

1 **BERNALILLO COUNTY, NEW MEXICO**

**ORDINANCE NO. \_\_\_\_\_**

2 APPROVING AND ADOPTING POLICY GUIDELINES AND APPLICATION  
3 PROCEDURES FOR THE ESTABLISHMENT OF TAX INCREMENT  
4 DEVELOPMENT DISTRICTS WITHIN BERNALILLO COUNTY, NEW  
5 MEXICO.

6 WHEREAS, Bernalillo County, New Mexico (the “County”) desires to benefit from the  
7 Tax Increment for Development Act, Sections 5-15-1 through 5-15-28 NMSA 1978, as amended  
8 and supplemented (the “Act”); and

9 WHEREAS, a tax increment development district (“TIDD”) provides a funding  
10 mechanism to finance construction of public infrastructure within the boundaries of the TIDD  
11 and for the operation and maintenance of such public infrastructure until dedicated to the  
12 County; and

13 WHEREAS, in order to permit the County to make a reasonable judgment as to whether  
14 to establish a TIDD and upon what terms, the County has established these policy guidelines and  
15 application procedures.

16 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS (THE  
17 “BOARD”), THE GOVERNING BODY OF BERNALILLO COUNTY, NEW MEXICO:

18 SECTION 1. GENERAL POLICIES.

19 (A) Purpose. This ordinance is intended to serve as guidelines for the purpose  
20 of considering and, as appropriate, approving the establishment of tax increment development  
21 districts and the issuance of bonds of such districts pursuant to the Act. The purpose of this  
22 policy is to enable the County to make a reasoned judgment concerning the terms and conditions

1 upon which to approve the formation of a TIDD and to provide procedures for the County to  
2 consider TIDD applications. Capitalized terms not otherwise defined herein are as defined in the  
3 Act.

4 (B) Purpose of Public Infrastructure. TIDDs should be utilized for the  
5 financing of on-site and off-site public infrastructure for economic development or  
6 redevelopment that facilitates and supports development and job creation. Public infrastructure  
7 financed by a TIDD shall (i) enhance the sustainability of the local, regional or statewide  
8 economy, (ii) support the creation of jobs, school sites and facilities and workforce housing and  
9 (iii) generate tax revenue for the provision of public improvements.

10 (C) Compliance with County Policy. Public improvements financed by a  
11 TIDD should be in conformance with applicable long-range County policies for development;  
12 other ordinances applicable to the affected land including annexation ordinances and any related  
13 annexation agreements and all supplements and subsequent enactments relating to these  
14 measures. Existing County policies for development, growth management and conservation  
15 shall remain in effect and shall not be waived or relaxed upon the creation of a TIDD. The TIDD  
16 may use bond proceeds or other TIDD funds to purchase land, including public rights-of-way or  
17 other real property to be used for public infrastructure improvements, unless such real property  
18 would be required to be dedicated and conveyed to the County by the applicant/landowner upon  
19 development of the applicant's/landowner's property.

20 (D) Costs and Expenses. Unless otherwise agreed by the County, all costs and  
21 expenses incurred by the County in connection with the application and formation of a TIDD  
22 shall be paid by the applicant/landowner through advance payments as provided in Sections 4(B)  
23 and 5(A) of this Ordinance. Costs and expenses incurred by the County in connection with the

1 application and formation of a TIDD shall not be liabilities of the County. Advance payments  
2 shall include payments for services rendered by County staff, services rendered by outside  
3 consultants who may be retained by the County including, but not limited to, bond counsel and  
4 other attorneys, financial advisors, planners, designers, engineers, appraisers, and tax  
5 professionals. If the County uses outside consultants as “staff,” such as attorneys or engineers,  
6 those consultants shall be paid their normal rate for services. The TIDD shall also pay, on an  
7 ongoing basis, the administrative fees of the County Treasurer related to the collection and  
8 distribution of property taxes relating to the TIDD.

9 (E) Reimbursement. Subsequent to the approval of an application for  
10 formation of a TIDD by the County, and after authorization by the TIDD exercising its sole  
11 discretion, all or part of such advance payments may be reimbursed to the applicant/landowner  
12 or to the TIDD to the extent permitted by state or federal law, from the proceeds of bonds, tax  
13 increment revenues or other legally available revenues of the TIDD. The County may, in its  
14 discretion, based on a particular applicant’s development plan and financing plan, authorize the  
15 TIDD to reimburse up 100% of the applicant’s equity contribution based on a demonstration  
16 satisfactory to the County that the goals served by the TIDD are not compromised by such  
17 reimbursement. Section 20(B) of the Act requires property owners to contribute a minimum of  
18 20% of initial infrastructure cost prior to the issuance of gross receipts or property tax increment  
19 bonds.

20 (F) TIDD Board of Directors; Delegated Authority. The TIDD shall be  
21 governed by a board of directors comprised of members of the Board or, at the sole option of the  
22 Board, five directors appointed by the Board which directors may include one representative of  
23 the applicant/landowner, (the “TIDD board”). The Board may, in accordance with law, delegate  
24 certain responsibilities of governance of the TIDD to a committee as approved by the Board.

1 The day-to-day responsibilities of the TIDD may be performed pursuant to an agreement with  
2 outside personnel (including a development agreement entered into pursuant to the Act), or  
3 County staff. Advisory committees may, at the option of the TIDD board, be utilized. An  
4 applicant may request the formation of a single TIDD or multiple TIDDs, which are designed to  
5 finance public infrastructure projects to serve separate, but related land uses, and which rely on  
6 discrete tax increment financing approaches.

7 (G) No Impact on County. (1) Unless otherwise agreed to by the County, the  
8 TIDD shall be self-supporting with regard to operations and maintenance of TIDD financed  
9 public infrastructure until the dedication of the infrastructure to the County and acceptance by  
10 the County after any applicable warranty period. Following the dedication of TIDD financed  
11 public infrastructure to the County and acceptance by the County after the one year warranty  
12 period, operations and maintenance of TIDD financed public infrastructure may be payable from  
13 the portion of the gross receipts tax increment or property tax increment retained by the County  
14 or from other County financing sources. Notwithstanding anything to the contrary which may be  
15 contained herein, the amount and structure of debt of a TIDD shall not have any direct or indirect  
16 negative material impact on the County's debt ratings with Standard & Poor's Corporation,  
17 Moody's Investors Services, Inc., Fitch Investor Services, Inc., or any other nationally  
18 recognized bond-rating service then rating the County's outstanding bonds.

19 (2) If the Provisions set forth in the Tax Increment for Development  
20 Act 5-15-1 NMSA 1978, or this ordinance, impair the ability of the County to meet its principal  
21 or interest payment obligations for revenue bonds or general obligation bonds outstanding prior  
22 to the effective date for the Tax Increment for Development Act that are secured by the pledge of  
23 all or part of the County's revenue, gross receipts tax or property tax, then the amount otherwise

1 payable to the TIDD pursuant to the Tax Increment for Development Act shall be paid instead to  
2 the County in an amount sufficient to meet any required payment.

3 (H) Special, Limited Obligations. Bonds of the TIDD shall be payable only  
4 from special funds into which are deposited certain gross receipts tax increments and property  
5 tax increments dedicated for the purpose of securing TIDD bonds in accordance with the Act.  
6 Notwithstanding anything to the contrary which may be contained herein, neither the property,  
7 the full faith and credit nor the taxing power of the County shall be pledged to the payment of  
8 any TIDD obligation or indebtedness.

9 (I) TIDD Financings; Board Approval. The TIDD board shall determine, in  
10 accordance with its policies and procedures, the amount, timing and form of financing to be used  
11 by a TIDD after review of the financial feasibility study required by Section 3(G) of this  
12 Ordinance. All bond proceeds generated by the financing must be spent on project costs, which  
13 may include the construction, acquisition and renovation of public infrastructure, in accordance  
14 with the bond documents and the policies and procedures of the TIDD board. All financings  
15 shall be subject to final review and approval by the Board, provided, however, that financings  
16 which contemplate the issuance of a multiple series of bonds shall be approved at the time of the  
17 approval of the first issuance of bonds and the TIDD board shall not be required to receive  
18 further approvals from Board except when there is a material change affecting the financial  
19 stability of the bond such as the amount and timing of issuance in relation to the projected build-  
20 out of the TIDD project.

21 (J) Procurement. Except as otherwise determined by the Board, the TIDD  
22 shall construct or finance improvements on such terms and with such persons as the TIDD board  
23 determines to be appropriate, in accordance with Section 12(B) of the Act, as amended.

1           (K) Costs of Operation, Administration and Maintenance. Until the  
2 completion of the public infrastructure improvements financed by the TIDD, the expiration of  
3 the one year warranty period for such improvements and the dedication of such improvements to  
4 the County, all costs incurred by the TIDD during such period for the administration and  
5 operation of the TIDD and the operation and maintenance of such public infrastructure  
6 improvements shall be the responsibility of the TIDD, the applicant/landowner, applicable  
7 homeowners' association, or any combination of the foregoing, as may be acceptable to the  
8 applicant/landowner, County and the TIDD.

9           SECTION 2. PRE-APPLICATION DISCUSSION WITH COUNTY STAFF.

10           (A) TIDD Review Staff; Preliminary Tasks. The County hereby appoints a  
11 TIDD Review Staff, which shall be comprised of the County Manager and additional staff  
12 designated by the County Manager. The TIDD Review Staff is authorized to obtain the input  
13 and recommendation of the County's bond counsel and financial advisor, and other County  
14 personnel concerning the legal, financial, operational and administrative feasibility of the  
15 proposed TIDD financing and/or delivery of enhanced services and the sufficiency of the  
16 application and supporting documents. Each TIDD applicant shall meet with the TIDD Review  
17 Staff, which shall do the following:

18                   (1) Make an initial assessment whether the proposed TIDD appears to  
19 be consistent with the County's land use and development policies, zoning and other applicable  
20 regulations, including applicable policies relating to economic development and job growth;

21                   (2) Identify any related County approvals that will be required to  
22 permit the TIDD;

1                   (3)     Identify other issues specific to the applicant’s proposed project  
2 that should be addressed in its application in order for the County to make the findings required  
3 by Section 1(C) of the Act, such as compliance with applicable County policies, rules or  
4 regulations, and the proposed project’s facilitation or support of economic development, job  
5 growth and job creation, work force housing, public school facility development and  
6 enhancement, mixed-use transit-oriented development, traditional neighborhood design or  
7 sustainable development;

8                   (4)     Identify the proposed improvement of the specific property within  
9 the proposed TIDD, including the expectation of the future obligations of the owner or developer  
10 and the County concerning the zoning, subdivisions, improvements, impact fees, financial  
11 responsibilities and other matters relating to the development, improvement and use of the real  
12 property within the proposed TIDD; and

13                   (5)     Establish a preliminary schedule for (i) the applicant’s submittal of  
14 a TIDD application, (ii) County staff review of the application for completeness, (iii) Board  
15 meeting or meetings for its consideration of and action on the application.

16                   (B)     Role of TIDD Review Staff. The determinations of the TIDD Review  
17 Staff shall be of an advisory nature, for the purposes of assisting applicants in submitting  
18 completed applications with detail and information required to enable meaningful consideration  
19 by the Board. TIDD Review Staff determinations and recommendations shall be considered by,  
20 but not be binding on, the Board.

21                   (C)     Invitation to Apply for TIDD. If the TIDD Review Staff concludes that an  
22 application is consistent with applicable County ordinances, regulations, and policies including  
23 this Ordinance, then an invitation to submit an application will be extended to the applicant and

1 the TIDD Review Staff will advise the applicant of the requested application contents in the  
2 matter set forth in Section 3 of this Ordinance. If the TIDD Review Staff concludes that the  
3 application is inconsistent with applicable County ordinances, regulations and policies including  
4 this Ordinance, then the TIDD Review Staff will notify the applicant that the applicant will not  
5 receive an invitation to submit an application. The applicant may appeal to the Board the  
6 decision of the TIDD Review Staff not to extend an invitation to submit an application.

7 SECTION 3. CONTENT OF APPLICATION. Based on the recommendations of the  
8 TIDD Review Staff or the Board, the TIDD application shall, at a minimum, contain the  
9 following:

10 (A) Legal Description. A description of the proposed TIDD, including a legal  
11 description of its boundaries, identity and addresses of all persons or entities with any interest in  
12 the property, and the names and addresses of any qualified electors (as defined in Section 3-1-  
13 2(K) NMSA 1978) located within the proposed boundaries. The description must contain an  
14 analysis of the appropriateness of the TIDD boundaries. No TIDD will be approved if the  
15 boundaries of the proposed TIDD overlap the boundaries of an existing TIDD or existing public  
16 improvement district, or a proposed TIDD, or proposed public improvement district; of the  
17 County or any other jurisdiction unless the overlapping districts have entered into a joint powers  
18 agreement pursuant to Sections 11-1-1 through 11-1-7, NMSA 1978, as amended or  
19 supplemented. TIDD boundaries may be non-contiguous. If any applicant proposes that a  
20 property tax increment or a gross receipt tax increment of the County, be used to finance  
21 infrastructure in an existing TIDD of another jurisdiction, the applicant shall follow all of the  
22 polices and procedures in this Ordinance as if the applicant was applying for a County TIDD.



1           (B) Consent. If the TIDD is proposed to be formed without an election  
2 through the waiver of election provided in the Act, evidence satisfactory to the County of the  
3 unanimous consent of owners of real property within the proposed boundaries of the TIDD to the  
4 creation of the TIDD. A current title report on the property shall be submitted as evidence of the  
5 names of persons with any interest in the land and qualified electors. In the event that any owner  
6 of property within the proposed TIDD withdraws consent to the creation of a TIDD, the  
7 applicant shall have the opportunity to submit a revised application and shall not be required to  
8 submit a new application fee as provided in Section 2 of this Ordinance; provided, that the  
9 County may request that the applicant deposit additional funds to pay costs reasonably incurred  
10 by the County in reviewing an application which has been revised as a result of a property  
11 owner's withdrawal of consent to the creation of a TIDD.

12           (C) Election. If the TIDD is proposed to be formed by election, the County  
13 may require evidence satisfactory to the County of the applicant's ability to pay for an election,  
14 whether or not an all mail-in election, and a proposed election timetable.

15           (D) Project Description. A detailed description of the types of public  
16 infrastructure to be financed by the TIDD, including the estimated construction or acquisition  
17 costs of the public infrastructure, projection of working capital needs, including adequate funds  
18 for repair and replacement of infrastructure, the annual operation and maintenance costs of the  
19 public infrastructure and the governmental approvals and licenses that shall be required for both  
20 the public and private improvements to be constructed and operated. The description shall  
21 contain adequate information to establish financial parameters for the operation and financing of  
22 the TIDD as set forth in Section 5 of this Ordinance. The description shall include a  
23 representation concerning the future ownership and maintenance of the public infrastructure.

1 (E) Schedule. A proposed project schedule for commencement and  
2 completion of (a) the public infrastructure and (b) the private development.

3 (F) Tax Increment Development Plan. A tax increment development plan that  
4 includes the following information:

5 (1) Whether gross receipts tax increment bonds or property tax  
6 increment bonds or both are proposed;

7 (2) The public improvements proposed to be financed by each type of  
8 bond financing proposed along with a description of the public improvements and an estimate of  
9 the costs of completion;

10 (3) The estimated annual gross receipts tax increment to be generated  
11 by the TIDD project; and the portion of that gross receipts tax increment proposed to be pledged  
12 as security for gross receipts tax increment bonds, (which portion may not exceed seventy-five  
13 percent (75%) of the gross receipts tax increment) if applicable;

14 (4) The estimated annual property tax increment to be generated by the  
15 TIDD project and the portion of that property tax increment proposed to be pledged as security  
16 for property tax increment bonds (which portion may not exceed seventy-five percent (75%) of  
17 the property tax increment), if applicable;

18 (5) Any proposed use of gross receipts tax increment revenues or  
19 property tax increment revenues other than to secure the payment of bonds;

20 (6) The proposed land uses for the TIDD project including a map  
21 depicting the geographic boundaries of the TIDD;

1                                   (7)     The number and types of jobs expected to be created by the TIDD  
2 project during build-out of the TIDD and after completion of the TIDD;

3                                   (8)     The amount and characteristics of workforce housing expected to  
4 be created by the TIDD project;

5                                   (9)     The location and characteristics of public school facilities expected  
6 to be created, improved, rehabilitated or constructed by the TIDD project;

7                                   (10)    A description of innovative planning techniques, including mixed-  
8 use transit-oriented development, traditional neighborhood design or sustainable development  
9 techniques, that the County should find to be beneficial and that are proposed to be incorporated  
10 into the TIDD project; and

11                                  (11)    The amount, type and source of private investment in the TIDD  
12 project.

13                                  (G)     Financial Feasibility Study. A financial feasibility study (which shall be  
14 satisfactory to the County and prepared by an independent professional with appropriate  
15 expertise approved by the County and paid for by the Applicant) for the entire project (or such  
16 phases of the project that are expected to be constructed during the term of the TIDD) covering  
17 both the public infrastructure and the private development and including appropriate cash flow  
18 analysis addressing projected tax increment revenues. The financial feasibility study shall  
19 include projections for a period which shall be the longest of (i) the expected term of existence of  
20 the TIDD, (ii) the anticipated period during which tax increment is to be collected by the TIDD,  
21 or (iii) the proposed final maturity date of any bonds issued by the TIDD. The financial  
22 feasibility study shall include:

1 (1) An analysis of the financing and the estimated costs of the  
2 improvements, services and benefits to result from the formation of the proposed TIDD  
3 (including the time estimated to be necessary to complete the TIDD improvements).

4 (2) Projected costs of maintenance after construction.

5 (3) A complete description of the improvements to be owned and  
6 maintained by the County.

7 (4) A financing plan for any private development in the TIDD which  
8 is not expected to be dedicated to the County.

9 (5) A market absorption study for the development in the TIDD  
10 prepared by an independent consultant acceptable to the County.

11 (H) Equity Contribution. A description of the proposed equity contribution  
12 from the applicant and a calendar showing the anticipated timing and sources of such  
13 contribution. An equity contribution shall be equal to a minimum of 20% of estimated initial  
14 infrastructure cost prior to the issuance of gross receipts or property tax increment bonds.

15 (I) Applicant Financial Information. A description of the applicant's  
16 professional experience and evidence demonstrating its financial capacity to undertake the  
17 development associated with the public infrastructure and private development. The application  
18 shall also describe the direct and indirect benefits to all parties with financial interest in the  
19 proposed development. Such information shall be accompanied by three-year audited financial  
20 statements, if available, or comparable information attesting to the financial strength and  
21 experience of the development parties along with a description of past projects and disclosure of  
22 any material litigation.

1           (J)    Operating Plan. An operating plan for the TIDD describing the extent of  
2 the TIDD's responsibilities for and anticipated costs of operation and maintenance of TIDD  
3 financed public infrastructure prior to the dedication to the County of such infrastructure, the  
4 method of carrying out those responsibilities, and specifying whether the TIDD or another entity  
5 will be responsible for operation and maintenance of specific public infrastructure improvements  
6 until dedicated and accepted by the County. Following the dedication of TIDD financed public  
7 infrastructure to the County the costs of operation and maintenance of such infrastructure will be  
8 financed through the use of the portion of the gross receipts tax increment and/or property tax  
9 increment retained by the County or through other County financing sources.

10           (K)   Compliance Statement. A description of how the proposed TIDD meets  
11 the existing development objectives of the County, including the degree to which the TIDD is  
12 consistent with growth management policies and zoning requirements, and the degree to which  
13 the land use plan for the TIDD is consistent with the County's applicable long-range policies for  
14 development, growth management and conservation.

15           (L)   Proposed Development Agreement. Consistent with the policies set forth  
16 in this Ordinance, a description of the proposed terms of a Development Agreement including  
17 the improvement of the specific property within the proposed TIDD, including the expectation of  
18 the future obligations of the owner or developer and the County concerning the zoning,  
19 subdivisions, improvement, impact fees, financial responsibilities and other matters relating to  
20 the development, improvement and use of the real property within the proposed TIDD. The  
21 description of proposed development agreement terms shall not be required to include the level  
22 of detail expected to be included in the proposed development agreement itself and shall not be  
23 binding on the County or the developer and shall not constitute a legal cause of action or create  
24 vested rights.

1 (M) Resolutions.

2 (1) A proposed resolution of intent to form the proposed TIDD (a)  
3 providing that the tax increment development plan is approved pursuant to Section 5-15-4(A) of  
4 the Act and (b) directing publication of notice of a public hearing concerning the formation of  
5 the TIDD which hearing shall be held no later than 90 days after the adoption of the resolution of  
6 intent in accordance with Sections 5-15-8(E) and 5-15-6 of the Act.

7 (2) A proposed resolution ordering the formation of the TIDD and setting  
8 the matter for an election or declaring that the election is waived. The proposed resolution  
9 ordering the formation of the TIDD must address those items set forth in Sections 5-75-4(C) and  
10 5-15-7(C) of the Act.

11 (N) Other Information. Such other information as the County may reasonably  
12 require after its initial review of the application, including but not limited to preliminary legal  
13 opinions, appraisals, further information regarding the relationship of the application to the  
14 County's development objectives, additional proof of financial capability, business references,  
15 term sheets for financing and financial commitment letters.

16 SECTION 4. APPLICATION PROCEDURES.

17 (A) Application Submission. Six (6) copies of the application for the  
18 formation of a TIDD shall be submitted to the County Manager, who shall coordinate an  
19 interdepartmental analysis of each application.

20 (B) Application Fees. At the time of submission of the application, the  
21 applicant shall pay a \$25,000 application fee. The application fee shall be used by the County  
22 for costs incurred in connection with the processing and review of the application and the

1 formation of the TIDD in accordance with the provisions of Section 1. \$10,000 of the  
2 application fee shall be non-refundable. In calculating costs incurred by the County, the County  
3 may include reasonable costs associated with the pre-application discussion contained in Section  
4 2. An accounting of all costs incurred by the County shall be made to the applicant at its request  
5 and if reasonably necessary, additional funds may be requested by the County and must be paid  
6 by the applicant. If an applicant withdraws its application prior to the County's completion of its  
7 application review, the County shall return the unexpended portion (if any) of the application fee  
8 (but not the non-refundable \$10,000 portion) to the applicant. Any unused portion of the  
9 application fee shall be refunded to the applicant at such time as the County determines that all  
10 costs and expenses have been paid. The County and its legal consultants shall use reasonable  
11 efforts to determine whether any features of a TIDD proposed in an application appear not to be  
12 feasible, and to advise the applicant early in the review process for the purpose of avoiding  
13 unnecessary additional costs of review.

14 (C) Intent Resolution. At the applicant's request, County staff may, in its  
15 discretion, present to the Board a non-binding resolution expressing the County's intent to  
16 proceed with the formation of the TIDD. Such a resolution may be based upon a preliminary  
17 application outline, containing, at a minimum, the following information:

- 18 (1) Ownership of property proposed to be included in the TIDD;
- 19 (2) Location and boundaries of the proposed TIDD;
- 20 (3) General description of improvements to be constructed with TIDD  
21 financing and estimated costs of construction;
- 22 (4) Estimated principal amount of TIDD bonds proposed to be issued;

1 (5) Estimated maximum annual debt service on TIDD bonds;

2 (6) Estimated annual gross receipts tax increment to be generated by  
3 the TIDD project and the portion of such increment to be allocated during the time necessary to  
4 complete the payment of the TIDD project;

5 (7) Estimated annual property tax increment to be generated by the  
6 TIDD project and the portion of such increment to be allocated during the time necessary to  
7 complete the payment of the TIDD project;

8 Any resolution adopted pursuant to this section shall express the County's non-binding  
9 intent to proceed with the formation of the TIDD, subject to such conditions as may be set forth  
10 in the resolution.

11 (D) Existing Agreements. Agreements by and between the County and the  
12 applicant/landowner relating to the provision of infrastructure within the boundaries of the  
13 TIDD may exist prior to the formation of the TIDD (the "Existing Agreements"). To the extent  
14 of any inconsistency between the Existing Agreements and agreements between the County and  
15 the applicant/landowner relating to the provision of infrastructure within the boundaries of the  
16 TIDD entered into upon formation of the TIDD (the "TIDD Agreements"), the provisions of the  
17 Existing Agreements shall be deemed amended and the provisions of the TIDD Agreements shall  
18 control. The Existing Agreements relating to the provision of infrastructure proposed to be  
19 furnished by the TIDD shall be identified in the application and how those Existing Agreements  
20 are expected to be modified shall be described.

21 (E) Post Application Conference. After the application fee is submitted, the  
22 County Manager shall arrange an initial conference with the applicant and the appropriate TIDD



1 Review Staff, for the purpose of reviewing the application for completeness and conformity with  
2 County policies. The TIDD Review Staff shall use its best efforts to review the application and  
3 conduct the initial conference within fifteen business days following receipt of the application  
4 and payment of the application fee.

5 (F) Additional Information. If at any time during the application process  
6 County staff requests additional information, the applicant shall provide any and all  
7 supplemental information requested, in accordance with the provision of Section 3(N) of this  
8 Ordinance.

9 (G) TIDD Review Staff Report. After analysis of an application as  
10 supplemented, the TIDD Review Staff under the direction of the County Manager or his or her  
11 assignee, will prepare a report including recommendations relating to the TIDD and an analysis  
12 of the impact of the formation of the TIDD and its effects on the County. The report may  
13 provide a recommended disposition of the application and any additional requirements that shall  
14 be placed on the applicant/landowner and the TIDD. The County shall use its best efforts to  
15 complete the analysis and report concerning the application within thirty business days following  
16 the submission of a fully complete application. Recommendations of the TIDD Review Staff are  
17 advisory and are not binding on the Board.

18 (H) Transmittal to Board. If all costs billed to or incurred by the County have  
19 been paid by the applicant by a date at least 14 calendar days prior to the date of the meeting of  
20 the Board at which the appropriate legislation approving the application is to be introduced and if  
21 the application meets the qualifications provided herein, the application, along with any report  
22 and recommendations of the TIDD Review Staff, shall be forwarded to the Board, along with  
23 appropriate implementing legislation. Implementing legislation shall consist of the following:

1                   (1)     a resolution of intent to form the proposed TIDD (a) providing that  
2 the tax increment development plan included with the Application is approved pursuant to  
3 Section 5-15-4(A) of the Act, subject to the further proceedings of the Board in connection with  
4 the formation of the proposed TIDD, and (b) directing publication of notice of a public hearing  
5 concerning the formation of the TIDD which hearing shall be held no later than 90 days after the  
6 adoption of the resolution of intent, in accordance with Sections 5-15-5(E) and 5-15-6 of the Act;  
7 and

8                   (2)     a resolution ordering that the TIDD be formed and setting the  
9 matter for an election or declaring that the election is waived as provided in Section 5-15-7  
10 NMSA 1978. This formation resolution shall occur upon completion of the public hearing  
11 referenced above.

12 Final approval of the Board shall be conditioned on the Board's conclusion that all matters  
13 necessary to be completed prior to the formation of the TIDD have been completed.

14                   (I)     Commission Approval of TIDD Development Agreement. (i) If the Board  
15 approves an application for formation of a TIDD, the applicant/landowner and the TIDD Review  
16 Staff shall coordinate a schedule of events for formation of the TIDD including either the setting  
17 of an election for the matter or declaring that the election is waived, and shall negotiate an  
18 appropriate Development Agreement between the County and the applicant/landowner which  
19 Development Agreement shall incorporate the requirements of any report, recommendations of  
20 the County Review Staff relating to such TIDD, the requirements of this Ordinance and any  
21 other restrictions, provisions and agreements required by the County in its discretion. The  
22 Development Agreement shall be subject to approval by the Board.

1           (ii) If an applicant proposes that a property tax increment or a gross receipts tax  
 2 increment of a TIDD created by another taxing entity within the County which will be used to  
 3 finance infrastructure in the TIDD not created by the County, the applicant shall follow all of the  
 4 policies and procedures in the Ordinance as if the applicant was applying to the County for new  
 5 TIDD.

6

7           SECTION 5   TIDD OPERATIONS AND DEBT FINANCING.

8           (A)   TIDD Administration Expense Fee. In addition to the amounts set forth in  
 9 Section 4(B) of this Ordinance, upon formation of a TIDD the applicant/landowner shall deposit  
 10 with the TIDD a nonrefundable administrative expense fee in the amount of \$5,000. The  
 11 administrative expense fee shall be applied by the TIDD to the costs and expenses incurred in  
 12 connection with the formation, review of any feasibility study, election costs, administration,  
 13 operation and maintenance of the TIDD or its public improvements. From time to time, upon  
 14 depletion of the administrative expense fee, the TIDD may request, and the applicant/landowner  
 15 shall deposit with the TIDD, additional amounts deemed by the County to be necessary for the  
 16 purposes contemplated in this section within 14 days of such request.

17           (B)   Administration, Operation and Maintenance Charges. In order to provide  
 18 for the TIDD to be self-supporting for its administrative, operation and maintenance expenses,  
 19 and to finance services in addition to those provided by the County, the County and the TIDD,  
 20 unless otherwise agreed, may require the imposition of up to \$5.00 per \$1,000 of net taxable  
 21 value, not as a tax or charge of the County, but in accordance with the provisions of Sections  
 22 12(A)(11) and 13(A) of the Act, as amended, upon the TIDD taxable property, for the  
 23 administration of the TIDD, and the operation and maintenance of property which is not County-

1 owned infrastructure otherwise maintained by the County. Failure to impose such tax shall not  
2 impose upon the County any obligations for operations.

3 (C) Debt Finance Terms. The amount and structure of debt of a TIDD shall  
4 not have a net negative impact on the debt or financing capabilities of the County, taking into  
5 account the basic purposes and operation of a TIDD as provided in the Act. Any debt issued  
6 shall be in accordance with the provisions of Section 1(H) of this Ordinance.

7 (D) Gross Receipts Tax Increment Bonds. Gross Receipts Tax Increment  
8 Bonds shall be payable from the authorized gross receipts tax increment from the gross receipts  
9 taxes generated from taxable activities located within the TIDD. An applicant for gross receipts  
10 tax revenue bonds shall describe in each financial feasibility study required in Section 3(G) of  
11 this Ordinance, the following:

12 (1) The amount and timing of TIDD gross receipts tax increment  
13 bonds to be issued.

14 (2) The expected production of gross receipts tax increment within the  
15 TIDD, and its relationship to anticipated absorption of developed real property.

16 (3) The sources of gross receipts taxes or portions thereof to be  
17 pledged to the repayment of the gross receipts tax increment bonds.

18 (4) Whether the bonds shall be publicly offered or privately placed.  
19 Publicly offered bonds shall either (i) be rated (either on their own merits or by use of  
20 appropriate credit enhancement) as investment grade by Standard & Poor’s Ratings Group,  
21 Moody’s Investors Service, Inc., Fitch Ratings, or other nationally recognized bond-rating  
22 services, or (ii) be issued in connection with a transaction which meets all of the following

1 criteria: (a) the minimum equity contribution, excluding real property, of the developer is at  
2 least 20% of the estimated initial cost of the project; and (b) the developer and the TIDD shall  
3 enter into an appropriate contribution agreement, which may require a letter of credit or other  
4 third-party guarantee of the bonds by the developer.

5 Privately placed bonds need not be rated; however, the purchasers of such bonds must be  
6 “qualified institutional buyers” (as such term is defined in Rule 144A of the Securities Exchange  
7 Commission) and must agree not to resell the bonds except to “qualified institutional buyers” or  
8 “accredited investors”, as such terms are defined by the SEC, in a private placement.

9 If appropriate, the applicant shall enter into a “Continuing Disclosure Undertaking” (as  
10 required by Rule 15c2-12 of the Securities Exchange Commission) relating to the issuance of the  
11 bonds.

12 (E) Property Tax Increment Bonds. Property Tax Increment Bonds shall be  
13 payable from the authorized property tax increment from taxable property located within the  
14 TIDD. Applicants for Property Tax Increment Bonds shall describe in each financial feasibility  
15 study as required by Section 3(G) of this Ordinance, the following:

16 (1) The amount and timing of TIDD property tax increment bonds to be  
17 issued.

18 (2) The expected market absorption of development within the TIDD, and its  
19 relationship to anticipated absorption of developed real property.

20 (3) The sources of the property taxes or portions thereof to be pledged to the  
21 repayment of the property tax increment bonds.

1           (4)     Whether the bonds shall be publicly offered or privately placed. Publicly  
2 offered bonds shall either (i) be rated (either on their own merits or by use of appropriate credit  
3 enhancement) as investment grade by Standard & Poor’s Ratings Group, Moody’s Investors  
4 Service, Inc., Fitch Ratings, or other nationally recognized bond-rating services, or (ii) be issued  
5 in connection with a transaction which meets all of the following criteria: (a) the minimum  
6 equity contribution, excluding real property, of the developer is at least 20% of the estimated  
7 initial cost of the project; and (b) the developer and the TIDD shall enter into an appropriate  
8 contribution agreement, which may require a letter of credit or other third-party guarantee of the  
9 bonds by the developer.

10           Privately placed bonds need not be rated; however, the purchasers of such bonds must be  
11 “qualified institutional buyers” (as such term is defined in Rule 144A of the Securities Exchange  
12 Commission) and must agree not to resell the bonds except to “qualified institutional buyers” or  
13 “accredited investors”, as such terms are defined by the SEC, in a private placement.

14           If appropriate, the applicant shall enter into a “Continuing Disclosure Undertaking” (as  
15 required by Rule 15c2-12 of the Securities Exchange Commission) relating to the issuance of the  
16 bonds.

17           (F)     Bond Counsel.     The County’s Bond Counsel shall advise the County in  
18 connection with the formation of a TIDD and all activities taken by TIDD formed by the County,  
19 the cost of which shall be paid by the all TIDD and the County’s bond counsel shall be bond  
20 counsel for the issuance of TIDD bonds. From time to time the County may request from bond  
21 counsel such opinions as it deems necessary in connection with the formation and activities of  
22 the TIDD. All fees and expenses of the County’s Bond Counsel shall be paid by the Applicant,  
23 the TIDD, or from the proceeds of the Sale of TIDD.

1 SECTION 6. FINANCIAL CONSIDERATIONS.

2 (A) Limitation on County’s Obligations. Whether or not TIDD bonds are  
3 issued, the County’s obligations to the TIDD shall never exceed seventy-five percent (75%) of  
4 the gross receipts tax increment or seventy-five percent (75%) of the property tax increment, as  
5 applicable.

6 (B) Debt Service Reserve Fund. All TIDD bond issues, except bond issues  
7 having a term of less than 1 year or bond issues that are held by the applicant/landowner or an  
8 affiliate of the applicant/landowner, shall include a debt service reserve fund in an amount  
9 acceptable to the TIDD board, unless the Board determines such fund is not necessary.

10 (C) Indemnity. The County may require the applicant (or such other third  
11 party acceptable to the County and the TIDD), to indemnify and hold harmless the County and  
12 the TIDD and their officers, agents and employees from and against any and all liabilities,  
13 claims, costs and expenses, including attorneys’ fees, incurred in any proceeding challenging the  
14 formation, operation, administration of the TIDD, the offer and sale of TIDD bonds, and the  
15 levying by the TIDD of any tax in accordance with the Act.

16 (D) Environmental Condition. Unless otherwise provided to the County  
17 pursuant to other requirements prior to TIDD financing and acquisition by the TIDD or County,  
18 the TIDD and County shall require proof that the real property which shall be dedicated to or  
19 otherwise owned, leased or operated by the County or the TIDD is free from releases of or of the  
20 existence of any substances or materials in a quantity known by applicant/landowner to be  
21 considered hazardous or toxic and requiring remediation or removal under federal, state or local  
22 environmental laws, ordinances or regulations (collectively, “Environmental Laws”) and shall  
23 require a proposed form of indemnity agreement for the benefit of the TIDD and County with

1 respect to any liability under applicable Environmental Laws arising from the release or  
2 existence of hazardous or toxic substances on the real property as of the date that the real  
3 property is dedicated, conveyed, leased or otherwise transferred to the TIDD or County by the  
4 applicant/landowner.

5 (E) Refinancing and Refunding Bonds. Refinancings and refundings shall be  
6 permitted and shall be expected to either (i) generate interest rate savings; (ii) restructure  
7 payment of principal or (iii) eliminate burdensome covenants. All refinancings and refundings  
8 shall be submitted to the Board for approval after the final review and approval of the TIDD  
9 Board.

10 (F) Cost of Change. The applicant shall be responsible for all costs and  
11 expenses incurred in connection with proposed changes to a TIDD application after the County  
12 has begun its review process pursuant to this Ordinance.

13 (i) The County Treasurer shall determine the base property taxes in  
14 accordance with the Act for the TIDD real and personal property in the aggregate and not per  
15 parcel or tract. The property tax increment will be determined by the Treasurer based on TIDD  
16 real and personal property in the aggregate and not per parcel or tract.

17 (G) County Treasurer. (ii) Prior to disbursing any Property Tax Increment  
18 to a TIDD, the County Treasurer shall make disbursements of property taxes to the entities  
19 entitled to receive such disbursements in the amounts they are entitled to receive; (ii) The County  
20 Treasurer shall make distributions of the Property Tax Increment to the TIDD on January 1 and  
21 July 1 of each year commencing on the January 1 or July 1 that such funds are first available.



1           SECTION 7. DELEGATION. The appropriate officers of the County, including,  
2 without limitation, the County Manager, County Finance Director and Deputy County Manager  
3 are authorized to take all action necessary and appropriate to effectuate the provisions of this  
4 Ordinance. The appropriate officers of the County, including, without limitation, the County  
5 Manager, County Finance Director and Deputy County Manager also are directed to make such  
6 changes or corrections to the procedures established in this Ordinance relating to the number of  
7 days in which actions are required to be taken, the persons responsible for particular actions, the  
8 types and forms of documents required to be submitted to the County and other administrative  
9 matters which, in their judgment, are necessary and appropriate to accomplish the purposes of  
10 this Ordinance and to provide efficient administration of the TIDD process. Notice of any such  
11 changes or corrections shall be given to all persons affected thereby and a certificate of such  
12 changes and corrections shall be filed with the County Clerk.

13           SECTION 8. AMENDMENT OF ORDINANCE. This Ordinance may be amended by  
14 resolution or ordinance of the Board.

15           SECTION 9. SEVERABILITY CLAUSE. If any section, paragraph, clause or  
16 provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the  
17 invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any  
18 of the remaining provisions of this

19           SECTION 10. REPEALER CLAUSE. All bylaws, orders, resolutions and ordinances, or  
20 parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency.  
21 This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part  
22 thereof, heretofore repealed.

**1** SECTION 11. EFFECTIVE DATE. Upon its final passage, this Ordinance shall be  
**2** recorded in the book of ordinances in the County kept for that purpose and authenticated by the  
**3** signature of the County Clerk and shall take effect thirty days after being recorded as provided  
**4** by law.

**5** [the remainder of this page intentionally left blank]

**6**

1           ADOPTED AND APPROVED THIS 25<sup>th</sup> day of October, 2007

2   **BOARD OF COUNTY COMMISSIONERS**  
3   **BERNALILLO COUNTY, NEW MEXICO**

4   \_\_\_\_\_  
5   Alan B. Armijo, Chair

6   \_\_\_\_\_  
7   E. Tim Cummins, Vice Chair

8   \_\_\_\_\_  
9   Teresa L. Córdoba, Ph.D, Member

10    \_\_\_\_\_  
11    Deanna Archuleta, Member

12    \_\_\_\_\_  
13    \_\_\_\_\_  
14    Michael Brasher, Member

15    [SEAL]

16    Attest:

17    \_\_\_\_\_  
18    Maggie Toulouse, Clerk