VILLAGE OF BOSQUE FARMS
ORDINANCE 2006-03

AN ORDINANCE RELATING TO ECONOMIC DEVELOPMENT PLANNING.

BE IT ORDAINED BY THE GOVERNING BODY OF THE VILLAGE OF BOSQUE FARMS, NEW MEXICO

Section 1. Economic Development Ordinance

1.1 Short Title.
This Ordinance may be cited as the "Economic Development Ordinance."

Section 2. Authority

2.1 The Economic Development Ordinance is enacted pursuant to the statutory authority conferred upon municipalities to allow public support of economic development (NM Statute Section 5-10-1 through Section 5-10-13-1978). This Ordinance is adopted as part of the Village of Bosque Farms economic development plan.

Section 3. Purpose

3.1 The purpose of the Economic Development Ordinance is to allow public support of economic projects to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. Further, the purpose of the ordinance is to allow the Village of Bosque Farms to enter into one or more joint powers' agreements with other local governments to plan and support regional economic development projects.

3.2 **Local Economic Development Act**

Local governments are allowed to provide direct or indirect assistance to qualifying business to implement economic development plans and projects. Furthermore local and regional governments have the authority to contribute assets to development projects. However, the imposition of a tax must be approved by the voters in referendum.

Eligible uses: Municipalities may impose municipal infrastructure gross receipts tax and dedicate the revenue for economic development projects. A total of 0.25% tax (in four increments of 0.0625%) may be imposed.

Section 4. Definitions as used in the Economic Development Ordinance

4.1 *Economic development project* means the provision of direct or indirect land, buildings or other infrastructure; public works improvements essential to the location assistance of a qualifying business and include the purchase, lease, grant, or construction, reconstruction, improvement or other acquisition or conveyance of expansion of a qualifying business; and payments for professional services contracts necessary for local or regional governments to implement a plan or project.

4.2 *Qualifying entity* means an existing or proposed corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one, or a combination of two or more of the following:

A. An industry for manufacturing, processing, or assembling of any agricultural or manufactured products;

B. A commercial enterprise for storing, warehousing, distributing, or selling products of agriculture, mining or industry, but other than provided in Paragraph (D) of this subsection, not including any enterprise for sale of goods or commodities at retail or for the distribution to the public of electricity, gas, water, or telephone or other services commonly classified as public utilities;

C. A business in which all or part of the activities of the business involves the supplying of services to the general public or to government agencies or to a specific industry or customer, but, other than provided in Paragraph (D) of this subsection, not including business primarily engaged in the sale of goods or commodities at retail; and

D. A telecommunications sales enterprise that makes the majority of its sales to persons outside of New Mexico.

4.3 *Project participation agreement* means an agreement between a qualifying entity and the Village of Bosque Farms whereby the Village of Bosque Farms provides assistance to an economic development project in exchange for the benefits received as set forth in this section.

4.4 *Governing Body* means the Mayor and the Village Councilors.

Section 5. Economic Development Projects

5.1 The Village Clerk/Administrator, after approval of the Governing Body, may assist economic development projects in any legally permissible

manner, including but not limited to provisions of land, buildings and infrastructure provided that all the requirements of this ordinance are met. The Village of Bosque Farms may provide land, buildings or infrastructure it already owns, or it may build, purchase or lease the facilities needed for an economic development project. The Village of Bosque Farms, at its discretion, may bear the full cost or contribute a portion of the costs including the waiver of applicable fees. The Village of Bosque Farms, at its discretion, may also contribute to the payment of costs for professional service contracts such as industry feasibility studies, and planning and design services needed to implement a project.

5.2 The Governing Body may consider offering all forms of assistance allowed under this ordinance and any other legally permissible forms of assistance. However, this does not establish any obligation on the communities' part to offer any specific type or level of assistance.

Section 6. Economic Development Committee

6.1 The Governing Body assigns the Economic Development Committee the following responsibilities with regard to the economic development plan for the Village of Bosque Farms:

A. Reviewing and making recommendations to the Governing Body on applications for assistance for economic development projects; and

B. Reviewing and making recommendations to the Governing Body on applications for industrial revenue bonds (IRB'S).

6.2 The Economic Development Committee shall at all times provide for a Chairman's position for the Committee. The Governing Body shall appoint members of the Committee and designate one of the members as Chairman.

Section 7. Application Requirements

7.1 Any qualifying entity meeting the definition set forth in subsection 4.2 may propose an economic development project to the Village of Bosque Farms. Meeting the definition of a qualifying entity does not create any obligation on the part of the Village of Bosque Farms.

7.2 Applications from qualifying entities shall be submitted to the Village of Bosque Farms on forms provided by the Village Clerk.

7.3 Applications shall contain the following information for business applicants.

A. Identification information:

1) Complete name and address of entity;
2) Incorporation papers with by-laws;
3) List of board of directors and executive director, with addresses; and resumes of all directors and officers; and
4) Resumes of all directors and officers.

B. Evidence of financial solvency:

1) Financial statements (income statements and balance sheets) for the past three years;
2) Federal tax number, New Mexico State Taxation and Revenue number and county business license; and
3) Projected income statement for at least three years.

C. Evidence of organizational capacity:

1) Brief history of the entity;
2) Organizational chart of the entity; and
3) Business plans for the entity and proposed project (shall include pro-forma cash flow analysis);

D. The project participation agreement and any other pertinent information will be forwarded to the Governing Body for final consideration at a public meeting.

Section 8. Applicable Review Criteria

8.1 Applications for economic development projects requesting assistance from the Village of Bosque Farms which meet the policies and objectives of the communities' economic development plan, shall receive priority.

Examples Include, but are not limited to:

A. Manufacturing firms (including intellectual property such as computer software);

B. Projects, which enhance the exporting capacity of businesses and/or provide goods and services, which currently have to be imported into the Village of Bosque Farms;

C. Private businesses seeking to build, expand or relocate;

D. Private businesses which provide facilities or services which enhance the ability of the Village of Bosque Farms;

E. Organizations, which assist business start-ups or bring small businesses together to increase their competitive abilities. This must involve a tangible project, which will create jobs in the Village and promote an industry. Examples include, but are not limited to:

1) Business incubators;
2) Art incubators or coalition (e.g. a performing arts coalition seeking construction rehearsal or performance facilities);
3) Public markets for farmers, gardeners, crafts, etc.; and,
4) Organizations which foster economic development by promoting work force development efforts such as apprenticeships or other job training programs.

F. Projects in industry clusters listed above are encouraged, but others are eligible to apply as well. The intention is to retain flexibility in the use of incentives; and

G. Qualifying entities with existing contract or projects with the community when this plan is adopted may propose a restructuring of their projects as an economic development project.

8.2 All applications for economic development projects requesting economic assistance from the community shall submit a cost benefit analysis. Preparing a cost benefit analysis will be the responsibility of the applicant. The Village of Bosque Farms retains the right to specify a format and methodology for the cost-benefit analysis. The Economic Development Committee shall review and approve the methodology used. The source and rationale for any multiplier effects shall be identified. The cost-benefit analysis shall show that the Village of Bosque Farms will at least recoup the value of its donation within a maximum period of ten years. The analysis shall address the following:

A. The number and type of jobs to be created, both temporary construction jobs and permanent jobs (by New Mexico Department of Labor job categories);

B. Pay scale of jobs;

C. Determination of which jobs are expected to be filled locally and which will be filled by transfers from other facilities or recruited from outside the Village of Bosque Farms area;

D. Total payroll expected at start-up and after one year;

E. Anticipated impact on local tax base; and

F. Anticipated impact on local school systems.

8.3 All applicants for economic development projects requesting economic assistance from the Village of Bosque Farms shall require the same review required of industrial revenue bond applications. This review shall focus on environmental and community impacts of proposed projects. Special attention shall be given to job training and career advancement programs and policies. Projects shall demonstrate a strong commitment to providing career opportunities for Village of Bosque Farms area residents. Cultural impacts of projects shall also be considered.

8.4 Any qualifying entity seeking assistance shall prepare and make available a job training and career development plan for their employees.

8.5 All applicants for economic development projects requesting economic assistance from the Village of Bosque Farms shall clearly demonstrate the benefits which will accrue to the community as a result of the donation of public resources. The Village of Bosque Farms has considerable flexibility in determining what is considered as adequate benefits. Benefits such as providing components or production capabilities, which enhance a targeted industry cluster, or addressing critical deficiencies in a regional economy, may be recognized. The benefits claimed on any proposal will receive careful scrutiny. However, it is the intent of this ordinance to be flexible in the evaluation of these benefits, and to recognize the qualitative, as well as quantitative impact of a proposal.

8.6 All applicants for economic development projects requesting assistance from the Village of Bosque Farms shall clearly demonstrate how the qualifying entity is making a substantive contribution. The contribution shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property or other things or service of value for the expansion or improvement of the economy. The Village of Bosque Farms retains flexibility in defining the "substantive contributions". The benefits identified in the previous paragraphs may be accepted as adequate contributions on their own, or cash donations may be required. Assistance in providing affordable housing to its employees or the community at large may also qualify. Determination of what constitutes an acceptable contribution for a given project shall be at the discretion of the governing body.

Section 9. Public Safeguards

9.1 All economic development projects receiving assistance from the Village shall be subject to an annual performance review conducted by the Economic Development Committee. This review shall evaluate whether the project is achieving the goals and objectives set forth in the project participation agreement. This review shall be presented to the Governing Body for consideration. The Governing Body at a public hearing may terminate assistance to the economic development project by provisions set forth in the agreement, which terminates the agreement and specifies the disposition of all assets and obligations of the project.

9.2 The Village of Bosque Farms shall retain a security interest which shall be specific in the project participation agreement. The type of security interest will depend on the nature of the economic development project and assistance provided by the Village of Bosque Farms. Types of security may include, but are not limited to:

A. Letter of credit in the Village of Bosque Farms;

B. Performance bond equal to the Village of Bosque Farms' contribution;

C. A mortgage or lien on the property or equipment;

D. Pro-rated reimbursement of donation if business reduces work force or leaves the community before the term agreed to; and

E. Other security agreeable to both parties.

9.3 Should a qualifying entity move, sell, lease or transfer a majority interest in the economic development project before the expiration of the project participation agreement, the Village of Bosque Farms retains the right to deny any and all assignments, sales, leases or transfers of any interests in the economic development project until adequate assurances are made that the transferee, assignee or lessee is a qualifying entity and that the terms of the agreement will be satisfied by the transferee, assignee or lessee. At its discretion, the Village of Bosque Farms may choose to deny said assignment, lease or transfer or may negotiate a new agreement with the new operator, or the Village of Bosque Farms may reclaim the facility and enter into an agreement with the new qualifying entity.

9.4 Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its project participation agreement for a minimum period based on the cost-benefit analysis developed for the project.

Section 10. Project Participation Agreement

10.1 The qualifying entity shall prepare with the Village of Bosque Farms a project participation agreement. This agreement is the formal document, which states the contribution and obligation of all parties in the economic development project. The agreement must state the following items:

A. The economic development goals of the project;

B. The contribution of the Village and the qualifying entity;

C. The specific measurable objectives upon which the performance review will be read;

D. A schedule for project development and goal attainment;

E. The security being offered for the Village's investment;

F. The procedures by which a project may be terminated and the Village's investment recovered; and

G. The time period for which the Village shall retain an interest in the project. Each project agreement shall have a "sunset" clause after which the Village of Bosque Farms shall relinquish interest in and oversight of the project.

10.2 Each project participation agreement shall be subject to review and approval by the Governing Body at a public hearing.

Section 11. Project Monies

All project monies shall be kept in a separate account by the entity and the Village of Bosque Farms, with such account clearly identified. These accounts shall be subject to an annual independent audit paid for by the qualifying entity.

Section 12. Termination

The Governing Body may terminate this ordinance and the Village of Bosque Farms' economic development plan and any or all project participation agreements undertaken under its authority. Termination shall be by ordinance at a public hearing or in accordance with the terms of the project participation agreement. If an ordinance or a project participation agreement is terminated, all contract provisions of the project participation agreement regarding termination shall be satisfied. Upon termination of

the ordinance or any project participation agreement, any Village monies remaining in the Village project accounts shall be transferred to the Village of Bosque Farms general fund.

Section 13. Joint Regional Projects

The Village of Bosque Farms may engage in economic development projects involving one or more other government entities for projects, which encompass more than one municipality or county. In such instances, the relevant governing bodies shall adopt a joint powers agreement. This agreement will establish the application criteria and the terms of all project participation agreements. Criteria established under a joint powers agreement shall be consistent with the provisions of this ordinance.

Section 14. Severability Clause

Should any section, subsection, paragraph, sentence, clause or phrase set forth in this Ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any person or situation.

Section 15. Effective Date

This ordinance shall take effect five days after publication by title and general summary.

PASSED, APPROVED AND ADOPTED THIS 18TH DAY OF MAY, 2006.

VILLAGE OF BOSQUE FARMS

Wayne Ake, Mayor

(SEAL)

ATTEST:

Gayle A. Jones, Clerk/Administrator