

CITY OF ROSWELL, NEW MEXICO

**RESOLUTION NO. 03-28**

DECLARING THE INTENT OF THE CITY OF ROSWELL, NEW MEXICO, SUBJECT TO THE SATISFACTION OF CERTAIN CONDITIONS, TO ISSUE INDUSTRIAL REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$45,000,000 IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION, REHABILITATION AND EQUIPPING OF A PROPOSED INDUSTRIAL REVENUE BOND PROJECT CONSISTING OF A LICENSED ACUTE-CARE HOSPITAL AND FOR THE PURPOSE OF INDUCING NEW MEXICO MEDICAL SURGICAL HOSPITAL, LLC, ITS ASSIGNS OR AN AFFILIATE, OR THEIR OR ITS SUCCESSORS, TO LOCATE AND OPERATE SUCH PROJECT WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY; AND PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the City of Roswell (the "City") is a municipal corporation duly organized and existing pursuant to the Constitution and laws of the State of New Mexico (the "State"); and

WHEREAS, the City Council (the "Council") is the governing body of the City; and

WHEREAS, pursuant to the Industrial Revenue Bond Act, Chapter 3, Article 32, New Mexico Statutes Annotated, 1978 Compilation, as amended (the "Act"), the City is authorized to acquire industrial revenue projects to be located within the municipal boundaries or within fifteen miles of the municipal boundaries for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in the State of New Mexico and promoting a sound and proper balance in the State of New Mexico between agriculture, commerce and industry; and

WHEREAS, New Mexico Medical Surgical Hospital, LLC (together its assigns or an affiliate, or their or its successors and assigns, the "Company"), has presented to the City a proposal (the "Proposal") whereby in accordance with the Act the City will acquire, by deed or lease, land within the City, and acquire, construct, rehabilitate and equip buildings and other improvements on such land, and will acquire and install various equipment, for the purpose of establishing a licensed acute-care hospital with a capacity of approximately thirty beds, which land, buildings, improvements and equipment will constitute a project (the "Project") as defined in the Act; and

WHEREAS, the Proposal proposes the issuance by the City of its taxable Industrial Revenue Bonds (New Mexico Medical Surgical Hospital, LLC Project) Series 2003 (the "Bonds") under the Act in an aggregate principal amount not to exceed \$45,000,000 to finance all or part of the costs of acquisition, construction, rehabilitation and equipping of the Project and certain costs in connection with the authorization, issuance and sale of the Bonds; and

WHEREAS, the issuance of the Bonds by the City to finance all or a part of the Project will constitute one of the inducements whereby the Company will determine to locate its commercial facility in the City; and

WHEREAS, the City desires to indicate its intent, subject to the conditions provided in Section 5 below, to proceed with the issuance of the Bonds for the financing of the Project pursuant to the terms of an ordinance (the "Bond Ordinance"); and

WHEREAS, the City and the Company understand that the adoption of this Resolution shall not obligate the City to issue the Bonds except in full compliance with the terms of the Bond Ordinance adopted by the City prior to the issuance of the Bonds and related bond documents in form satisfactory to the City.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROSWELL, NEW MEXICO, THE GOVERNING BODY OF THE CITY:

Section 1. Ratification. All actions (not inconsistent with the provisions hereof) heretofore taken by the Council and the officers and officials of the City, related to the purpose of this Resolution, are ratified, approved and confirmed.

Section 2. Intent to Issue Bonds. In order to promote the local health and general welfare, safety, convenience and prosperity of the inhabitants of the City, it is the Council's intent to take all necessary and advisable steps to effect the issuance of the Bonds, in an aggregate principal amount not to exceed \$45,000,000, in order to defray part or all of the costs of the acquisition, construction, rehabilitation and equipping of the Project, provided that this expression of intent is conditioned upon the issuance of the Bonds on or before one year from the date of the adoption of this Resolution, and further provided that issuance of the Bonds is subject to the conditions described in Section 5 hereof.

Section 3. No Pecuniary Liability of the City. The Bonds shall not constitute a debt or indebtedness of the City within the meaning of any provision or limitation of the Constitution or statutes of the State. Nothing in this Resolution or in any other instrument shall be considered as obligating the City to any pecuniary liability or as constituting a charge upon the general credit of the City or against its general revenues or its taxing power. No costs are to be borne by the City as a result of the Bonds or the Project, and all costs incurred by the City in connection with or as a consequence of the issuance and sale of the Bonds and the construction, rehabilitation, acquisition, equipping and operation of the Project will be promptly reimbursed by the Company. The Bonds shall not impose any pecuniary liability on the officers, employees or agents of the City, including without limitation its Mayor and the members of the Council.

Section 4. State Tax Matters. The City intends to acquire in its name the Project, including all capital equipment and other tangible personal property used in the Project, and for such acquisitions the City will, consistent with State law, deliver the necessary nontaxable transaction certificates to the Company for delivery to vendors as may be applicable under the New Mexico Gross Receipts and Compensating Tax Act. For this purpose, upon adoption of this Resolution, the City recognizes that an agency relationship shall be deemed to exist between the City and the Company of the type described in 3 NMAC 2.212.22 (pertaining to tax treatment of purchases of tangible personal property in industrial revenue bond projects), and officials of the City are hereby authorized to issue nontaxable transaction certificates to the Company for Project purchases immediately upon the adoption of this Resolution. Such certificates shall not be used other than with respect to such capital equipment and tangible personal property. This

Resolution is intended to be an "inducement resolution" as that term is used in, and for the purposes of, 3 NMAC 2.212.22.

Section 5. Issuance of Bonds Conditioned upon Full Review and Approval. The issuance of the Bonds and the execution and delivery of any documents to which the City is a party in connection therewith shall be subject to the approval and authorization by the Council pursuant to the Bond Ordinance, which Bond Ordinance shall be considered following reasonable public notice of the time, date and place of the public hearing be held on the proposed adoption of the Bond Ordinance. In connection with this Resolution, the Council has been informed that the Company has expressed its understanding that a failure or refusal of the Council, however arising, to adopt the Bond Ordinance will have the effect of voiding any benefits to the Company under the Act, including voiding the nontaxable transaction certificates issued to the Company for Project purchases and making such purchases subject to whatever tax would be due if such certificates had not been issued.

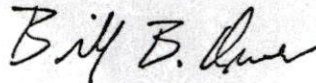
Section 6. Authorized Actions. The Mayor and other City officials are hereby authorized and empowered to take such steps and to do such things as may be necessary to achieve the purposes of this Resolution.

Section 7. Severance Clause. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 8. Headings. Titles of sections in this Resolution are included for convenience only, and shall not be construed as modifying the text.

Section 9. Repealer. All orders and resolutions, or parts thereof, in conflict with this Resolution are hereby repealed; however, this repealer shall not be construed to revive any order, resolution or part thereof, heretofore repealed.

Passed, Approved, Signed and Adopted this 14th day of August, 2003.



Bill B. Owen, Mayor

ATTEST:



Timothy D. Stoessel, City Clerk

(SEAL)