

RESOLUTION NO. R 008 94

A PROJECT RESOLUTION AUTHORIZING UP TO \$1,500,000 ECONOMIC DEVELOPMENT REVENUE BONDS (FIRST STATE POULTRY, INC. PROJECT)

WHEREAS, Council of Sussex County (the "County") has heretofore adopted the Sussex County Commercial, Industrial and Agricultural Ordinance, Ordinance No. 80, as amended, (the "General Ordinance") to encourage and assist the financing of the construction, acquisition, sale or lease of industrial, commercial and agricultural facilities related to the maintenance or promotion of employment or to the redevelopment or revitalization of areas within the County; and

WHEREAS, First State Poultry, Inc., a Delaware corporation (the "Applicant"), has applied to the County for the financing of a project consisting of the acquisition of approximately five acres of land and the construction and equipping of a poultry processing facility to be located on County Road 319 adjacent to the Sussex County Airport just south of the intersection of County Road 319 with the Penn Central railroad track in Georgetown, Delaware (the "Project"); and

WHEREAS, as required by the General Ordinance, the Applicant has submitted to the County through the County Administrator (the "Administrator") an application for assistance in financing the Project (the "Application") and has requested the County to finance a portion of the costs of the Project, an estimate of which is attached as Exhibit A hereto (the "Costs"), through the issuance by the County of its Economic Development Revenue Bonds in the aggregate principal amount not to exceed \$1,500,000 (the "Bonds"); and

WHEREAS, as required by the General Ordinance, the Application and the proposed issuance of the Bonds were reviewed by a committee comprised of the County Administrator, Director of Finance, County Attorney and Director of Economic Development (the "Review Committee") at a public hearing conducted on January 18, 1994, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Review Committee has made the findings and determinations required by the General Ordinance, including the findings that

(a) the Project is eligible for financial assistance and the financing thereof will accomplish the public purposes contemplated by the General Ordinance;

(b) the Project will (i) tend to maintain or provide gainful employment opportunities within and for the people of the County; (ii) aid, assist and encourage the economic development or redevelopment of the County; and (iii) maintain, diversify or expand employment promoting enterprises within the County; and

(c) the Bonds are to be payable solely from Revenues as specified in Section 7 of the General Ordinance; and

WHEREAS, the Administrator has advised the Applicant of the Review Committee's findings and determinations; and

WHEREAS, the Administrator has advised the Council of the Review Committee's findings and determinations and recommendations and has transmitted the Application to the Council; and

WHEREAS, by Resolution of Intention adopted by County Council on January 18, 1994, the County has indicated its intent to issue the Bonds subject to the receipt of a commitment to purchase the Bonds;

WHEREAS, after notice published in The Delaware State News not less than 14 days prior to the date hereof, County Council has held a public hearing on this date with respect to the Project and the proposed issuance of the Bonds at which time all interested persons were given an opportunity to be heard and after said hearing County Council desires to give its final approval to the issuance of the Bonds;

WHEREAS, the County has received a commitment for the purchase of the Bonds from Simon Securities (the "Underwriter");

WHEREAS, the County and the Underwriter will enter into a Bond Purchase Agreement (the "Bond Purchase Agreement") providing for the Bonds to be issued pursuant to a Trust Indenture (the "Indenture") between the County and a financial institution (the "Trustee"), for the proceeds of the Bonds to be loaned to the Applicant pursuant to a Loan Agreement (the "Loan Agreement") between the County and the Applicant and for the Applicant's obligation to repay the Bonds pursuant to the Loan Agreement to be secured by certain collateral to be delivered by the Applicant;

WHEREAS, the Bonds will be limited obligations of the County payable solely from the Revenues of the Project, as that term is defined in Section 7 of the General Ordinance; and

WHEREAS, the Council desires to authorize the issuance, execution and delivery of the Bonds and the execution and delivery of the other documents required to accomplish the foregoing and to authorize all other necessary action in connection with the Project and the financing thereof.

NOW THEREFORE BE IT RESOLVED:

Section 1. Definitions. The terms used in this Resolution shall have the meanings specified herein or in the preamble hereto or, if not otherwise defined herein, as specified in the General Ordinance, unless a different meaning is clearly indicated by the context.

Notwithstanding any other provisions to the contrary, "Costs" means with respect to the Project all costs, whether capital or otherwise, and include without limitation, the cost of acquisition, construction, reconstruction, repair, alteration, improvement and extension of any building, structure, facility or other improvement; the cost of machinery and equipment; the cost of acquisition, construction, reconstruction, repair, alteration, improvement and extension of pollution control devices, equipment or facilities; the cost of lands, rights-in-lands, easements, privileges, agreements, franchises, utility extensions, disposal facilities, access roads and site development necessary or useful and convenient for the Project or in connection therewith; financing costs including, but not limited to, discount on bonds, costs of issuance of bonds, engineering and inspection costs, trustee or fiscal agents fees, costs of financial, legal, professional and other estimates and advice, organization, administrative, insurance, and other expenses of the County or the Applicant prior to and during any acquisition or construction; and all such other expenses as may be necessary or incidental to the financing, acquisition, construction or completion of the Project or part thereof including, but not limited to, capitalized interest and such provisions for reserves for payment of principal of or

interest on the Bonds during or after such financing, acquisition or construction as may be provided for herein, but shall not include raw materials, work in progress, working capital, or stock in trade.

Section 2. Authorization. This Resolution is enacted pursuant to the provisions of the Constitution of the State of Delaware under Title 9, Delaware Code, Section 7001 et. seq. and in accordance with the provisions of the General Ordinance.

Section 3. Interpretation. All references in this Resolution to articles, sections and other subdivisions of this Resolution are to the designated articles, sections or other subdivisions of this Resolution originally enacted. The words "herein", "hereof", "hereby", and "hereunder" and other words of similar import refer to this Resolution as a whole and not to any particular article, section or other subdivision. The use of words in the singular number includes the plural and the use of the plural includes the singular number.

Section 4. Descriptive Headings. The descriptive headings of the sections of this Resolution are inserted for convenience only and shall not control or affect the meaning or construction of any of its provisions.

Section 5. Severability. In case any one or more of the provisions contained in this Resolution or in the Bonds or any other document executed and delivered pursuant hereto shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Resolution or of said Bonds or other documents, and this Resolution, said Bonds or other documents shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained herein or therein.

Section 6. Approval of Project and Findings with Respect Thereto. The Council hereby approves the findings and determinations made by the Review Committee with respect to the Project, and in conjunction therewith does hereby make the following findings and determinations:

(a) the issuance and sale by the County of the Bonds in an aggregate principal amount not to exceed \$1,500,000 in order to lend the proceeds thereof to the Applicant for the sole and exclusive purpose of financing a portion of the Costs of the Project will accomplish the public purposes specified in the General Ordinance and will:

(i) tend to maintain or provide gainful employment opportunities within and for the people of the County;

(ii) aid, assist and encourage the economic development or redevelopment of the County; and

(iii) maintain, diversify or expand employment promoting enterprises within the County; and

(b) the Bonds will be limited obligations of the County and do not pledge the credit or taxing power thereof but will be payable solely from the Revenues of the Project as specified in Section 7 of the General Ordinance.

Based on the foregoing findings and determinations and as a substantial inducement to the Applicant to locate, remain or expand within the County, the Project is hereby approved and determined to be eligible for financing by the County as provided herein and in the General Ordinance.

Section 7. Authorization of the Bonds. In order to provide funds to pay a portion of the Costs of the Project, the County shall issue its Economic Development Revenue Bonds (First State Poultry, Inc. Project) in an aggregate principal amount not exceeding \$1,500,000 which shall mature and bear interest as provided in the Indenture.

The Bonds shall be dated, shall be payable and shall be in such form as shall be provided in the Indenture. The Bonds may be issued in one or more series, either or both of which may be subject to or exempt from income taxes.

The Bonds shall be limited obligations of the County payable solely and exclusively from the payments made by the Applicant under the Loan Agreement and out of other Revenues derived from the Project. The Bonds shall not pledge the full faith and credit or taxing power of the County or of The State of Delaware or of any other political subdivision thereof and shall not be a debt or liability of The State of Delaware or of any other political subdivision thereof.

The Bonds shall not be payable out of any funds, revenues or properties of the County other than those specifically pledged therefor.

Section 8. Authorization of Bond Purchase Agreement, Indenture and Loan Agreement - Sale of Bonds. The County shall enter into the Bond Purchase Agreement, the Indenture and the Loan Agreement pursuant to which the Bonds shall be issued and sold to or upon the order of the Underwriter, the proceeds of the Bonds shall be loaned to the Applicant, the Applicant shall agree to make loan payments sufficient to make all payments when due on the Bonds, and the Applicant shall provide such collateral or other security for its obligations under the Loan Agreement and with respect to the Bonds as shall be specified in the Indenture and the Loan Agreement.

Section 9. Execution and Deliver of Documents. The Administrator is hereby authorized to execute and deliver (or to accept delivery of, as the case may be), in the name of the County and on its behalf, the below listed documents, in such form as shall be acceptable to him and the County's counsel and in accordance with the provisions of this Resolution and consistent with the terms of the Underwriter's commitment letter submitted to the County (as may be modified by the Underwriter with the consent of the Applicant and the County Administrator) and is further authorized to approve the final forms thereof, and to approve the exact principal amount of the Bonds, such approvals to be conclusively evidenced by the execution thereof, and the County Clerk is hereby authorized to affix to all of the below listed documents the seal of the County and to attest to the same:

- (a) The Bond Purchase Agreement;
- (b) The Indenture;
- (c) The Loan Agreement;
- (d) The Bonds; and
- (e) Such other documents as the Administrator determines to be reasonable and appropriate to complete the financing for this Project as authorized by this Resolution.

Copies of the foregoing documents, together with the other documents relating to the transactions authorized hereby, in final form as executed and delivered by the parties thereto, shall be filed in the official records of the County.

Section 10. Binding Effect of Covenants and Agreements. All covenants, obligations and agreements of the County set forth in this Resolution and in the documents authorized hereby shall be deemed to be the covenants, obligations and agreements of the County to the full extent authorized or permitted by law.

Section 11. Further Action. The proper officers of the County are hereby authorized and directed to execute such further documents and do such further things as may be necessary or proper to carry out the intent and purpose of this Resolution or any document herein authorized including the selection of a Trustee and the allocation of private activity bond volume cap to the Bonds.

Section 12. Repeal of Inconsistent Resolutions. All prior Resolutions or portions thereof which are inconsistent with this Resolution are hereby repealed.

Section 13. Effective Date. This Resolution shall become effective upon its passage by Council.

I DO HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF RESOLUTION NO. R 008 94 PASSED BY THE COUNTY COUNCIL OF SUSSEX COUNTY ON THE 1ST DAY OF FEBRUARY, 1994.


Robin A. Griffith
Clerk of the County Council

SYNOPSIS: This Project Resolution authorizes the County to issue its economic development revenue bonds in the aggregate principal amount of up to \$1,500,000 for the financing of a project for First State Poultry, Inc., consisting of the acquisition of approximately five acres of land and the construction and equipping of a poultry processing facility to be located on County Road 319 adjacent to the Sussex County Airport just south of the intersection of County Road 319 with the Penn Central railroad track in Georgetown, Delaware.

The bonds contemplated by this Resolution will be limited obligations of the County, which will not constitute or give rise to any pecuniary liability of the County other than from the revenues derived from the project financed, which will be specifically pledged to payment of principal and interest on the bonds.

EXHIBIT A
to
PROJECT RESOLUTION
FOR
FIRST STATE POULTRY, INC. PROJECT

Estimated Costs of Project

Land Acquisition	\$ 42,700
Buildings	625,000
Equipment, machinery	504,000
Construction period interest	50,000
Costs of issuance, other transaction costs and necessary reserves	161,500
Contingency	<u>116,800</u>
Total	<u>\$1,500,000</u>