

ORDINANCE NO. 10

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF EDDY COUNTY, NEW MEXICO AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND SALE UNDER THE COUNTY INDUSTRIAL DEVELOPMENT REVENUE BOND ACT, SECTIONS 4-59-1 TO 4-59-16, INCLUSIVE, OF THE NEW MEXICO STATUTES, OF ITS INDUSTRIAL DEVELOPMENT REVENUE BONDS (INTERNATIONAL MINERALS & CHEMICAL CORPORATION PROJECT) SERIES A, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$1,000,000, FOR THE PURPOSE OF FINANCING CERTAIN INDUSTRIAL DEVELOPMENT FACILITIES; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT OF SALE BETWEEN SAID COUNTY AND INTERNATIONAL MINERALS & CHEMICAL CORPORATION; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE OF TRUST SECURING SAID BONDS; AUTHORIZING THE SALE OF SAID BONDS TO THE UNDERWRITER AND THE EXECUTION OF A BOND PURCHASE AGREEMENT IN CONNECTION THEREWITH; AND AUTHORIZING OTHER MATTERS PERTAINING TO THE ISSUANCE OF SAID BONDS; SAID BONDS TO BE RETIRED FROM THE INSTALLMENT PAYMENTS TO BE MADE BY INTERNATIONAL MINERALS & CHEMICAL CORPORATION UNDER SAID AGREEMENT OF SALE WITH THE COUNTY, ALL AS AUTHORIZED BY THE COUNTY INDUSTRIAL DEVELOPMENT REVENUE BOND ACT.

WHEREAS, Eddy County, New Mexico, a political subdivision of the State of New Mexico (the "Issuer"), is authorized by the County Industrial Development Revenue Bond Act, Sections 4-59-1 to 4-59-16, inclusive, of the New Mexico Statutes Annotated 1978, as amended (the "Act"), to issue revenue bonds for the purposes set forth in the Act and to permit the expenditure of the proceeds thereof to defray, among other things, the cost of acquiring, constructing and equipping a "project" as defined in the Act; and

WHEREAS, International Minerals & Chemical Corporation, a New York corporation, or any successor, surviving, resulting or transferee corporation (the "Company") is acquiring, constructing and installing certain industrial development facilities (the "Project") located in Eddy County, New Mexico and wishes to have the Issuer issue its revenue bonds to finance the cost of the Project pursuant to the provisions of the Act; and

WHEREAS, in furtherance of the purposes set forth in the Act, the Issuer wishes to provide for the financing of the cost of the Project by the sale and issuance of its revenue bonds and authorizing such actions as might be required to implement such stated intention; and

WHEREAS, pursuant to and in accordance with provisions of the Act, the Issuer is now prepared to proceed with financing the Project and to issue and sell its Industrial Development Revenue Bonds (International Minerals & Chemical Corporation Project) Series A in the aggregate principal amount of \$1,000,000 (the "Bonds") to provide the same, such Bonds to be secured by the Indenture (hereinafter defined) and, except to the extent payable from Bond proceeds or moneys from the investment thereof, to be payable solely from the revenues and receipts and other amounts received by the Issuer pursuant to the Agreement (hereinafter defined); and

WHEREAS, Robinson Humphrey/American Express Inc., the underwriter (the "Underwriter") has submitted to the Issuer a form of Bond Purchase Agreement (hereinafter defined) setting forth the Underwriter's proposal to purchase the Bonds; and

WHEREAS, copies of the Agreement, Indenture and Bond Purchase Agreement have been presented to and are before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Eddy County, New Mexico, as follows:

Section 1. The following words and terms as used in this ordinance shall have the following meanings unless the context clearly indicates another or different meaning or intent:

"Act" shall mean the County Industrial Development Revenue Bond Act, Sections 4-59-1 to 4-59-16, inclusive, of the New Mexico Statutes Annotated 1978, as amended).

"Agreement" shall mean the Agreement of Sale dated as of January 1, 1983 between the Issuer and the Company, as approved by this ordinance, and as the same may be amended from time to time.

"Bond Purchase Agreement" shall mean the Bond Purchase Agreement to be entered into between the Issuer and the Underwriter, as approved by this ordinance, relating to the purchase and sale of the Bonds.

"Bonds" shall mean the Issuer's Industrial Development Revenue Bonds (International Minerals & Chemical Corporation Project) Series A, in an aggregate principal amount of \$1,000,000 authorized to be issued pursuant to this ordinance and Article II of the Indenture.

"Company" shall mean International Minerals & Chemical Corporation and any successor, surviving, resulting or transferee corporation as permitted by Section 5.2 of the Agreement.

"Indenture" shall mean the Indenture of Trust dated as of January 1, 1983 between the Issuer and the Trustee, as the

same may be supplemented from time to time in accordance with its terms.

"Issuer" shall mean Eddy County, New Mexico or any successor succeeding to its rights or obligations under the Agreement and the Indenture.

"Project" shall mean the property described and defined as such in the Agreement and the Indenture.

"Trustee" shall mean the trustee appointed under the Indenture, or its successor.

"Underwriter" shall mean Robinson Humphrey/American Express Inc.

Section 2. Pursuant to the Act, the Board of County Commissioners of the Issuer does hereby authorize the financing of all or a portion of the costs of acquiring, constructing and equipping the Project in accordance with the terms of the Agreement and does hereby determine that it is in furtherance of the public purposes set forth in the Act; and that, therefore, providing for the Project through the issuance and sale of the Bonds is in the public interest.

Section 3. The Board of County Commissioners of the Issuer does hereby find, declare and determine that:

(a) The amount necessary in each year to pay the principal of and interest on the Bonds (assuming that the Bonds bear interest at an average rate of 6.96% per annum, that interest commences on February 17, 1983, and that payment of the full principal amount of the Bonds is made on January 1, 2003) is estimated as follows:

<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>
\$60,638	1983	\$ 69,600	1994
69,600	1984	69,600	1995
69,600	1985	69,600	1996
69,600	1986	69,600	1997
69,600	1987	69,600	1998
69,600	1988	69,600	1999
69,600	1989	69,600	2000
69,600	1990	69,600	2001
69,600	1991	69,600	2002
69,600	1992	1,000,000	2003
69,600	1993		

Under Section 4.2(a) of the Agreement, the Company is obligated to pay to or on behalf of the Issuer purchase price payments in an amount equal to the amount necessary to pay all of the principal of, premium, if any, and interest on the Bonds.

(b) It is not necessary or advisable to establish a reserve fund in connection with the retirement of the Bonds and the maintenance of the Project.

(c) The Agreement provides that the Company shall maintain the Project in good repair and carry all proper insurance with respect thereto.

(d) The Agreement provides that the Company shall pay to the Issuer purchase price payments sufficient to pay the principal of, premium, if any, and interest on the Bonds when due.

Section 4. To provide for the financing of the cost of acquiring, constructing and equipping the Project, the Issuer does hereby authorize the issuance of revenue bonds of the Issuer under the Act, to be designated "Eddy County, New Mexico, Industrial Development Revenue Bonds (International Minerals & Chemical Corporation Project) Series A" in the aggregate principal amount of \$1,000,000. The Bonds shall be issued in the forms and denominations set forth in the Indenture; shall be dated, except as otherwise provided in the Indenture, their date of issuance; shall be numbered as provided in the Indenture; shall mature on January 1, 2003; shall be subject to redemption prior to maturity upon the terms and conditions set forth in the Indenture; shall bear interest payable semiannually at a rate (computed on the basis of a year of 360 days of twelve 30-day months), payable on the first day of each January, April, July and October of each year, commencing April 1, 1983, and at final maturity, at a rate equal to 58% of the Prime Rate, such rate to be adjusted automatically as of the opening of business on the first business day of every week to equal such percentage of the Prime Rate then in effect. Any overdue installment of the principal amount of the Series A Bonds shall bear interest after its due date (whether upon maturity, by acceleration or otherwise) at a rate equal to 58% of the Prime Rate, adjusted as set forth above. As used herein, "Prime Rate" means the rate of interest publicly announced by Harris Trust and Savings Bank, in Chicago, Illinois from time to time as its Prime Rate. If for any reason, Harris Trust and Savings Bank should fail to publish a Prime Rate, the rate shall be equal to 70% of the bond equivalent rate applicable to 13-week U.S. Treasury Bills on the basis of the average per annum discount rate at which such 13-week U.S. Treasury Bills shall have been sold at the most recent Treasury auction. The Bonds shall be sold to the Underwriter at a price of 100% of the aggregate principal amount thereof.

Section 5. The Bonds shall be limited obligations of the Issuer and, except to the extent payable from Bond proceeds or moneys from the investment thereof, shall be payable solely from the revenues and receipts and other amounts received by or on behalf of the Issuer pursuant to the Agreement and otherwise as provided therein and in the Indenture. Bonds and interest thereon shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation and shall not constitute nor give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers.

Section 6. The Bonds shall be executed on behalf of the Issuer with the manual or facsimile signature of the Chairman of the Board of County Commissioners of the Issuer and attested by the manual or facsimile signature of the County Clerk of the Issuer (provided that one such signature shall be manual) and shall have impressed or imprinted thereon the official seal of the Issuer. The coupons attached to the coupon Bonds shall bear the facsimile signature of the Chairman of the Board of County Commissioners and County Clerk of the Issuer.

If any of the officers who shall have signed or sealed any of said Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed shall have been actually authenticated by the Trustee or delivered by the Issuer, such Bonds nevertheless may be authenticated, issued and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds had not ceased to be such officer or officers of the Issuer; and also any such Bonds may be signed and sealed on behalf of the Issuer by those persons who, at the actual date of the execution of such Bonds, shall be the proper officers of the Issuer, although at the nominal date of such Bonds any such person shall not have been such officer of the Issuer.

Section 7. The Issuer reserves the right, but does not hereby obligate itself, to issue additional bonds for the purposes and upon the conditions set forth in the Agreement and the Indenture.

Section 8. The Issuer shall have no obligation with respect to the Project, and all costs, expenses, taxes, governmental charges and fees and charges with respect to the Project shall be paid by the Company.

Section 9. The Indenture is hereby approved in substantially the form submitted to this meeting, and the Chairman of the Board of County Commissioners and County Clerk of the Issuer are hereby authorized and directed to execute, acknowledge and deliver the Indenture with such changes therein as shall be approved on behalf of the Issuer by such persons executing such document, their execution to constitute conclusive evidence of such approval, and the County Clerk is hereby authorized and directed to affix to the Indenture the official seal of the Issuer.

Section 10. The Agreement between the Issuer and the Company is hereby approved in substantially the form submitted to this meeting, and the Chairman of the Board of County Commissioners and County Clerk of the Issuer are hereby authorized and directed to execute, acknowledge and deliver the Agreement with such changes therein as shall be approved on behalf of the Issuer by such persons executing such document, their execution to constitute conclusive evidence of such approval, and the County Clerk is hereby authorized and directed to affix to such document the official seal of the Issuer.

Section 11. The Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Chairman of the Board of County Commissioners of the Issuer is hereby authorized to confer with the Underwriter in order to complete such Bond Purchase Agreement and to execute and deliver said Bond Purchase Agreement on behalf of the Issuer in substantially the form presented to this meeting with such changes therein as he shall approve on behalf of the Issuer, his execution to constitute conclusive evidence of such approval, and the sale of the Bonds pursuant to the Bond Purchase Agreement is hereby authorized, approved and directed.

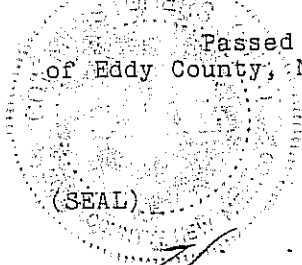
Section 12. Each of the authorized officials of the Issuer are hereby empowered and directed to execute and deliver the Bonds and all documents and other instruments which may be required under the terms of the Bond Purchase Agreement, the Indenture, the Agreement and this ordinance. For purposes of this section "authorized officials of the Issuer" shall mean the Chairman of the Board of County Commissioners and the County Clerk of the Issuer.

Section 13. The provisions of this ordinance are hereby declared to be separable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

Section 14. In the event of any conflict between the provisions of this ordinance and any prior ordinances, orders, resolutions or parts thereof, the provisions of this ordinance shall prevail.

Section 15. This ordinance shall be effective as soon as provided by law, after passage and recordation in the County ordinance book.

Passed and approved by the Board of County Commissioners of Eddy County, New Mexico this 17th day of January, 1983.



(SEAL)

County Clerk

Chairman of the Board of County Commissioners

Ayes: Ralph W. Callaway  
George S. Carriker  
Johnnie Bowman

Nays: \_\_\_\_\_