

1 TORRANCE COUNTY, NEW MEXICO
2 ORDINANCE NO. 2022- 01 - _____
3

4 AUTHORIZING THE EXECUTION AND DELIVERY OF A REVENUE NOTE
5 (PILOT PAYMENTS), SERIES 2022 AND A RELATED LOAN AGREEMENT
6 AND OTHER FINANCING DOCUMENTS, EVIDENCING A SPECIAL,
7 LIMITED OBLIGATION OF TORRANCE COUNTY, NEW MEXICO TO PAY
8 A PRINCIPAL AMOUNT NOT TO EXCEED \$9,500,000, TOGETHER WITH
9 INTEREST THEREON, FOR THE PURPOSE OF FINANCING THE
10 CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF A COUNTY
11 ADMINISTRATION OFFICE AND FUNDING RESERVES, CAPITALIZED
12 INTEREST, AND COSTS OF ISSUANCE TO THE EXTENT APPLICABLE;
13 PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST
14 DUE UNDER THE NOTE SOLELY FROM REVENUES DERIVED FROM OR
15 ATTRIBUTABLE TO CERTAIN SPECIFIED PAYMENTS IN LIEU OF TAXES
16 PROVIDED FOR IN CERTAIN SPECIFIED INDUSTRIAL REVENUE BOND
17 TRANSACTIONS; RATIFYING ACTIONS HERETOFORE TAKEN;
18 REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND
19 AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION
20 WITH THE EXECUTION AND DELIVERY OF THE NOTE.

21 WHEREAS, Torrance County, New Mexico (the "County") is a legally and regularly
22 created, established, organized and existing county under the general laws of the State of New
23 Mexico (the "State"); and

24 WHEREAS, the Board of County Commissioners of the County (the "Board") has
25 determined and hereby determines that it is necessary and advisable to construct, equip, furnish
26 and finance a new administration building for the County (including capitalized interest, necessary
27 reserves and Expenses, as applicable, the "Project") and to finance the Project it is necessary and
28 advisable for the County to issue its Revenue Note (PILOT Payments), Series 2022 (the "Note")
29 as provided in this Ordinance and in connection therewith to execute and deliver a Loan Agreement
30 (the "Loan Agreement") with Century Bank (the "Holder") and certain other documents relating
31 thereto (the Note, Loan Agreement and such other documents are sometimes referred to as the
32 "Loan Documents"); and

33 WHEREAS, pursuant to ordinances previously approved by the Board (the "IRB
34 Ordinances"), the County has issued certain industrial revenue bonds (the "IRBs") under NMSA
35 1978 Section 4-59-1 et seq., as amended (the "IRB Act") and in connection therewith has entered
36 into certain Lease Agreements (the "IRB Leases") under which the lessees thereunder (being the
37 following affiliates of Pattern Energy: Climes Corner Wind, LLC; Duran Mesa Wind, LLC; Red
38 Cloud Wind, LLC; Tecolote Wind, LLC; each, a "Company" and collectively, the "Companies")
39 have agreed to pay certain payments ("PILOTS") to the County in lieu of taxes, all as described in
40 the IRB Leases; and

41 WHEREAS, the Board has determined that under NMSA 1978 Sections 4-62-1 et seq., as
42 amended (the "Act"), the County may issue the Note to finance the Project and may lawfully
43 pledge all revenues of the County which are attributable to PILOTS payable by the Companies

1 under the IRB Leases (collectively, the “Pledged Revenues”) as security for the obligations of the
2 County under the Note and the other Loan Documents; and

3 WHEREAS, the Pledged Revenues have not heretofore been pledged to secure the payment
4 of any obligation which is currently outstanding; and

5 WHEREAS, the financing of the Project through the issuance of the Note and the pledge
6 by the County of the Pledged Revenues as security for the Note will provide for the public health,
7 peace and safety of the County and its residents; and

8 WHEREAS, the Note shall be a special, limited obligation of the County, payable solely
9 from the Pledged Revenues, and shall not constitute a general obligation of the County, or a debt
10 or pledge of the faith and credit of the County or the State; and

11 WHEREAS, the Note shall be executed and delivered pursuant to Act, and shall be secured
12 by an irrevocable first lien on the Pledged Revenues; and

13 WHEREAS, the Board intends by this Ordinance to authorize the issuance and delivery of
14 the Note and the execution and delivery of the other Loan Documents, in the amount, upon the
15 terms, and for the purposes set forth herein; and

16 WHEREAS, there have been presented to the Board and there presently are on file with
17 the County Clerk this Ordinance and the forms of the Note and the Loan Agreement, which are
18 incorporated by reference and considered to be a part hereof; and

19 WHEREAS, the Board hereby determines that the Project is to be used for governmental
20 purposes of the County and will not be used for purposes which would cause the Note to be deemed
21 a “private activity bond” as defined in the Internal Revenue Code of 1986, as amended, and the
22 applicable regulations thereunder (collectively, the “Code”); and

23 WHEREAS, all required authorizations, consents and approvals in connection with (i) the
24 issuance of the Note and the execution of the other Loan Documents, (ii) the pledge of the Pledged
25 Revenues to the Bank (or its assigns) as security for the payment of amounts due under the Note
26 and the other Loan Documents, (iii) the use of the proceeds of the Note to finance the Project, and
27 (iv) the authorization, execution and delivery of the Note and the other Loan Documents which
28 are required to have been obtained by the date of this Ordinance, have been obtained or are
29 reasonably expected to be obtained;

30 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
31 COMMISSIONERS OF TORRANCE COUNTY, NEW MEXICO, THAT:

32 Section 1. Definitions. In addition to terms defined in the Recitals to this Ordinance,
33 the following terms shall, for all purposes, have the meanings herein specified, unless the context
34 clearly requires otherwise (such meanings to be equally applicable to both the singular and the
35 plural forms of the terms defined):

1 “Aggregate Annual Debt Service Requirement” means the total principal and
2 interest payments due and payable pursuant to the Note for any one Fiscal Year or other
3 twelve-month period described in the Ordinance.

4 “Authorized Officers” means the Chair of the Board, the County Manager, the
5 County Treasurer, the County Finance Director and the County Clerk of the County.

6 “Closing Date” means the date of execution and delivery of the Loan Agreement
7 and issuance of the Note.

8 “Expenses” means the cost of issuance of the Note and execution and delivery of
9 the Loan Documents.

10 “Debt Service Account” means the “Torrance County, New Mexico, Series 2022
11 Revenue Note (PILOTs Payments) Debt Service Account” created in Section 8 herein and
12 to be maintained by the Bank.

13 “Final Terms Certificate” means a certificate of an Authorized Officer determining
14 the final terms of the Note pursuant to Section 5 below, within the parameters established
15 in this Ordinance.

16 “Fiscal Year” means the period commencing on July 1 in each calendar year and
17 ending on the last day of June of the next succeeding calendar year, or any other twelve-
18 month period which any appropriate authority may hereafter establish for the County as its
19 fiscal year.

20 “Herein,” “hereby,” “hereunder,” “hereto,” “hereinabove,” and “hereafter” refer to
21 the entire Ordinance and not solely to the particular section or paragraph of the Ordinance
22 in which such word is used.

23 “Income Fund” means the “Torrance County, New Mexico, PILOTs Revenue
24 Fund” created in Section 8 hereof and to be maintained by the County.

25 “Loan” means the funds to be advanced under the Note and Loan Agreement and
26 to be loaned to the County by the Bank pursuant to the Loan Agreement.

27 “Loan Agreement” means the Loan Agreement dated the Closing Date between the
28 Bank and the County which provides for the financing of the Project and requires payments
29 by or on behalf of the County to the Bank, and any amendments or supplements thereto,
30 and including the exhibits attached to the Loan Agreement.

31 “NMSA 1978” means the New Mexico Statutes Annotated, 1978 compilation, as
32 amended and supplemented.

33 “Ordinance” means this Ordinance as adopted by the Board on July 13, 2022,
34 approving the Loan Agreement and Note and pledging the Pledged Revenues to the
35 payment of the Loan Agreement and Note, as amended from time to time.

1 Section 2. Ratification. All action heretofore taken (not inconsistent with the
2 provisions of this Ordinance) by the Board and officers of the County directed toward the Project,
3 the issuance of the Note and the execution and delivery of the Loan Documents be, and the same
4 hereby are, ratified, approved and confirmed.

5 Section 3. Authorization of the Project, Loan Agreement and Note. The Project and
6 the method of financing the Project through issuance of the Note and the execution and delivery
7 of the Loan Documents are hereby authorized and ordered. The Project is for the benefit of the
8 County and its residents.

9 Section 4. Findings. The County hereby declares that it has considered all relevant
10 information and data and hereby makes the following findings:

11 A. The Project is needed to meet the needs of the County and its residents and
12 the issuance of the Note and the execution and delivery of the other Loan Documents is
13 necessary and advisable.

14 B. Moneys available and on hand for the Project from all sources other than
15 the Loan are not sufficient to defray the cost of the Project.

16 C. The Pledged Revenues may lawfully be pledged to secure the payment of
17 amounts due under the Note and the other Loan Documents.

18 D. It is economically feasible to defray, in whole or in part, the costs of the
19 Project by the issuance of the Note and the execution and delivery of the other Loan
20 Documents.

21 E. The issuance of the Note, and the execution and delivery of the other Loan
22 Documents pursuant to the Act to provide funds for the financing of the Project are
23 necessary and in the interest of the public health, safety, and welfare of the residents of the
24 County.

25 F. The County will finance the Project, in whole or in part, with the net
26 proceeds of the Loan.

27 G. The County does not have any outstanding obligations payable from
28 Pledged Revenues which it has incurred or will incur prior to the initial execution and
29 delivery of the Loan Agreement and the Note.

30 H. The net effective interest rate on the Loan does not exceed the maximum
31 rate permitted by State law.

32 Section 5. Loan Agreement and Note - Authorization and Detail.

33 A. Authorization. This Ordinance has been adopted by the affirmative vote of
34 a majority of all of the members of the Board. For the purpose of protecting the public
35 health, conserving the property, protecting the general welfare and prosperity of the
36 residents of the County and completing the Project, it is hereby declared necessary that the

1 County, pursuant to the Act, execute and deliver the Note and the other Loan Documents
2 evidencing a special limited obligation of the County to pay a principal amount of up to
3 \$9,500,000, and the execution and delivery of the Note and the other Loan Documents are
4 hereby authorized. The County shall use the proceeds of the Loan to (i) finance the Project
5 and (ii) pay Expenses.

6 B. Detail. The Note and the Loan Agreement shall be in substantially the forms
7 presented at the meeting of the Board at which this Ordinance was adopted. The other Loan
8 Documents shall be in forms acceptable to the Authorized Officer executing the same. The
9 Loan shall be in an aggregate principal amount of up to \$9,500,000, shall be payable in
10 installments of principal due on the dates designated in the Note and the Loan Agreement
11 and bear interest payable on the dates and at the rate designated in the Note and the Loan
12 Agreement.

13 C. Delegation of Authority to Determine Final Terms. In accordance with the
14 Supplemental Public Securities Act, NMSA 1978, Sections 6-14-8 to -11 (the
15 "Supplemental Act"), the Board hereby delegates to its Authorized Officers (or any
16 Authorized Officer acting alone) the authority to determine and establish the principal
17 amounts, dates, denominations, maturities, redemption provisions, interest rates, sale
18 prices, and payment terms of the Note, as evidenced by execution and delivery of the Final
19 Terms Certificate; provided that: (1) the maximum aggregate principal amount of the Note
20 shall not exceed \$9,500,000; (2) the Note may mature in serial or term maturities or may
21 be payable in accordance with any amortization schedule so long as the last such maturity
22 is no more than twenty (20) years after the Closing Date; and (3) the net effective interest
23 rate on the Loan does not exceed the maximum rate permitted by law. The County Manager
24 or his designee shall present the Final Terms Certificate to the Board in accordance with
25 the requirements of the Supplemental Act.

26 Section 6. Approval of Loan Agreement and Note. The forms of the Note and Loan
27 Agreement as presented at the meeting of the Board at which this Ordinance was adopted are
28 hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge
29 and deliver the Note, the Loan Agreement and the other Loan Documents, with such changes,
30 insertions and omissions as are consistent with this Ordinance and as may be approved by such
31 individual Authorized Officers, and the County Clerk is hereby authorized to affix the seal of the
32 County on the Loan Agreement and the Note and attest the same. The execution of the Note and
33 the other Loan Documents an Authorized Officer shall be conclusive evidence of such approval

34 Section 7. Special Limited Obligation. The Note and the other Loan Documents shall
35 be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement, and Note
36 and shall be payable solely from the Pledged Revenues. The Note, together with interest thereon
37 and other obligations of the County thereunder, shall be a special, limited obligation of the County,
38 payable solely from the Pledged Revenues as provided in this Ordinance and the Loan Agreement,
39 and shall not constitute a general obligation of the County or the State, and the holders of the Note
40 may not look to any general or other fund of the County for payment of the obligations thereunder.
41 Nothing contained in this Ordinance, the Note or the Loan Documents shall be construed as
42 obligating the County (except with respect to the application of the Pledged Revenues), as
43 incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing

1 power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, the
2 Note or any other instrument impose any pecuniary liability upon the County or any charge upon
3 its general credit or against its taxing power. The Loan Agreement and Note shall never constitute
4 an indebtedness of the County within the meaning of any State constitutional provision or statutory
5 limitation and shall never constitute or give rise to a pecuniary liability of the County or a charge
6 against its general credit or taxing power. Nothing herein shall prevent the County from applying
7 other funds of the County legally available therefor to payments required by the Loan Agreement
8 and Note, in its sole and absolute discretion.

9 Section 8. Funds and Accounts. The County hereby creates the following special and
10 separate funds:

11 A. Income Fund. The County hereby establishes the “Torrance County, New
12 Mexico, PILOTs Revenue Fund”, to be maintained by the County.

13 B. Debt Service Account. The County hereby creates the “Torrance County,
14 New Mexico, Series 2022 Revenue Note (PILOTs Payments) Debt Service Account”, to
15 be maintained by the Bank.

16 Section 9. Deposit of Pledged Revenues, Distributions of the Pledged Revenues and
17 Flow of Funds.

18 A. Deposit of Pledged Revenues. The County shall credit all Pledged Revenues
19 to the Income Fund. The Pledged Revenues shall be paid to the Bank for deposit in the
20 Debt Service Account in an amount sufficient to pay principal interest, and other amounts
21 due under the Note.

22 B. Termination on Deposits to Maturity. No payment shall be made into the
23 Debt Service Account if the amount in the Debt Service Account totals a sum at least equal
24 to the entire aggregate amount to become due as to principal and interest on, and any other
25 amounts due under, the Note in which case moneys in such account in an amount at least
26 equal to such principal and interest requirements shall be used solely to pay such
27 obligations as the same become due, and any moneys in excess thereof in such account
28 shall be transferred to the County and used as provided below.

29 C. Use of Surplus Revenues. After making all the payments hereinabove
30 required to be made by this Section, any moneys remaining in the Debt Service Account
31 shall be transferred to the County on a timely basis and shall be applied to any other lawful
32 purpose.

33 Section 10. Lien on Pledged Revenues. Pursuant to this Ordinance and the Loan
34 Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged,
35 and the County grants a security interest therein for, the payment of the principal interest, and any
36 other amounts due under the Note and the Loan Agreement, subject to the uses thereof permitted
37 by and the priorities set forth in this Ordinance. The Loan Agreement and Note constitute an
38 irrevocable first lien on the Pledged Revenues.

1 Section 11. Other Obligations. No provision of this Ordinance shall be construed in
2 such a manner as to prevent the issuance by the County of additional bonds or other obligations
3 payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate
4 and junior to the lien on Pledged Revenues securing the Note nor to prevent the issuance of bonds
5 or other obligations refunding all or part of the Note. The County shall not issue bonds or other
6 obligations payable from the Pledged Revenues having a lien thereon equal to the Note or prior
7 and superior to the Note without the prior written consent of the Bank.

8 Section 12. Qualified Tax-Exempt Obligations. The County hereby designates the Note
9 as its “qualified tax exempt obligation” within the meaning of Section 265(b)(3) of the Code, and
10 covenants and warrants that it does not reasonably expect to issue tax-exempt obligations in
11 calendar year 2022 in an amount in excess of \$10,000,000, taking into account the Note (but
12 subject to statutory exceptions for private activity bonds and current refunding transactions to the
13 extent applicable).

14 Section 13. Authorized Officers. Each of the Authorized Officers is hereby individually
15 authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits
16 and other documents and to do and cause to be done any and all acts and things necessary or proper
17 for carrying out this Ordinance, the Loan Agreement, the Note, the other Loan Documents and all
18 other transactions contemplated hereby and thereby. Authorized Officers are hereby individually
19 authorized to do all acts and things required of them by this Ordinance, the Loan Agreement, the
20 Note and the other Loan Documents for the full, punctual and complete performance of all the
21 terms, covenants and agreements contained in this Ordinance, the Note, the Loan Agreement and
22 the other Loan Documents, including but not limited to, the execution and delivery of closing
23 documents in connection with the execution and delivery of the Note, and the publication of the
24 summary of this Ordinance set out in Section 19 of this Ordinance (with such changes, additions
25 and deletions as may be necessary).

26 Section 14. Amendment of Ordinance. Prior to the date of the initial delivery of the Note
27 to the Bank, the provisions of this Ordinance may be supplemented or amended by ordinance or
28 resolution of the Board with respect to any changes which are not inconsistent with the substantive
29 provisions of this Ordinance. This Ordinance may be amended by ordinance of the Board without
30 receipt by the County of any additional consideration, but only with the prior written consent of
31 the Bank.

32 Section 15. Ordinance Irrepealable. After the Note has been executed and delivered, this
33 Ordinance shall be and remain irrepealable until all obligations due under the Note and the Loan
34 Agreement shall be fully paid, canceled and discharged, as provided therein.

35 Section 16. Severability Clause. If any section, paragraph, clause or provision of this
36 Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or
37 unenforceability of such section, paragraph, clause or provision shall not affect any of the
38 remaining provisions of this Ordinance.

39 Section 17. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts
40 thereof; inconsistent herewith are hereby repealed to the extent only of such inconsistency. This

1 repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof;
2 heretofore repealed.

3 Section 18. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in
4 the book of the County kept for that purpose, authenticated by the signatures of the Chairman of
5 the Board and the County Clerk of the County, and the title and general summary of the subject
6 matter contained in this Ordinance (set out in Section 19 below) shall be published in a newspaper
7 which maintains an office and is of general circulation in the County, or posted in accordance with
8 law, and such Ordinance shall be in full force and effect thereafter, in accordance with law.

9 Section 19. General Summary for Publication. Pursuant to the general laws of the State,
10 the title and a general summary of the subject matter contained in this Ordinance shall be published
11 in substantially the following form:

12 (Form of Summary of Ordinance for Publication)

13
14 Torrance County, New Mexico
15 Notice of Adoption of Ordinance

16 Notice is hereby given of the title and of a general summary of the subject matter
17 contained in Ordinance No. _____ duly adopted and approved by the County
18 Commission of Torrance County, New Mexico, on July 13, 2022. A complete copy
19 of the Ordinance is available for public inspection during the normal and regular
20 business hours of the County Clerk, 205 S 9th Ave #1, Estancia, New Mexico.

21 The title of the Ordinance is:

22 TORRANCE COUNTY, NEW MEXICO
23 ORDINANCE NO. 2022- 01 - _____

24 AUTHORIZING THE EXECUTION AND DELIVERY OF A REVENUE NOTE
25 (PILOT PAYMENTS), SERIES 2022 AND A RELATED LOAN AGREEMENT
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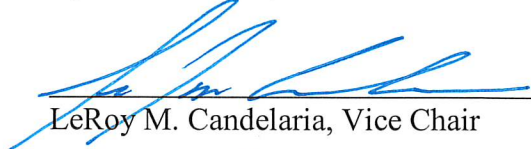
2 A summary of the subject matter of the Ordinance is contained in its title. This
3 notice constitutes compliance with NMSA 1978 Section 4-37-7.

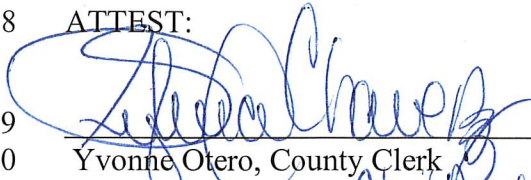
4 (End of Form of Summary for Publication)

1 PASSED AND ADOPTED this 13th day of July, 2022.

2 BOARD OF COUNTY COMMISSIONERS OF
3 TORRANCE COUNTY, NEW MEXICO

4 
5 _____
6 Ryan Schwebach, Chair

7 
8 _____
9 LeRoy M. Candelaria, Vice Chair

10 ATTEST:

Yvonne Otero, County Clerk



Kevin McCall, Member

Chief Deputy Clerk

