



TORRANCE **C**OUNTY
BOARD OF FINANCE MEETING
MARCH 27, 2019
9:00 A.M.

FOR PUBLIC VIEW, DO NOT REMOVE



Torrance County

BOARD OF COUNTY COMMISSIONERS (BCC)

Ryan Schwebach, Chair

Kevin McCall, District 1

Javier Sanchez, District 3

Wayne Johnson, County Manager

ADMINISTRATIVE MEETING AGENDA

WEDNESDAY, March 27, 2019 @ 9:00 AM

- 1. Call to Order**
- 2. Invocation and Pledge of Allegiance**
- 3. Changes to the Agenda**
- 4. PROCLAMATIONS**
- 5. CERTIFICATES AND AWARDS**
- 6. BOARD AND COMMITTEE APPOINTMENTS**
- 7. PUBLIC COMMENT and COMMUNICATIONS**
- 8. APPROVAL OF MINUTES**
 - A. COMMISSION:** Motion to Approve the March 13, 2019 Torrance County Board of County Commissioners Minutes
 - B. COMMISSION:** Motion to Approve the March 13, 2019 Torrance County Board of Finance Minutes
- 9. APPROVAL OF CONSENT AGENDA**
- 10. ADOPTION OF ORDINANCE / PUBLIC HEARINGS**
 - A. PLANNING & ZONING:** Pacific Wind Development, LLC- Modification of special use permit- El Cabo project. (Public Hearing Required)
 - B. COMMISSION:** Motion to approve introduction and publication of an ordinance authorizing the sale of up to a maximum \$60,000,000 of Torrance County Industrial Revenue Bonds to finance the acquisition, construction and equipping of the NM Renewable Data Center II, LLC. (Public Hearing Not Required)

C. **COMMISSION:** Motion to approve introduction and publication of an ordinance authorizing the sale of up to a maximum \$675,000,000 of Torrance County Industrial Revenue Bonds to finance the acquisition, construction, equipping and installation of the La Joya Wind Projects.

11. ADOPTION OF RESOLUTION

A. **COMMISSION:** Resolution No. 2019- Authorizing and approving submission of a completed application for financial assistance and project approval to the New Mexico Finance Authority. Commissioner Sanchez

12. APPROVALS

A. **COMMISSION:** Motion to Approve Letter of Support and Collaboration for Torrance County's application to support the PMS Mountainair Family Health Center and authorize the County Manager to represent the Board of County Commissioners for all submission requirements.

13. DISCUSSION

A. **FINANCE:** Hinkle & Farley 2018 Audit Presentation

B. Mid-Region Council of Governments Presentation

C. **US CENSUS BUREAU/VERONICA ARZATE DE REYES:** Presentation of the 2020 Census complete count committee.

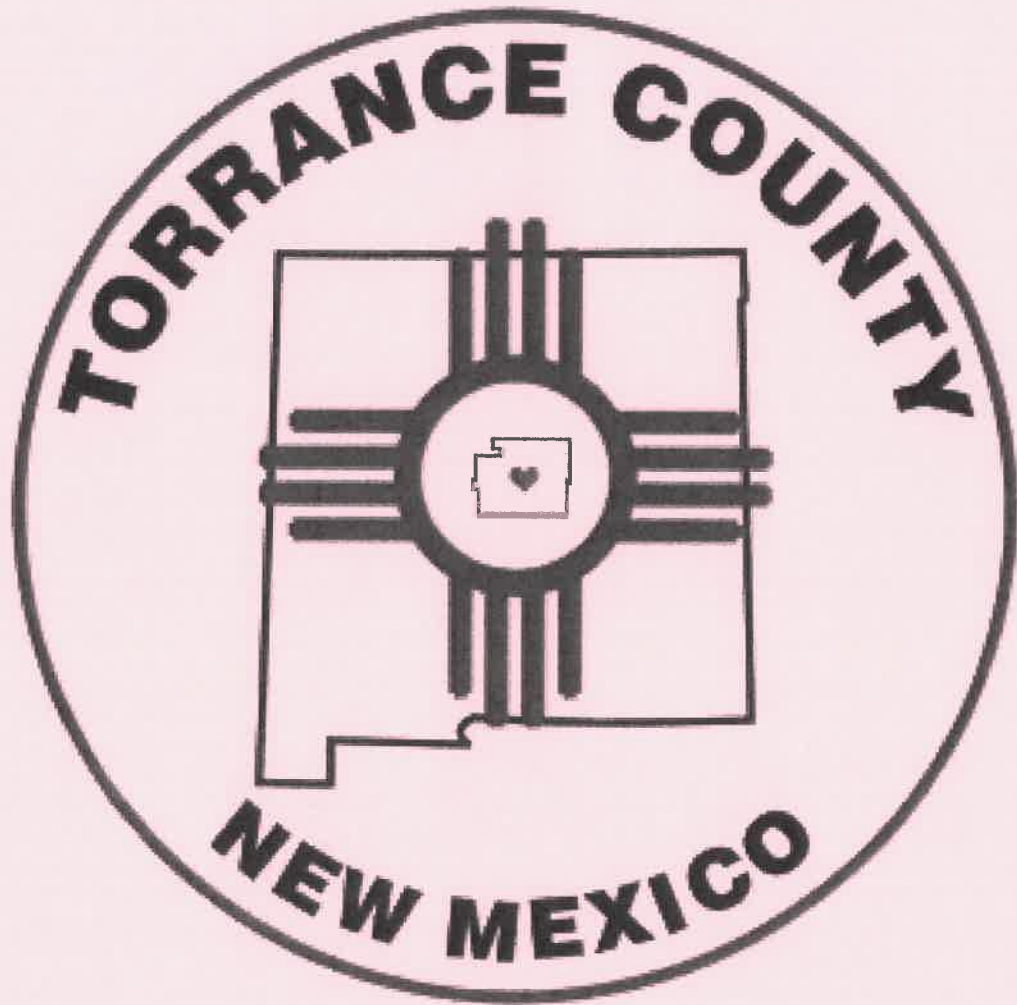
D. **COMMISSION:** Discussion of Radio Station

14. EXECUTIVE SESSION

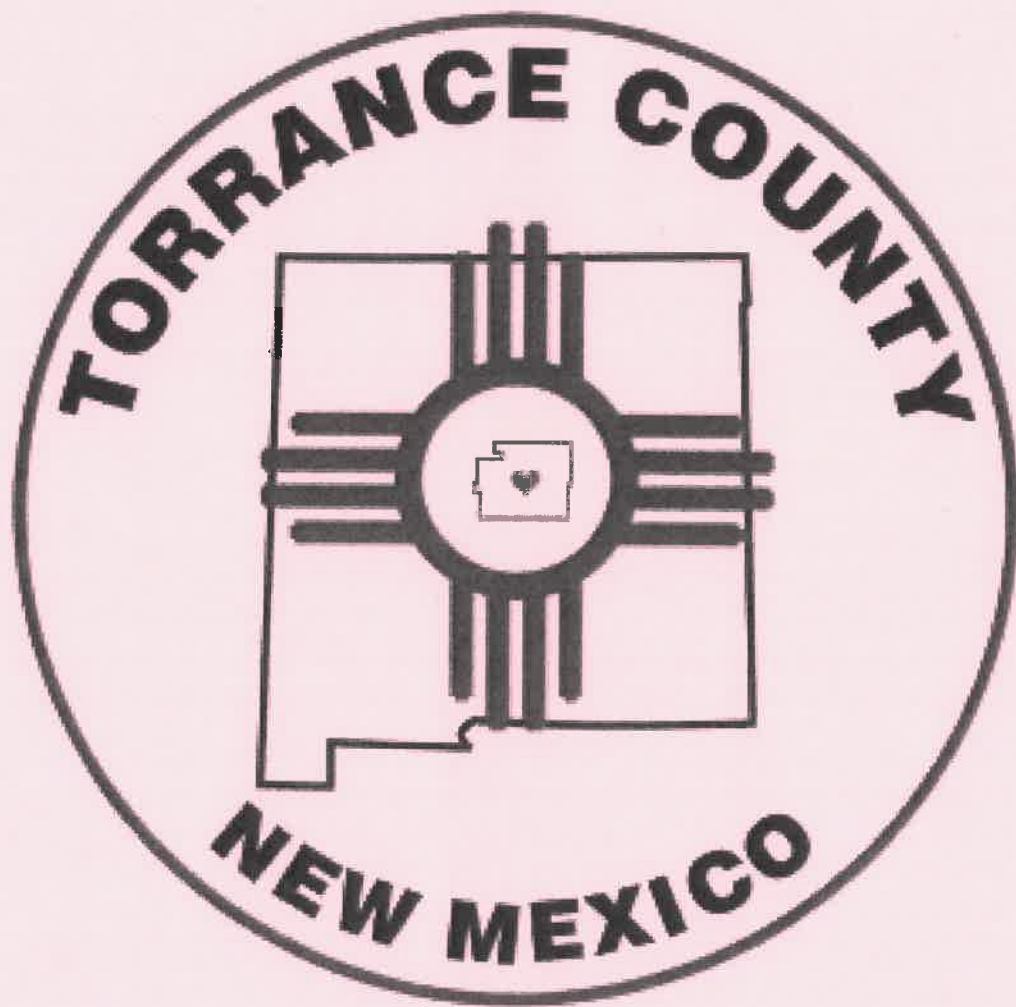
15. Announcement of the next Board of County Commissioners Meeting:

The next meeting of the Torrance County Board of Commissioners will be held April 10, 2019 in the Commission Chambers of the Torrance County Administrative Building.

16. Signing of Official Documents



*Agenda Item
No. 1*



*Agenda Item
No. 2*



*Agenda Item
No. 3*



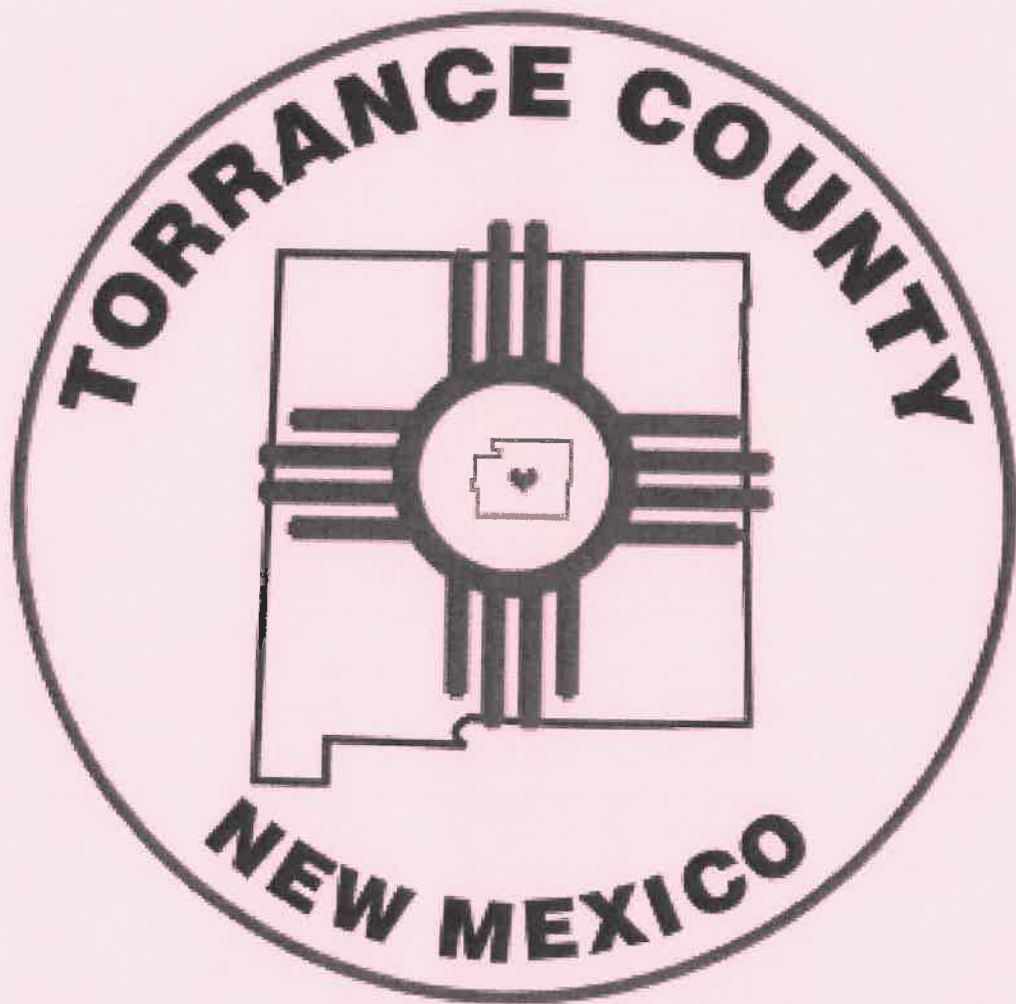
*Agenda Item
No. 4*



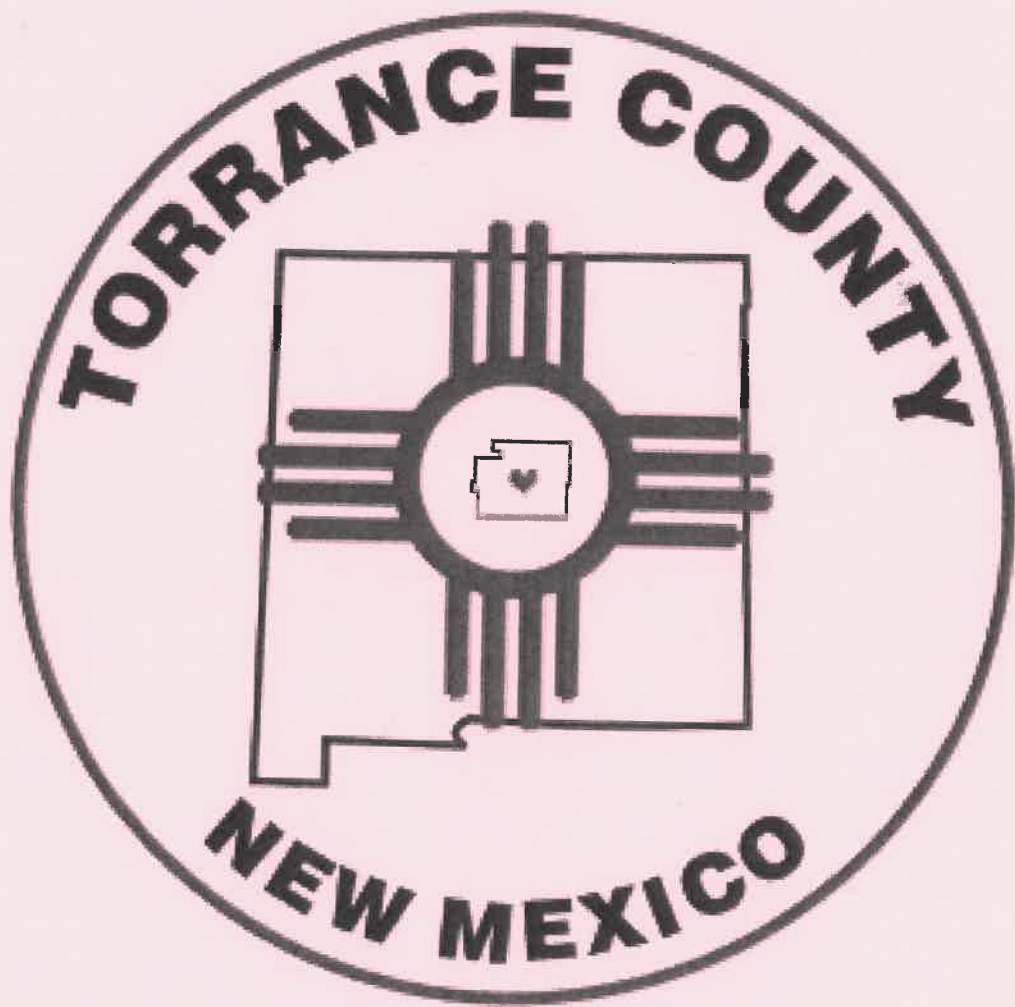
*Agenda Item
No. 5*



*Agenda Item
No. 6-A*



*Agenda Item
No. 7*



*Agenda Item
No. 8-A*

**DRAFT COPY
TORRANCE COUNTY BOARD OF COMMISSIONERS
COMMISSION MEETING
MARCH 13, 2019**

COMMISSIONERS PRESENT: RYAN SCHWEBACH -CHAIRMAN
KEVIN MCCALL –DISTRICT 1
JAVIER SANCHEZ –DISTRICT 3

OTHERS PRESENT: WAYNE JOHNSON-COUNTY MANAGER
DENNIS WALLIN- COUNTY ATTORNEY
BELINDA GARLAND-ACTING FINANCE DIRECTOR
YVONNE OTERO-ADMIN. ASST.

1.) CALL MEETING TO ORDER

Chairman Schwebach calls the March 13th, 2019 Commission Meeting to order at 9:03 A.M.

2.) PLEDGE AND INVOCATION

Pledge lead by Wayne Johnson

Invocation lead by Chairman Schwebach

3.) CHANGES TO THE AGENDA

Wayne Johnson states that agenda item number 10-A, the Pacific Wind Development, LLC modification of their special use permit, needs to be deferred until the next Commission meeting on March 27th, 2019. They have more business that day thus making it more convenient for them to do both things on that day.

Mr. Johnson also states that there are some issues in regards to resolution numbers that will need to be straightened out and handled when we get to them.

4.) PROCLAMATIONS

Nothing was presented for this item

5.) CERTIFICATES AND AWARDS

Nothing was presented for this item.

6.) BOARD AND COMMITTEE APPOINTMENT

A.) PLANNING & ZONING: Commission Review & interview of applicants for position on the Estancia Basin Water Planning Committee

Steve Guetschow, Planning & Zoning, states that in response to the ads that were placed in the newspaper, radio, & online, they received 3 letters of interest to be placed on this board. One letter was from Mr. Guetschow to continue serving on the board and the other two letters were from the agricultural representatives Mr. Bill Larson and Mr. Pete Romero. If it pleases the Commission Mr. Guetschow will read the letters into the record.

Chairman Schwebach asks if the individuals that sent in the letters are present.

Steve Guetschow states that Mr. Larson is not present as he was not able to attend because of travel concerns but will be available by phone if you would like to speak with him. Mr. Pete Romero is present.

Chairman Schwebach asks Mr. Guetschow to read Mr. Larson's letter and if Mr. Romero could please come up and read his after.

Steve Guetschow reads Mr. Larson's letter into record. Mr. Larson's letter states that he is willing to serve on the board. Is involved with and has dealt with lots of water rights topics and states some of his qualifications and experiences.

Pete Romero reads his letter into record. Mr. Romero's letter states that he is interested in becoming a member on this board. He has many concerns about the water issues and would like to be part of a committee that would help make better decisions when it comes to the issues of water. He feels that he would be a great asset to this board and asks for the Commission's consideration to appoint him to this board.

Chairman Schwebach asks how many positions they are looking at appointing.

Steve Guetschow states that there will be 3 positions, 1 government position and 2 agricultural positions. They each serve 3 years terms that are renewable.

Commissioner Sanchez asks Mr. Guetschow if the Commission is approving all the applicants at this time.

Steve Guetschow replies, yes, that is correct.

ACTION TAKEN: Commissioner Sanchez makes a motion to approve the appointment of Steve Guetschow as the government representative, and Bill Larson, and Peter Romero as the agricultural representatives to the Estancia Basin Water Planning Committee. Chairman Schwebach seconds the motion. No discussion, all Commissioners in favor. **MOTION CARRIED**

7.) PUBLIC COMMENT and COMMUNICATIONS

a.) Albert Beckwith states that this is his 3rd appearance here and has followed the direction of the Commission from the last meeting about speeding. He was told to get license numbers from the offending vehicles that are speeding down his road. They are throwing trash out, a cat of his was killed and thrown back into his yard. He said he came out here to live in peace and not be harassed. Mr. Beckwith states that he was told to get pictures or license plate numbers, and has gotten pictures of the vehicles. Mr. Beckwith states he is on his way to Santa Fe to find out why his area is not signed for ambulances to find crippled people's homes. He was told by the Commissioner to follow the chain of command & has done so since day one. He states that he spoke with the offender, was told it would clear up, and two years later it has not. There needs to be better signage for the ambulances to locate people and also speed limit signs. Not all homes in the area can be found by GPS. He is proof of this, he had to go to the McIntosh post office to meet the oxygen delivery person because he could not find his house. Proper street signs would alleviate this problem as well as speed limit signs for those that feel they can drive at any speed they wish.

b.) Michael Godey asks what the speed limits is in the state of New Mexico or Torrance County on dirt roads that does not have a sign.

Leonard Lujan states that the speed limit is 35 mph.

8.) APPROVAL OF MINUTES

A.) **Motion to Approve:** Minutes for the February 13th, 2019 Workshop

Chairman Schwebach asks for a motion to approve the minutes from the February 13th, 2019 workshop. **ACTION TAKEN:** Commissioner McCall makes a motion to approve the minutes from the February 13th, 2019 workshop. Commissioner Sanchez seconds the motion. No discussion, all Commissioners in favor. **MOTION CARRIED**

B.) **Motion to Approve:** Minutes for the February 25, 2019 Special Meeting

ACTION TAKEN: Chairman Schwebach makes a motion to approve the minutes from the February 25th, 2019 special meeting. Commissioner Sanchez seconds the motion. No discussion, all Commissioners in favor. **MOTION CARRIED**

C.) **Motion to Approve:** Minutes from the February 27th, 2019 Administrative Meeting

ACTION TAKEN: Chairman Schwebach makes a motion to approve the minutes from the February 27th, 2019 Administrative Meeting. Commissioner Sanchez seconds the motion. No discussion, all Commissioners in favor. **MOTION CARRIED**

9.) APPROVAL OF CONSENT AGENDA

ACTION TAKEN: Chairman Schwebach makes a motion to approve the consent agenda. Commissioner Sanchez seconds the motion. No discussion, all Commissioners in favor.
MOTION CARRIED

10.) PUBLIC HEARING

A.) PLANNING & ZONING: Pacific Wind Development, LLC-Modification of special use permit-El Cabo project

This item is deferred until the March 27th, 2019 Commission Meeting

11.) ADOPTION OF ORDINANCE/AMENDMENT TO COUNTY CODE

Nothing was presented for this item

12.) ADOPTION OF RESOLUTION

A.) COMMISSION: Resolution No. 2019-15 Motion to Approve the Torrance County Board of Commissioners Rules of Procedures

Wayne Johnson states that the Commission has before them a policy that was created that is based on the operation of the Commission in Bernalillo County and other Commissions around the state. We did not have in place a consistency of operation for the Commission, clear delineation of authority, what you can & cannot do in meetings, how the public is supposed to act with the Commission itself, and guaranteeing public interaction with the Commission while allowing the Commission to move forward with business. The majority authority and discretion rests with the chair, but it attempts to make sure the public and the Commission understand their roles. These rules will allow for consistency in the now and in the future when new boards or management come in, and would urge the Commission to pass this.

ACTION TAKEN: Chairman Schwebach makes a motion to approve Resolution No. 2019-15 Torrance County Board of Commissioners Rules of Procedures. Commissioner McCall seconds the motion. Chairman Schwebach asks if there is any discussion. Commissioner Sanchez asks if Section 6 of the rules and procedures can be read so that they can be clarified for the public.

Wayne Johnson states that the public comment will be a part of every meeting. There will be certain things that the public will not be authorized to speak on, but there will be certain parts that will require the public to speak. When a public hearing is held that will require public comment. When approvals are made, there is no public comment needed, unless otherwise stated by the Commission Chair. It is entirely up to the Commission Chair to allow the public to speak. Public comment is in every meeting and the public will be allowed to speak on any issue no matter what it is and will be given 2 minutes to speak.

Commissioner Sanchez reads sections 6 & 7 of the Rules & Procedures which are Public Comment & Addressing the Commission.

Wayne Johnson states that this is what the Commissioners are currently doing. The whole idea is for the body to be able to get its job done and allow the public to be involved as well. These rules do work for both parties.

Commissioner Sanchez asks if public comment will be allowed for each agenda item or just during the public comment section.

Wayne Johnson, replies, as a general rule, no. Although the chair does have the discretion of opening up the floor at any time and each Commissioner can invite someone up to speak on a certain topic, should they wish to do so. No time limits will be enforced that are associated with the public comment.

Chairman Schwebach asks if there is any further discussion. No further discussion, all Commissioners in favor. **MOTION CARRIED**

B.) FINANCE: Resolution No. 2019-16 Budget Increase

Belinda Garland is requesting the Commissioner approval for a budget increase for the Sheriff's LEPF fund and the DWI's supplies fund. Ms. Garland states that the LEPF is the Law Enforcement Protection Fund. This is a grant that is given to the Sheriff's department to help with purchasing their equipment.

Chairman Schwebach asks why they are increasing the funds.

Belinda Garland states that it is in the General Fund, but the budget needs to be increased, and has to go to DFA for approval.

Chairman Schwebach asks, we are increasing the budget because we have budget money coming in, correct?

Belinda Garland replies, yes, that is correct. It is in the general fund but we need to increase the budget for the fund.

Chairman Schwebach asks for a motion to approve Resolution 2019-16 Budget Increase. **ACTION TAKEN: Commissioner Sanchez** makes a motion to approve Resolution 2019-16 Budget Increase. Chairman Schwebach seconds the motion. No further discussion, all Commissioners in favor. **MOTION CARRIED**

C.) FINANCE/TREASURER: Resolution No. 2019-19 Budget Fund Balance Policy

Wayne Johnson states that this is something he and the Treasurer have looked at. This changes the authority to sign off on periodic cash transfers from the Finance Director to the Manager. Mr. Johnson felt that it was more of a management & Treasurer's function to verify that there will be money available, and to makes sure that the cash transfers were coming up to

a management level before the transfer takes place. This repeals a previous resolution that authorized the Finance Director and the Treasurer and shifts it to the Manager and the Treasurer.

Commissioner McCall asks if there are limits to this.

Wayne Johnson states that it is limited to the budget itself.

Tracy Sedillo states that this resolution changes two things, the item Mr. Johnson just explained and it also will remove the every Commission meeting reporting. The transfers are on the Treasurer's report and at any given time you can look at the report to see these transfers. These transfers are part of the operating budget, at no time will they ever exceed what the Commission has already approved. If at any point we have to transfer more money than what was approved, we would need to come back to the Commission with another resolution to do a budget increase, and then be approved by DFA.

Commissioner McCall asks if the items are still staying within their own line item within the department.

Tracey Sedillo replies, yes. The reason there are cash transfers in the budget is because we are required in certain things such as grant matching that is required by the terms of the grant, there is fiscal assistant that we give to other funds, the mandatory to the reappraisal fund, and several other things that have transfers. These are cash transfers between the funds. This isn't adjusting the expenditures or revenues, it is just a transfer and are set by the operating budget. We are trying not have all the transfers occur at one time so that we won't drain the general fund. We wanted to make the transfers periodically as they were needed, instead of making the transfer then having to reverse it because it was not needed.

Chairman Schwebach states that just to be clear, we are referring to Resolution 2019-18 or 2019-19? Or the Line item transfers or Budget Fund Balance Policy?

Tracy Sedillo states that this is the Budget Fund Balance Policy.

Chairman Schwebach asks for a motion to approve Resolution No. 2019-19 Budget Fund Balance Policy. **ACTION TAKEN:** Commissioner Sanchez makes a motion to approve Resolution No. 2019-19 Budget Fund Balance Policy. Chairman Schwebach seconds the motion. No further discussion, all Commissioners in favor. **MOTION CARRIED**

D.) FINANCE: Resolution No. 2019-18 Line Item Transfers

Belinda Garland states what was just approved by the Commission will eliminate these requests in the future. These are line item transfer requests made by department heads to be able to move money around within their budgets from one line item to another. For example, if they are short money from one fund they can move money from another fund in to that fund to cover the expense. Ms. Garland is requesting the approval of the Commission for Resolution No. 2019-18.

Chairman Schwebach asks for a motion to approve Resolution 2019-18 Line Item Transfers. **ACTION TAKEN: Commissioner McCall** makes a motion to approve Resolution 2019-18 Line Item Transfers. **Chairman Schwebach** seconds the motion. No further discussion, all Commissioners in favor. **MOTION CARRIED**

E.) COMMISSION: Resolution 2019-07 Support the EMWT Regional Water Associations Request for Capital Outlay in the 2019 Legislative Session (Commission Schwebach)

Chairman Schwebach states that he brought this up two meetings ago and there were several individuals that were wanting a better understanding of this. Chairman Schwebach asks if there is representation from EMWT to speak. What came out of the last meeting was the bi-laws and what guarantee does this entity have in not transferring water out of the basin. Chairman Schwebach asks if Mr. Swenka could speak on this and then Chairman Schwebach will open the floor for questions.

Art Swenka, EMWT, states that the Articles of Incorporation & Articles of Association both state that we cannot transfer water out of the Estancia basin. The EMWT works on the basin not on the county. There is some confusion that we would be transferring water out of the county, on some cases it is true. Mr. Swenka states that he submitted maps of the basin and there are parts that are outside of the county.

Chairman Schwebach asks where the water would be transferred to.

Art Swenka states that it would still remain in the basin.

Chairman Schwebach asks Mr. Swenka to define the “basin.” Mr. Swenka hands out a map of the basin. Chairman Schwebach states that if he is viewing the map correctly the basin goes up north of Stanley right up to the Galisteo Basin, correct? Where is the cut off to the west?

Art Swenka states, yes, it goes right up next to the Galisteo Basin. In the upper corner the county line blots out about an inch of the border of the basin. There is some concern in the Edgewood area, but Edgewood is in the basin.

Chairman Schwebach asks Mr. Swenka to give a brief description on the concept of EMWT, why it came about, and what its mission statement is.

Art Swenka states that the mission statement is that they would create a trunk line between Willard and Moriarty to move water back and forth as needed by the different communities along the way. If requested, in the future, there would be lines built up into the mountain areas.

Johnny Romero thanks the Commission for giving the people a chance to speak and not just voting for this during the previous meeting this was presented at. The main concern is when the pipeline is set, what will happen when a rich person comes in to bring in huge subdivision and the water is being pumped to feed the northern area of the county, and it drains the southern areas, what control will EMWT have to stop the flow when another district is in danger. Why should the public have to pay to put in a pipeline if it is going to destroy another area? Let those rich people pay the \$100 million to put in the pipeline not the public. Something needs to

be put in place to control the flow of water or stop it if an area is in danger. Another concern is with the communities along the mountains. They feel they are not being represented enough by the representative that sit on the EMWT board. Mr. Romero suggests placing a representative from each of the mountain towns on that board. The land grants do not support this. If we include this people and give them a voice things would move along smoother.

Art Swenka states that as far as the people that sit on the board, the towns appoint those representatives, EMWT has no control over who is appointed. The county appointed 2 members, Estancia appoints 2 members, as well as Moriarty & Willard. EMW Gas Company also has a representative because we use their office and for administrative purposes. Mr. Swenka states that he has visited with all the Land Grants. Mr. Jason Quintana currently sits on the board as he was appointed by the Commission to represent the county. There is also a representative from Mountainair that was also appointed by the county. This organizations is owned by the 4 entities. The board is a non-paid board that volunteers their time and does this for the 4 entities. The 4 entities are in power and they are not in favor of moving the water out of the basin. It is in the EMWT bi-laws that we will not move water out of the basin.

Mr. Swenka states that EMWT's mission is much like that of EBRA. They all want to keep the water in the basin. What the people do with the water in the basin is not their concern, their concern is to keep it in the basin. All the time these groups spend at the legislature, is all volunteer time spent in keeping the water in the basin. They report to the entities quarterly let them know where they are. EMWT would have no authority to tell Edgewood that they could not have any water because they are in the basin. The municipalities control EMWT, there are restrictions.

Mr. Swenka states that one of the reasons that EMWT exists is because they have fought rich water people from coming in and taking water out of the basin. They have been successful in stopping one such entity from Texas that wanted to come in and take water from all over the basin. We need to take control of our water and not let any outsiders come in and try to take it. As far as Mr. Romero's question as to what control we would have in stopping the flow of water to a subdivision we allowed to come in, there may be a certain liability involved, you can't just stop the water flow.

Michael Godey asks if the association could have some say in the kind of development that would be coming in, if they can place some kind of restrictions through planning and zoning. There should be more of a need and not a want, such as a Golf Course within the subdivision. That is more of a luxury and not a need.

Art Swenka states that he agrees with that. Mr. Guetschow does a great job of keeping EMWT informed of any new developments coming in.

Nathan Dial, Mayor for the Town of Estancia, states that the town has signed a letter of support for what the county is doing here. The town is also in full support of what EMWT should be doing. A few questions that people have brought to him are, 1.) Once the pipeline is established, can they make eminent domain claims on the water? 2.) The people in McIntosh want to know if the area you picked is good water. There is no guarantee you will get good water but it is a concern. There also needs to be better signage, it makes it look like all the land

grants and Mountainair are on board, the signs are misleading. People want to be sure the water is going to stay in the valley and be used appropriately.

Wayne Johnson states that it may be useful to read sec11 of the by-laws for EMWT that will address the concern for Mayor Dial and those of the public asking questions. Mr. Johnson reads: The association shall not sell or export outside of the Estancia underground water basin as its boundaries are defined by the Office of the New Mexico state Engineer. Provided that the association may provide water to the Town of Mountainair that currently relies on water from the Estancia underground water basin to supply its water needs per use only within the town limits as they exist as of the date of the association's incorporation. Under no circumstances shall this certificate of association be amended to permit the sale, transfer, or conveyance of the association in whole or in part to any privately owned entity for profit.

Art Swenka states that is reference to Mr. Dial's eminent domain questions, all we are placing is a pipeline. We are not going to be controlling people's water companies. There is just going to be a pipeline in place to supply water to them if they ask.

Dennis Wallin states that the people do have the right being formed under Section 3-28, the statute states, they can claim eminent domain. They don't have eminent domain over water rights, those are controlled by the state engineer's office, but the other utilities and water companies formed under this section do have the right of eminent domain.

Chairman Schwebach states that just to clarify, the eminent domain language was written in to EMWT merely to pay the pipeline. You can't use eminent domain to claim water. They will be purchasing or leasing water on existing water rights. The concept is wet water not paper permits or water that is non-existent. The goal is to limit current water production by putting it through better beneficial use.

In regards to Mr. Dials question on clean water, this system has to deliver fresh water, not brackish water. If it is brackish water it will be treated. It will also be looked at to see if it is economical to look for fresh water or treat the water in the well that they developed.

Last question from Mr. Dial, is it the board's will to allow representation for the land grants and the Town of Mountainair?

Art Swenka states that the articles of association would have to be redone to include those entities. When he went around and spoke with the land grants, they did not want their names mentioned or to be involved. Mr. Swenka recommended that they treat the land grants like they treat the municipalities. The towns and the land grants are exempt from eminent domain.

Commissioner Sanchez asks if that includes membership on the board.

Dennis Wallin states that it is governed by statute. They were formed under 3-28-1 as a water association, which specifically states that a combination of 2 or more municipalities in the board of county commissioners of the county. Land Grants are not mentioned in the statute. More research would need to be done to see if they could be members of this type of board.

Commissioner McCall states that it was earlier mentioned that the land grants have their own water system, is it a common pipeline?

Commissioner Sanchez states that all 4 land grants have a separate rural domestic water system. They are not linked with any other entity.

Art Swenka states that each of the land grants have their own wells and water systems. Mr. Swenka states that the concern is that the water would leave here and be given to the rich people that are doing developments. One such entity is Campbell Ranch. They are proposing a 4,000 home development, with 2 golf courses, swimming pools, resort hotels, etc. In 1987 Bill King sold water to Roger Cox to build Paako Golf Course, they did not use all the water rights, so in 1999 Mr. Cox sold the rest to Campbell Ranch. There are 436 acre feet of water rights that Campbell Ranch owns in the Estancia Water Basin. They still require another 300 plus acre feet from the Sandia Basin, but Bernalillo County and the State Engineer have been opposing the sale. There are still 2 more appeals that can be made by Campbell Ranch, if they succeed then we will be losing a lot of water. This is currently water speculation and there is currently a bill that will prevent water speculation.

Kathleen Jesse states the Campbell Ranch decision was turned down on January 29th. The reason being is because it would be a huge impact on the water in the Sandia basin. This Morrison Guideline is something we should follow. She is concerned where the water will be coming from. Ms. Jesse states that in the 2010 Estancia Basin water plan, the state engineer stated that we were drawing 79,000 acre feet of water from the basin. The basin was going down an average of 1.23 feet per year. We should retire water rights, 92%-98% of the water is going to agriculture. If the water is not being used then retire them. This is where we will get the water. Emphasis needs to be on water reduction and we need a better structure to follow. The Morrison guideline is a good document to follow. We need to decrease the drilling in the area. Conserve the water.

Michael Godey states that the association needs to take a harder look in being an advocate in conserving water and more efficient ways in using water. Also, is Rhonda King still on the board, and what her opinion on this.

Art Swenka states that she is on the water planning committee board.

Commissioner McCall states that the issue of consumptive use needs to be talked about. The water that is going into the pipeline is a wet water right coming out of agriculture use. You have to cut that in 50% to go to consumptive use. It takes 2 acres of irrigated water to make 1 acre for consumptive use. That is one way of bringing down the amount of water use in this basin. You come out buy a 3 acre parcel, apply for a drilling permit, for a domestic well, the water that you are pumping out of that well are not accounted for, and is that correct?

Art Swenka states that to his understanding, now, is that every well that is drilled you have to put a meter on it.

Commissioner McCall replies, yes he understands that, but does it account for a water right?

Chairman Schwebach states that a domestic or a livestock irrigation well is limited. The domestic well is limited to 1 ½ acre feet annually and a livestock irrigation well is limited to 3 acre feet annually. The majority of the domestic wells in this valley are considered livestock wells or were grandfathered in at the 3 acre feet. The majority of the wells are not metered and if they are the state engineer does not limit use in consumption. If you go over the 3 acre feet you won't be shut down. The majority of the irrigation wells are not metered. The only time they are metered is when you apply through the state engineer to deepen a well or to combine waters, at that point all wells are metered. There is nothing stated that you have to report water use. Once that water is transferred into that pipeline and is for consumptive use, it is monitored very closely.

Commissioner McCall states that when you have people stop pumping their personal domestic well and it goes into that pipeline, it is all accounted for. There is a benefit to this pipeline.

Art Swenka states that if you look at agriculture in the past, they started off with flood irrigation, then went to side rolls, then to pivots, and eventually to a drip hose, although this can be costly and lasts only 9 years. These are all things that have been done to reduce water use.

Commissioner McCall states that on his farm he is 70% sub surface drip and has cut his consumption my 50%.

Kathleen Jesse states that the big focus needs to be on water reduction and keeping the water in our county. Water rights should be retired and that can be done by the state engineer.

Chairman Schwebach states that they can and that is all with the office of the state engineer. Through the water planning committee back on the 90's, permits were given for irrigation permits, it got out of hand, they closed the basin, and no new permits have been given out for irrigation purposes since the early 90's. Half of the water rights are paper rights, it is difficult to bring those paper rights to wet water. EMWT is looking at wet water.

We have dealt with this situation, most questions have been answered, and some have not. Everyone has been included by EMWT they have guidelines that are adjustable or amendable as needed. As of right now farmers do not fall under the Morrison guidelines, but there are areas on how the aquifer is managed. Farmers are limited to what you can and cannot do in that zone as a licensed irrigator. If a subdivision comes in and there is a well on each property the state engineer cannot deny that. This pipeline will prevent that, it's not just water quantity but water quality.

There are people in McIntosh that are moving out because they can't afford to keep drilling wells to find water, this will prevent that. **ACTION TAKEN: Chairman Schwebach** makes a motion to approve Resolution 2019-07 Support the EMWT Regional Water Associations Request for Capital Outlay in the 2019 Legislative Session.

Wayne Johnson states that this resolution was written specifically for the 2019 Legislature. With a minor amendment you could make it more of an evergreen statement by the Commission. Mr. Johnson states that he can read the adjustment.

Chairman Schwebach withdraws his motion and asks Mr. Johnson to read the resolution.

Wayne Johnson reads: The Torrance County Board of Commissioners is in full support of the EMWT Regional Water Association's request for Capital Outlay funds during the 2019 Legislative Cycle to leverage funding previously obligated to the USDA which require supplemental State Funding. The change would strike out Capital Outlay and replace that with "matching funds" and strike out "the 2019 Legislative Cycle." It would then read: The Torrance County Board of Commissioners is in full support of the EMWT Regional Water Association's request for matching funds to leverage funding previously obligated to the USDA which require supplemental State Funding.

ACTION TAKEN: Chairman Schwebach makes a motion to approve the amended letter. Commission McCall seconds the motion. Chairman Schwebach asks if there is any further discussion. Commissioner Sanchez would like to add, in regards to Mayor Dial's submission of question #1. There may be a lack of communication as he listens to the conversation here and the constituents. Question # 1 asks, what are the assurances according to the mission statement and charter of EMWT that the water collected will stay in the Estancia Basin? It clearly states in the bi-laws that there is clear indication that the intention is for the water to stay in the basin, it's more of a requirement. The question that is lingering, is it in the interest of the lower Estancia Basin to share a water system with lower Santa Fe County. Is it in the best interest to share a water line in that fashion? Is it in the best interest to share with the up part of the county that is within the basin? Yes, that is an easy answer.

Art Swenka states that he is not sure he can answer that. There is a water shed in the Edgewood area and water is collect there. It isn't just the lower basin that furnishes water for the Estancia basin, it comes from all over. We may never be able to tell how much comes from that water shed but it is from the basin.

Commissioner Sanchez asks who is best situated to make that determination whether the lower basin should share a water network with the upper basin, mainly southern Santa Fe County. No one really knows, it is an open question.

Chairman Schwebach states that we need to keep in mind that with much of southern Santa Fe County, there children attend schools in Torrance County and they shop with in the county, the economic driving force are intermingled. This is something that the board can look at later on. No further discussion, all Commissioners in favor. **MOTION CARRIED**

13.) APPROVALS

A.) **SHERIFF:** Approval of Law Enforcement Protection Fund (LEPF) Application for the Torrance County Sheriff's Office

Martin Rivera states that this is an application for the LEPF. This is just the application in the amount of \$28,400.00 that comes from the state. This money is used by the Sheriff's Department to purchase equipment, vehicles, vehicle repair, & training. The department gets this every year and the state is currently looking at raising the amount in the future.

Commissioner McCall asks if this is a fund that comes every year and if the amount is to be determined at a later date. Is there matching funds?

Martin Rivera replies, it depends. The state gives us a certain amount, and they give us \$600.00 for every certified officer they have in the department and there are no matching funds.

Belinda Garland states that there are guidelines that the department must follow on how the money can be spent.

ACTION TAKEN: **Chairman Schwebach** makes a motion to approve the Law Enforcement Protection Fund (LEPF) Application for the Torrance County Sheriff's Office. **Commissioner McCall** seconds the motion. No further discussion. **MOTION CARRIED**

B.) MANAGER/GRANT COORDINATOR: Approval to submit an application for 2018 staffing for adequate Fire & Emergency Response (SAFER)

Cheryl Allen, Grant Coordinator, states that she is bringing forth to the Commission, for discussion and approval, the application for the SAFER Grant. This is a grant that she & Chief Lester Gary are working on together. This is a new grant that the county has never applied for. This grant will assist local fire departments with staffing and deployment capabilities in order to respond to emergencies and to ensure that the communities have adequate protection from fire & fire related hazards. This is a federal grant and will pay the salary and benefits for Fire Fighters/EMT's. The total funding nationwide is \$350 million and will be awarding 30 grants nationwide. The deadline to apply is March 22nd 2019 & the grant awards will be announced September 30, 2019. There are also several waivers available to the county that will decrease the match required by the county, and the county will be applying for 3 of the 4 waivers. The waivers are cost share, maintenance of effort, and the minimum budget requirements. Without the waivers the max is 75% for the 1st and 2nd year of the grant and for the 3rd year it is 35% of the grant.

Ms. Allen states that she prepared a chart that shows the request for 5 Fire Fighters/EMT's, the chart shows all expenditures. It also shows the federal funds and what the Torrance match will be per year. For each person hired, we will be required to supply them with their PPE, equipment, uniform, and physicals. That will be paid out of the fire protection fund and will be about \$400.00 per Fire Fighter/EMT per year.

The assignments would be adding 2 to the Willard District 6 and 3 in the McIntosh District 6. The benefits would be to expand EMT service in the southern part of the county by 100%. This would reduce response time and improve the minimum staffing levels. We are currently at 25% of the mandated requirements for response due to volunteers on weekends. Adding these EMT's would boost the application to the PRC for ambulances instead of rescue units. If we

have ambulances this will create revenue and maintain the salaries for those hired after the grant has ended.

Chairman Schwebach asks, if after year 3 and the grant funding is up, and depending on the financial situation with the county, can we lay these people off, and if so will we have to pay back the grant money and will it affect us on applying for any grants in the future.

Cheryl Allen states that we will not have to pay back the funds and we will be allowed to lay off the employees.

Wayne Johnson states that they will be hired as term employees.

Chairman Schwebach states that the goal is to put this into place, find a way to fund it, and keep it perpetual. We have 5 on this list, is it to be determined by the amount of the grant or by the Commission?

Cheryl Allen states that it will be determined by the Commission and the number needs to be specified in the grant.

Chairman Schwebach states that in moving forward we need to make sure we have the matching funds within the General Fund for the next 2 years.

Cheryl Allen states if we are awarded the grant and waivers for matching funds, the matching funds will decrease.

Commissioner McCall asks if we will get the waivers before or after we are awarded the grant or do they coincide with each other.

Cheryl Allen replies, they will coincide with each other.

Chairman Schwebach asks Chief Gary to speak on the positions he is requesting,

Lester Gary states that the reason that he went with 5 members, is because they will be hiring 2 more, to give us a total of 7. The department will be able to house and staff 2 ambulances/rescues plus 1 engine with the 7 personnel.

Commissioner McCall asks if Chief Gary could speak upon how they plan on getting the ambulances ready & equipped.

Lester Gary states that all 3 medical rescues that the county currently has are all fully equipped. We just have to go before the PRC to get a PRC number. The only things not on the units are narcotics and there will not be any until we get paramedics hired.

Chairman Schwebach states we have everything in place, and the PRC number is on its way back to the county, is that correct? How long before we know that we have the PRC number? If for any reason we do not get the PRC number what will happen?

Lester Gary states that it will take about 3 months to know about the PRC number. IF we don't get the number it won't hinder anything, we would just have to look at another way of funding the employees. The only advantage to the PRC number is that the county can then bill for the transports. There are several things in the legislature that are being discussed to be able to use the fire protection fund and gross receipts for staffing.

Commissioner McCall asks Chief Gary to speak on the resources that would be needed to do the billing and if Chief Gary has the staff to do so.

Lester Gary states that the billing would be held outside of the building. The department would use the EMS billing service. They bill the insurance and what they get back is 10% on the dollar. If his department were to handle billing it would be way more expensive, EMS billing service is much easier.

ACTION TAKEN: **Chairman Schwebach** makes a motion to approve to submit an application for 2018 Staffing for Adequate Fire & Emergency Response (SAFER) grant. **Commissioner Sanchez** seconds the motion. No further discussion, all Commissioners in favor. **MOTION CARRIED**

C.) MANAGER: Motion to authorize the County Manager to enter into MOU with Torreon Acequia Association for repair and maintenance

Wayne Johnson states that this item, on behalf of the Commission, would allow himself to enter into an agreement with the Torreon Acequia Association for maintenance and repair to the acequia in Torreon. Leonard Lujan went up and to take a look at what it would take within a limited scope of work to do the repairs. The current scope of work with repairs, equipment, and man power would be at the cost of \$2,868.00. The association is also requesting that the county do an annual maintenance. The association has also agreed to do some of the work and that was figured into this estimate.

Chairman Schwebach states that the cost is going to be \$2,868.00. This is not a cost share nor will we be billing them, this will be a full cost to the county. Is that correct?

Wayne Johnson states that he would work within the Commissions instruction on that. It is up to the Commission if they want this to be full cost to the county, negotiate a cost share, or bill them fully.

Commissioner McCall asks if the Acequia Association collects dues.

Erminio Salas states that they do not collect dues at this time. They just had their infiltration gallery and irrigation system installed in their natural spring. Once that is up and running they will begin collecting dues. The association has no money at this time.

Chairman Schwebach states that the concept is to enter into an agreement with the county get this cleaned up and put in into use, correct?

Erminio Salas states that the infiltration gallery & irrigation system is only half completed. They are currently asking for money from the legislature to complete the project. Once the repair is completed they then can begin collecting fees.

Commissioner McCall asks Mr. Salas if the work that the county will be doing help that system work or not work.

Erminio Salas states that this acequia is a totally different system. It does service people on the east side of highway 55, but hasn't worked, it needs maintenance. The county went up last year and helped with the portion of the acequia, but it still needs a lot of work

Chairman Schwebach states that the county maintaining this with county equipment and manpower is completely out of its realm, correct?

Wayne Johnson states that this is government to government transaction. This is fully within the discretion of the commission if they wish to go forward with this agreement.

Chairman Schwebach states that they do need to move forward, but would prefer to do it as a cost share. It would be a 75% to 25% match. Look at a cost share with a long term payback or potential forgiveness. His thought is to give some sort of incentive to get it up and running to make it an economic viability for a payback and to make sure that future endeavors will involve a cost share. This is all negotiable. In his experience cost shares work better, will work on this as it is not an immediate request.

Erminio Salas asks if at this point in-kind work can be considered as a cost share.

Chairman Schwebach replies, yes. That would work.

Erminio Salas states that they currently have all the easements taken care of. They will take care of taken down fences, cutting down trees, etc.

Commissioner Sanchez asks if that kind of work be considered in-kind work. 25% would be about \$700.00.

Commissioner McCall states that the \$700.00 would not be from the \$2,868.00. That is just strictly equipment usage correct?

Wayne Johnson states that the estimate includes 40 man hours and 40 hours of equipment usage. The man hours would total \$1,150.00 and the equipment hours would total \$1,718.00 for a total of \$2,868.00.

Commissioner McCall states that this is strictly our man power on the equipment and the equipment itself.

Wayne Johnson states that is correct. It would be that whether we do a cost share or cost forgiveness where we did an in-kind match. Whatever percentage the county wishes to place

they will use that to negotiate the amount of man hours put in to achieve that cost forgiveness. A cost share is a good approach at this point.

ACTION TAKEN: Commissioner Sanchez makes a motion to approve to authorize the County Manager to enter into MOU with Torreon Acequia Association for repair and maintenance and to authorize the County Manager to come to an agreement with cost share. Chairman Schwebach seconds the motion. No further discussion, all Commissioners in favor.
MOTION CARRIED

D.) COMMISSION: Estancia FFA request for financial assistance (Commissioner Sanchez)

Wayne Johnson states that Commissioner Sanchez let him know that he has not made a decision on this, but wanted it placed on the agenda for discussion and approval.

Jonathon Aday & Hezekiah “Heze” Ortiz state that they attended last month’s Commission meeting to request financial assistance from Torrance County for their trip to Scotland to compete in 2 international competitions.

Chairman Schwebach states that he has thought about this and likes the FFA programs. He congratulates them on their accomplishment but he personally feels that this is outside of the realm of spending tax payers money to give to a small group to participate in this. He is not against the program and what they have accomplished, he just doesn’t agree with authorizing the county to use tax payer’s money.

Commissioner McCall states that he has the same coach these kids had and back in 1991 they won state championship livestock judging contest, and placed 5th in the national competition. Kenneth Lujan is a great livestock coach. He also agrees with Chairman Schwebach that it is not good to be spending tax payer’s money on this, a line has to be drawn somewhere. Personally he will support them, but as part of a Commission he can’t support this.

Commissioner Sanchez asks what their budget is.

Jonathon Aday states that they have met their goal. What they are trying to make now is money for the extras that is not included in the initial budget. There is no longer a need for assistance in the primary budget.

Commission McCall ask that the group visit him after the meeting and he will support them personally.

Chairman Schwebach states that he will also support the group personally. The county may not be able to support them financially, but they can support them through advertising, or by any means the county has to let the county know what these young men and woman have accomplished. Congratulations again.

Wayne Johnson states that one of the items that was added to the agenda was the Proclamation’s section. This is to recognize people that are doing good things in this county. This gives us a chance to recognize these people publically.

NO ACTION TAKEN

E.) COMMISSION: Approval of contract extension for County Attorney Dennis Wallin

Dennis Wallin states that his contract extension expired at the end of February. At this point he is thinking they will be appointing someone by the end of March.

Wayne Johnson states they are trying to get someone in by the end of March. They have had a couple of responses from the RFP and are waiting to close out the in-house counsel side of the advertisement. This is a Commission hire and they will be allowed to go into closed session to review those applications. It will be up to the Commission on if they want to hire in-house counsel or through contract. Mr. Johnson would like to get this done as soon as possible.

Chairman Schwebach states, since we do not have another attorney/advisor, we are extending an existing contract with Mr. Wallin, correct?

Wayne Johnson replies, yes, that is correct.

Dennis Wallin states that he would like for this to be completed by the end of the month as he will not be available in the month of April.

ACTION TAKEN: **Chairman Schwebach** makes a motion to approve the contract extension for County Attorney Dennis Wallin. **Commissioner Sanchez** seconds the motion. No further discussion, all Commissioners in favor. **MOTION CARRIED**

14.) DISCUSSION

A.) US CENSUS BUREAU/VERONICA ARZATE DE REYES: Presentation of the 2020 Census complete count committee

Wayne Johnson states that this will have to be rescheduled as the lady that was to be presenting this is not present. Veronica was aware of the meeting as they spoke a few days ago.

B.) GRANT COORDINATOR: Discussion of NMFA CEDS - Update

Cheryl Allen states that she is bringing to the attention of the Commission the planning grant applications. These will include updating the Comprehensive land use plan and the economic development plans. The current comprehensive plan was adopted 16 years ago in August of 2003. The document was prepared by MRCOG with funding from the NM CDBG program.

A comprehensive plan is a document to guide development for 20 years that is adopted by the Commission through resolution or ordinance.

The 2003 plan defined goals and objective for development of the county & identified certain actions to implement the plan. Goals were organized by land use, transportation & circulation, regional infrastructure & natural resources, economic development, & county government

operations. It is recommended to update this plan every 5 years, ours is 16 years old. Some of the goals in the current plan were based on population projections. The projections show how outdated our plan is because it projected the population for 2020 to be at 24,175 and the current population is only 15,506. The plan includes a table that identifies strategic action plan priorities as critical need, 1-5 years, 5-10 years, and 10-20 years. We are currently in the 10-20 year range and we need to re-evaluate the county's priorities into a new plan.

Ms. Allen states that she has spoken with EVEDA and MRCOG and they both support updating the comprehensive plan that will include an economic development section. Torrance County intends to apply for another CDBG grant to update the comprehensive plan. To pursue the grant Ms. Allen has attended a CDBG application training. MRCOG will conduct a public meeting on March 27th at 2:30 pm in the Torrance County Commission Chambers. This meeting is required for the application. The County Commission will need to pass a resolution to apply for the CDBG grants and an organization will need to be hired to update the land use plan. The MRCOG previously did the plan but they informed Ms. Allen that they are not available to do so at this time.

The CDBG grant does not have a specific deadline. The grant is for \$50,000.00 and the match for Torrance County is \$5,000.00.

Ms. Allen states that Sandra Gaiser suggested we use the CDBG grant paired with the NMFA grant for a more robust economic development portion of the comprehensive plan. The NMFA grant could add an additional \$50,000.00 to the project. Ms. Gaiser said that updating the plan could cost \$100,000.00 or more. The NMFA grant does not require matching funds. If we qualify for these grants they will cover most of the cost of updating the plan.

Another application has been proposed for preparing a Comprehensive Economic Development Strategy (CEDS) which will propose a separate economic development district for southern Torrance County. There have been pros, cons, and questions regarding this plan. Moving forward with the Comprehensive plan with the public's input at the meeting on March 27th is critical. With the economic development portion Ms. Allen is suggesting that the meeting include Commissioner McCall (Torrance County representative for EVEDA), Wayne Johnson (County Manager), EVEDA (Myra Pancrazio), and herself to determine the best path in moving forward.

Wayne Johnson states that one of the things that has been a sticking point on this is the concept of a separate economic development district. This was not the intent, it should be a separate economic development focus. This will focus on the differences and specific needs for southern Torrance County as the needs are much different from the northern part of the county. Mr. Johnson is not sure that it is possible to have it as a separate economic focus. It was not one's intent to create a separate district from EVEDA.

Commissioner Sanchez replies, that is correct. Commissioner Sanchez asks if there is an issue in applying for the grant.

Cheryl Allen states that Myra Pancrazio does dispute this. This is one of the reasons for the meeting so that we can discuss all aspects and make sure everyone is on board with what we are trying to do.

Chairman Schwebach states that we do support EVEDA, and if Myra is opposed to this, he would like to know why. Therefore, it is a good idea to have the meeting. Chairman Schwebach does not know what the issue is and would like to find out what it is before moving forward with the grant.

Wayne Johnson states that this is only a discussion item no action is needed at this time.

Chairman Schwebach is aware of that, but he would like to find out what the problem is and not let this drag out and get it fixed as soon as possible. If the concept is to get a grant to look into different ways of economic development, which he is not opposed to, but he does not want to jeopardize something the county already has.

Commissioner McCall asks if we need to set a date for the meeting.

Chairman Schwebach suggest that we do it at a regular meeting, but let's contact the powers that be to make sure that they are available.

Commissioner Sanchez states that he would like to get this application approved at the next meeting. If we need to have a meeting with EVEDA on this before the next meeting, then let's get it done.

Wayne Johnson states that as Commissioner McCall is a rep to EVEDA that we get some of the information through himself to Commissioner McCall or in this setting before we call a meeting. If not then we would have to call for a special meeting.

Commissioner Sanchez states that at the beginning of the year he wanted to focus on economic development in his district. He looked at issues and tried to see what areas he could gain traction on. He came to the conclusion that he did not have enough information to see how he could help his district. He also noticed that a lot of the comprehensive plans in the communities have also lapsed just like ours. He came to the conclusion that a document was needed to focus specifically on the economic development for his Commission district. He spoke with the town leaders and school boards to see if a plan like this would be appropriate for them. They all seemed to say yes, but they do not know where to start.

Commissioner Sanchez states he put together a scope of work that he shared with the group. It is simple and they are looking at putting together a plan that would address economic development in the towns of Mountainair, Estancia, Willard, Encino, Chilili Land Grant, Torreon Land Grant, the Tajique Land Grant, and the Manzano Land Grant. They chose to focus on these areas because the communities have a lot in common. They do not have access to major transportation networks so they need to look at other ways for economic development.

Commissioner Sanchez would like the plan to be composed of various chapters. The first chapter would be a general outline and then each community would have its own chapter and

the following questions would be answered. Number 1 would be purely informational and an analyst would analyze the local economy. Next would be economic development. Each one of the communities would determine what kind of economic development they like to see. The consultant would set up the platform for the discussion but the communities would have total control. The last part would be a determination of project opportunity and what you would want to focus on within a certain time frame.

Commissioner Sanchez envisioned this plan making economic development more seamless and more coordinated in the southern part of the county. It would be better to identify the resources from each community and pull them together to help one another. This plan would also need an annual performance report. The report would address the following on a yearly basis, an adjustment to the strategy, a report on activity, evaluation of progress on the action plan and goals, and a schedule goals for the following year. This may enhance the relationship with EVEDA and MRCOG. We need a plan to start with and this can be done without any investment from the county.

Commissioner Sanchez states he wanted to look at alternate resources. He started with the New Mexico Department of Economic Development and ended up at the UNM Small Business Institute. The best option would be an NMFA grant. Their grants are awarded in \$50,000.00 increments with two sub-grant agreements that can be awarded per calendar year for a total of \$100,000.00.

While we are looking at this, we need to really look at updating the comprehensive plan. Commissioner Sanchez suggested to the County Manager that this all be done at the same time. Let's use the CDBG Grant & the NMFA grant and the sub-grant, it's a lot of money and commitment, but we can maximize the money to get as much done as we can. Commissioner Sanchez does not think that this particular plan will cost \$50,000.00. NMFA does not have a specific application time limit, the money is always there. If we were to submit an application there is a good chance that we will get approved. He would envision a consultant carrying out the work within 6 months and the entire project being wrapped up by Christmas. The money is there and will not cost anyone anything other than participation.

Another project Commissioner Sanchez embarked on was getting information from all the entities, he came across the UNM Small Business Institute and they try to connect students with projects in the local communities. Mr. Stacy Sacco, who is their director, has done a lot of work for the Edgewood area. He recommended that we take advantage of having a student do the work. Commissioner Sanchez did the application and a group of students contacted him to work on a project in the area.

The students have 9 weeks to complete their project. They are going to create a strategic marketing plan for all communities that Commissioner Sanchez mentioned. The way he envisions this plan fitting in with the application for NMFA is just as the SBI is winding down the NMFA grant may be awarded and the SBI information will feed into the plan. The UNM Project is free and will be of no cost to anyone. They are a link in the chain that will be part of this whole plan.

Commissioner McCall asks Commissioner Sanchez if he has visited with EVEDA to see if they have the information he wants. Has he gone deep enough into that organization to see that she does not, for sure, have all this information? It would not be good if all you are doing is doubling up information. The second question is, why not do a southern and a northern study. Commissioner McCall has an issue with segregating the county in half when it is the whole county.

Commissioner Sanchez states that EVEDA does not have any information at all. In response to the second question, it is not about segregating it is about practicality.

Commissioner McCall understands that, but why not challenge the consultant to do a northern study and a southern study, if you don't think we will exhaust the entire \$50,000.00.

Commission Sanchez states that would be fine, but when it comes to the I-40 corridor it is very well documented in MRCOG plans, transportation plans, and in EVEDA's own plan. There is no need for it to be done in the northern part of the county. There is no verbiage for the southern part of the county.

Wayne Johnson states that the comprehensive plan includes an economic component. In this particular case we are looking at a particular grant to focus just on southern Torrance. The comprehensive plan would include some of that information. It would be looking at the economics of northern Torrance and would not be left out. He believes that there are significant differences in regards to infrastructure and various industries that are more northern. The SWOT analysis is a good example. We should peruse this until we don't get a grant or we have to reform our plan. Having a comprehensive plan makes a difference when it comes to accessing legislative and federal dollars. The first thing they will ask is if we have a current comprehensive plan and do you know how you are going to use this plan. Moving forward with this is a good idea for the county as a whole.

Chairman Schwebach states he agrees with this but is curious is to why Myra is opposed to this. Or maybe through Commissioner McCall what Myra's hang up is with this.

Commissioner McCall asks if Ms. Betty Cabber would be able to give some input on this.

Betty Cabber, Chairman for EVEDA and has been a member since 1998. Ms. Cabber states that she cannot speak for Myra personally. The information she has heard here today is a lot more detailed than what she has heard and what EVEDA has been given or understands. There are some other possibilities. She likes the UNM SBI team. Get the details from that report before going forward with the comprehensive plan. She doesn't know if there is anyone available in the county that has the time to put into the sort of information Commission Sanchez is wanting. EVEDA needs to see the whole plan as it has not been presented to them. If the student plan gets you enough information to put into the plan it will help. Take your plan to EVEDA and let all the members look it over. EVEDA is mainly for bringing in jobs and sustainability, you are looking into things that bring people into the county to spend money here. Complete the SBI study and speak with EVEDA before you rush into a \$50,000.00 loan.

Chairman Schwebach asks Ms. Cabber if she is merely opinionating and not speaking on behalf of EVEDA, is that correct.

Betty Cabber replies, partly. She is chair for EVEDA and is speaking for EVEDA and of her own opinion. We need to look at this plan to see how it can all work together.

Chairman Schwebach states that this is a very good idea. The concept is to get plans with the southern entities. This could be something EVEDA could mirror. The concept of this plan is to draw those ideas out which possibly has not been done through EVEDA or any other economic plan.

Betty Cabber states that she thought this was what the student project was going to do in bringing together those thoughts and ideas from the southern part of the county.

Chairman Schwebach states that he has worked with the student entities and it is a great thing but it is not the end. What he has heard is that it could create problems with EVEDA. This is not the case, this is just to create a plan. Chairman Schwebach would like to hear from Myra. If this does not affect EVEDA then he would like to know why she is so against this. Once we develop these plans, will it create another district and cause problems with EVEDA.

Commissioner Sanchez states that he envisions this as assisting the entire region and EVEDA. If you look at the entities more than half are not members of EVEDA. Those are Torreon, Tajique, Mountainair, Chilili, Manzano, and Willard, none are members. If given a plan this may encourage them to become members. They are in part an intention with EVEDA that could be translated by them into action.

Chairman Schwebach agrees with what Commissioner Sanchez has to say. This has a potential to unite the understandings between the north and the south, the smaller communities, and the I-40 corridor, on the difference of economic development, the differences of the needs of the people, and the direction they are wanting to go in. If this is what everyone here is for then he is all for it.

Betty Cabber states that Mountainair, Willard, & Encino are non-paying members, but Myra is still available to them no matter what. That has been known since 1998. They are not members because they do not have the money that the other entities do to be members.

Commissioner Sanchez states that in order for him to get the buy-in from the communities, he feels that there needs to be a letter of support that would contain 3 things. Those 3 things are the pledge of participation, a commitment to designate a representative to work and participate in the effort, and an adoption of the final strategy. Each one of the communities has written a letter that they are in support of Torrance County and they do the 3 things listed above. The intention is to attach this letter to the application.

Michael Godey states he did research on selective zoning for art districts. He thinks Mountainair could be a possibility for this. A few other places have done this and it is effecting and will draw people in. If anyone is interested he can gather up his research and give it to the commission.

Chairman Schwebach states that we should plan on getting this issue on the next meeting and get the answers he is requesting from EVEDA.

14.) EXECUTIVE SESSION

A.) **FIRE:** Limited personnel matters regarding: the discussion of hiring, promotion, demotion, dismissal, assignment, or resignation of or the investigation or consideration of complaints or charges against county employees.

(Closed pursuant to NMSA 1978 Section 10-15-1(H)(2).)

ACTION TAKEN: Chairman Schwebach makes a motion to enter into Executive Session. Commissioner McCall seconds the motion. Roll Call Vote: District 1-Yes, District 2-Yes, District 3-Yes. No discussion, all Commissioners in favor. **MOTION CARRIED**

EXECUTIVE SESSION BEGINS AT 11:52 AM

ACTION TAKEN: Commissioner McCall makes a motion to reconvene from Executive Session. Commissioner McCall seconds the motion. Roll Call Vote: District 1-Yes, District 2-Yes, District 3-Yes. No discussion, all Commissioners in favor. **MOTION CARRIED**

RECONVENE FROM EXECUTIVE SESSION AT 1:19 PM

Chairman Schwebach states that no action was taken during executive session.

15.) Announcement of next Board of County Commissioners Meeting

Chairman Schwebach states that the next Commission Meeting will be held on March 27, 2019 in the Torrance County Administrative Chambers

*ADJOURN

Chairman Schwebach asks for a motion to adjourn the March 13th, 2019 Commission Meeting. **ACTION TAKEN:** Chairman Schwebach makes a motion to adjourn the March 13th, 2019 Commission Meeting. Commissioner Sanchez seconds the motion. No further discussion, all Commissioners in favor. **MOTION CARRIED**

MEETING ADJOURNED AT 1:20 PM

Chairman Ryan Schwebach

Yvonne Otero-Administrative Assistant

Date

The video of this meeting can be viewed in its entirety on the Torrance County NM website, Audio discs of this meeting can be purchased in the Torrance County Clerk's office and the audio of this meeting will be aired on our local radio station KXNM.



*Agenda Item
No. 8-B*

DRAFT COPY
TORRANCE COUNTY BOARD OF COMMISSIONERS
BOARD OF FINANCE MEETING
MARCH 13, 2019

COMMISSIONERS PRESENT: RYAN SCHWEBACH -CHAIRMAN
KEVIN MCCALL –DISTRICT 1
JAVIER SANCHEZ –DISTRICT 3

OTHERS PRESENT: WAYNE JOHNSON-COUNTY MANAGER
TRACY SEDILLO- COUNTY TREASURER
YVONNE OTERO-ADMIN. ASST.

1.) CALL MEETING TO ORDER

Chairman Schwebach calls the March 13th, 2019 Board of Finance Meeting to order at 1:37 PM.

2.) CHANGES TO AGENDA

There were no changes to the agenda.

3.) TREASURER’S REPORT- Presentation by Torrance County Treasurer

Tracy Sedillo states that the first section of the packet given to the Commission is the financial report. This shows the beginning fund balances by fund, what we received in revenue year to date, the transfers out & in, and the disbursements. The last columns are the fund balances. This report is as of February 28th, 2019.

Ms. Sedillo then proceeds to go over what the report entails. The 2nd & 3rd pages are the trust & agency accounts. These are tax accounts where property tax payments go into before they are distributed out to the entities. These get disbursed the 15th of the following month by checks issued to the entities. The next pages goes into detail of each fund. It shows what was received for the month, the beginning budget, the adjusted budget, the yearly cash receipts, and an estimate of what we should receive for the rest of the fiscal year.

Commissioner Sanchez asks how much is projected to carry over into next year.

Tracy Sedillo replies, she is not sure, they are currently working on revenue projections for the budget. She is going to look at the last 5 years of revenue and the projections to close the fiscal year to get the projections. The 3/12 reserve in the general fund and the 1/12 road fund has to be carried over into the next budget. The county is usually well over those reserves unless something was to go wrong with the detention fund which seems to be the drain on everything at the moment.

Ms. Sedillo states that the next section of the report is the tax collection report. So far 57.19% of the taxes for 2018 have been collected and we have collected 92% overall. The figures look low because of the protest with CCA. Their money is being held in suspense and cannot be released until the case is resolved. If the protest doesn't go in our favor we will have to refund money to CCA. The money has to be in an interest bearing account per statute. The entities effected by this are Torrance County, Town of Estancia, and Estancia Schools. It is both the first and second half of 2017 and the first half of 2018. CCA has to make their payments in order for the case to continue.

Ms. Sedillo states that her office is working hard on property tax collections. There is an auction tentatively scheduled for April 18th. There are 45 properties listed to be auctioned for delinquent taxes. Every July her office has to prepare a list of delinquent tax accounts that have not been paid for 3 years. Once the properties are turned over to the state the county no longer has any control over them. The states keeps all of the money except for the base tax, which is what the county gets to keep.

Ms. Sedillo states that she turned over 3000 delinquent tax accounts to the state last year and asked the state if they could send letters to the property owners. Having a letter come from the state, instead of from the county, really helps with collections. People are more apt to pay when they get a letter stating their property has been sent to the state.

The delinquent field specialist has been out tagging delinquent mobile homes and that has resulted in people coming in to make payments. Ms. Sedillo states that they are working hard with getting people to come in and pay their taxes. The office has a pre-payment plan and that goes over a 10 month period and that helps people make 10 smaller payments instead of 2 large payments.

Wayne Johnson asks Ms. Sedillo, that it is collected over 10 months correct, and if the money is disbursed to the entities.

Tracy Sedillo states that the money is held in a suspense because it is considered an overpayment, once October hits the payments are disbursed.

Ms. Sedillo states that the last section is the Investments. There are two accounts with the New Mexico Local Government Investment Pool. The main county account has \$6,704,173.43 and the second account is the taxes paid under protest which is the money that is being held from CCA's taxes. The county currently has \$7.2 million in investments. Ms. Sedillo goes over the historical data from the investments and they are projected to be 87% higher in FY2019 than FY2018.

Ms. Sedillo states that they have tried to keep as much money as possible in the state investment pool to maximize those earnings. The money is fairly liquid, so if she requested money it would be wired into the account the next day.

On a side note Ms. Sedillo states that she has opened up the account with US Bank and is slowly transitioning over.

Commissioner McCall asks Ms. Sedillo how it is going with the transition.

Tracy Sedillo states that it is going very well and she has spoken with their reps more in the past few weeks than she ever did with Wells Fargo. They have been very helpful. There are a lot of payments that are handled through ACH and that is very time consuming.

Commissioner McCall asks how her office is currently depositing.

Tracy Sedillo states they are driving every day to make deposits. She is trying to contract with a courier and once the logistical issues are cleared they can proceed in using the courier. Mr. Wallin has reviewed that contract, and using the courier will be much cheaper than having to drive to and from Moriarty every day. The amount is about \$230.00 per month for a 2 day pick up. All of the checks are done through remote desktop, they are scanned in and deposited every day. The cash is what needs to be taken to be deposited every day.

4.) ADOPTION OF RESOLUTION

A.) TREASURER: Motion to approve Resolution 2019-20 Torrance County Investment Policy

Tracy Sedillo states that this Resolution replaces the previous investment policy.

Wayne Johnson states that they are meeting here as the Board of Finance. The procedures are different than those of the commission and with the interface with the Treasurer. The Board of Finance has the authority to give its consent for any transaction and the Treasurer has the authority to initiate those transactions. The Board of Finance cannot enforce the Treasurer to make those transactions but can withhold their consent. The consent is enforced by a document such as this. The board states that as long as the treasurer is making investments within the policy she has the consent from the Board of Finance to proceed with that transaction. There were a few things changed in this policy.

Tracy Sedillo states that the collateral is one of the big changes that was made. The collateral on the main checking accounts, deposits, and the investments is what was changed. The previous policy had us at 50%. Ms. Sedillo states that she is not comfortable with that percentage. Should the bank close down she would like to receive more than half the money back. The collateral was raised to 102% which is what most of the counties in the state have in place.

Ms. Sedillo states that a few logistical things were changed which was the structure of the board. It is hard to get people to sit in on the investment committee. We did a new policy to have members of the public who had knowledge of investments to be part of the process. We currently aren't in an area where we can have long term investments because of the detention issue. The money needs to be secure and liquid if we need it. Since we were going to add the collateral and amend the policy we decided to go ahead and change the structure of the board.

Wayne Johnson states that they decided to reduce the members by 2. I would be the finance director and the manager. Now it will be the Manager and a designee and just 1 member of the

public instead of two. This is merely an advisory board and they have no control or ability to tell the treasurer or finance what to do with the money, they only make recommendations. This board would review annually and recommend changes to this investment policy, review the investment transactions and make recommendations regarding proper control, and guarantee the integrity and security of the Treasurer's investment portfolio. Request a legal review of county investments to assure compliance with current states laws and policies of the County Board of Finance. Meet at least quarterly to deliberate and advise such topics such as: economic outlook, portfolio diversification and maturity structure, potential risks and the target rate of return on the investment portfolio. Recommend depositories, custodians, and broker/dealers. The Board of County Commissioners have the authority to spend the dollars. If you follow this policy there should be no problems.

Commissioner Sanchez asks when the committee meets. It has been awhile since they have had a meeting.

Tracy Sedillo states that the committee meets quarterly so they will need to meet sometime this month. Ms. Sedillo states that the reason there hasn't been a meeting is because she has had some difficulty reaching the members. Some of the members may need to be replaced.

Wayne Johnson states that the way the board members are selected will be different. The Treasurer will make recommendations for the member of the public and the alternate and it will be brought before the board for their approval.

Commissioner Sanchez states that he would like to recommend reaching out to those members before just removing them from the board.

Wayne Johnson states that he sees no problem in continuing with the current board until the end of the fiscal year then they can make changes.

Chairman Schwebach asks for a motion to approve Resolution 2019-20 Torrance County Investment Policy. **ACTION TAKEN: Commissioner McCall makes a motion to approve Resolution 2019-20 Torrance County Investment Policy. Chairman Schwebach seconds the motion. No discussion, all Commissioners in favor. MOTION CARRIED**

***ADJOURN**

Chairman Schwebach asks for a motion to adjourn the March 13th, 2019 Board of Finance Meeting. **ACTION TAKEN: Commissioner Sanchez** makes a motion to adjourn the February 13th, 2019 Commission Meeting. **Chairman Schwebach** seconds the motion. No further discussion, all Commissioners in favor. **MOTION CARRIED**

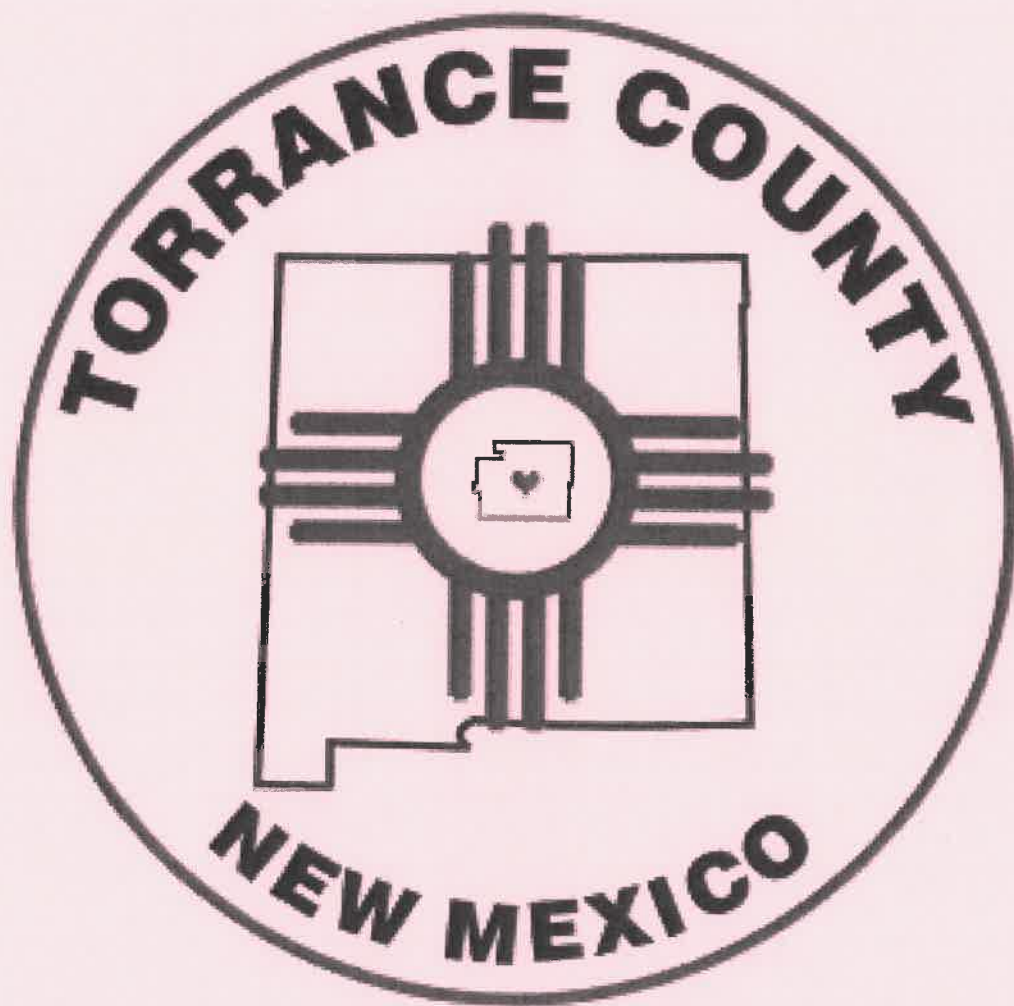
MEETING ADJOURNED AT 2:00 PM

Chairman Ryan Schwebach

Yvonne Otero-Administrative Assistant

Date

The video of this meeting can be viewed in its entirety on the Torrance County NM website, Audio discs of this meeting can be purchased in the Torrance County Clerk's office and the audio of this meeting will be aired on our local radio station KXNM.



*Agenda Item
No. 9*

C E R T I F I C A T I O N

TOTAL CHECKS PRINTED 98

THE UNDERSIGNED MEMBERS OF THE TORRANCE COUNTY BOARD OF COMMISSIONERS DO CERTIFY THAT THE CLAIMS ENUMERATED ABOVE WERE APPROVED & DO AUTHORIZE THE WARRANTS AGAINST THE FUNDS OF TORRANCE COUNTY FOR THE SUM OF 150,689.39 ON ACCOUNT OF OBLIGATIONS CURRED FOR THE SERVICES AS SHOWN ABOVE FOR THE PERIOD ENDING 03/21/2019 . WE CERTIFY THAT THE WITHIN NAMED PERSONS ARE LEGALLY ENTITLED UNDER THE CONSTITUTION OF THE STATUTES OF NEW MEXICO TO RECEIVE THE COMPENSATION STATED HEREIN. THAT THE SERVICES HAVE BEEN PERFORMED AS STATED IN THE ACCOUNTS HEREIN, THAT THEY ARE NECESSARY AND PROPER, THAT THIS VOUCHER HAS BEEN EXAMINED, THAT THE AMOUNTS CLAIMED ARE JUST, REASONABLE, AND AS AGREED AND THAT NO PART HAS BEEN PAID BY TORRANCE COUNTY.

SIGNED

ATTEST BY

Kevin McCall

Javier Sanchez

Ryan Schwebach

Linda Jaramillo

THE UNDERSIGNED COUNTY TREASURER DOES HEREBY CERTIFY THAT SUFFICIENT FUNDS EXIST FOR THESE ACCOUNTS PAYABLE CHECKS TO BE ISSUED ON THIS DATE AND DOES HEREBY AUTHORIZE THE FINANCE DEPARTMENT TO PROCESS THESE CHECKS.

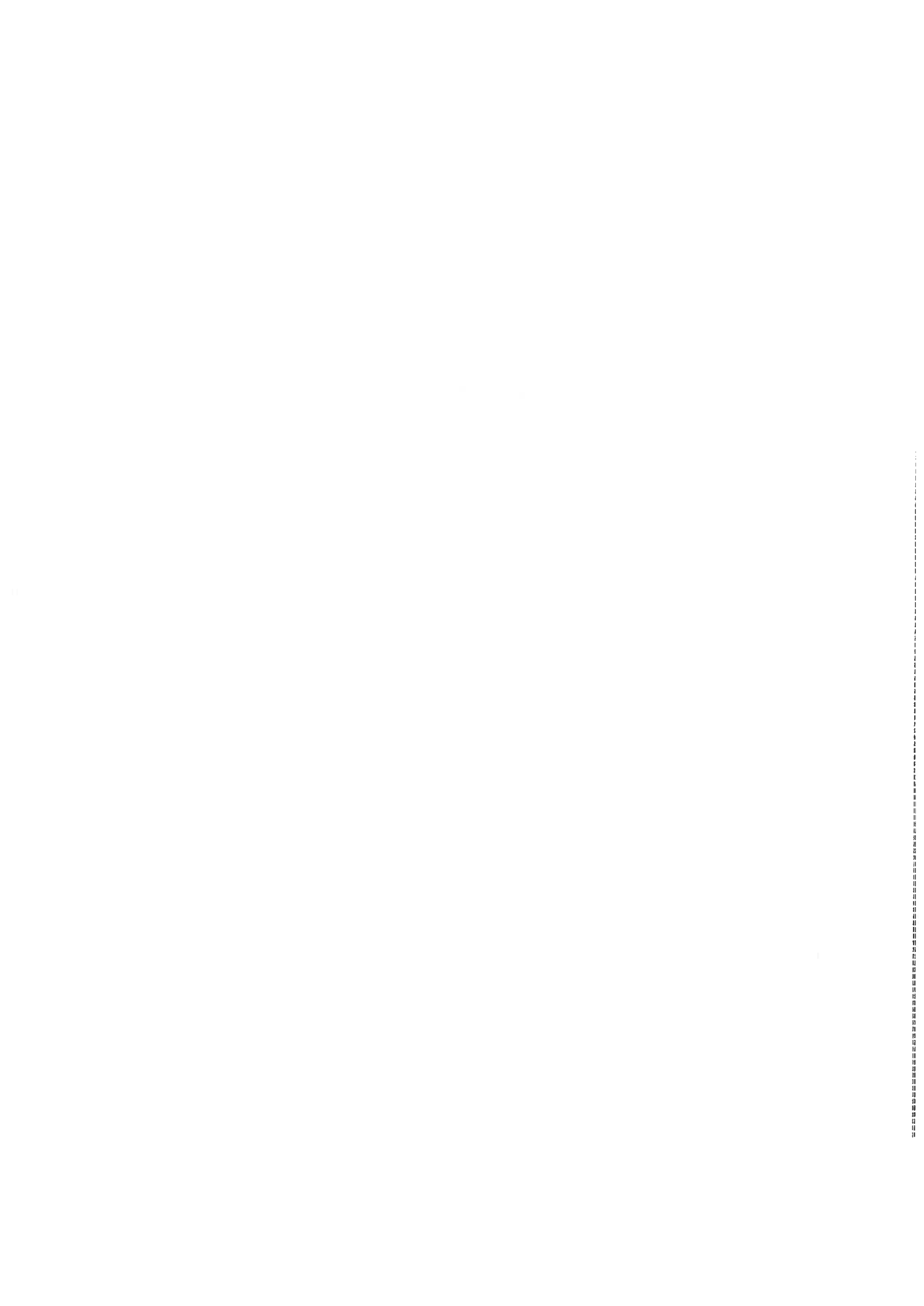
Tracy L. Sedillo

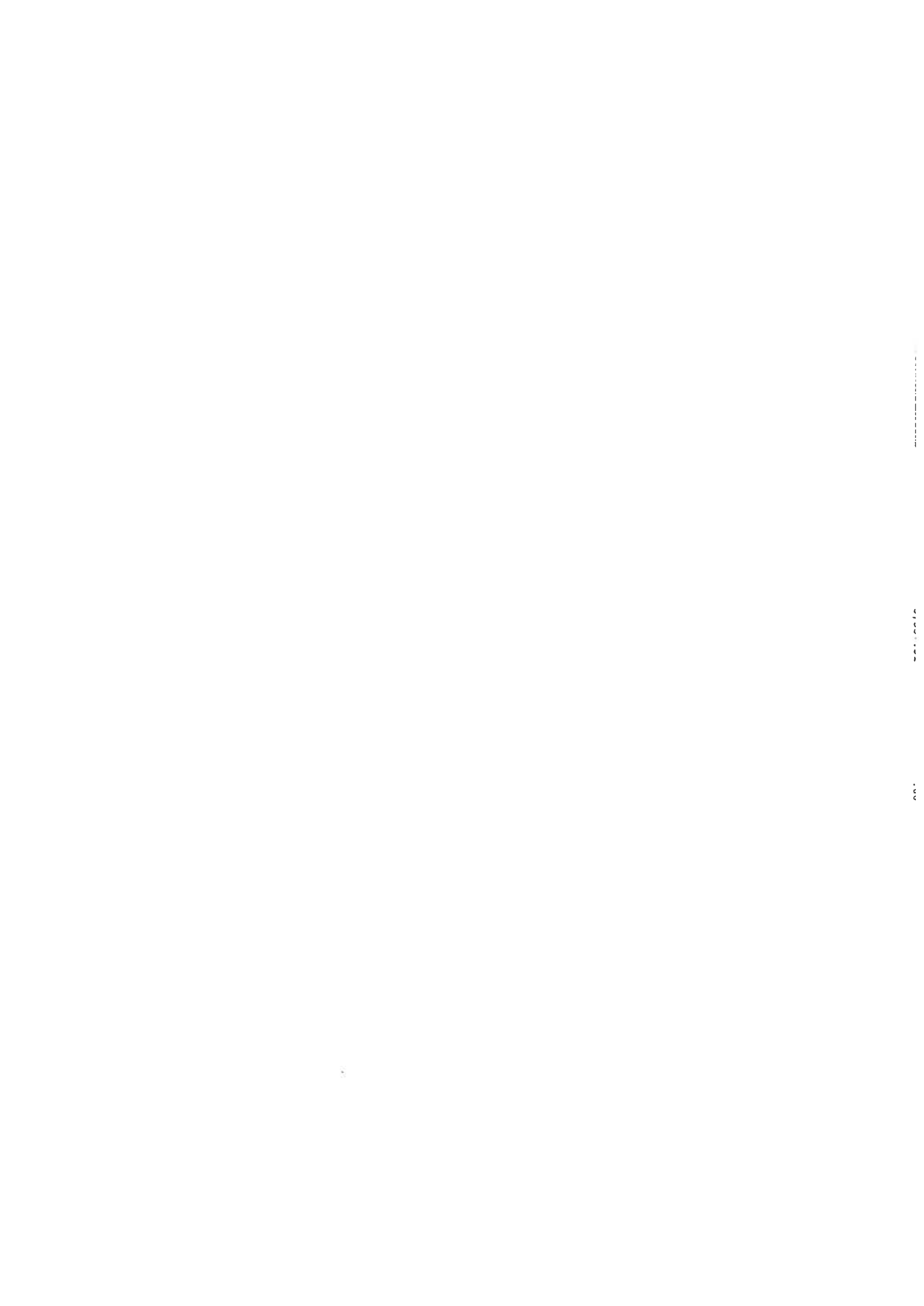
040-24-4413

/ /

33470

35.60





**TOTAL

DISTRICT 3 VFD

1,841.10 -----
=====

.00



*Agenda Item
No. 10-A*

Parcel ID# _____
Torrance County Planning & Zoning

Application for Special Review and Approval

- Check One: Establishment or Renewal of a Solid Waste District
Establishment of a Special Use (\$1,500.00 filing fee)
- Modification of Land Use within a Special Use Zone District
\$200.00 filing fee
- Renewable Conditional Use Permit \$200.00 filing fee
- Variance for the Following Reason(s): \$200.00 filing fee
- | | |
|--|---|
| <input type="checkbox"/> Area | <input type="checkbox"/> Setback |
| <input type="checkbox"/> Distance | <input type="checkbox"/> Off-Street Parking/Loading |
| <input type="checkbox"/> Use | <input type="checkbox"/> Dwellings per Lot |
| <input type="checkbox"/> Livestock Numbers | <input type="checkbox"/> Home Based Business |

Applicant: Pacific Wind Development, LLC Telephone: 307-638-6091

Mailing Address: 229 Stetson Dr. Cheyenne, WY 82009

Agent (if any): Mark Stacy Telephone: 307-638-6091

Mailing Address: 229 Stetson Dr. Cheyenne, WY 82009

Reason for requested Special Review and Approval (For Variances, include the exceptional conditions you believe justify the request):

SEE ATTACHMENT 1

Location of Property (Street Address and Legal Description of Property):

SEE ATTACHMENT 2

Zoning of Property: _____ Present Use: Grazing

Instructions: In accordance with Section 26B and Resolution 2014-50, this application must be accompanied by the filing fee of \$200.00 (unless applying for a Special Use District). Also include 10 copies of an accurate sketch plan showing the location of the property in question; locations of structures on the property and adjoining properties; all abutting streets and alleys; proposed special exceptions; and north arrow. Please attach a copy of the Deed and Recorded Survey.

Applicant's Signature: 

FOR OFFICE USE ONLY:

Application Received by: _____

Date: _____

Hearing Date: _____

Action Taken: _____

Date: _____

Expiration Date of Renewable Conditional Use Permit: _____

NOTE: Any special conditions or agreements should be in writing and attached to this application.

ATTACHMENT 1

Reason for requested Special Review and Approval (For Variances, include the exceptional conditions you believe justify this request):

This request for Special Review is to modify the number and height of turbines included in the initial application for the El Cabo Project submitted by Pacific Wind Development, LLC (PWD) to the Torrance County Planning and Zoning Department dated November, 2010. PWD stated in our El Cabo application that the Project would include 149 wind turbines. The Torrance County Board of Commissioners approved the application for Special Use on the 23rd of February, 2011. Since receiving that approval, the El Cabo Wind project has been completed and is currently commercially operational. The El Cabo project includes 142 wind turbine generators within a portion of the El Cabo Renewable Energy Special Use District (SUD). Of the approximately 87,000 acres approved for the SUD, the operational El Cabo project encompasses about 58,000 acres. PWD now wishes to construct additional wind turbine generators, using some of the remaining land, which will result in the initial estimate of 149 turbines being exceeded.

Therefore, Pacific Wind LLC requests approval to increase the number of wind turbine generators within the prior approved El Cabo SUD from 149 to 300. Additional infrastructure including a new project substation, switching station, overhead collector system, generation-tie line, operations and maintenance building, and other appurtenant facilities will also be required. This will allow Pacific Wind to pursue opportunities that will result in additional projects being built in Torrance County. The area for which this Special Review is requested is illustrated and described by maps and legal descriptions contained in Attachment 2.

Turbine locations and heights have been negotiated with the U.S. Department of Defense. These turbines may be as tall as 599 feet. Filings have been made with the FAA for Determinations of No Hazard for these locations. We anticipate receiving these determinations in the near future, although they have been delayed by the recent Government Shutdown. This project will not proceed without receiving these determinations.

Typical turbine specifications are included at Attachment 3.

ATTACHMENT 2

LEGAL DESCRIPTION

T5N R12E:

All of sections 25, 34, 35, and 36.

That portion of section 24 lying south of the Atchison Topeka and Santa Fe Railway.

All of section 27 EXCEPT for the following: starting at the northeast corner of section 27, then west 825 feet, then south 2095 feet, then northeast parallel to the Atchison Topeka and Santa Fe Railway 1045 feet, then north 1440 feet to the place of beginning.

T5N R13E:

All of sections 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34

All of section 19 except that portion north and west of the Atchison Topeka and Santa Fe Railway

T4N R12E:

All of section 24

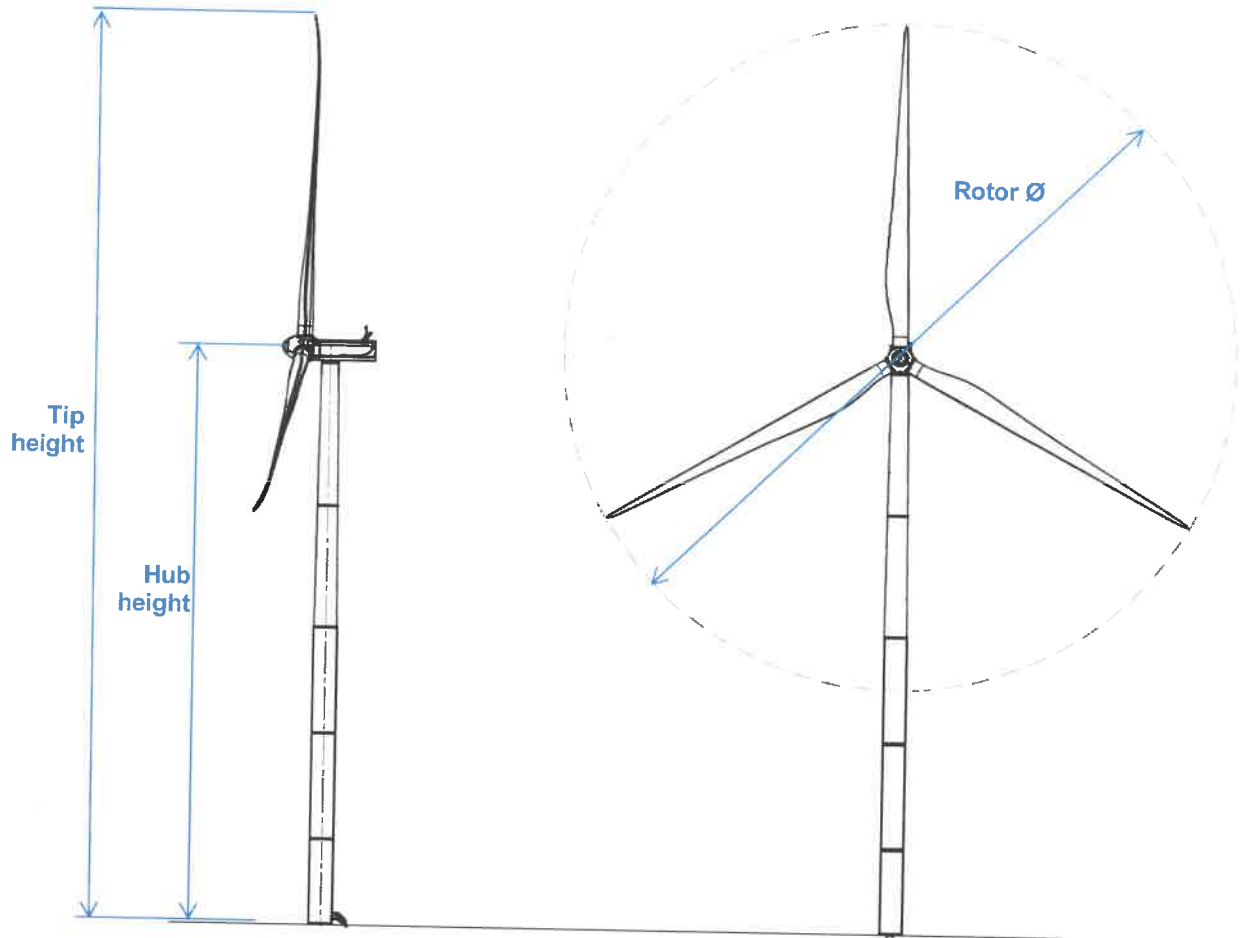
T4N R13E:

All of sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 30

The following areas in section 23: The NW 4, the W2 of the NE4, the N2 of the SW4, and the NW4 of the SE4

ATTACHMENT 3

Elevation Drawing



Tip height	180m
Hub height	107.5m
Rotor diameter	145m

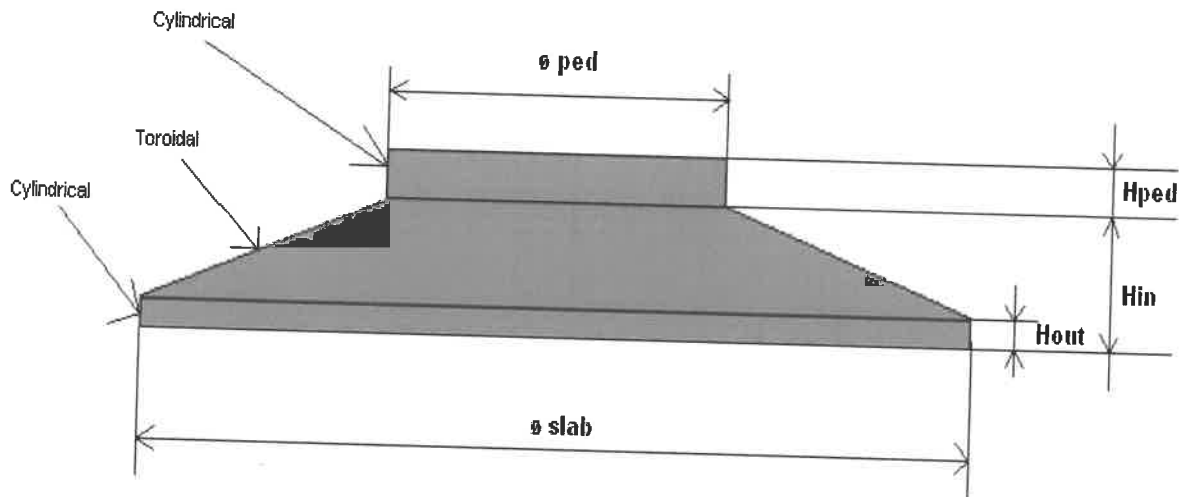
ATTACHMENT 3

Estimated Foundation Design

Hub height: 107.5 m

Volumes

Concrete volume ~529.18 m³, C35/45 – C40/50 MPa
 Reinforcement steel ~55410 kg, B 500 S



FOUNDATION GEOMETRY	
$\varnothing\text{slab}$ = Slab diameter [m]	21.50
Hout= Outer egde height [m]	0.50
Hin= Inner edge height [m]	2.60
$\varnothing\text{ped}$ = Pedestal diameter [m]	5.50
Hped= Pedestal height [m]	0.50

The estimated foundation design is based on the following assumptions:

- Gravity based flat foundation without buoyancy
- Specific weight of backfill 18.0 kN/m³
- Friction angle 30.0°

Additional factors that may impact the foundation design:

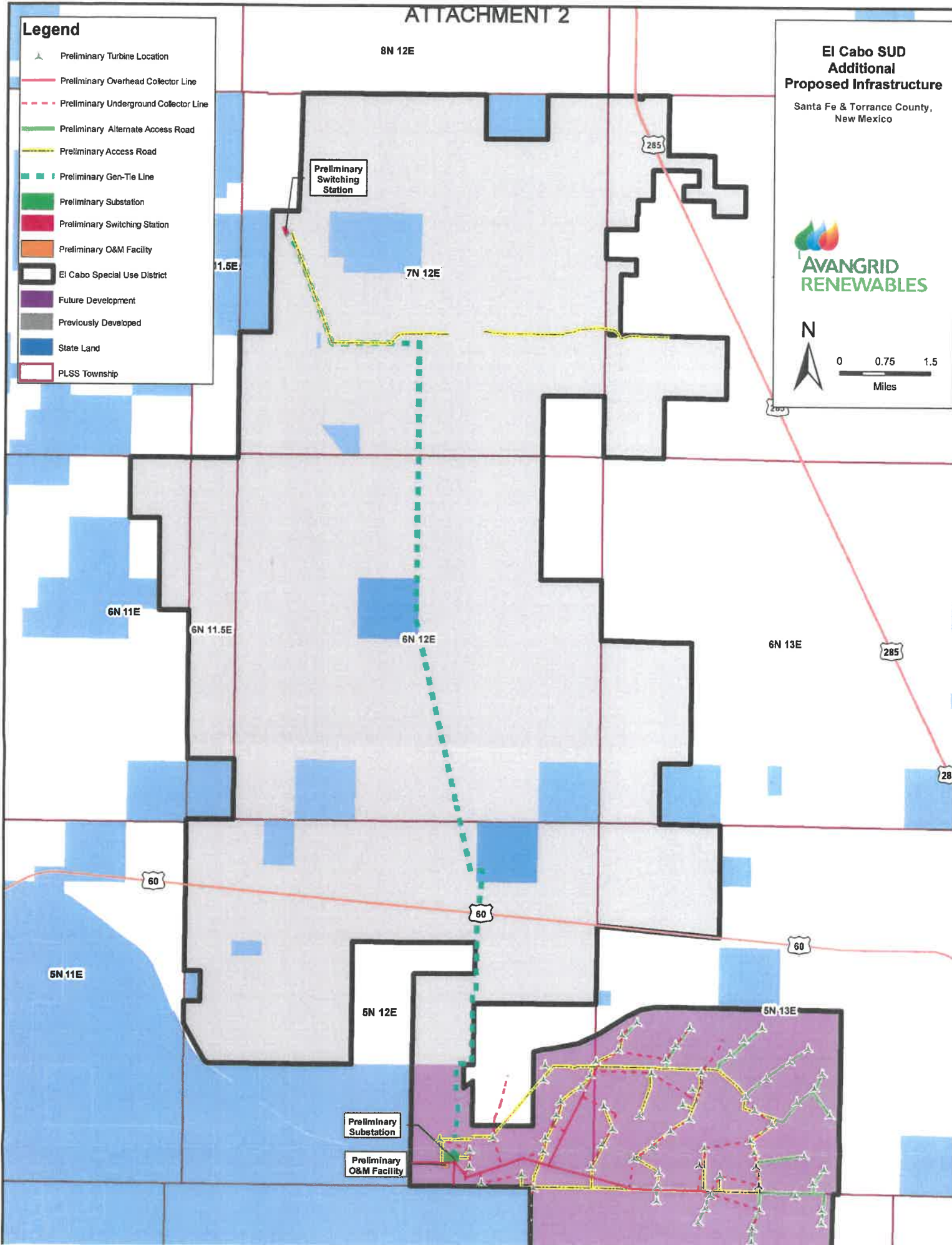
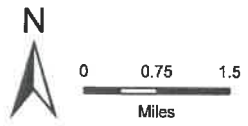
Soil conditions, country, designer practice, national codes and standards.

ATTACHMENT 2

Legend

- Preliminary Turbine Location
- Preliminary Overhead Collector Line
- Preliminary Underground Collector Line
- Preliminary Alternate Access Road
- Preliminary Access Road
- Preliminary Gen-Tie Line
- Preliminary Substation
- Preliminary Switching Station
- Preliminary O&M Facility
- El Cabo Special Use District
- Future Development
- Previously Developed
- State Land
- PLSS Township

**El Cabo SUD
Additional
Proposed Infrastructure**
Santa Fe & Torrance County,
New Mexico



Preliminary Switching Station

Preliminary Substation

Preliminary O&M Facility

**EXCERPT
OF
ORIGINAL SPECIAL USE
REGARDING GENERATOR
TOWER NUMBERS**

**EL CABO WIND PROJECT
ZONING ORDINANCE AMENDMENT/SPECIAL USE DISTRICT AND HEIGHT VARIANCE**

6.5 WIND ENERGY

6.5.1 Electricity Generation

As planned, the Project would consist of 149 Gamesa 2.0 MW G90 wind turbines, to generate 298 MW of clean, renewable energy. A total of 298 MW of wind generation capacity is equivalent to the energy usage of approximately 69,000 homes in the southwest region of the U.S. However, as discussed previously, the turbine vendor, size, number, and actual generating capacity have not yet been determined. This application describes impacts for the most likely turbine size that represents typical scale and impacts of turbines that could potentially be used by the Project. The minimum turbine layout would be 99 3.0-MW turbines. The maximum turbine layout would be 199 1.5-MW turbines. The final layout would have 99 to 199 turbines, with any combination of 1.5-MW turbines to 3.0-MW turbines. The total number of turbines would not exceed 199 and the total MW would not exceed 298.

6.5.2 Interconnection and Transmission

IBR filed an interconnection request with PNM for the Project effective on May 30, 2007. PNM subsequently completed Feasibility, System Impact, and Facilities Studies for the interconnection of the Project to the PNM 345 kV system. Negotiation of the Project Large Generator Interconnection Agreement (LGIA) is currently underway between PNM and IBR, and an executed LGIA is anticipated by November 2010. The LGIA would allow the Project to interconnect and deliver its full energy output to the Point of Interconnection, where IBR may use currently available transmission capacity to transmit the power to points on the PNM grid.

Energy from the Project would be delivered to the PNM interconnected grid via a new 345-kilovolt (kV) transmission line to be constructed by the Applicant from the Project substation to a new 345-kV interconnection switch station, located in San Miguel County.

The new 345-kV transmission line would be an overhead transmission line, constructed on wood "H" frame structures running north approximately 27.74 miles from the Project substation (approximately 11.27 miles within the Project Area, 24.22 miles within Torrance County, and 3.52 miles on New Mexico State Land within San Miguel County). The transmission line would interconnect with the existing PNM BA-Blackwater 345-kV line at a point approximately 5 miles northwest of Clines Corners, San Miguel County, New Mexico. The new PNM interconnection switch station would be a 345-kV ring bus configuration constructed adjacent to the existing PNM right-of-way, and would become the Point of Interconnection where the Project can deliver energy to the PNM grid. PNM will engineer and design the new interconnection switch station per the terms of the LGIA. See **Exhibit A**, Project Overview for location of proposed interconnection and **Exhibit K**, Transmission Line Tower Detail Drawing for an example of typical support structures.

6.5.3 Power Market

IBR carries out power supply transactions with over 50 companies nationwide on a regular basis, including public utility districts, investor owned utilities, electric cooperatives, and federal power marketing administrations. The Applicant is currently pursuing power purchase options.

TORRANCE COUNTY

NOTICE OF ACTION ON THE PORTION OF THE
EL CARO WIND PROJECT LYING SOUTH OF HIGHWAY
FOR W.M.T. 5N1R12413E & T4N1R12413E FOR
W/DPICATION OF SPECIAL USE TO INC REUSE &
GENERAL PURPOSE ENERGY OUTPUT
THE COUNTY ZONING BOARD HAS SCHEDULED A PUBLIC MEETING ON (DATE/TIME)

THE COUNTY HAS SCHEDULED A PUBLIC MEETING ON (DATE/TIME)

THE COUNTY HAS SCHEDULED A PUBLIC HEARING ON (DATE/TIME)
MARCH 13, 2019 9:00AM

AT THE COUNTY ADMINISTRATIVE BUILDING
FOR INFORMATION CALL (505) 544-4391 OR FAX (505) 384-5294
THIS SIGN SHALL BE POSTED

FROM 2/26 TO 3/14
IT IS ILLEGAL FOR AN UNAUTHORIZED PERSON TO REMOVE OR TAMPER WITH THIS SIGN

02/26/2019 07:54

TORRANCE COUNTY

NOTICE OF ACTION ON THE PORTION OF THE
EL BRADLAND PROJECT LYNNE SOUTH OF HWY 60 W/AL T. 5N,
FOR R. 12 & 13 E & T. 4 N. R. 12 & 13 E FOR MODIFICATION
OF SPECIAL USE TO INCREASE NUMBERS OF GENERATORS &
ENERGY OUTPUT
THE COUNTY ZONING BOARD HAS SCHEDULED A PUBLIC MEETING ON (DATE/TIME)

THE COUNTY HAS SCHEDULED A PUBLIC MEETING ON (DATE/TIME)

THE COUNTY HAS SCHEDULED A PUBLIC HEARING ON (DATE/TIME)
MARCH 13, 2019 9:00 AM

AT THE COUNTY ADMINISTRATIVE BUILDING
FOR INFORMATION CALL (505) 544-4391 OR FAX (505) 384-5294
THIS SIGN SHALL BE POSTED

FROM 2/26 TO 3/14
IT IS ILLEGAL FOR AN UNAUTHORIZED PERSON TO REMOVE OR TAMPER WITH THIS SIGN
02/26/2019 08:09

TORRANCE COUNTY

NOTICE OF ACTION ON THE BRION OF THE
EL CARBOND PROJECT LYING SOUTH OF HWY 60 WITH
FOR 15N R12413E & T4N R12413E FOR MODIFICATION
OF SPECIAL USE TO INCREASE NUMBER OF GENERATORS
THE COUNTY ZONING BOARD HAS SCHEDULED A PUBLIC MEETING ON (DATE/TIME)

THE COUNTY HAS SCHEDULED A PUBLIC MEETING ON (DATE/TIME)

THE COUNTY HAS SCHEDULED A PUBLIC HEARING ON (DATE/TIME)
MARCH 13, 2019 9:00 AM

AT THE COUNTY ADMINISTRATIVE BUILDING
FOR INFORMATION CALL (505) 544-4391 OR FAX (505) 384-5294

THIS SIGN SHALL BE POSTED
FROM 2/26 TO 3/4 02/26/2019 08:27
IT IS ILLEGAL FOR AN UNAUTHORIZED PERSON TO REMOVE OR TAMPER WITH THIS SIGN

TORRANCE COUNTY

NOTICE OF ACTION ON THE PORTION OF THE
EL CABO WIND PROJECT LYING SOUTH OF HWY 60
FOR W/IN T. 4N., R. 12E & R. 13E & T. 5N., R. 12E, & R. 13E.
FOR MODIFICATION OF SPECIAL USE TO INCREASE
GENERATOR NUMBERS & ENERGY OUTPUT
THE COUNTY ZONING BOARD HAS SCHEDULED A PUBLIC MEETING ON (DATE/TIME)

THE COUNTY HAS SCHEDULED A PUBLIC MEETING ON (DATE/TIME)

THE COUNTY HAS SCHEDULED A PUBLIC HEARING ON (DATE/TIME)
MARCH 13, 9:00 AM

AT THE COUNTY ADMINISTRATIVE BUILDING
FOR INFORMATION CALL (505) 544-4391 OR FAX (505) 384-5294
THIS SIGN SHALL BE POSTED

FROM 2/26 TO 3/14
IT IS ILLEGAL FOR AN UNAUTHORIZED PERSON TO REMOVE OR TAMPER WITH THIS SIGN

02/26/2019 08:46



*Agenda Item
No. 10-B*



EAST TORRANCE

Soil & Water Conservation District

P.O. Box 58, Estancia, NM 87016

715 S. 5th Street, Estancia

505-384-2272 ext.5

Board of Supervisors

Bylan Netherback
Chairman

Paul Wynn
Vice-Chair

Jan DeJong
Secretary / Treasurer

James Edwards
Member

Clayton Condon
Member

Phillips Rogers
Associate Member

March 20, 2019

Torrance County Commission
Wayne Johnson, County Manager
PO Box 48
Estancia, NM 87016

Ref: Proposed Industrial Revenue Bonds / NM Renewable Energy Development Data Center II, LLC

District Staff

Chris Lujan
District Manager

Torrance County Commissioners:

East Torrance Soil and Water Conservation District (East Torrance SWCD) board of supervisors located in Estancia, County of Torrance in New Mexico submits the following letter in response to the letter that provided us with notice of the intent of the Board of County Commissioners of Torrance County, New Mexico to consider the adoption of a bond ordinance would like to submit our comments and concerns.

District Partners

United States
Department of
Agriculture

United States
Department of
Agriculture

New Mexico
Department of
Agriculture

United States
Department of
Agriculture

United States
Department of
Agriculture

New Mexico State
Forestry

Brush and Land
Management

State Land Office

Torrance County
Department of
Agriculture

Office of the State
Engineer

Torrance County

Estancia Junior Water
Utility Committee

Estancia Public Service
Agency

Neighborhood Soil &
Water Conservation
District

Neighborhood Soil &
Water Conservation
District

Neighborhood Soil &
Water Conservation
District

The Conservation District is a legal subdivision of the state, like the county government or school district and has been in existence for 75 years. Supervisors are elected and serve voluntary and without pay. The soil and water conversation district are responsible under state law for conservation and sustainability of natural resources such as soil, water, air plants, animals and people. Funding for the District operations is obtained from three sources: State of New Mexico Budget appropriation (roughly \$12,000.00 year), Torrance County Mill levy Taxation (last year appropriations were (\$127,422.66) and federal grants in which we do not take any administrative pay from if awarded.

As stated in a prior letter to the Commission - The East Torrance SWCD uses these funds for cost share projects that benefit everyone who lives within or own lands within the District Boundaries with the following cost share projects: Water Harvesting, residential or commercial drip irrigation, low flow water devices programs. Rangeland cost share assistance: for livestock pipelines, water storage facilities, cross fencing and erosion control project. Cropland cost share assistance: for irrigation pipelines, valves, flow meters, laser leveling, low energy sprinkler nozzles, and back flow prevention vales. Brush Management and Weed Management assistance: with over 93 acres being thinned each year. And Group projects such as just this past year East Torrance SWCD partnered with Torreon Fire Department with a \$60,000.00 sponsorship to help purchase a new brush truck in helping fighting fires within the Manzano Mountains and emergency service throughout the fire departments district. Other group projects include help funding of the Torreon Acequia project, Town of Estancia and Torreon fire department water harvesting systems which were paid in full by the District. East Torrance SWCD has also put in a solar heating unit at the Estancia public pool and sponsored with \$5000.00 last year in helping to get the pool back up and running to open again last year. These projects benefit the whole community of Torrance County. These examples are just a few of the projects and activities that the District is involved with and do for the community and landowners.

Comments and / or concerns
Regarding the Ordinance and issuance of Bonds

All the projects and so much more is paid out of our financial assistance from the collections of our mill levy.

Prior to adopting an ordinance issuing industrial revenue bonds as a local public body, whose property tax base is affected by and issuance, and if granted; East Torrance SWCD will be impacted of the bonds; and asking the commission to allow East Torrance Soil and Water Conservation District to be a part of the negotiation of payments in lieu of taxes discussion as the school districts are doing.

We would like to remind the Commission, and all involved with the IRB in lieu of taxes to please consider bringing the Soil and Water Conservation District to the table to discuss payments in lieu of taxes as the school districts are allowed to just for the per fact that Soil and Water Conservation Districts are the ONLY entity that can by law put money on private, State and Federal lands for conservation projects and for beneficial use. Even if the District were able to receive \$20,000 a year that would be 1 to 5 projects that could be put back onto the land.

We appreciate you allowing us to submit our comments and look working with you all. If we can further assist or answer any other questions please do not hesitate in calling our District Manager, Cheri Lujan at 505-384-2272 ext 103.

Sincerely,



*Bill Wrye
Vice Chairman, East Torrance SWCD*

cl/file

YEAR	COUNTY	CITY	MESD	TOT PILOT
1	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
2	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
3	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
4	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
5	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
6	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
7	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
8	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
9	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
10	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
11	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
12	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
13	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
14	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
15	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
16	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
17	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
18	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
19	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
20	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
21	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
22	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
23	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
24	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
25	\$ 68,800.00	\$ 17,200.00	\$ 14,000.00	\$ 100,000.00
	\$ 1,720,000.00	\$ 430,000.00	\$ 350,000.00	\$ 2,500,000.00

**PROPOSED PROPERTY TAX TRANSACTION IN TORRANCE COUNTY/ CITY OF MORIARTY
PROJECT-
WITHOUT INCENTIVES & PILOTS IF SITE TAXABLE - 25 Years**

Original Cost	Assessment Rate	Total Mills	Rate for County	Rate For St Debt	Rate for MBOE	Rate For Moriarty	Rate for Edge. S&W
\$ 62,493,361.88	33.33%	0.02730	0.012771	0.00136	0.010705	0.001461	0.00100
DEV/OP YEAR	TOTAL TAXABLE VALUE	FULL REV. 100.00%	REV. FOR COUNTY 46.79%	REV. FOR ST DEBT 4.98%	REV. FOR MBOE 39.22%	REV. FOR CITY 5.3500%	REV. FOR E S&W 3.66%
1	\$20,829,038	\$568,570.24	\$266,034.01	\$28,314.80	\$222,993.25	\$30,418.51	\$20,809.67
2	19,992,455	\$545,734.03	\$255,348.95	\$27,177.55	\$214,036.89	\$29,196.77	\$19,973.87
3	19,224,531	\$524,772.03	\$245,540.83	\$26,133.65	\$205,815.59	\$28,075.30	\$19,206.66
4	18,487,325	\$504,648.51	\$236,125.04	\$25,131.50	\$197,923.15	\$26,998.70	\$18,470.14
5	17,779,607	\$485,329.93	\$227,085.88	\$24,169.43	\$190,346.40	\$25,965.15	\$17,763.08
6	17,204,585	\$469,633.55	\$219,741.54	\$23,387.75	\$184,190.28	\$25,125.40	\$17,188.59
7	16,552,352	\$451,829.55	\$211,411.05	\$22,501.11	\$177,207.55	\$24,172.88	\$16,536.96
8	15,926,208	\$434,737.71	\$203,413.77	\$21,649.94	\$170,504.13	\$23,258.47	\$15,911.40
9	15,325,110	\$418,329.54	\$195,736.39	\$20,832.81	\$164,068.85	\$22,380.63	\$15,310.86
10	14,748,057	\$402,577.70	\$188,366.11	\$20,048.37	\$157,890.97	\$21,537.91	\$14,734.34
11	14,312,189	\$390,679.83	\$182,799.09	\$19,455.86	\$153,224.63	\$20,901.37	\$14,298.88
12	13,780,376	\$376,162.93	\$176,006.64	\$18,732.91	\$147,531.10	\$20,124.72	\$13,767.56
13	13,269,836	\$362,226.71	\$169,485.88	\$18,038.89	\$142,065.32	\$19,379.13	\$13,257.50
14	12,779,717	\$348,847.94	\$163,225.95	\$17,372.63	\$136,818.16	\$18,663.36	\$12,767.83
15	12,309,203	\$336,004.32	\$157,216.42	\$16,733.01	\$131,780.89	\$17,976.23	\$12,297.76
16	11,991,134	\$327,321.98	\$153,153.96	\$16,300.63	\$128,375.68	\$17,511.73	\$11,979.98
17	11,557,508	\$315,485.30	\$147,615.57	\$15,711.17	\$123,733.34	\$16,878.46	\$11,546.76
18	11,141,227	\$304,122.09	\$142,298.72	\$15,145.28	\$119,276.68	\$16,270.53	\$11,130.87
19	10,741,598	\$293,213.40	\$137,194.55	\$14,602.03	\$114,998.30	\$15,686.92	\$10,734.34
20	10,357,954	\$282,741.06	\$132,294.54	\$14,080.50	\$110,891.04	\$15,126.65	\$10,348.32
21	10,140,839	\$276,814.48	\$129,521.49	\$13,785.36	\$108,566.64	\$14,809.57	\$10,131.41
22	9,787,272	\$267,163.17	\$125,005.65	\$13,304.73	\$104,781.40	\$14,293.23	\$9,778.17
23	9,447,848	\$257,897.92	\$120,670.43	\$12,843.32	\$101,147.56	\$13,797.54	\$9,439.06
24	9,122,001	\$249,003.27	\$116,508.63	\$12,400.36	\$97,659.08	\$13,321.67	\$9,113.52
25	8,809,188	\$240,464.41	\$112,513.30	\$11,975.13	\$94,310.14	\$12,864.85	\$8,801.00
TOTALS	\$345,617,159	\$9,434,311.60	\$4,414,314.40	\$469,828.72	\$3,700,137.01	\$504,735.67	\$349,298.54
ANNUALIZED	\$13,824,686.38	\$377,372.46	\$176,572.58	\$18,793.15	\$148,005.48	\$20,189.43	\$13,971.94

**CURRENT PROPERTY TAX IN TORRANCE COUNTY/CITY OF MORIARTY
TOTAL "AS IS" ON COUNTY TAX ROLLS
WITHOUT INCENTIVES & PILOTS IF SITE TAXABLE - 25 Years**

Original Cost \$	Assessment Rate	Total Mills	Rate for County	Rate For St Debt	Rate for MOE	Rate for City of Moriarty	Rate for Edgewood S&W
134,629.00	33.33%	0.03630	0.012771	0.00136	0.010705	0.001461	0.01000
DEV/OP YEAR	TOTAL TAXABLE VALUE	FULL RATE REVENUE	REVENUE FOR COUNTY	REVENUE FOR ST DEBT	REVENUE FOR Moriarty BOE	REVENUE FOR City	REVENUE FOR Edgewood S&W
1	\$44,872	\$1,169.44	\$573.06	\$61.03	\$480.35	\$32.12	\$22.89
2	\$44,872	\$1,169.44	\$573.06	\$61.03	\$480.35	\$32.12	\$22.89
3	\$44,872	\$1,169.44	\$573.06	\$61.03	\$480.35	\$32.12	\$22.89
4	\$44,872	\$1,169.44	\$573.06	\$61.03	\$480.35	\$32.12	\$22.89
5	\$44,872	\$1,169.44	\$573.06	\$61.03	\$480.35	\$32.12	\$22.89
6	\$50,768	\$1,323.12	\$648.36	\$69.04	\$543.48	\$36.34	\$25.90
7	\$50,768	\$1,323.12	\$648.36	\$69.04	\$543.48	\$36.34	\$25.90
8	\$50,768	\$1,323.12	\$648.36	\$69.04	\$543.48	\$36.34	\$25.90
9	\$50,768	\$1,323.12	\$648.36	\$69.04	\$543.48	\$36.34	\$25.90
10	\$50,768	\$1,323.12	\$648.36	\$69.04	\$543.48	\$36.34	\$25.90
11	\$57,440	\$1,496.99	\$733.56	\$78.12	\$614.89	\$41.11	\$29.30
12	\$57,440	\$1,496.99	\$733.56	\$78.12	\$614.89	\$41.11	\$29.30
13	\$57,440	\$1,496.99	\$733.56	\$78.12	\$614.89	\$41.11	\$29.30
14	\$57,440	\$1,496.99	\$733.56	\$78.12	\$614.89	\$41.11	\$29.30
15	\$57,440	\$1,496.99	\$733.56	\$78.12	\$614.89	\$41.11	\$29.30
16	\$64,988	\$1,693.70	\$829.96	\$88.38	\$695.69	\$46.51	\$33.15
17	\$64,988	\$1,693.70	\$829.96	\$88.38	\$695.69	\$46.51	\$33.15
18	\$64,988	\$1,693.70	\$829.96	\$88.38	\$695.69	\$46.51	\$33.15
19	\$64,988	\$1,693.70	\$829.96	\$88.38	\$695.69	\$46.51	\$33.15
20	\$64,988	\$1,693.70	\$829.96	\$88.38	\$695.69	\$46.51	\$33.15
21	\$73,528	\$1,916.27	\$939.02	\$100.00	\$787.11	\$52.63	\$37.51
22	\$73,528	\$1,916.27	\$939.02	\$100.00	\$787.11	\$52.63	\$37.51
23	\$73,528	\$1,916.27	\$939.02	\$100.00	\$787.11	\$52.63	\$37.51
24	\$73,528	\$1,916.27	\$939.02	\$100.00	\$787.11	\$52.63	\$37.51
25	\$73,528	\$1,916.27	\$939.02	\$100.00	\$787.11	\$52.63	\$37.51
TOTALS	\$1,457,977	\$37,997.57	\$18,619.82	\$1,982.85	\$15,607.64	\$1,043.53	\$743.72
ANNUALIZED	\$58,319.08	\$1,519.90	\$744.79	\$79.31	\$624.31	\$41.74	\$29.75

TORRANCE COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS
ORDINANCE NO. _____

AUTHORIZING THE ISSUANCE AND SALE OF TORRANCE COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (NM RENEWABLE DEVELOPMENT DATA CENTER II, LLC) SERIES 2019 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$60,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A SOLAR ENERGY GENERATING FACILITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, BOND, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Torrance County (the “County”) is a legally and regularly created, established, organized and existing political subdivision of the State of New Mexico (the “State”); and

WHEREAS, pursuant to New Mexico Statutes Annotated, Sections 4-59-1 through 4-59-16 NMSA 1978, as amended (the “Act”), the County is authorized to acquire industrial revenue projects to be located within the County, to issue industrial revenue bonds and to use the proceeds of such bonds for the purpose of promoting the use of the natural resources of the State and promoting industry and developing trade or other economic activity to secure and maintain a balanced and stable economy in the county to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, NM Renewable Development Data Center II, LLC, (the “Company”), is a limited liability company organized under the laws of the State of Delaware and qualified to do business in the State of New Mexico; and

WHEREAS, the Company has presented to the Commission a proposal whereby the County would (a) issue its Taxable Industrial Revenue Bonds (NM Renewable Development Data Center II, LLC), Series 2019 (the “Bonds”), and (b) acquire solar energy generating equipment and facilities (the “Project Property”), located within a part of the County which is outside the corporate limits of any municipality in the County, to be used by the Company for the generation, transportation and delivery of electricity; and

WHEREAS, the Company has requested that the County issue industrial revenue bonds for the purpose of providing funds to finance the acquisition, construction, installation, and equipping, of a solar energy power generating facility (the “Project”). The County has been advised by the Company that, neither location approval nor a certificate of convenience and necessity are

required prior to commencing construction or operation of the facility pursuant to the laws of the State; and

WHEREAS, under the Company's proposal, the County would enter into an Indenture (the "Indenture") with NMRD Data Center II --Britton, LLC, a limited liability company organized under the laws of the State of Delaware (the "Purchaser"), the Company and a Depository acceptable to the County and the Purchaser pursuant to which, together with this ordinance (the "Bond Ordinance"), the County would issue the Bonds; and

WHEREAS, under the Company's proposal, the County and the Company would enter into a Lease (the "Lease"), pursuant to which the Company will lease the Project Property from the County and the Company will make payments sufficient to pay the principal of and interest on the Bonds and to pay all other obligations incurred pursuant to the provisions of the Lease and the Bond Ordinance; and

WHEREAS, the County is authorized to enter into, deliver and perform all of its obligations under the Bond Documents and to issue, execute and deliver the Bonds pursuant to the Act and the Bond Ordinance; and

WHEREAS, the Bonds in a principal amount not to exceed \$60,000,000 will be issued, sold and delivered by the County, in a private sale to the Purchaser, pursuant to a bond purchase agreement to be dated as of the initial date of delivery of the Bonds, among the County, the Purchaser and the Company (the "Bond Purchase Agreement"); and

WHEREAS, the proceeds of the Bonds shall be applied to pay the costs of the Project and to pay certain costs associated with the transaction; and

WHEREAS, the Commission has determined that it is in the best interest of the County to issue the Bonds and to execute and deliver the Bond Documents, defined below, and other documents related thereto; and

WHEREAS, the County will enter into the following documents in connection with the issuance of the Bond:

1. Lease
2. Indenture
3. Bond Purchase Agreement
4. Bonds

The Lease, Indenture, Bond Purchase Agreement and Bonds are collectively referred to in the Bond Ordinance as the "Bond Documents"; and

WHEREAS, the County is authorized to issue the Bonds under the Act and after having considered the Company's proposal, has concluded that it is desirable at this time to authorize the issuance of the Bonds to finance the Project and that the County's issuance of the Bonds will constitute and be a valid public purpose; and

WHEREAS, this Commission has been advised by Bond Counsel that the disclosure provisions of Rule 15c2-12 of the Securities and Exchange Commission are not applicable to this transaction inasmuch as the Bonds are being sold in a private sale without participation of an underwriter; and

WHEREAS, there has been published in the *The Independent*, a newspaper of general circulation in the County, public notice of the Commission's intention to adopt this Bond Ordinance, which notice contained certain information concerning the ownership, purpose, location and size of the Project and the amount of the Bonds to be issued to finance the Project, which notice was published at least fourteen (14) days prior to final action upon this Bond Ordinance; and

WHEREAS, the acquisition of the Project Property has been approved by the Moriarty-Edgewood School District.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF TORRANCE COUNTY, NEW MEXICO:

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Bond Ordinance previously taken by the Commission and the officials of the County directed toward approval of the issuance and sale of the Bonds be approved and the same hereby are ratified, approved and confirmed.

Section 2. FINDINGS.

A. General. The Commission hereby declares that it has considered all relevant information presented to it relating to the Bonds and the Project and hereby finds and determines that the issuance of the Bonds pursuant to the Bond Ordinance to provide funds for the Project is necessary and advisable and in the interest of and will promote the use of the natural resources of the State, industry and trade and a sound and proper balance in the State between agriculture, commerce and industry.

B. The Commission finds that:

- (1) The Bonds will be issued for the purpose of financing the Project.
- (2) The aggregate face amount of obligations to be issued with respect to financing the Project is not to exceed \$60,000,000.
- (3) The developer of the Project Property is the Company.
- (4) The Project Property is located in the County outside the corporate limits of any municipality located in the County.

Section 3. BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale. The issuance of the Bonds in a principal amount not to exceed \$60,000,000 and the use of the proceeds of the Bonds to finance the cost of the Project including payment of transaction expenses related thereto are hereby approved and confirmed. The sale of the Bonds at par at a purchase price not to exceed \$60,000,000 is approved.

B. Form and Terms. Subject to the limitations set forth in this Bond Ordinance, the Bonds shall (i) be in the form and denomination and shall be numbered and dated as set forth in the Indenture, (ii) be payable as to principal and interest and subject to optional and mandatory redemption and defeasance in the amounts, upon the conditions and at the times and prices set forth in the Indenture; and (iii) be issued in a principal amount not to exceed \$60,000,000, bearing interest at the rate and maturing on the date set forth in the Indenture.

C. Execution. The Bonds shall be signed by the presiding officer of the Board of County Commissioners of the County.

D. Interest Rate. The interest rate on the Bonds shall be four percent (4%).

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The Bond Documents in the form presented to the Commission are hereby approved. The presiding officer of the Board of County Commissioners of the County is authorized to approve the form, terms and provisions of the Bond Documents on behalf of the Commission, provided that such form, terms and provisions are consistent with this Bond Ordinance and to execute and deliver in the name and on behalf of the County, and the County Clerk or Deputy County Clerk is hereby authorized to attest, as necessary, the Bond Documents.

The Presiding Officer of the Commission, the County Manager and other officers of the County shall take such action as is necessary to effectuate the provisions of the Indenture and shall take such action as is necessary in conformity with the Act to finance the costs of the Project and for carrying out other transactions as contemplated by this Ordinance, and the Bond Documents, including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Bonds.

The Presiding Officer of the Board of County Commissioners and the County Clerk are further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including leases, subleases, security agreements and subordination agreements and instruments as requested from time to time by the Company or any lender or lenders providing financing for the Project, and to do such other acts and things, either prior to or after the date of delivery of the Bonds, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents and as are not inconsistent with the terms of this Ordinance.

Section 5. DELIVERY OF BONDS. Upon the execution of the Bond Documents, the satisfaction of the conditions set forth in the Bond Documents and upon receipt of the purchase price for the Bonds, the Bonds shall be executed, authenticated and delivered to the Purchaser.

The Bonds shall not be valid for any purpose until the Bonds have been properly authenticated as set forth in the Indenture.

Section 6. FUNDS AND ACCOUNTS. There is established in the Indenture, and on and after the date on which the Bonds are issued there shall be maintained, the funds and accounts as set forth in the Indenture. Other funds and accounts may be established as are necessary under the Indenture.

Section 7. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER MATTERS. The following determinations are made:

A. The maximum amount necessary in each year to pay the principal of and interest on the Bonds, assuming issuance of the Bonds as of May 30, 2019, in the maximum aggregate principal amount of \$60,000,000 and bearing an interest rate of 4%, is as follows:

<u>Year</u>	<u>Total Debt Service</u>	<u>Principal</u>	<u>Interest</u>
2020	2,400,000	\$-0-	2,400,000
2021	2,400,000	\$-0-	2,400,000
2022	2,400,000	\$-0-	2,400,000
2023	2,400,000	\$-0-	2,400,000
2024	2,400,000	\$-0-	2,400,000
2025	2,400,000	\$-0-	2,400,000
2026	2,400,000	\$-0-	2,400,000
2027	2,400,000	\$-0-	2,400,000
2028	2,400,000	\$-0-	2,400,000
2029	2,400,000	\$-0-	2,400,000
2030	2,400,000	\$-0-	2,400,000
2031	2,400,000	\$-0-	2,400,000
2032	2,400,000	\$-0-	2,400,000
2033	2,400,000	\$-0-	2,400,000
2034	2,400,000	\$-0-	2,400,000
2035	2,400,000	\$-0-	2,400,000
2036	2,400,000	\$-0-	2,400,000
2037	2,400,000	\$-0-	2,400,000
2038	2,400,000	\$-0-	2,400,000
2039	2,400,000	\$-0-	2,400,000
2040	2,400,000	\$-0-	2,400,000
2041	2,400,000	\$-0-	2,400,000
2042	2,400,000	\$-0-	2,400,000
2043	2,400,000	\$-0-	2,400,000
2044	62,400,000	\$60,000,000	2,400,000

- B. The Bonds will bear interest at the rate of four percent (4%).
- C. The Bonds may be redeemed at any time without premium.
- D. It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund for the maintenance of the Project Property.
- E. The Lease requires that the Company maintain the Project Property in safe repair and in such operating condition as is needed for its operations and carry proper insurance with respect to the Project Property as provided in the Lease.
- F. The Lease requires the Company to make lease payments in an amount sufficient to pay the principal of and interest on the Bonds as principal and interest become due and to pay all Related Costs.
- G. The Bonds shall be issued on or before December 31, 2019.

Section 8. LIMITED OBLIGATIONS. The Bonds shall be a special limited obligation of the County, payable solely from the Basic Rent (as defined in the Lease) paid by the Company to the County as described in the Indenture and any other property or interest of the County specifically pledged under the Indenture and shall never constitute a debt or indebtedness of the County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing contained in the Bond Ordinance or in the Bond Documents or any other instrument shall be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing powers, nor shall the breach of any agreement contained in the Bond Ordinance, the Bond Documents, the Bonds or any other instrument be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, the County having no power to pay out of its general funds, or otherwise contribute any part of the costs of constructing or equipping the Project Property, nor power to operate the Project Property as a business or in any manner except as lessor of the Project Property.

Section 9. APPROVAL OF INDEMNIFICATION. The Commission specifically requires that the Lease contain provisions relating to indemnification which provide that the Company shall indemnify and hold harmless the County and its Board of County Commissioners, officials, employees and agents against liability to the Company, or to any third parties, that may be asserted against the County or its Board of County Commissioners, officials, members, officers, employees or agents with respect to the County's ownership of the Project Property or the issuance of the Bonds and arising from the condition of the Project Property or the acquisition, construction and operation of the Project Property by the Company, except to the extent New Mexico Statutes Annotated Section 56-7-1, 1978 Compilation, would preclude such indemnity, and except claims

for any loss or damage arising out of or resulting from the gross negligence or willful misconduct of the County or its Board of County Commissioners, or any official, employee or agent of the County.

Section 10. BOND ORDINANCE IRREPEALABLE. After the Bonds are issued, the Bond Ordinance shall be and remain irrepealable until the Bonds, including interest, are fully paid, canceled and discharged or there has been defeasance of the Bonds in accordance with the Indenture.

Section 11. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 12. SEVERABILITY. If any section, paragraph, clause or provision of the Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of the Bond Ordinance.

Section 13. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the presiding officer of the Board of Commissioners, and by the signature of the County Clerk or any Deputy County Clerk, and shall be recorded in the Ordinance book of the County, kept for that purpose, and shall be in full force and effect thereafter in accordance with the laws of the State, and notice of adoption thereof shall be published once in a newspaper which maintains an office in, and is of general circulation in the County.

Done this ____ day of _____, 2019.

ATTEST:

TORRANCE COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS

County Clerk

By _____
Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

NMRD DATA CENTER II – BRITTON, LLC,

TORRANCE COUNTY, NEW MEXICO

and

NM RENEWABLE DEVELOPMENT DATA CENTER II, LLC PROJECT

BOND PURCHASE AGREEMENT

Dated _____, 2019

\$60,000,000

Torrance County, New Mexico

Taxable Industrial Revenue Bonds

(NM Renewable Development Data Center II, LLC Project)

Series 2019

BOND PURCHASE AGREEMENT

NMRD DATA CENTER II – BRITTON, LLC (the “Purchaser”), **TORRANCE COUNTY, NEW MEXICO** (the “Issuer”), and **NM RENEWABLE DEVELOPMENT DATA CENTER II, LLC**(the “Company”), agree:

Section 1. Recitals. The Issuer, the Purchaser, the Company and BOKF, NA, as depository (the “Depository”) have entered into an Indenture dated as of _____, 2019 (the “Indenture”). Pursuant to the Indenture, the Issuer will issue its Taxable Industrial Revenue Bonds (NM Renewable Development Data Center II, LLC Project), Series 2019, in the maximum principal amount of \$60,000,000 (the “Bonds”). Capitalized terms used in this Bond Purchase Agreement (this “Agreement”) but not defined herein shall have the meanings assigned to such terms in the Indenture.

Section 2. Purchase and Delivery. On the basis of the representations and covenants contained in this Agreement and subject to the terms and conditions contained in this Agreement, the Purchaser will purchase the Bonds from the Issuer and the Issuer will sell the Bonds to the Purchaser. As consideration for the sale of the Bonds, the Purchaser will make advances on the Bonds at the times and under the conditions specified in Section 702 of the Indenture. The Issuer will deliver the Bonds to the Purchaser as provided in Section 403 of the Indenture, or at such other time as is mutually agreeable to the Purchaser and the Issuer (the “Closing Date”).

Section 3. Issuer Representations. The Issuer represents that, as of the date of this Agreement:

(a) Each of the representations of the Issuer in the Lease Agreement, dated as of _____, 2019 (the “Lease” and, together with the Indenture and this Agreement, the “Bond Documents”), between the Issuer and the Company, and the Indenture is true and correct as if made on and as of the date of this Agreement.

(b) Pursuant to Ordinance No. _____ duly adopted by the Board of County Commissioners of Torrance County on _____ (the “Bond Ordinance”), the Issuer duly authorized and approved (i) the execution and delivery by the Issuer of the Bond Documents and the performance by the Issuer of its obligations under the Bond Documents, and (ii) the issuance, execution and delivery of the Bonds. The Bond Ordinance has not been amended, modified or repealed.

Section 4. Company Representations. The Company represents that as of the date hereof:

(a) Each of the representations of the Company in the Lease is true and correct as if made on and as of the date of this Agreement.

(b) This Agreement, the Indenture and the Lease constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally and general principles of equity.

(c) The Company is a Delaware limited liability company, duly organized, validly existing and in good standing under the law of the State of Delaware and is a duly registered foreign limited liability company authorized to do business in the State of New Mexico and has full legal capacity, right, power and authority to own the Company’s properties and conduct the Company’s business. The Company has full legal capacity, right, power and authority to execute and deliver this Agreement, the Indenture and

the Lease, to provide for the operation and management of the Project Property, and to take any and all such action as may be required on its part to carry out, give effect to and consummate the transactions contemplated by this Agreement, the Indenture and the Lease.

(d) Neither the execution and delivery of this Agreement, the Indenture and the Lease, nor the consummation of the transactions contemplated therein or the compliance with the provisions thereof, will conflict with, or constitute on the part of the Company a violation of, or a breach of or default under any material indenture, mortgage, commitment, note or other agreement or instrument to which the Company is a party or by which the Company is bound, or any material order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its activities or properties. All consents, approvals, authorizations and orders of governmental or regulatory authorities (except as required under state securities laws) which are required for the Company's execution and delivery of, consummation of the transactions contemplated by, and compliance with the provisions of this Agreement, the Indenture and the Lease have been obtained.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the best of the knowledge of the Company, threatened, against or affecting the Company, or the actions taken or contemplated to be taken by the Company, nor, to the best of the knowledge of the Company, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the business or financial condition of the Company, or the transactions contemplated by, or the validity or enforceability of, this Agreement, the Indenture or the Lease.

(f) No event has occurred and no condition exists which, upon issuance of the Bonds, would constitute (or with the giving of notice or lapse of time, or both, would constitute) an Event of Default under the Lease.

(g) The Company is not in violation of any provisions of, or in default under any statute, indenture, mortgage, commitment, note or other agreement or instrument to which it is a party or by which it is bound, or any order, rule, regulation or decision of any court or governmental agency or body having jurisdiction over it or any of its activities or properties, which violation would materially and adversely affect its business or financial condition.

Section 5. Purchaser Representations. The Purchaser represents and acknowledges that, as of the date of this Agreement:

(a) The Purchaser is purchasing the Bonds for its own account for investment and with no present intention of distributing or reselling the Bonds or any interest in the Bonds but without prejudice, however, to its right at all times to sell or otherwise dispose of all but not part of the Bond in compliance with the Securities Act of 1933, as amended, the regulations promulgated thereunder, applicable state securities laws and regulations and the terms of the Bonds, upon receipt of appropriate investor representations, an opinion of counsel experienced in securities law matters and satisfactory to the Issuer and in accordance with the applicable terms of the Indenture.

(b) The Purchaser understands that the Bonds are a special limited, and not general, obligation of the Issuer, are payable solely from the Basic Rent received under the Lease and from the security therefor as described in the Indenture but from no other sources. The Purchaser understands that the Bonds are not secured by any obligation or pledge of any monies received or to be received from taxation or from the State or any political subdivision, taxing district, or municipality thereof (including, without limitation, the Issuer), and that the Bonds will never represent or constitute a general obligation, debt or bonded indebtedness of the Issuer, the State, any political subdivision or municipality thereof, and

that no right will exist to have taxes levied by the Issuer, the State, any political subdivision or municipality thereof, for the payment of principal of, premium, if any, and interest on the Bonds. The Purchaser understands that payment of the Bonds depends upon the general credit of the Company, and upon the security granted in the Indenture for the Company's obligations under the Lease.

(c) The Purchaser is an affiliate of the Company and has been afforded the opportunity to discuss the business, assets and financial position of the Company with the officers, employees and auditors of the Company; and has received such information concerning the Company and its business, assets and financial position, and the Project (as defined in the Lease) as it deems necessary in making its decision to purchase the Bonds.

(d) The Purchaser is duly and legally authorized to purchase the Bonds, has such knowledge and experience in financial and business matters (including the ownership of municipal conduit obligations) as are required for, and is capable of, evaluating the merits and risks of its purchase of the Bonds, is aware of the intended use of proceeds of the Bonds, and understands that interest on the Bonds is not excludable from gross income for federal income tax purposes.

(e) The Purchaser understands that neither the Issuer nor any of its officials, counsel, consultants or agents has undertaken to furnish any information with respect to the Company or to ascertain the accuracy of any information furnished to the Purchaser with respect to the Company, and the Purchaser has not requested or received any representations from the Issuer with respect to any such information, its accuracy or completeness. The Purchaser waives any requirement of due diligence in investigation or inquiry on the part of the Issuer, its officials, counsel, agents and consultants and all claims, actions or causes of action which the Purchaser may have from and after the date hereof against the Issuer, its officials, counsel, agents and consultants growing out of any such action which any of the foregoing took, or could have taken, in connection with the authorization, execution, delivery, and sale of the Bonds to the Purchaser or in connection with any statement or representation by the Company which induced the Purchaser to purchase the Bonds.

(f) The Purchaser has received and reviewed copies of the Bond Documents and the Bond Ordinance.

(g) This Agreement constitutes the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

(h) The Purchaser has been informed by the Company and agrees that the Indenture has not been qualified under the Trust Indenture Act of 1939, and that the Bonds (i) are not being registered or otherwise qualified for sale under (a) the Securities Act of 1933, as amended, or (b) the "Blue Sky" laws and regulations of any state, (ii) will not be listed on any stock or other securities exchange, (iii) will not carry a rating from any rating service and (iv) will not be readily marketable. The Purchaser has been informed by the Company and agrees that a legend will be placed on the Bonds certificate or any other documents evidencing ownership of the Bonds to the effect that it has not been registered under the Securities Act of 1933, as amended, or the applicable state "Blue Sky" laws and that it may only be transferred in compliance with the Indenture and applicable securities laws.

(i) The execution, delivery and performance of this Agreement by the Purchaser will not constitute a default under any other agreement by which the Purchaser is bound.

(j) The Purchaser acknowledges that its purchase of the Bonds constitutes a transaction in a bond secured by the Indenture which is, among other things, a personal property security agreement, pursuant to which the Bonds are offered and sold as a unit.

Section 6. Indemnification.

(a) The Company and the Purchaser will, jointly and severally, indemnify, defend and hold harmless the Depository, as defined in the Indenture, each agent and employee of the Depository, the Issuer, each County Commission member, official, agent or employee of the Issuer and each person, if any, who has the power, directly or indirectly, to direct or cause the direction of the management and policies of the Issuer (each an "Indemnified Party" and, collectively, the "Indemnified Parties") from and against any and all losses, claims, damages, liabilities, joint or several, or expenses related thereto arising out of or in connection with or caused by any offering, sale or resale of the Bonds in violation of any federal or state securities laws or by an untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact made to any person or caused by an omission or alleged omission of any material fact in connection with the Bonds or the sale, resale or delivery thereof.

(b) In case a claim is made or any action is brought against one or more of the Indemnified Parties based upon the matters described in the preceding paragraph and in respect of which indemnity is sought against the Company or the Purchaser pursuant to the preceding paragraph, the Indemnified Party or Parties seeking indemnity shall promptly notify the Company and the Purchaser, in writing, and the Company and the Purchaser shall promptly assume or cause the assumption of the defense thereof, including the employment of counsel chosen by the Company and the Purchaser and approved in writing by the Issuer (provided, that such approval by the Issuer shall not be unreasonably withheld), the payment of all expenses (including reasonable counsel fees and expenses) and the right to negotiate and consent to settlement. If the Company and the Purchaser fail to assume or cause the assumption of the defense of such action or to retain counsel reasonably satisfactory to the Issuer within a reasonable time after notice of the commencement of such action, the reasonable fees and expenses of counsel retained by the Indemnified Party shall be paid by the Company or the Purchaser. If any Indemnified Party is advised in a written opinion of counsel that the defenses of such Indemnified Party should be handled by separate counsel, the Company and the Purchaser shall not have the right to assume or cause the assumption of the defense of such Indemnified Party, but the Company and the Purchaser shall be responsible for the fees and expenses of such separate counsel (the "Separate Counsel") retained by such Indemnified Party. Notwithstanding, and in addition to, any of the foregoing, any one or more of the Indemnified Parties shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnified Party or Indemnified Parties unless the employment of such counsel has been specifically authorized in writing by the Company and the Purchaser. Neither the Company nor the Purchaser shall be liable for any settlement of any such action effected without the written consent of the Company or the Purchaser, but if settled with the written consent of the Company and the Purchaser or if there is a final judgment for the plaintiff in any such action with or without consent, the Company and the Purchaser will indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.

(c) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in this Section 6 is for any reason held to be unavailable to the Indemnified Parties in accordance with its terms, the Purchaser and the Company shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by this Section 6 incurred by the Indemnified Parties in such proportions as determined by a court having jurisdiction of the matter.

(d) The covenants and agreements of the Purchaser and the Company under this Section 6 are joint and several.

Section 7. Conditions. The obligation of the Purchaser to purchase the Bonds and the obligation of the Issuer to sell the Bonds are subject to satisfaction of the following conditions precedent:

(a) The representations of the Issuer, the Purchaser and the Company in this Agreement will be true and correct on and as of the date the Bonds are issued (“Closing Date”) as if made on and as of the Closing Date.

(b) As of the Closing Date, no Default (as defined in the Indenture) or Event of Default (as defined in the Lease) will have occurred and be continuing, and no event will have occurred and be continuing which, with the lapse of time or the giving of notice or both, would constitute a Default or Event of Default.

(c) On or before the Closing Date, all actions required to be taken as of the Closing Date in connection with the Bonds, the Bond Ordinance and the Bond Documents by the Issuer, the Purchaser and the Company will have been taken, and the Issuer, the Purchaser and the Company will each have performed and complied with all agreements, covenants and conditions required to be performed or complied with by the Bond Ordinance and the Bond Documents.

(d) The Indenture will have been duly executed and delivered by the Issuer, the Company, the Purchaser and the Depository. The Lease will have been duly executed by the Issuer and the Company. Each of the Bond Documents, the Bond Ordinance and all other official action of the Issuer relating to the Bonds, the Project (as defined in the Lease) and the Bond Documents will be in full force and effect on the Closing Date and will not have been amended, modified or supplemented on or before the Closing Date.

(e) The Issuer, the Company and the Purchaser will have received the following, each dated the Closing Date:

(i) the approving opinion of Sutin Thayer & Browne, A Professional Corporation, Bond Counsel, substantially in the form of Exhibit A;

(ii) the opinion of counsel to the Company, substantially in the form of Exhibit B;

(iii) the opinion of the Attorney for the Issuer, substantially in the form set forth in Exhibit C;

(iv) the opinion of counsel to the Purchaser, substantially in the form set forth in Exhibit D;

(v) a certificate of and with reference to the Issuer and signed by a duly authorized officer of the Issuer to the effect set forth in subsections (a) and (c) of this Section 7 with respect to the Issuer;

(vi) a certificate of and with reference to the Company signed by a duly authorized officer of the Company to the effect set forth in subsections (a), (b) and (c) of this Section 7;

(vii) a certificate of and with reference to the Purchaser signed by a duly authorized officer of the Purchaser to the effect set forth in (a) and (c) of this Section 7;

(viii) a certificate of the Depositary signed by a duly authorized officer of the Depositary to the effect that (a) he or she is an authorized officer of the Depositary; (b) the Indenture has been duly executed and delivered by the Depositary; (c) the Depositary has all necessary corporate powers required to execute, deliver and perform its obligations under the Indenture; and (d) to the best of his or her knowledge, the execution and delivery by the Depositary of the Indenture and the performance by the Depositary of its obligations under the Indenture will not conflict with or constitute a breach of or default under any law, administrative regulation, consent decree or any agreement or other instrument to which the Depositary is subject or by which the Depositary is bound;

(ix) such additional legal options, certificates, proceedings, instruments and other documents as any such party or Bond Counsel may reasonably request; and

(x) an investment intent letter from the Purchaser in the form of the Certificate of Qualified Investor attached to the Indenture.

If any conditions to the obligations of the Purchaser or the Issuer under this Agreement are not satisfied and if the satisfaction of such conditions is not waived by the Purchaser and the Issuer, then, at the option of the Purchaser or the Issuer, respectively in accordance with their interests (x) the Closing Date will be postponed for such period, not to exceed five business days, as may be necessary for such conditions to be satisfied or (y) the obligations of the Purchaser and the Issuer under this Agreement will terminate, and neither the Purchaser nor the Issuer will have any further obligations or liabilities under this Agreement.

Section 8. Survival. All agreements, covenants and representations and all other statements of the Issuer and the Company and their respective officers set forth in or made pursuant to this Agreement will survive the Closing Date and the delivery of and payment for the Bonds.

Section 9. Notices. Any notice, demand, direction, request, consent, approval, report or other instrument authorized or required by any of the Bond Documents to be executed, given or filed will be in writing and will be deemed to have been sufficiently given or filed for all purposes of the Bond Documents when delivered by hand delivery or on the third Business Day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer: Torrance County, New Mexico
205 Ninth Street
Estancia, New Mexico 87016

If to the Purchaser: NMRD Data Center II- Britton, LLC
c/o NM Renewable Development Data Center II, LLC

If to the Company: NM Renewable Development Data Center II, LLC

Any Party may, by notice to each of the other Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent. Receipt by the Issuer and the Company of a Certificate of Qualified Investor in the form attached to the Indenture as Exhibit E, from a transferee of the Bonds will constitute notice by the transferee of such a different address for the Purchaser.

Section 10. Remedies. No right or remedy conferred on any party in this Agreement is intended to be exclusive of any other right or remedy. No delay or omission of any party to exercise any such right or remedy may be exercised from time to time and as often as the relevant party may deem expedient. No waiver by any party of any right or remedy with respect to any Default or Event of Default will extend to or affect any other existing or subsequent Default or Event of Default.

Section 11. Severability. In case any one or more of the provisions of this Agreement or of the Bonds are for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of any of this Agreement or of the Bonds, but this Agreement and the Bonds will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the Issuer contained in this Agreement or the Bonds are for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of the Issuer to the full extent permitted by law.

Section 12. Obligations of Issuer Not Obligations of Officials Individually. No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bond will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 13. Limitation of Issuer's Liability. No agreements or provisions contained in this Agreement nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of the Bond proceeds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer, its officials, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or will obligate the Issuer financially in any way, except with respect to the Basic Rent available under the Lease and the Indenture provided by the Company and pledged to the payment of the Bonds, and their application as provided under the Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in this Agreement or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officials, employees, agents and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the funds available under the Lease or the Indenture provided by the Company and pledged to the payment of the Bonds. None of the provisions of the Bond Documents will require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under the Bond Documents. Nothing in this Agreement will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement in any of the Bond Documents; provided, that no costs, expenses or other monetary relief will be recoverable from the Issuer except as may be payable from the funds available under the Lease or the Indenture provided by the Company and pledged to the payment of the Bonds.

Section 14. Title, Headings. The title and headings of the articles and sections of this Purchase Agreement have been used for convenience only and do not modify or restrict any of the terms or provisions hereof.

Section 15. Execution in Counterparts. This Agreement may be executed in counterparts, all of which taken together will constitute one instrument.

Section 16. Applicable Law. The validity, construction and effect of this Agreement will be governed by the law of the State of New Mexico.

Section 17. Expenses. All costs and expenses relating to the preparation, issuance, delivery and sale of the Bonds and the preparation, execution and delivery of the Bond Ordinance, the Bond Documents and all other agreements, documents and instruments related to the transactions contemplated by the Bond Documents, including the fees and expenses of Issuer's outside review counsel, are to be paid by the Company.

Section 18. Performance of the Parties. The respective obligations of the parties hereunder are subject to the performance by each other party hereto of its own obligations hereunder.

[Remainder of this page intentionally left blank]

DATED: _____, 2019

NMRD DATA CENTER II -- BRITTON, LLC
as Purchaser

By _____
Name: _____
Title: _____

NM RENEWABLE DEVELOPMENT DATA
CENTER II, LLC,
as Company

By _____
Name: _____
Title: _____

(Signature Page for Bond Purchase Agreement)

Attest:
(SEAL)

BOARD OF COUNTY COMMISSIONERS,
TORRANCE COUNTY, NEW MEXICO

County Clerk

By _____
Its Chair

(Signature Page for Bond Purchase Agreement)

Exhibit A

[Opinion of Bond Counsel]

_____, 2019

Torrance County, New Mexico
Estancia, New Mexico

NMRD Data Center II --Britton, LLC

NM Renewable Development Data Center II, LLC

BOKF, NA
Albuquerque, New Mexico

\$60,000,000
Torrance County, New Mexico
Taxable Industrial Revenue Bonds
(NM Renewable Development Data Center II, LLC Project)
Series 2019

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance and sale by Torrance County, New Mexico (the "Issuer") of its Taxable Industrial Revenue Bonds (NM Renewable Development Data Center II, LLC Project) Series 2019 in the maximum principal amount of \$60,000,000 (the "Bonds").

The Bonds will bear interest on the outstanding principal amount at a per annum rate equal to four percent (4%). Interest on the Bonds is payable each _____ 1 beginning _____, 20____, with the outstanding principal amount of the Bonds plus all interest thereon due and payable in full at their final maturity.

The Bonds are subject to redemption prior to maturity as described in the Indenture dated as of _____, 2019 (the "Indenture") among the Issuer and NMRD Data Center II --Britton, LLC (the "Purchaser"), NM Renewable Development Data Center II, LLC (the "Company") and BOKF, NA (the "Depositary").

The principal of, interest on and redemption price of the Bonds are not general obligations of the Issuer but special obligations payable solely from the revenues pledged under the Indenture. Neither the faith and credit nor the taxing power of the State of New Mexico or of any of its political subdivisions or municipalities, including the Issuer, is pledged to the payment of the principal of, interest on or redemption price of the Bonds. The principal of, interest on and redemption price of the Bonds will never constitute a debt or indebtedness of the Issuer within the meaning of any provision or limitation of the constitution or laws of the State of New Mexico. The Bonds will never constitute nor give rise to a pecuniary liability of the State of New Mexico, any of its political subdivisions or of the Issuer or a charge against their general credit or taxing powers.

In connection with the issuance of the Bonds, we have examined (a) a certified copy of an ordinance passed by the Torrance County Commission on _____, 2019 authorizing the issuance of the Bonds, pursuant to and under the provisions of Sections 4-59-1 through 4-59-16, New Mexico Statutes Annotated, 1978 Compilation, as amended (the "Act"); (b) the executed Bonds; (c) executed counterparts of the Indenture, the Lease Agreement dated as of _____, 2019 (the "Agreement") between the Issuer and the Company and the Bond Purchase Agreement dated _____, 2019 (the "Bond Purchase Agreement" and, together with the Indenture and the Agreement, the "Bond Documents") among the Purchaser, the Issuer and the Company; and (d) such other opinions, documents, certificates and letters as we deemed relevant in rendering this opinion.

Based on such examination, in our opinion:

1. The Issuer is a political subdivision of the State of New Mexico and has the power and authority, under the constitution and laws of the State of New Mexico, including the Act, to execute and deliver the Bond Documents, and to authorize, execute, issue and deliver the Bonds.

2. The terms and provisions of the Bonds and the Bond Documents comply in all respects with the requirements of the Act.

3. The Bonds have been validly authorized, executed and issued in accordance with the law of New Mexico and represent the valid and binding special obligation of the Issuer.

4. The Bond Documents have been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties to the Bond Documents, constitute legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

5. Neither the offer nor sale of the Bonds to the Purchaser pursuant to the Bond Documents is required to be registered under any federal or New Mexico securities law. The Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.

6. The issuance and sale of the Bonds to the Purchaser is not subject to Rule 15c2-12 of the Securities and Exchange Commission.

Our opinion in paragraph 4 above, insofar as it relates to the enforceability of the Indenture, is subject to the following qualifications:

(i) New Mexico law may require that notice of acceleration be given to the Company before foreclosure of the Indenture. Comer v. Hargrave, 93 N.M. 170, 598 P.2d 213 (1979).

(ii) We express no opinion as to title to or the priority of any lien on or security interest in any real or personal property.

The foregoing opinions represent our legal judgment based upon a review of existing legal authorities that we deem relevant to render such opinions and are not a guarantee of a result.

Very truly yours,

Exhibit B

[Opinion of Counsel to the Company]

_____, 2019

Torrance County, New Mexico
Estancia, New Mexico

NMRD Data Center II --Britton, LLC

NM Renewable Development Data Center II, LLC

BOKF, NA
Albuquerque, New Mexico

Ladies and Gentlemen:

We have represented NM Renewable Development Data Center II, LLC (the "Company") in connection with (i) the Lease Agreement dated as of _____, 2019 (the "Agreement") between Torrance County, New Mexico (the "Issuer") and the Company, (ii) the Bond Purchase Agreement (the "Bond Purchase Agreement") dated _____, 2019 among NMRD Data Center II --Britton, LLC (the Purchaser), the Issuer and the Company, pursuant to which the Purchaser has agreed to purchase the Issuer's Taxable Industrial Revenue Bonds (NM Renewable Development Data Center II, LLC Project) Series 2019 in the maximum principal amount of \$60,000,000 to be issued under the Indenture dated as of _____, 2019 (the "Indenture") among the Issuer, the Purchaser, the Company and the Depository, and (iii) the Indenture. We have reviewed executed copies of the Bond Documents (as defined below), and certificates of officers of the Company and public officials and we have made such other investigations of law and fact as we have deemed necessary. The Agreement, the Indenture and the Bond Purchase Agreement are referred to herein as the Bond Documents.

Based upon the foregoing, in our opinion:

1. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware, is duly registered as a foreign limited liability company under the laws of New Mexico and has duly authorized the execution, delivery and performance of the Agreement, the Indenture and the Bond Purchase Agreement.
2. The execution, delivery and performance by the Company of the Agreement, the Indenture and the Bond Purchase Agreement will not conflict with, contravene, violate or constitute a breach of or default under the articles of organization or operating agreement of the Company or any law, rule, regulation, ordinance, or, to our knowledge, based on a certificate of an officer of the Company, any order, consent, decree, agreement or instrument to which the Company is a party or by which it or its properties, including the Project Property as defined in the Lease, is bound.
3. The Agreement, the Indenture and the Bond Purchase Agreement constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally and general principals of equity.

4. All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Company of the Agreement, the Indenture and the Bond Purchase Agreement have been obtained and are in full force and effect.

5. There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to our knowledge, threatened against the Company, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bond or the execution and delivery of any of the Bond Documents, (ii) in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents, or (iii) questions the authority of the Company to lease or operate any of the Project Property, as defined in the Lease.

Very truly yours,

Exhibit C

[Opinion of Counsel to Issuer]

_____, 2019

Torrance County, New Mexico
Estancia, New Mexico

NMRD Data Center II --Britton, LLC

NM Renewable Development Data Center II, LLC

BOKF, NA
Albuquerque, New Mexico

Ladies and Gentlemen:

This opinion is being rendered to you in connection with the issuance by Torrance County, New Mexico (the "Issuer") of its Taxable Industrial Revenue Bond (NM Renewable Development Data Center II, LLC Project) Series 2019 in the maximum principal amount of \$60,000,000 (the "Bonds").

In our opinion:

1. The Issuer is a duly organized and validly existing political subdivision of the State of New Mexico under the Constitution and laws of the State of New Mexico.
2. Ordinance No. 2019-__ was duly adopted by the Torrance County Commission on _____, 2019 (the "Bond Ordinance") in accordance with all applicable laws and has not been repealed or rescinded.
3. To our knowledge and without opining as to the legality, validity or enforceability of the Bond, the Indenture, the Lease Agreement and the Bond Purchase Agreement (all as defined in the Bond Ordinance), the adoption of the Bond Ordinance by the County Commission of the Issuer will not violate any provision of the laws of the State of New Mexico.
4. To our knowledge, no litigation is now pending or threatened against the Issuer which seeks to or does restrain or enjoin the issuance or delivery of the Bonds, or in any manner questions the authority or proceedings for the issuance of the Bonds.

The foregoing opinions are limited to matters involving the law of the State of New Mexico and the Issuer, and we do not express any opinion as to the laws of any other jurisdiction.

Very truly yours,

Exhibit D

[Opinion of Counsel to the Purchaser]

_____, 2019

Torrance County, New Mexico
Estancia, New Mexico

NMRD Data Center II --Britton, LLC

NM Renewable Development Data Center II, LLC

BOKF, NA
Albuquerque, New Mexico

Ladies and Gentlemen:

We have acted as counsel to NMRD Data Center II --Britton, LLC (the "Purchaser") in connection with the Indenture dated as of _____, 2019 (the "Indenture") among BOKF, NA as depository (the "Depository"), Torrance County (the "Issuer"), NM Renewable Development Data Center II, LLC (the "Company") and the Purchaser, and the Bond Purchase Agreement (the "Bond Purchase Agreement") dated _____, 2019 among the Purchaser, the Issuer and the Company, pursuant to which the Purchaser has agreed to purchase the Issuer's Taxable Industrial Revenue Bonds (NM Renewable Development Data Center II, LLC Project) Series 2019 in the maximum principal amount of \$60,000,000 to be issued under the Indenture. The Indenture, the Bond Purchase Agreement, and the Lease Agreement dated as of _____, 2019 between the Company and the Issuer are referred to herein as the "Bond Documents." In connection with this transaction, we have examined executed copies of the Bond Documents, certificates of officers of the Purchaser and certificates of public officials and have made such other investigations of law and fact as we have deemed necessary.

Based upon the foregoing, in our opinion:

1. The Purchaser is a limited liability company duly organized and validly existing and in good standing under the laws of Delaware.
2. The execution, delivery and performance by the Purchaser of the Indenture and the Bond Purchase Agreement will not conflict with, contravene, violate or constitute a breach of or default under the articles of organization or the operating agreement of the Purchaser or any law, rule, regulation, ordinance, or, to our knowledge, based on a certificate of an officer of the Purchaser, any order, consent, decree, agreement or instrument to which the Purchaser is a party or by which it or its property is bound.
3. The Indenture and the Bond Purchase Agreement constitute the legal, valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally and general principals of equity.
4. All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Purchaser of the Indenture and the Bond Purchase Agreement have been obtained and are in full force and effect.

5. There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to our knowledge, threatened against the Purchaser, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents, or (ii) in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents.

This opinion has been delivered at your request for the purposes in connection with the Bond Documents. Without our prior written consent, this opinion is not to be utilized or quoted for any other purpose and no one other than you is entitled to rely thereon.

Very truly yours,

TORRANCE COUNTY, NEW MEXICO,

NMRD DATA CENTER II --BRITTON, LLC
as Purchaser

NM RENEWABLE DEVELOPMENT DATA CENTER II, LLC

and

BOKF, NA,
as Depositary

INDENTURE

Dated as of _____, 2019

Securing

\$60,000,000
Torrance County, New Mexico
Taxable Industrial Revenue Bonds
(NM Renewable Development Data Center II, LLC Project)
Series 2019

TORRANCE COUNTY, NEW MEXICO, a political subdivision existing under the laws of the State of New Mexico (together with its successors and assigns, the “Issuer”) and NMRD DATA CENTER II --BRITTON, LLC, a Delaware limited liability company, (together with its successors and assigns, and transferees of the Bonds (defined below), the “Purchaser”), NM RENEWABLE DEVELOPMENT DATA CENTER II, LLC, a Delaware limited liability company authorized to do business in New Mexico (the “Company”) and BOKF, NA (together with its successors and assigns, the “Depository”), agree:

ARTICLE I - RECITALS

Section 101. The Act. Pursuant to Sections 4-59-1 through 4-59-16, New Mexico Statutes Annotated, 1978 Compilation, as amended (collectively, the “Act”), the Issuer is authorized to acquire, construct and equip certain industrial or commercial projects and to issue industrial revenue bonds to finance such projects and certain related costs. Such bonds are payable by the Issuer solely out of revenue of the leasing of such projects. Such bonds may be further secured by, among other things, a mortgage and lien upon the properties acquired, constructed and equipped as part of the project. Under the Act, a project may include land, buildings, machinery, equipment and other property deemed necessary in connection with such project.

Section 102. Government Proceeding. The Company has presented to the Torrance County Commission, a proposal relating to the issuance of taxable industrial revenue bonds and the development and equipping of a solar power generation facility. The Issuer, by County Commission Ordinance No. _____ adopted on _____, 2019 (the “Ordinance”), authorized, among other matters, (i) the issuance of its Torrance County, New Mexico, Taxable Industrial Revenue Bonds (NM Renewable Development Data Center II, LLC Project), Series 2019 (the “Bonds”), in the principal amount not to exceed \$60,000,000 and substantially in the form of Exhibit A and (ii) the execution and delivery of this Indenture.

Section 103. Indenture; Lien; Collateral Pledge. The Bonds are to be issued under this Indenture (together with any and all amendments and supplements, (this “Indenture”), which constitutes a collateral pledge of the Agreement (defined below).

Section 104. The Agreement. The Issuer has entered into a Lease Agreement (together with any and all amendments and supplements, the “Agreement”), dated as of the date of this Indenture, with the Company under which the Issuer has leased the Project Property to the Company, and the Company has agreed to make rental payments in amounts sufficient to pay the principal of, interest on and redemption price of the Bonds. For the purpose of providing security for the payment of the principal of, interest on and redemption price of the Bonds, the Issuer wishes to assign to the Purchaser certain of its interests in the Agreement but reserving its rights under the Agreement to certain payments, reimbursement for certain costs and expenses, and to give consents and to be indemnified.

ARTICLE II - DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 201. Meanings of Words and Terms. All capitalized words and terms defined in the Agreement have the same meanings when used in this Indenture if not also defined in this Indenture. Defined terms in all Bond Documents have consistent meanings unless otherwise expressed. In addition:

“Acquisition Fund” has the meaning assigned in Section 701.

“Act” has the meaning assigned in Section 101.

“Agreement” has the meaning assigned in Section 104.

“Authorized Company Representative” means any one of the persons at the time designated to act on behalf of the Company in a certificate furnished to the Issuer and the Depository containing the specimen signatures of such persons and signed on behalf of the Company by an officer of the Company.

“Bonds” have the meaning assigned in Section 102.

“Bond Documents” means this Indenture, the Agreement and the Bond Purchase Agreement.

“Bond Fund” has the meaning assigned in Section 602.

“Bond Purchase Agreement” means the Bond Purchase Agreement dated the date of the execution and delivery of this Indenture among the Purchaser, the Issuer and the Company.

“Business Day” means any day that is not a Saturday or Sunday or a day on which banking institutions in the State or in the City in which payment is to be made are authorized or required to close.

“Company” has the meaning assigned in the first paragraph of this Indenture.

“Certificate of Qualified Investor” means the certificate attached hereto as Exhibit E.

“Completion Certificate” means a certificate by the Company certifying that the Project is complete and all costs have been paid for or provisions have been made for their payment, in the form attached hereto as Exhibit D.

“Depository” has the meaning assigned in the first paragraph of this Indenture.

“Event of Default” has the meaning assigned in Section 901.

“Final Maturity Date” means _____, 2044.

“Indenture” has the meaning assigned in Section 103.

“Issue Date” means the date of issuance and delivery of the Bond to the Purchaser.

“Issuer” has the meaning assigned in the first paragraph of this Indenture.

“Ordinance” has the meaning assigned in Section 102.

“Parties” means the Company, the Issuer, the Purchaser and the Depository.

“Party” means any one of the Parties.

“Payment Date” means _____, 20__.

“Payment of the Bonds” means payment in full of the principal of, interest on and redemption price of the Bonds in accordance with their terms and the provisions of this Indenture and payment of all fees and expenses of the Issuer, the Purchaser and the Depository payable by the Company under this Indenture, the Agreement or the Bond Purchase Agreement.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision.

“Project” means the acquisition of the Company’s rights in the Project Site and the acquisition, construction and equipping of a solar power generation facility (including the Project Property) made with the proceeds of the Bonds from time to time for use by the Company.

“Project Property” means (i) the Facility (as defined in the Agreement) and all improvements suitable for use and used thereon, including all equipment and other personal property of any kind whether now owned or hereafter acquired with the proceeds of the Bonds prior to the Completion Date which is subject to depreciation for federal income tax purposes and (ii) any rights of the Company in, or related to, the Project Site now owned or hereafter acquired under easements, agreements or leases assigned to the Issuer.

“Project Site” means the real property in Torrance County, New Mexico described in Exhibit A to the Agreement.

“Record Date” means each _____ while the Bonds are outstanding.

“Related Costs” means expenditures incurred or to be incurred by the Company with respect to the Project, including, without limitation, the acquisition, installation, construction and commissioning of the Project Property.

“State” means the State of New Mexico.

Section 202. Rules of Construction.

(a) The captions and headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

(b) All references in this Indenture to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Indenture unless some other reference is established.

(c) Any inconsistency between the provisions of the Agreement and the provisions of this Indenture will be resolved in favor of the provisions of the Agreement.

Section 203. Bond Not General Obligations of Issuer. Neither the faith and credit nor the taxing power of the State or of any of its political subdivisions, including the Issuer, is pledged to the payment of the principal of, interest on or redemption price of the Bonds. The Bonds will be payable by the Issuer solely out of the Basic Rent, proceeds and receipts and other security pledged hereby. The principal of, interest on and redemption price of the Bonds will never constitute a debt or indebtedness or general obligation of the Issuer within the meaning of any State constitutional provision or statutory limitation. The Bonds will never constitute or give rise to a pecuniary liability of the Issuer or be a charge against its general credit or a charge against the general credit or the taxing powers of the State or any political subdivision thereof.

ARTICLE III- GRANT

Section 301. Assignment and Pledge. In consideration of the purchase of the Bonds by the Purchaser, and in order to secure the payment of the principal of (including, without limitation, all sums

advanced by the Purchaser, with interest thereon, in accordance with the terms of this Indenture and the other Bond Documents (all references in this Indenture to the payment of principal of the Bonds shall include such sums)), interest on and redemption price of the Bonds, and in order to secure the performance by the Issuer of its obligations under this Indenture and the Bonds, the Issuer assigns and pledges to the Purchaser and grants a security interest to the Purchaser in (i) all the Issuer's right, title and interest in and to the Agreement and any other easement, lease, sublease, license, concession or other grant of a possessory or use interest in the Project Property to the extent the Issuer has any interest therein but reserving its rights under the Agreement to payments under Sections 4.14, 5.3(b), 6.2, 6.3, 6.4 and 6.5 of the Agreement, to reimbursement for certain costs and expenses, to receive notices, to give consents and to be indemnified; (ii) the moneys and investments in the Acquisition Fund and the Bond Fund and all reserves payable to the Issuer pursuant to the Agreement or this Indenture (including, without limitation, insurance and eminent domain proceeds) with respect to the Project Property; (iii) all lease rentals, revenues, profits, and receipts receivable by or on behalf of the Issuer from the Project Property and (iv) the Project Property.

Section 302. Release. If (i) the principal of and interest on the Bonds are paid by the Issuer in full to the Bond Fund, as provided for herein, (ii) the Purchaser has received all sums due it under the Bond Documents, and (iii) the Issuer keeps, performs and observes all agreements, covenants and provisions under this Indenture, then all obligations of the Issuer as to the Bonds under this Indenture will terminate, and the Purchaser will cancel and discharge the lien of this Indenture and execute and deliver to the Issuer and the Company such instruments in writing as may be required to evidence such discharge. The Clerk and/or the County Manager of the Issuer are authorized to accept a certificate of the Purchaser, that all principal and interest due on the Bonds has been paid as evidence of the satisfaction of this Indenture.

ARTICLE IV- AUTHORIZATION, FORM, EXECUTION AND DELIVERY OF BONDS

Section 401. Authorization; Authorized Amount of the Bonds. The Bonds are hereby authorized to be issued under this Indenture and secured by this Indenture. The Bonds will be issued as a single fully registered bond without coupons, in the maximum principal amount not to exceed \$60,000,000. The Bonds will be numbered consecutively beginning with R-1. The Bonds may not be issued under this Indenture except in accordance with this Article.

Section 402. Form of Bond. The Bonds will be in substantially the form of Exhibit A. The Bonds will be dated the date of the execution and delivery of this Indenture and will bear interest on Advances made pursuant to Section 702 at the rate of four percent (4%). All interest on the Bonds will be calculated from the date of advance for all periods on the basis of a 360-day year of twelve thirty-day months. Accrued interest shall be payable on the Payment Date, with the outstanding principal amount of the Bonds plus all interest thereon due and payable in full on the Final Maturity Date. Principal and interest, as applicable, will be payable by the Issuer from the Basic Rent received from the Company to the owner of the Bonds on the immediately preceding Record Date upon presentation of the Bonds for cancellation at the offices of the Issuer. All payments will be made in lawful money of the United States.

Section 403. Execution and Delivery; Payment. The Bonds will be signed by the Chairman of the Board of County Commissioners of the Issuer and delivered to the Purchaser on the date of the execution and delivery of this Indenture. Subject to the terms and conditions of the Bond Purchase Agreement, the Purchaser will purchase the Bonds and will pay the purchase price of the Bonds to the Issuer as set forth in Section 701.

Section 404. Registration and Transfer of the Bond. The Company on behalf of the Issuer will cause to be kept at its office a book for the registration and transfer of the Bonds. The registration book will be open to inspection by the Issuer upon advance notice during the Company's normal business hours.

The Bonds, together with the obligation to fund advances thereunder, may be transferred by the Purchaser in whole, but not in part, in person or by duly authorized attorney, in the registration book upon (i) surrender of the Bonds, (ii) delivery of a written transfer instrument, and (iii) compliance with Securities Act of 1933, as amended (the "Federal Securities Act"), and applicable state securities laws as established to the satisfaction of the Issuer, and delivery to the Issuer and the Company of (A) an opinion, in form and substance satisfactory to the Issuer, from legal counsel experienced in securities laws matters, which counsel must be satisfactory to the Issuer, to the effect the transfer complies with the Federal Securities Act and applicable state securities laws and (B) written representations from the transferee, in form and substance satisfactory to the Issuer (including, but not limited to the form of Certificate of Qualified Investor), necessary to establish such compliance all as further set forth in the Bonds form attached as Exhibit A. Such Issuer approval shall be in writing. In the case of a transfer under this Section 404, the Issuer agrees that it will cooperate in delivering a new Bond, registered in the name of the transferee. The person requesting the transfer will pay any tax or fee or other charge imposed on the transfer and will pay the Issuer's expenses in connection therewith. The Issuer may deem and treat the person in whose name the Bond is registered as the absolute owner thereof for the purpose of receiving payment and for all other purposes, and all such payments made to any such registered owner or upon its written order will be valid and effectual to satisfy and discharge the liability upon the Bond, to the extent of the sum or sums paid; and the Issuer will not be affected by any notice to the contrary.

The Issuer acknowledges that the Purchaser may assign its rights to receive payments of principal, interest and any amounts due under the Bonds to any party without the consent of the Issuer.

Section 405. Lost, Stolen, Destroyed and Mutilated Bond. If the Issuer receives satisfactory evidence that any Bonds have been lost, stolen, destroyed or mutilated and receives satisfactory indemnity, and the mutilated Bonds are surrendered and cancelled, then the Issuer will execute and deliver new Bonds. The applicant for new Bonds will pay any charges and expenses in connection with the issuance of the new Bonds. New Bonds issued under this Section will be an original contractual obligation of the Issuer and will be entitled to all of the benefits of this Indenture. The provisions of this Section with respect to the replacement of the lost, stolen, destroyed or mutilated bonds are exclusive.

Section 406. Cancellation and Destruction of the Bonds by Issuer. If the Bonds are delivered to the Issuer for cancellation, the Bonds will be cancelled immediately and destroyed by the Issuer.

Section 407. Application of Payments for Bonds. All payments received by the Issuer under the Agreement with respect to the Bonds will be applied first to accrued interest on the Bonds on the next date for the payment of such interest and, second, to the unpaid principal of the Bonds. If such payments exceed accrued interest on and the unpaid principal of the Bonds, and any other amounts owed, the excess will be paid to the Company. The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of making Bond advances under this Indenture.

ARTICLE V- REDEMPTION

Section 501. Redemption. If the Company gives notice to the Issuer, the Depository and the Purchaser pursuant to Article IX of the Agreement that the Company has elected to cause redemption of the Bonds in full or in part and the Company pays the redemption price, all or such portion of the Bonds will be deemed redeemed by the Issuer on the date indicated in such notice at a redemption price equal to the principal amount to be redeemed plus accrued interest on such principal amount to the redemption date.

If the Company redeems the Bonds in full before the Completion Date, any monies held in the Acquisition Account shall be returned to the Company.

ARTICLE VI- BOND REVENUES AND FUNDS

Section 601. Source of Payment of the Bonds. The Bonds and all payments by the Issuer under this Indenture are not general obligations of the Issuer, and shall never constitute indebtedness of the Issuer, but are the limited, special obligations of the Issuer payable solely from revenues and receipts derived from the leasing of the Project Property under the Agreement and other security pledged to payment of the Bonds under this Indenture. The Project Property has been leased under the Agreement and the Basic Rent is to be remitted by the Company directly to the Purchaser on or before the Payment Date, subject to the rights of offset set forth in Section 5.4(b) of the Agreement. The portion of the Basic Rent necessary to pay amounts owing on the Bonds is to be deposited in the Bond Fund (except for any payments which are satisfied pursuant to the exercise of the right of offset as set forth in Section 5.4(b) of the Agreement). The Basic Rent is sufficient in amount to insure the prompt payment of the principal and accrued interest on the Bonds and the entire amount of the Basic Rent is pledged to the payment of principal and accrued interest on the Bonds.

Section 602. Creation of the Bond Fund, Payments. A fund shall be created for the benefit of Issuer by the Company and designated “NM Renewable Development Data Center II, LLC Project Series 2019 Bond Fund” (the “Bond Fund”). There will be deposited into the Bond Fund, as and when received (i) the Basic Rent (except to the extent offset pursuant to Section 5.4(b) of the Agreement), and (ii) all other moneys required to be deposited into the Bond Fund pursuant to this Indenture and the Agreement. The interest and other income received on investments of the Bond Fund moneys as provided in Section 708 will be retained in the Bond Fund. The Company covenants that so long as the Bonds are outstanding, it will deposit or cause to be deposited solely from the sources stated in Section 601, into the Bond Fund for Issuer’s account, sufficient sums from revenues and receipts from the Project Property promptly to meet and pay the installments of interest, or of principal and interest, as applicable, on the Bond (except to the extent that any payments of principal, interest or redemption price are to be made pursuant to the right of offset set forth in Section 5.4(b) of the Agreement). The Parties acknowledge that Section 4-59-3 NMSA provides that it is not intended that any county itself be authorized to operate any manufacturing, industrial or commercial enterprise under the Act and, accordingly, the Issuer has no intention of taking possession of or operating the Project Property.

Section 603. Use and Custody of the Bond Fund. The moneys in the Bond Fund will be used solely for payment of principal of and interest on the Bonds, except as provided in Sections 604 and 905. The Bond Fund will be in the custody of the Company, and the Company will withdraw sufficient funds from the Bond Fund to pay the installments of principal and interest on the Bonds as due (except to the extent that any payments of principal, interest or redemption price are to be made pursuant to the right of offset set forth in Section 5.4(b) of the Agreement).

Section 604. Repayment to the Company from the Bond Fund. Any amounts remaining in the Bond Fund after actual payment in full of the Bonds, the fees, charges and expenses of the Issuer and the Purchaser, administrative expenses and other amounts required to be paid by the Company under the Agreement will be paid to the Company upon expiration of the Agreement.

Section 605. Investments. Moneys on deposit in the Bond Fund may be invested and reinvested by the Company. Such investments will be deemed at all times to be a part of the Bond Fund. Any interest received on any such investment and any profit realized from such investment will be credited to the Bond Fund. Any loss resulting from any such investment will be charged to the Bond Fund. The Company will use all reasonable efforts to sell at the best price obtainable or present for redemption any

such investment when necessary in order to provide cash to meet any payment or transfer from the Bond Fund.

Section 606. Non-presentment of the Bond. If the Bonds are not presented for payment when the final payment of principal and interest is due, and if there are funds sufficient to make such final payment deposited with the Company, all liability of the Issuer for payment of the Bonds will cease. Interest shall not accrue after the Final Maturity Date. The Purchaser will be restricted to such funds for any claim against the Issuer relating to the Bonds.

Section 607. No Liability. Issuer will not be liable or responsible for any misapplication of funds, loss, liability or expense (or failure to realize profits) with respect to the Bond Fund and Company shall indemnify and hold Issuer harmless from and against all claims, liabilities or whatsoever nature arising from or relating to the Bond Fund or Company's management of the Bond Fund.

ARTICLE VII- ACQUISITION FUND

Section 701. Creation of the Acquisition Fund; Deposits. A fund is hereby created with the Depository and designated "NM Renewable Development Data Center II, LLC Project Series 2019 Acquisition Fund." Subject to the terms of the Bond Purchase Agreement, the Purchaser will purchase the Bonds on the date of execution and delivery of the Indenture and will pay the purchase price of the Bonds through the Advances described in Section 702. The proceeds of the sale of the Bonds, the interest and other income received on investments of the Acquisition Fund moneys as provided in Section 708 will be retained in the Acquisition Fund. The moneys in the Acquisition Fund will be held by the Depository and will be applied to the payment of Related Costs and, pending such application, will be subject to a lien in favor of the Purchaser or its assignee to secure payment of principal and accrued interest on the Bonds. The Acquisition Fund will be in the custody of the Depository, and the Depository is authorized and directed to wire from or issue checks on the Acquisition Fund for the payment of Related Costs pursuant to Section 702.

Section 702. Disbursements. The Company may request Advances from time to time to finance the Project (each, an "Advance") by delivery of a Requisition Notice to the Purchaser and the Depository in the form attached hereto as Exhibit C (the "Requisition Notice"). On or before the fifth business day following receipt of the Requisition Notice from the Company requesting an Advance, so long as no Event of Default has occurred and is continuing, the Purchaser will pay or cause to be paid the amount of the Advance requested in such Requisition Notice to the Depository for deposit in the Acquisition Fund, provided, however, that the aggregate amount of such Advances shall not exceed \$60,000,000. The Depository will make payments of Related Costs from the Acquisition Fund not later than the business day following the date of receipt of payment of the amount of the Advance from Purchaser, provided that immediately available funds are on deposit therein. The records of the Depository will be conclusive as to the aggregate amount of advances requested and made, absent manifest error. The Purchaser is authorized to endorse on the schedule attached to the Bonds the date and amount of each such advance. Failure to make any such endorsement or any error in such endorsement will not affect the rights or obligations of any of the Parties on or with respect to the Bonds. The Requisition Notice signed by an Authorized Company Representative shall state to whom the payment is to be made, the general purpose for which the obligation to be paid was incurred, and that:

(a) obligations in the stated amounts were incurred for Related Costs and are due and payable (or, if the Company is indicated as the payee, were duly paid by the Company) and that each item is a proper charge against the Acquisition Fund and has not been the subject of a previous withdrawal from the Acquisition Fund; and

(b) to the best knowledge of such Authorized Company Representative there has not been filed with or served upon the Issuer or the Company notice of any lien, right or attachment upon, or claim, other than such lien, right, attachment or claim as are filed or made in the ordinary course of constructing and operating the Project, affecting the right of any such payees to receive payment of, the respective amounts stated in such requisition which has not been released or will not be released simultaneously with the payment of such obligation; and

(c) with respect to any item for payment for labor or to contractors, builders or materialmen, (i) the obligations stated have been properly incurred, (ii) such work was actually performed or such materials or supplies were actually furnished or installed in or about the Project, and (iii) either such materials or supplies are not subject to any lien or security interest or any such lien or security interest will be released or discharged upon payment of the requisition.

Section 703. Records. The Depositary will keep and maintain all Requisition Notices and adequate records pertaining to the Acquisition Fund, and payments made therefrom, which will be open to inspection by the Issuer, the Purchaser, the Company, or their agents, upon advance notice, during normal business hours.

Section 704. Depositary May Rely on Requisitions. All writings, requisitions and certificates received by the Depositary as conditions of payment from the Acquisition Fund, and which are proper and complete on their face, may be conclusively relied upon by the Depositary and will be retained by the Depositary, subject at all reasonable times, upon advance notice, to examination by the other Parties and their respective agents and representatives.

Section 705. Status Reports. At least annually, the Depositary will make a written report covering all receipts and moneys then on deposit in the Acquisition Fund, and will report any investments of such moneys and all transfers and disbursements of such moneys as of and for the preceding year. The reports will be prepared in conformity with the provisions of this Indenture, and copies of each report will be filed with the Purchaser, the Company, and, if requested by the Issuer, with the Issuer, not later than the fifteenth day of the month following the year covered by the report.

Section 706. Completion Date. Upon receipt of a certificate substantially in the form of Exhibit D signed by an Authorized Company Representative establishing the Construction Completion Date, as established in Section 4.4 of the Agreement, the Depositary will set aside in the Acquisition Fund the moneys necessary for the payment of the Related Costs incurred by the Company but not then due or payable as set forth in such certificate, and then will transfer any other moneys remaining in the Acquisition Fund to the Company or its assignee.

Section 707. Payment on Acceleration. If the Purchaser declares the unpaid principal of and accrued interest on the Bond to be immediately due and payable pursuant to Section 902(a), the Depositary will promptly, upon receipt of notice of such declaration from the Purchaser or its assignee, return all moneys then held for the credit of the Acquisition Fund in accordance with Section 905 to the Purchaser or its assignee for application to the unpaid principal of and accrued interest on the Bonds.

Section 708. Investments. Moneys on deposit in the Acquisition Fund may be invested and reinvested by the Depositary, at the written direction of an Authorized Company Representative. Such investments will be deemed at all times to be a part of the Acquisition Fund. Any interest received on any such investment and any profit realized from such investment will be credited to the Acquisition Fund. Any loss resulting from any such investment will be charged to the Acquisition Fund. The Depositary will use all reasonable efforts to sell at the best price obtainable or present for redemption any such investment when necessary in order to provide cash to meet any payment or transfer from the Acquisition Fund. Neither the

Depository nor the Issuer will be responsible for any loss, liability or expense (or failure to realize profits) resulting from any such investment. The Depository may make any such investment through its own or its affiliated bond or investment department, unless otherwise directed in writing by an Authorized Company Representative.

Section 709. No Liability. Issuer will not be liable or responsible for any misapplication of funds, loss, liability or expense (or failure to realize profits) with respect to the Acquisition Fund and the Company shall indemnify and hold Issuer harmless from and against all claims, liabilities or whatsoever nature arising from or relating to the Acquisition Fund or the Company's management of the Acquisition Fund.

ARTICLE VIII- PARTICULAR COVENANTS AND PROVISIONS

Section 801. Extent of Covenants; Disclaimer of Liability. It is expressly made a condition of this Indenture that any covenants, stipulations, obligations, representations or agreements herein contained or contained in the Bonds or this Indenture do not and will never give rise to a personal or pecuniary liability of any present or future officer, employee or agent of the Issuer, or be a charge against the general credit or taxing powers of the Issuer, and in the event of a breach of such covenant; stipulation, obligation, representation or agreement, no personal or pecuniary liability of any present or future officer, employee or agent of the Issuer, or charge payable by the Issuer directly or indirectly from the revenues of the Issuer, other than the Basic Rent, will arise therefrom. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR OF ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE ISSUER, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, INTEREST ON OR REDEMPTION PRICE OF THE BONDS. THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE OF THE BONDS WILL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OR GENERAL OBLIGATION OF THE ISSUER WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR STATUTES OF THE STATE. THE BONDS OR THIS INDENTURE WILL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE STATE, ANY OF ITS POLITICAL SUBDIVISIONS OR OF THE ISSUER OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS. NONE OF THE PROVISIONS OF THIS INDENTURE SHALL REQUIRE THE ISSUER TO EXPEND OR RISK ITS OWN FUNDS OR TO OTHERWISE INCUR FINANCIAL LIABILITY IN THE PERFORMANCE OF ANY OF ITS DUTIES OR IN THE EXERCISE OF ANY OF ITS RIGHTS OR POWERS HEREUNDER.

Section 802. Performance; Authority. The Issuer covenants that it will faithfully perform all covenants and provisions contained in this Indenture and in the Bonds. The Issuer represents that it is duly authorized under the Constitution and laws of the State of New Mexico, including the Act, to issue the Bonds, to execute and deliver this Indenture, to grant a security interest in the property described in this Indenture, to pledge the rentals and other revenues described in this Indenture and that it has, to its knowledge, taken all actions required on its part for the issuance of the Bond, and for the execution and delivery of this Indenture and the Agreement.

Section 803. Obligations Under the Agreement. The Issuer: (i) will perform all of its obligations under the Agreement; (ii) will not execute or agree to any change, amendment or modification of or supplement to the Agreement except in accordance with the provisions thereof and Section 1101 of this Indenture; and (iii) will not agree to any abatement, reduction or diminution of the Basic Rent without the written approval of the Purchaser. The parties acknowledge that the Issuer has no obligation to enforce the Agreement but any actions taken by the Issuer to enforce the Agreement shall be at the expense of the Company.

Section 804. Use and Possession by the Company. So long as not otherwise provided in this Indenture or the Agreement, the Company will be permitted to possess, use and enjoy the Project Property so as to carry out its obligations under the Agreement.

Section 805. Instruments of Further Assurance. The Issuer will, at the expense of the Company or the Purchaser, execute, acknowledge, deliver and perform such supplemental indentures or such further acts, instruments, documents and transfers as the Depository or the Purchaser may reasonably require for better assuring, transferring, mortgaging and pledging unto the Depository or the Purchaser all the property and revenues and receipts pledged to the payment of the Bond under this Indenture.

Section 806. Recording of Indenture. Supplemental Indentures and Other Documents. The Company will cause this Indenture, the Agreement, and all supplements to this Indenture and the Agreement, as well as all security instruments, financing statements, continuation statements and any other instruments as may be required, to be recorded or filed in such manner and places as required to fully preserve and protect the security of the Purchaser and the rights of the Depository, including recording in the real estate records of Torrance County, New Mexico. The Depository will have no responsibility to make any such filings except for filings as the Company may from time to time request, and the Issuer will have no responsibility to make any such filings.

ARTICLE IX- EVENTS OF DEFAULT AND REMEDIES

Section 901. Events of Default. Each of the following events is an “Event of Default:”

(a) Failure to pay any installment of principal or interest due under the Bonds when due and such failure continues unremedied for a period of 30 days after the provision by the Issuer or the Purchaser of written notice of non-payment;

(b) An Event of Default under the Agreement or any other Bond Document (other than this Indenture) occurs and is continuing;

(c) The Company fails to perform any covenant contained in this Indenture or the Bond Documents, other than as specified in subsections (a) and (b) above, and such failure is not cured within 30 days after receipt by the Company of the written notice of such failure unless the Purchaser shall agree in writing to the extension of such time prior to its expiration.

Section 902. Remedies on Events of Default. Upon the occurrence of an Event of Default, the Purchaser will have the following rights and remedies:

(a) **Acceleration.** The Purchaser or its assignee may, by written notice given to the other Parties, declare the principal amount of the Bond outstanding to be immediately due and payable and principal and interest thereon will become immediately due and payable; provided, however, that the Purchaser or its assignee, by written notice to the other Parties, may annul such declaration and destroy its effects and waive any such default: (i) if all covenants, conditions and agreements with respect to which such default shall have been made shall be fully performed, (ii) all arrears shall have been paid on any installment of interest and principal which has been theretofore due, plus (to the extent permitted by law) interest thereon from the due dates, and (iii) all reasonable charges and expenses of the Issuer, the Purchaser, the Depository and their agents and counsel shall have been paid or provided for. Any such declaration that the Bond is due and payable will be deemed to be a redemption of the Bond; and

(b) **Suit for Judgment on the Bonds.** The Purchaser will be entitled to sue either for the specific enforcement of any covenant or agreement contained herein, or in any of the Bond Documents, or

in and of the execution of any power herein granted and/or for and recover judgment, either before or after or during the pendency of any proceedings for the enforcement of the lien of this Indenture or for the enforcement of any of its rights, but any such judgment against the Issuer will be enforceable only against the funds and accounts related to and held under this Indenture for the Bonds. There will not be authorized any deficiency judgment against the Issuer. No recovery of any judgment by the Purchaser will in any manner or to any extent affect the lien of this Indenture or any rights, powers or remedies of the Purchaser hereunder, but such lien, rights, powers and remedies of the Purchaser will continue unimpaired; and

(c) **Enforcement of Rights Under Agreement.** The Purchaser or its assignee may, as assignee of specified interests of the Issuer in the Agreement, enforce any remedy available to the Issuer under the Agreement (except the remedies of the Issuer pursuant to Section 8.3 of the Agreement) and under any other lease, sublease, license or other grant of a possessory or use interest in the Project Property.

No right or remedy confirmed on any Party hereunder is intended to be exclusive of any other right or remedy confirmed on such Party hereunder, but each and every such right or remedy will be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute; provided, that the remedy of Purchaser in respect of an Event of Default or other breach hereunder or any other Bond Document shall be limited in all cases to those expressly provided in Section 902.

Section 903. Rights and Remedies of Purchaser. The Purchaser will not have the right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust related thereto or for the appointment of a receiver or any other remedy hereunder, unless an Event of Default has occurred and is continuing of which the Company has been notified, it being understood and intended that the Purchaser will not have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its actions or to enforce any right hereunder except in the manner herein provided. Nothing in this Indenture will, however, affect or impair the right of the Purchaser to enforce the payment of the principal of and interest on the Bond, when due or at and after the maturity thereof, or the obligation of the Issuer to pay the principal and interest on the Bonds at the time and place and from the revenues provided in this Indenture or in the Bonds.

Section 904. Issuer and Depositary Not Responsible. Neither the Issuer nor the Depositary has any responsibility or right to act on behalf of the Purchaser with respect to any Event of Default. All rights and remedies arising from or related to any Event of Default are solely the rights and remedies of the Purchaser; provided that, upon request and at the expense of the Purchaser, the Issuer will cooperate with the Purchaser in the lawful enforcement of such rights and remedies upon receipt of indemnity satisfactory to the Issuer in the Issuer's sole discretion against any out-of-pocket costs and expenses incurred by the Issuer in its sole discretion (including any counsel fees and expenses) or liability the Issuer may incur or suffer as a result of or in connection with such cooperation.

Section 905. Application of Moneys. All moneys received by the Issuer or the Purchaser pursuant to any right given or action taken under the provisions of this Article will, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities, and expenses incurred or made by the Issuer and the Purchaser, will be applied first to pay the fees and expenses of the Issuer and the Depositary; then to the payment of charges due the Purchaser pursuant to the Bond Documents, and then to the payment of interest and principal due and unpaid on the Bonds. Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys will be applied at such times, and from time to time, as the Issuer will determine.

Whenever the Bonds and interest thereon have been paid under the provisions of this Section and all expenses and charges of and payments due to the Purchaser, the Issuer and the Depositary (and their

respective counsel and agents) under this Indenture and the Agreement have been paid, any balance remaining will be paid to the Company or its assignee as provided in Section 604.

Section 906. Purchaser to File Proofs of Claim. In the case of any insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceedings affecting the Project Property or the Company, the Purchaser and the Issuer will, to the extent permitted by law, be entitled to file such proofs of claims and other documents as may be necessary or advisable in order to have claims of the Purchaser or the Issuer, respectively, allowed in such proceedings for the entire amount due and payable by the Issuer, or by the Company, as the case may be, under the Indenture or the Agreement, at the date of the institution of such proceedings and for any additional amounts which may become due and payable after such date.

Section 907. Delay or Omission; No Waiver. No delay or omission of the Purchaser to exercise any right or power accruing upon any Event of Default will exhaust or impair any such right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence therein; and every power and remedy given by this Indenture to the Purchaser may be exercised from time to time and as often as may be deemed expedient by the Purchaser.

Section 908. No Waiver of One Default to Affect Another. No waiver of any Event of Default by the Purchaser will extend to or affect any subsequent or any other then existing Event of Default or shall impair any rights or remedies consequent thereon.

Section 909. Discontinuance of Proceedings on Default; Position of Parties Restored. In case the Purchaser shall have proceeded to enforce any right under this Indenture by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Purchaser, then and in every such case the Issuer and Purchaser will be restored to their former positions and rights under this Indenture with respect to the Project Property and all rights, remedies, and powers of the Purchaser will continue as if no such proceedings had been taken.

Section 910. Waivers of Events of Default. The Purchaser may, in its discretion, waive any Event of Default and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds. In case of any such waiver or rescission, or in case any proceeding taken by the Purchaser on account of any such Event of Default shall have been discontinued or abandoned or determined adversely to the Purchaser, then in every such case the Issuer and the Purchaser shall be restored to their former respective positions and rights hereunder, and the Event of Default which was waived will be considered to be cured, but no waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

ARTICLE X-THE DEPOSITARY

Section 1001. Acceptance of Duties. The Depositary accepts the duties imposed on it by this Indenture, but only on the following express terms and conditions:

(a) The Depositary undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations will be read into this Indenture against the Depositary.

(b) In the absence of negligence or willful misconduct on its part, the Depositary may conclusively rely on certificates or notices furnished to the Depositary and conforming to the requirements of this Indenture or the Agreement, as the case may be; but if any such certificates or notices are specifically required to be furnished to the Depositary under this Indenture or the Agreement, the Depositary will

examine the same to determine whether they conform to the requirements of this Indenture or the Agreement, as the case may be.

(c) The Company hereby indemnifies and holds harmless the Depositary from and against any and all loss, liability, cost, damage and expense, including, without limitation, reasonable counsel fees, which the Depositary may suffer or incur by reason of any action, claim or proceeding brought against the Depositary arising out of or relating in any way to this Indenture or any transaction to which the Indenture relates unless such action, claim or proceeding is the result of the negligence or willful misconduct of the Depositary. The indemnification shall survive the resignation, removal and termination of the Depositary. No provision of this Indenture will be construed to relieve the Depositary from liability for its own negligence or willful misconduct.

(d) The Depositary may consult with counsel and other professionals and the advice of such counsel and other professionals shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Depositary hereunder in good faith and in reliance thereon.

(e) The Depositary shall be under no obligation to take any action or exercise any right or power under the Indenture unless the Company shall first have provided to the Depositary, its directors, officers, agents and employees, security or indemnity satisfactory to the Depositary against the costs (including without limitation reasonable fees of attorneys), expenses and liabilities that might be incurred by the Depositary in connection herewith.

Section 1002. Compensation. The Company will pay directly to the Depositary its reasonable fees and charges and all of its reasonable expenses (including reasonable counsel fees and expenses).

Section 1003. Qualification. The Depositary must be an association or a corporation organized and doing business under the laws of the United States of America or of any state and be subject to supervision or examination by federal or state banking authorities. If at any time the Depositary ceases to be eligible in accordance with the provisions of this Section 1003, it will resign immediately in the manner and with the effect specified in Section 1004.

Section 1004. Resignation and Removal.

(a) No resignation or removal of the Depositary and no appointment of a successor Depositary will become effective until the acceptance of appointment by the successor Depositary under Section 1005.

(b) The Depositary may resign at any time upon 10 business days' written notice to the other Parties. If an instrument of acceptance by a successor Depositary has not been delivered to the retiring Depositary within 30 days after the giving of such notice of resignation, the retiring Depositary may petition any court of competent jurisdiction for the appointment of a successor Depositary.

(c) The Depositary may be removed at any time by the Company upon 10 business days' written notice to the other Parties.

(d) The Depositary will be automatically removed on the occurrence of the Completion Date of the Project and the application of all moneys on deposit in the Acquisition Fund as provided in Section 706. No successor Depositary will thereafter be appointed and each reference to the Depositary in this Indenture and the Agreement will thereafter be ineffective.

(e) If the Depositary resigns or is removed (except as provided in subsection (d) of this Section 1004), the Company will promptly appoint a successor Depositary and give written notice of such appointment to the Issuer, the Purchaser and the retiring or removed Depositary.

Section 1005. Successor Depositary.

(a) Every successor Depositary appointed under this Indenture will execute, acknowledge and deliver to its predecessor and the other Parties an instrument accepting such appointment, and thereupon such successor Depositary, without any further act, will become fully vested with all the rights, and be subject to all the obligations, of its predecessor; but such predecessor will, nevertheless, on the request of its successor, the Issuer, the Company or the Purchaser execute and deliver an instrument transferring to such successor Depositary all the rights of such predecessor under this Indenture. Every predecessor will deliver all property, including all records relating hereto, and moneys held by it under this Indenture to its successor. The Issuer and the Purchaser will execute, acknowledge and deliver any instrument, satisfactory to each of them, required by any successor Depositary to more fully and certainly vest in such Depositary the rights vested in the predecessor Depositary by this Indenture.

(b) Notwithstanding any of the foregoing provisions of this Article, any Person qualified to act as Depositary under this Indenture with or into which the Person acting as Depositary may be merged or consolidated, or to which the assets and business of such Person may be sold, will automatically become the successor Depositary.

ARTICLE XI-SUPPLEMENTS AND AMENDMENTS TO INDENTURE

Section 1101. Other Supplemental Indentures. This Indenture may be supplemented or amended only by one or more instruments executed by the Issuer, the Purchaser and the Depositary.

Section 1102. Consent of the Company. Any supplemental indenture affecting the rights of the Company will not be effective unless and until the Company shall have consented in writing to the execution and delivery of such supplemental indenture.

ARTICLE XII- MISCELLANEOUS PROVISIONS

Section 1201. Notices. Any notice, demand, direction, request, consent, report or other instrument authorized or required by any of the Bond Documents to be executed, given or filed (excluding Uniform Commercial Code filings, recordings and other governmental filings) will be in writing and will be deemed to have been sufficiently given or filed for all purposes of the Bond Documents when delivered by hand delivery or on the third Business Day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

- If to the Issuer: Torrance County, New Mexico
205 S Ninth Street
Estancia, New Mexico 87016

- If to the Purchaser: NMRD Data Center II --Britton, LLC
c/o NM Renewable Development Data Center II, LLC

- If to the Company: NM Renewable Development Data Center II, LLC

If to the Depository: BOKF, NA
Attn: Cindy Mitchell
100 Sun Avenue NW, Suite 500
Albuquerque, New Mexico 87109

Any Party may, by notice to each of the other Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent. Receipt by the Issuer, the Company and the Depository of a notice from a transferee of the Bond will constitute notice of such a different address for the Purchaser.

Section 1202. Remedies. No right or remedy conferred on any Party in any of the Bond Documents is intended to be exclusive of any other right or remedy conferred on such Party in any of the Bond Documents. Each such right or remedy is in addition to every other right or remedy provided in any of the Bond Documents, or any other applicable agreement or contract; provided, that the remedy of the Issuer or the Purchaser in respect of an Event of Default or other breach hereunder or any other Bond Document shall be limited in all cases to those expressly provided in Section 902 hereunder or Article VIII of the Agreement, as the case may be. No delay or omission of any Party to exercise any such right or remedy will impair any such right or remedy or be construed to be a waiver. Every such right or remedy may be exercised from time to time and as often as the relevant Party may deem expedient. No waiver by any Party of any right or remedy with respect to any default or Event of Default will extend to or affect any other existing or subsequent default or Event of Default.

Section 1203. Beneficiaries. Nothing in any of the Bond Documents expressed or implied is intended or is to be construed to confer upon any Person other than the Parties any right, remedy or claim, legal or equitable.

Section 1204. Severability. In case any one or more of the provisions of any of the Bond Documents or of the Bonds are for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of any of the Bond Documents or of the Bonds, but the Bond Documents and the Bonds will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the any Party contained in any of the Bond Documents or the Bonds is for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of such Party to the full extent permitted by law.

Section 1205. Obligations of Issuer Not Obligations of Officials Individually. No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bonds will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 1206. Payments Due on Days That Are Not Business Days. If the date for any payment called for under any of the Bond Documents or the Bonds is not a Business Day, then such payment will be made on the next Business Day and no interest on such payment will accrue for the period after the scheduled date for such payment.

Section 1207. Limitation of Issuer's Liability. No agreements or provisions contained in any Bond Document nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of Bond proceeds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer, its officers, employees, agents or members of its governing body or constitute a charge against

the Issuer's general credit, or obligate the Issuer financially in any way, except with respect to the Basic Rent, and its application as provided under this Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in any Bond Document or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officers and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the Basic Rent. Without limiting the requirement to perform its duties or exercise its rights and powers under the Bond Documents upon receipt of appropriate indemnity or payment, none of the provisions of any Bond Document will require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under any Bond Document.

Section 1208. Successors. Wherever a Party is referred to in this Indenture, it shall be deemed to include its successors, and all covenants and agreements in this Indenture will bind and inure to the benefit of the such Party's successors.

Section 1209. Title, Headings. The title and headings of the articles, sections and subdivisions of this Indenture have been used for convenience only and will not modify or restrict any of the terms or provisions of this Indenture.

Section 1210. Consents and Approvals. In any action requiring the consent or approval of a party to this Indenture, such consent or approval will not be unreasonably withheld.

Section 1211. Execution in Counterparts. Each of the Bond Documents may be executed in multiple counterparts, all of which taken together will constitute one instrument. Any Party may execute any of the Bond Documents by executing any such counterpart of such Bond Document.

Section 1212. Applicable Law. The validity, construction and effect of each of the Bond Documents will be governed by and construed in accordance with the laws of the State applicable to agreements made and to be performed in the State of New Mexico.

[Remainder of Page Intentionally Left Blank]

DATED AS OF _____, 2019.

(SEAL)

BOARD OF COUNTY COMMISSIONERS,
TORRANCE COUNTY, NEW MEXICO

Attest:

County Clerk

By _____
Its Chair

STATE OF NEW MEXICO)
)
COUNTY OF TORRANCE)

This instrument was acknowledged before me on this _____ day of _____, 2019, by _____, as Chair of the Torrance County Board of County Commissioners, governing body of Torrance County, a political subdivision of the State of New Mexico.

Notary Public

My Commission Expires: _____

(Signature Page for Indenture)

BOKF, NA
as Depository

By: _____
Name: _____
Its: _____

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

_____ This instrument was acknowledged before me on _____, 2018, by _____ as
_____ of BOKF, NA.

Notary Public

My commission expires:

(Signature Page for Indenture)

EXHIBIT A
THIS BOND IS TRANSFERABLE ONLY UPON COMPLIANCE
WITH THE RESTRICTIVE TERMS PROVIDED BELOW

No. R-1

Up to \$60,000,000

United States of America
State of New Mexico

Torrance County, New Mexico
Taxable Industrial Revenue Bonds
(NM Renewable Development Data Center II, LLC Project)
Series 2019

Registered Owner: NMRD DATA CENTER II --BRITTON, LLC

FINAL MATURITY DATE	INTEREST RATE	ISSUE DATE
_____, 2044	4%	_____, 2019

Torrance County, a political subdivision of the State of New Mexico existing under the Constitution and laws of the State of New Mexico (the "Issuer"), for value received, promises to pay, solely from the sources described below, to NMRD DATA CENTER II --BRITTON, LLC (together with its successors and assigns, and transferees as permitted below, the "Purchaser") Sixty Million Dollars (\$60,000,000) (subject to prior optional redemption as described below) or so much of such amount as has been advanced by the Purchaser and is outstanding and to pay, solely from such sources, to the Purchaser, interest on principal amounts advanced with respect to this Bond from the dates of such Advances at the Interest Rate specified above (computed on the basis of a 360-day year consisting of twelve 30-day months) until payment of such principal amount. Accrued interest in the amount of four (4%) of the outstanding principal amount of the Bonds shall be payable on the Payment Date, with the outstanding principal amount of the Bonds due and payable in full on the Final Maturity Date.

This Bond is issued under and pursuant to the Constitution and laws of the State of New Mexico, particularly Sections 4-59-1 to 4-59-16, NMSA 1978, as amended, and under and pursuant to Ordinance No. _____ duly adopted by the Issuer on _____, 2019.

The principal of, interest on and redemption price of this Bond are payable solely from Basic Rent derived by the Issuer from the Lease Agreement dated as of _____, 2019 (the "Agreement") between the Issuer and NM Renewable Development Data Center II, LLC (the "Company"), which has been pledged and assigned by the Issuer to the Purchaser under the Indenture, dated as of _____, 2019 (together with any amendments and supplements, the "Indenture") among the Issuer, the Purchaser, the Company and BOKF, NA, as Depositary (the "Depositary").

Reference is made to the Indenture and the Agreement for the provisions, among others, with respect to the custody and application of the proceeds of the sale of this Bond, the collection and disposition of income and other revenues, a description of the account charged with and pledged to the payment of the principal of, interest on and redemption price of this Bond, the nature and extent of the security, the terms and conditions under which this Bond is issued and amounts are to be advanced with respect to this Bond by the Purchaser, and the rights, duties and obligations of the Issuer, the Company, the Purchaser and the Depository.

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW MEXICO OR OF ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE ISSUER, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, INTEREST ON OR REDEMPTION PRICE OF THIS BOND. THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE OF THIS BOND WILL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR STATUTES OF THE STATE OF NEW MEXICO. THIS BOND WILL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE STATE OF NEW MEXICO, ANY OF ITS POLITICAL SUBDIVISIONS OR OF THE ISSUER OR A CHARGE AGAINST THEIR GENERAL CREDIT OR TAXING POWERS.

This Bond may be called for redemption as provided in the Indenture, at the option of the Company as a whole or in part on any date selected by the Company, at a redemption price equal to the principal amount to be redeemed plus interest accrued on such principal amount to the redemption date.

If an Event of Default (as defined in the Indenture) occurs, the Purchaser may cause the then unpaid principal amount of this Bond and all accrued interest to be immediately due and payable as provided in the Indenture. Neither the Issuer nor the Depository has any right or responsibility to act on behalf of the Purchaser with respect to any Event of Default.

This Bond may be transferred in whole but not in part. SUBJECT TO THE LAST PARAGRAPH OF SECTION 404 OF THE INDENTURE AND NOTWITHSTANDING ANY PROVISION OF THIS BOND TO THE CONTRARY, NEITHER THIS BOND NOR ANY INTEREST IN THIS BOND MAY BE, DIRECTLY OR INDIRECTLY, OFFERED, SOLD, HYPOTHECATED, ENCUMBERED OR OTHERWISE TRANSFERRED OR DISPOSED OF (INDIVIDUALLY AND COLLECTIVELY, A "TRANSFER") EXCEPT IN COMPLIANCE WITH SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND APPLICABLE STATE SECURITIES LAWS AS ESTABLISHED TO THE SATISFACTION OF THE ISSUER, AND ANY SUCH PURPORTED TRANSFER OF THIS BOND WILL NOT BE EFFECTIVE UNLESS THE TRANSFEROR PROVIDES TO THE ISSUER, THE DEPOSITARY AND THE COMPANY (A) AN OPINION, IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, FROM LEGAL COUNSEL EXPERIENCED IN SECURITIES LAWS MATTERS, WHICH COUNSEL MUST BE SATISFACTORY TO THE ISSUER, TO THE EFFECT THE TRANSFER COMPLIES WITH THE ACT AND APPLICABLE STATE SECURITIES LAWS AND (B) WRITTEN REPRESENTATIONS FROM THE TRANSFEREE, IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, NECESSARY TO ESTABLISH SUCH COMPLIANCE.

All acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this Bond and the execution of the Indenture have happened, exist and have been performed as so required.

The validity, construction and performance of this Bond are governed by the law of New Mexico applicable to agreements made and to be performed in New Mexico.

TORRANCE COUNTY, NEW MEXICO

By: _____
Chair, Torrance County
Board of County Commissioners

Attest

Torrance County Clerk

(Seal)

SCHEDULE OF ADVANCES AND PAYMENTS

<u>Date</u>	<u>Amount Of Advance</u>	<u>Amount of Principal Payment or Redemption</u>	<u>Resulting Principal Amount</u>	<u>Notation Made By</u>
-------------	------------------------------	--	---	-----------------------------

EXHIBIT B
PROJECT SITE

Project Site:

The remainder of the Tract designated "3-B" located within the North Half (N1/2) of Section Eight (8) and the Southeast Quarter (SE1/4) of Section Five (5), Township Nine (9) North, Range Eight (8) East, NMPM Torrance County that is not located within the City of Moriarty

AND

The remainder of the Tr 3-A within N1/2 Sec 8 and SE1/4 Sec 5, Township 9 North, Range 8 East NMPM Torrance County that is not located within the City of Moriarty

AND

Tr. A-2, Lands/Current & A-1-A, Lands/Burson, Section 9, Township 9 North, Range 8 East. NMPM Torrance County

EXHIBIT C
REQUISITION AND CERTIFICATE NO.

To: NMRD Data Center II --Britton, LLC, as Purchaser
BOKF, NA, as Depositary

The undersigned, pursuant to the Indenture dated as of _____, 2019 (the "Indenture"), among Torrance County, New Mexico (the "Issuer"), NMRD Data Center II --Britton, LLC (the "Purchaser"), NM Renewable Development Data Center II, LLC (the "Company") and BOKF, NA (the Depositary"), requests on behalf of the Company, the disbursement of \$ _____ from the Acquisition Fund (as defined in the Indenture) to pay the following costs and expenses (or to reimburse the Company for payment of such costs and expenses) related to the Project (as defined in the Indenture) or to the issuance of the Bonds (as defined in the Indenture):

<u>Amount</u>	<u>General Classification Of Expenditure</u>	<u>Payee</u>
\$		
Amount of this requisition:	\$ _____	

The undersigned certifies that:

(1) obligations in the stated amounts were incurred for Related Costs (as defined in the Indenture) and are due and payable (or, if the Company is indicated as the Payee, were duly paid by the Company) and that each item is a proper charge against the Acquisition Fund and has not been the subject of a previous withdrawal from the Acquisition Fund; and

(2) to the best knowledge of the undersigned there has not been filed with or served upon the Issuer or the Company notice of any lien, right or attachment upon, or claim affecting the right of any such payee to receive payment of, the respective amounts stated in such requisition which has not been released or will not be released simultaneously with the payment of such obligation; and

(3) with respect to any item for payment for labor or to contractors, builders or materialmen, (i) the obligations stated have been properly incurred, (ii) such work was actually performed or such materials or supplies were actually furnished or installed in or about the Project, and (iii) either such materials or supplies are not subject to any lien or security interest or any such lien or security interest will be released or discharged upon payment of this requisition.

DATED: _____

NM RENEWABLE DEVELOPMENT DATA CENTER
II, LLC

By _____
Name: _____
Title: _____
Authorized Company Representative

**EXHIBIT D
COMPLETION CERTIFICATE**

The undersigned Authorized Company Representative, pursuant to Section 706 of the Indenture, dated as of _____, 2019 (the "Indenture"), among Torrance County, New Mexico, NMRD Data Center II --Britton, LLC, as Purchaser, NM Renewable Development Data Center II, LLC (the "Company") and BOKF, NA, as Depositary, states that, except for specified amounts remaining in the Acquisition Fund for any specified Related Costs as described in Appendix A hereto incurred by the Company, but not now due and payable, the Project is complete and all costs of labor, services, materials and supplies in connection with the Project Property have been paid for or provisions have been made for their payment. After the transfer of remaining moneys in the Acquisition Fund to the Company pursuant to Section 706 of the Indenture, the Company will have sole responsibility for the payment of any Related Cost in excess of the amount specified to be retained in the Acquisition Fund.

Moneys set aside for payment of pending expenses equal \$ _____
and total disbursements equal \$ _____

DATED: _____, _____

NM RENEWABLE DEVELOPMENT DATA CENTER
II, LLC

By _____
Name: _____
Title: _____
Authorized Company Representative

EXHIBIT E
CERTIFICATE OF QUALIFIED INVESTOR

Torrance County, New Mexico

BOKF, NA, as Depository

NM Renewable Development Data Center II, LLC

Re: Torrance County, New Mexico
Taxable Industrial Revenue Bonds
(NM Renewable Development Data Center II, LLC Project), Series 2019

Please be advised that the undersigned is purchasing the captioned Bonds (hereinafter referred to as the "Bonds"). Such purchase is for the account of the undersigned, for the purpose of investment and not with a present intent for distribution or resale. In the event that the undersigned transfers such Bonds, the undersigned shall comply with all provisions of the Indenture dated as of _____, 2019 (as amended from time to time, the "Indenture"), among Torrance County, New Mexico (the "Issuer"), NMRD Data Center II --Britton, LLC, as Purchaser, NM Renewable Development Data Center II, LLC (the "Company") and BOKF, NA, as Depository (the "Depository"), as described in the Bonds. The undersigned assumes all responsibility for complying with any applicable federal and state securities laws in such regard and must present to the Depository, the Issuer and the Company a Certificate of Qualified Investor executed by the proposed transferee, among other things as may be required by the agreements authorizing the Bonds, before such transfer will be effective.

The undersigned acknowledges that it is one of the following:

1. a bank as defined in Section 3(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), or savings and loan association or other institution as defined in Section 3(a)(S)(A) of the Securities Act, whether acting in its individual or fiduciary capacity; broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"); insurance company as defined in Section 2(13) of the Securities Act; insurance company as registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act; Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; plan established and maintained by a state, its political subdivision, or any agency or instrumentality of a state or its political subdivision, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self directed plan, with investment decisions made solely by persons that are accredited investors;

2. a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;

3. an organization described in Section 501(c)(3) of the Internal Revenue Code with total assets in excess of \$5,000,000;

4. a natural person whose individual net worth, or joint net worth with that person's spouse, at the time of this purchase exceeds \$1,000,000, excluding the value of the primary residence of such person;

5. a natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with the person's spouse in excess of \$300,000 in each of those years and who reasonably expects reaching the same income level the current year; or

6. one or more of the following, as indicated, that it is acting for its own account or the accounts of other Qualified Institutional Buyers and that it in the aggregate owns and/or invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the Company:

(a) an insurance company, as defined in Section 2(13) of the Securities Act;

(b) an investment company registered under the Investment Company Act of 1940, as amended, or any business development company as defined in Section 2(a)(48) of that Act;

(c) a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958;

(d) a plan established and maintained by a state, its political subdivision or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees;

(e) an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974;

(f) a trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in Paragraph (d) or (e) above, and not a trust fund that includes as participants individual retirement accounts or H.R. 10 plans;

(g) a business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (the "Investment Advisers Act");

(h) an organization described in Section 501(c)(3) of the Internal Revenue Code, a corporation (other than a bank as defined in Section 3(a)(2) of the Securities Act or a savings and loan association or other institution referenced in Section 3(a)(5)(A) of the Securities Act or a foreign bank or savings and loan association or equivalent institution), partnership or similar business trust; or

(i) an investment adviser registered under the Investment Advisers Act;

7. a dealer registered pursuant to Section 15 of the Exchange Act, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$10 million of securities of issuers that are not affiliated with the dealer, provided that securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as a participant in a public offering shall not be deemed to be owned by such dealer; or

8. a dealer registered pursuant to Section 15 of the Exchange Act acting in a riskless principal transaction on behalf of a qualified institutional buyer; or

9. an investment company registered under the Investment Company Act, acting for its own account or for the accounts of other qualified institutional buyers, that is part of a family of investment companies which own in the aggregate at least \$100 million in securities of issuers, other than issuers that are affiliated with the investment company or are part of such family of investment companies. "Family of investment companies" means any two or more investment companies registered under the Investment Company Act, except for a unit investment trust whose assets consist solely of shares of one or more registered investment companies, that have the same investment adviser (or, in the case of unit investment trusts, the same depositor), provided that, for purposes of this section:

(a) each series of a series company (as defined in Rule 18f-2 under the Investment Company Act) shall be deemed to be a separate investment company; and

(b) investment companies shall be deemed to have the same adviser (or depositor) if their advisers (or depositors) are majority-owned subsidiaries of the same parent, or if one investment company's adviser (or depositor) is a majority-owned subsidiary of the other investment company's adviser (or depositor);

10. an entity, all of the equity owners of which are qualified institutional buyers, acting for its own account or the accounts of other qualified institutional buyers; or

11. a bank as defined in Section 3(a)(2) of the Securities Act, any savings and loan association or other institution as referenced in Section 3(a)(5)(A) of the Securities Act, or any foreign bank or savings and loan association or equivalent institution, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with it and that has an audited net worth of at least \$25 million as demonstrated in its latest annual financial statements, as of a date not more than 16 months preceding the date of sale in the case of a U.S. bank or savings and loan association, and not more than 18 months preceding such date of sale for a foreign bank or savings and loan association or equivalent institution; or

12. any entity that is acquiring the Bond for the purpose of facilitating investment therein by "qualified institutional buyers" as defined under Rule 144A promulgated under the Securities Act; or

13. NM Renewable Development Data Center II, LLC, the parent or subsidiary thereof, or any affiliated entity.

The undersigned further acknowledges that (i) interest on the Bonds is not exempt from gross income for federal income tax purposes, and (ii) an opportunity was available to obtain and that the undersigned has obtained all materials which were regarded as necessary to evaluate the merits and risks of investment in the Bonds and after such evaluation, the undersigned understands and knows that investment in the Bonds involves certain risks, including, but not limited to, those related to limited security and source for payment of the Bonds and the probable lack of any secondary market for the Bonds.

The undersigned acknowledges, warrants and represents that the undersigned is experienced in transactions such as those relating to the Bonds and that the undersigned is knowledgeable and fully capable of independently evaluating the risks involved in investing in the Bonds. The undersigned further acknowledges that neither the Issuer nor any of its officials, counsel, agents or consultants is responsible for any information contained in or omitted from the materials furnished, whether directly or by any other means, relating to the Bonds and acknowledges that the undersigned will not look and has not looked to any of them to obtain such information on its behalf.

NMRD Data Center II --Britton, LLC,
as Purchaser

By _____
Name: _____
Title: _____

Address for Notices and
Payment of principal and interest:

TORRANCE COUNTY, NEW MEXICO
and
NM RENEWABLE DEVELOPMENT DATA CENTER II, LLC

LEASE AGREEMENT

Dated as of _____, 2019

\$60,000,000
Torrance County, New Mexico
Taxable Industrial Revenue Bonds
(NM Renewable Development Data Center II, LLC Project)
Series 2019

TORRANCE COUNTY, NEW MEXICO, a political subdivision of the State of New Mexico (together with its successors and assigns, the “Issuer”), as lessor, and NM RENEWABLE DEVELOPMENT DATA CENTER II, LLC, a Delaware limited liability company (together with its successors and assigns, the “Company”), as lessee, agree:

**ARTICLE I
RECITALS**

Section 1.1. Recitals.

A. The Company has requested that the Issuer issue its Taxable Industrial Revenue Bonds (NM Renewable Development Data Center II, LLC Project), Series 2019 in the maximum principal amount of \$60,000,000 (the “Bonds”). The proceeds of the Bonds will be used to finance the Project (defined below).

B. The Issuer is authorized under Section 4-59-1 to 4-59-16, New Mexico Statutes Annotated, 1978 Compilation (the “Act”) to acquire certain projects and issue its industrial revenue bonds in payment therefor and has determined that it is desirable to acquire the Project (defined below) pursuant to Ordinance No. _____ (the “Bond Ordinance”) and has in the Bond Ordinance authorized the issuance of the Bonds.

C. The Bonds are to be issued under an Indenture dated as of _____, 2019 (together with any and all amendments and supplements, the “Indenture”) among the Issuer, NMRD Data Center II --Britton, LLC (together with its successors and assignees, and transferees of the Bonds, the “Purchaser”), the Company and BOKF, NA, as Depositary (the “Depositary”). The Bonds will be a special limited obligation of the Issuer payable as therein provided and the Bonds will not constitute a debt or indebtedness or pledge of the credit of the Issuer, and the Purchaser or owners of the Bonds will have no right to have taxes levied by the Issuer or to require the Issuer to use any revenues for the payment of the Bonds, except for Basic Rent (as defined in this Agreement).

D. The proceeds of the Bonds will be used to finance the acquisition of the Project Property (defined below) leased to the Company under this Lease Agreement (together with all amendments and supplements, this “Agreement”).

E. The Company has conveyed the Project Site described in Exhibit A to the Issuer pursuant to a special warranty deed. The Project Property, which includes the Project Site, is to be leased to the Company pursuant to this Agreement.

F. The Bonds are to be purchased under a Bond Purchase Agreement dated as of _____, 2019 (together with any and all amendments and supplements, the “Bond Purchase Agreement”) among the Issuer, the Purchaser and the Company.

G. The Bonds will be secured by the Indenture which constitutes, among other things, a collateral pledge of this Agreement.

In consideration of the promises and the mutual representations and agreements hereinafter contained, the Issuer and the Company agree as follows (provided that any obligation of the Issuer created by or arising out of this Agreement will never constitute an indebtedness of the Issuer or give rise to any pecuniary liability of the Issuer, or a change against its general credit or taxing powers but will be payable solely out of Basic Rent).

ARTICLE II DEFINITIONS AND RULES OF CONSTRUCTION

Section 2.1. Definitions. All words and terms defined in the Indenture have the same meanings when used in this Agreement. In addition:

“Additional Payments” has the meaning assigned in Section 5.3(b).

“Applicable Environmental Law” means any applicable law, statute, ordinance, regulation, order or rule relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or materials or pertaining to health or the environment, including, without limitation, CERCLA and RCRA, as each is amended and in effect from time to time.

“Basic Rent” has the meaning assigned in Section 5.3(a).

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

“Closing Date” means the date of execution and delivery of the Bonds.

“Company Financing” means a transaction or series of transactions involving credit agreements, loan documents, letters of credit, or other instruments evidencing financial obligations to which the Company or any subsidiary or affiliate of the Company is a party entered into or occurring at any time prior to the Closing Date (as defined in the Bond Purchase Agreement) or during the Term and after the date of initial delivery of the Bonds, for the use by the Company or any subsidiary or affiliate of the Company, together with any Company Financing Lien.

“Company Financing Lien” means any pledge, encumbrance or other lien on all or any portion of the Leased Property entered into in connection with a Company Financing

“Construction Completion Date” has the meaning assigned in Section 4.4.

“County PILOT” means the payment in lieu of taxes to be made by the Company to the Issuer in an annual amount equal to \$68,800.

“Eminent Domain” means the taking of title to, or the temporary use of; all or any part of the Project Property pursuant to eminent domain or condemnation proceedings, or by any

settlement or compromise of such proceedings, or any voluntary conveyance of all or any part of the Project Property during the pendency of, or as a result of a threat of, such proceedings.

“Event of Default” has the meaning assigned in Section 8.1.

“Facility” means a solar power generation power facility located in Torrance County, New Mexico, and its related supporting equipment and all improvements thereon for the generation and transmission of electricity.

“Indemnitee” has the meaning assigned in Article VI.

“Institutional Investor” means, collectively, any natural person(s) or any entity(ies) who acquire a direct or indirect interest in the Company or in the Project as a part of a transaction to ensure that the Project is owned at least in part by a person or entity able to use the federal renewable electricity production tax credits or investment tax credits and tax depreciation benefits associated with holding an ownership interest in the Project (including any subsequent transferees of any such person(s) or entity(ies)).

“Proceeds,” when used with respect to any insurance proceeds or any award resulting from, or other amount received in connection with, Eminent Domain, means the gross proceeds from the insurance or such award or other amount.

“Project” means the acquisition of the Project Site and the acquisition, design, permitting, construction and equipping of the Facility.

“Project Property” means (i) the Facility and all improvements suitable for use and used thereon, including all equipment and other personal property of any kind whether now owned or hereafter acquired with the proceeds of the Bonds prior to the Construction Completion Date as further described in Exhibit A and (ii) any rights of the Company in, or related to, the Project Site now owned or hereafter acquired under deeds, easements, agreements or leases assigned or otherwise conveyed to the Issuer (including the conveyance by the Company of the Project Site to the Issuer pursuant to a special warranty deed).

“Project Site” means the real property in Torrance County, New Mexico described in Exhibit A.

“RCRA” means the Resource Conservation and Recovery Act of 1976.

“Related Costs” means expenditures incurred or to be incurred with respect to the Project, including, without limitation, the acquisition, installation and construction of the Project Property.

“Rent” means Basic Rent and any Additional Payments under this Agreement.

“School District” means the Moriarty-Edgewood School District.

“School PILOT” means the payment in lieu of taxes to be made by the Company to the School District in an annual amount equal to \$11,200.

“State” means the state of New Mexico.

“Term” means the duration of the leasehold estate created by this Agreement pursuant to Section 5.1 hereof.

“TRD” means the New Mexico Taxation and Revenue Department.

Section 2.2. Rules of Construction.

(a) The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(b) All references in this Agreement to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Agreement unless some other reference is established.

(c) Any inconsistency between the provisions of this Agreement and the provisions of the Indenture will be resolved in favor of the provisions of this Agreement.

**ARTICLE III
REPRESENTATIONS**

Section 3.1. Issuer Representations. The Issuer represents that, as of the date of delivery of this Agreement:

(a) The Issuer is a political subdivision, organized and existing under the laws of the State.

(b) The Issuer has duly authorized by an ordinance of the governing body of the Issuer adopted at a meeting duly called and held by the affirmative vote of not less than a majority of its members, the execution, delivery and performance of the Bond Documents, the Bonds and the issuance of the Bonds, all for the purpose of financing the Project including the acquisition, construction and equipping of the Project Property and paying certain costs related to the issuance of the Bonds.

(c) To the knowledge of the Issuer, (i) the execution, delivery and performance by the Issuer of the Bond Documents will not conflict with or create a material breach of or material default under the Act or any other law, rule, regulation or ordinance applicable to the Issuer or any agreement or instrument to which the Issuer is a party or by which it is bound, and (ii) there is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body, pending or threatened against the Issuer, which seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents or in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents.

Section 3.2. Company Representations. The Company represents that, as of the date of delivery of this Agreement:

(a) The Company is a limited liability company duly organized and validly existing under the laws of Delaware, is in good standing under the laws of Delaware, is a duly registered foreign limited liability company authorized to do business in New Mexico, and has duly authorized the execution, delivery and performance of this Agreement and the Bond Purchase Agreement.

(b) The Company has full legal right, power and authority to carry out and consummate the transactions contemplated by this Agreement and the Bond Purchase Agreement, all of which have been duly authorized by all necessary action on the part of the Company.

(c) The execution, delivery and performance by the Company of this Agreement and the Bond Purchase Agreement and the application by the Company of the proceeds of the issuance and sale of the Bonds as provided in the Bond Documents do not and will not conflict with, contravene, violate or constitute a breach of or default under the articles of organization or operating agreement of the Company or any material agreement to which the Company is a party or by which the Company or its properties or the Project Property is bound or any law, rule, regulation, ordinance, order, consent, or decree, applicable to the Company, its properties or the Project Property if such conflict, contravention, violation, breach or default could materially affect the ability of the Company to perform its obligations under the Bond Documents.

(d) This Agreement and the Bond Purchase Agreement constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity.

(e) No Default or Event of Default, or event or condition which, with notice or lapse of time or both, would constitute a Default or an Event of Default, with respect to the Company has occurred and is continuing. The Company has not received any written notice of any currently existing material violation of any zoning, land use, environmental or other similar law or regulation applicable to the Project Site.

(f) There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to the best of the knowledge of the Company, threatened against the Company, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents, (ii) questions the validity or enforceability of the Bonds or any of the Bond Documents, (iii) questions the authority of the Company to own, lease or operate any of the Project Property, or (iv) if adversely determined, would have a material adverse effect on the Project Property or the Company's ability to perform its obligations under the Bond Documents.

(g) All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Company of this Agreement and the Bond Purchase Agreement have been obtained and are in full force and effect.

(h) The Company acknowledges that the Issuer has made no warranty or representation, express or implied, that the amount in the Acquisition Fund, as defined in Section 701 of the Indenture, will be sufficient to pay the Related Costs or that the Project Property will be suitable for the Company's needs.

(i) The Company will not use or operate the Project, or permit the Project to be used or operated, in any way which would adversely affect the qualification of the Project as a "project" under the Act. None of the proceeds of the Bonds will be used to provide working capital.

(j) The acquisition, construction and installation of the Project Property by the Company and the operation thereof will comply in all material respects with applicable zoning, planning, building, environmental and other regulations of the governmental authorities having jurisdiction over the Facility, and all permits, licenses, consents and permissions necessary for the Facility have been or will be obtained in due course.

(k) The Project Property is located in that part of Torrance County which is outside the corporate limits of any municipality and is or will be an electric generation facility which does not require location approval and a certificate of convenience and necessity prior to construction or operation of the facility pursuant to the New Mexico Public Utility Act, Sections 62-3-1, et seq., NMSA 1978.

(l) No representation made by the Company in this Agreement and no statement made by the Company in any written information, material or report furnished to the Issuer or the Purchaser in connection with the transactions contemplated by this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the representation or statement, in light of the circumstances under which it is made, not misleading.

(m) The representations of the Company in this Section 3.2 and in any other instrument delivered by the Company in connection with the transactions contemplated by the Bond Documents will survive the execution and delivery of this Agreement, the issuance, sale and delivery of the Bonds for one year as representations of facts existing as of the date of execution and delivery of the Bond Documents or other instrument containing such representation.

**ARTICLE IV
THE PROJECT AND THE COMPANY**

Section 4.1. Acquisition, Equipping and Completion. The Company will acquire, construct and install the Project Property as agent for the Issuer under the Act and applicable TRD regulations. To the extent necessary, after all proceeds of the issuance of the Bonds have been exhausted, the Company will finance the completion of the Facility with other funds. The Project Property will at all times during the Term be located within Tarrant County, New Mexico. The Issuer makes no warranty that the proceeds of the issuance and sale of the Bonds will be sufficient to pay all the Related Costs. The Company will obtain at the necessary time all licenses and permits required for the occupancy and operation of the Project Property.

Section 4.2. Plans and Specifications; Changes. The Company may make changes, supplements, amendments and additions, omissions or substitutions for components of the Project Property without the approval of the Issuer or the Purchaser. If the Company elects to make any such change, supplement, amendment, addition, omission or substitution which would make the description of the Project Property contained in Exhibit A materially inaccurate, the Company will revise the description of the Project Property set forth in Exhibit A, accordingly and will deliver a copy of such revised Exhibit A, certified by an Authorized Company Representative, to the Issuer and the Purchaser. The Issuer and Company will take such further actions as necessary to effect such change including executing, delivering, and recording a bill of sale, assignment and any amendments to the Bond Documents. Notwithstanding the foregoing, the Company will not make any changes, supplements, amendments, additions, omissions, or substitutions or otherwise change or operate the Project Property or permit the Project Property or the Facility to be operated so as to cause the Project Property not to be a “project” within the meaning of the Act as in effect on the date of issuance of the Bonds, and the Company will not take or omit to take any action which will result in the Bond proceeds being applied in violation of the Bond Documents.

Section 4.3. No Warranty of Condition or Suitability by Issuer. THE COMPONENTS OF THE PROJECT PROPERTY HAVE BEEN DESIGNATED AND SELECTED BY THE COMPANY. THE ISSUER HAS NOT MADE AN INSPECTION OF ANY PORTION OF THE PROJECT PROPERTY. THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO ANY PORTION OF THE PROJECT PROPERTY OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY OF THE SAME, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP IN THE SAME. ALL RISKS INCIDENT TO THE PROJECT PROPERTY ARE TO BE BORNE BY THE COMPANY. THE ISSUER WILL HAVE NO LIABILITY WITH REGARD TO OR ARISING OUT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN ANY PORTION OF THE PROJECT PROPERTY, WHETHER PATENT OR LATENT. THE PROVISIONS OF THIS SECTION 4.3 HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PORTION OF THE PROJECT PROPERTY, WHETHER ARISING UNDER THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT.

Section 4.4. Construction Completion Date. The Company will complete the Project as promptly as practicable and, in any event, by December 31, 2022. On the date the Project is complete and a certificate of occupancy has been obtained for the Facility (if such certificate is required to be obtained) (the “Construction Completion Date”), the Company will deliver to the Issuer and the Depositary a certificate signed by an Authorized Company Representative stating that, except for specified amounts remaining in the Acquisition Fund for any specified Related Costs incurred by the Company but not then due and payable, the Project is complete and all costs of labor, services, materials and supplies in connection with the Project have been paid for or provisions have been made for their payment. After the transfer of remaining moneys in the Acquisition Fund to the Company pursuant to Section 706 of the Indenture, the Company will have sole responsibility for the payment of any Related Costs in excess of the amount specified to be retained in the Acquisition Fund. Upon completion, the Project Property will comply in all material respects with all building codes, and other laws, ordinances, rules and regulations applicable to the Project Property or the Facility.

Section 4.5. Gross Receipts and Compensating Tax. The Company, either on its own behalf or as agent for the Issuer pursuant to Section 4.1 and this Section, will file returns for reporting and paying compensating tax which is due because of the Project and promptly will pay, as a Related Cost, any gross receipts or compensating tax due from the Issuer under any such returns. To the extent consistent with or required by State law, the Issuer will cooperate with the Company in the obtaining of Nontaxable Transaction Certificates from the TRD for delivery to suppliers with respect to the Project Property as may be applicable under the New Mexico Gross Receipts and Compensating Tax Act. The Company shall take delivery of all Project Property as agent of the Issuer and may specify such agency relationship on all purchasing and delivery documentation corresponding to the Project Property. It is the intention of the Issuer and the Company that the Company shall be deemed to be acting as agent for the Issuer with respect to all purchases of Project Property on the terms set forth herein, even if certain purchasing and delivery documentation may not expressly disclose or identify such agency relationship. The Company will pay any gross receipts or compensating tax plus applicable penalty and interest which is found by the TRD to be due from the Company or the Issuer because of the purchase or use of the Project Property or any component of the Project Property by the Company or the Issuer. The Company, at its sole expense, may request any rulings from the TRD which the Company determines might be necessary or desirable to clarify the New Mexico gross receipts and compensating tax results of transactions related to the Project and may dispute, at its sole expense, in any manner authorized by the New Mexico Tax Administration Act, any gross receipts or compensating tax liability imposed on the Company or the Issuer because of the Project. The Issuer will, at the sole expense of the Company, join in any reasonable modifications to this Agreement which are necessary or desirable to obtain Nontaxable Transaction Certificates or otherwise reduce the gross receipts and compensating tax imposed on the Company or the Issuer as a result of or in connection with the acquisition, construction and installation of the Project Property and will otherwise cooperate with the Company to address any reasonable request of the Company regarding issues raised by TRD with respect to Non-Taxable Transaction Certificates. The Company will employ Nontaxable Transaction Certificates solely to purchase Project Property and will not employ Nontaxable Transaction Certificates for purchases after the Construction Completion Date or for purchases in amounts greater than the proceeds of the Bonds.

Section 4.6. Compliance With Law. The Company will obtain or cause to be obtained all necessary permits and approvals, for the occupancy, operation and maintenance of the Project Property and will comply in all material respects with all Applicable Environmental Laws and all lawful requirements of any governmental body, agency or department regarding the use, condition or operation of the Project Property. The Company may in good faith contest the validity or the applicability of any such requirement. During the period of such contest and any related appeal, this Section 4.6 will be deemed satisfied with respect to the requirement so contested.

To the extent that the use which the Company makes or intends to make of the Project Property will result in the manufacturing, treatment, refining, transportation, generation, storage, disposal or other release or presence of any hazardous substance or solid waste on or to the Project Property, such use will be in accordance with all applicable law, including any applicable regulations. For purposes of this paragraph, the terms “hazardous substance” and “release” will have the meanings specified in CERCLA, and the term “disposal” (or “disposed”) will have the meaning specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning will apply subsequent to the effective date of such amendment, and provided, further, to the extent that the laws of the State establish a meaning for “hazardous substance,” “release,” or “disposal” which is broader than that specified in either CERCLA or RCRA, such broader meaning will apply; provided, further, that the term “hazardous substance” will also include those listed in the U.S. Department of Transportation Table (49 C.P.R. 172.101) and amendments thereto from time to time.

The Company agrees to promptly notify the Purchaser and the Issuer of any violation of any Applicable Environmental Laws of which the Company becomes aware.

Company shall, at Company’s sole cost and expense, remove or take remedial action with regard to any hazardous substance for which any removal or remedial action is required pursuant to any Applicable Environmental Laws. Company shall indemnify, defend, protect and hold the Issuer and the Issuer’s commissioners, employees and agents free and harmless from any liability (including, without limitation, costs, reasonable attorneys and consulting fees, investigation, laboratory fees and litigation expenses) arising out of (a) a release of any hazardous substance in, on or under the Project Site or (b) the violation by Company or its employees, agents or contractors of any Applicable Environmental Laws. The indemnity obligations stated in this Section are in addition to the other indemnity obligations of Company hereunder, and shall survive the termination of this Agreement.

Section 4.7. Nuisance Not Permitted. The Company will use reasonable care to not commit a nuisance in connection with its use or occupancy of the Project Property.

Section 4.8. Taxes and Utility Charges. The Company will pay or cause to be paid, as and when due, (i) all taxes, assessments, and governmental and other charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project Property, (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project Property and (iii) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by any lien on the Project

Property. The Company may, in good faith, contest the amount or validity of any such levy, tax, assessment or other charge by appropriate legal proceedings. During the period of such contest and any related appeal, this Section 4.8 will be deemed satisfied with respect to any such levy, tax, assessment or other charge so contested.

Section 4.9. Maintenance. The Issuer will not be under any obligation to, and will not, operate, maintain or repair the Project Property. The Company will, at its own expense, keep the Project Property in safe repair and in such operating condition as is needed for its operations. The Company will not be under any obligation to renew, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable, inappropriate or unnecessary equipment.

Section 4.10. Replacement and Removal of Project Property. The Company may replace or remove and/or sell, trade in, exchange or otherwise dispose of any machinery, equipment or fixtures constituting a part of the Project Property, without any responsibility or accountability to the Issuer, and thereby acquire title to such machinery, equipment or fixtures, provided that such replacement or removal will not change the nature of the Project as a qualified “project” as defined in and as contemplated by the Act. Upon request and at the expense of the Company, the Issuer will deliver to the Company appropriate instruments evidencing the acquisition by the Company of title to any machinery, equipment or fixtures permitted by this Section 4.10 to be so replaced or removed. The provisions of Article X govern the delivery and form of any such instruments. The removal from the Project of any portion of the equipment, if any, pursuant to the provisions of this Section will not entitle the Company to any abatement or diminution in amount of the Basic Rent, Additional Payments, School PILOTs or County PILOTs payable under this Agreement. The Company may acquire machinery, equipment or other property (other than fixtures) which does not constitute a part of the Project Property and title to any such property will not thereby be transferred to the Issuer.

Section 4.11. Eminent Domain; Damage; Destruction. The Company will give prompt notice to the Issuer and the Purchaser of any material damage to or destruction of the Project Property. If either the Issuer or the Company receives notice of the proposed taking of all or any part of the Project Property by Eminent Domain, it will give prompt notice to the other and the Purchaser. Any such notice will describe generally the nature and extent of such damage, destruction, taking or proposed taking. The Proceeds resulting from the exercise of Eminent Domain with respect to or from any damage to or destruction of all or any portion of the Project Property shall at the option of the Purchaser, be applied to the prepayment of the Bond or paid to the Company.

Section 4.12. Access and Inspection. The Company authorizes the Issuer and the Purchaser and their duly authorized agents during regular business hours, upon two (2) days prior written notice, (i) such rights of access to the Project Property as may be reasonably necessary to inspect the progress of the Project and (ii) the right of entry onto the Project Site for any purpose contemplated by this Agreement. Such rights of access and entry will not be terminated, curtailed or otherwise limited by any sale, assignment, lease or other transfer of the Project Property by the Company to any other Person.

Section 4.13. Assessment in the Company's Name. If this Agreement has not been terminated on or before the twenty-fifth anniversary of this Agreement, the Company will take all necessary action to have the Project Property assessed for property tax purposes in the name of the Company on or within 30 days before the twenty-fifth anniversary of this Agreement, and the Company will pay all ad valorem taxes on the Project Property from and after such date. If the Project Property must be conveyed to the Company to accomplish such assessment, the Company will promptly notify the Issuer and the Issuer will convey the Project Property to the Company, and this Agreement will thereafter be construed to be an installment sale agreement and all terms and provisions of this Agreement will remain in full force and effect. The provisions of Article X govern the manner and form of any such conveyance. Notwithstanding the foregoing, if the Company fails to take all necessary action to have the Project Property assessed for property tax purposes in the name of the Company thirty (30) days before or on the twenty-fifth anniversary of this Agreement, the Issuer may terminate this Agreement and execute, deliver and cause to be recorded, at the expense of the Company, a quitclaim deed, assignment of easements and a bill of sale with respect to the Project Property. In anticipation of the conveyance of the Project Property by the Issuer to the Company, the Issuer will, upon the request of the Company, deliver to an escrow agent agreed to by the Issuer and the Company appropriate documents, including, but not limited to, a quitclaim deed, special warranty deed, an assignment of easements and other real property rights and a bill of sale, prepared by the Company at the Company's expense, conveying to the Company the Issuer's interest in the Project Property; such documents to be delivered to the Company at the time of purchase of the Project Property.

Section 4.14. Use of Project Property.

(a) The Company will use the Project Property or cause the Project Property to be used continuously during the Term so as to constitute a "project" within the meaning of the Act as in effect on the date of issuance of the Bonds. As used in the first sentence of this Section 4.14(a), "continuously" means regularly and on a schedule consistent with that of similar facilities in the United States. Temporary cessation of operations shall not constitute a failure by the Company to comply with this Section 4.14(a) if such temporary cessation is (i) as a result of maintenance or retooling or for repair or replacement of facilities, or due to slack demand or other similar circumstances, in each case not exceeding fifteen (15) consecutive days (unless the Issuer agrees in writing to a longer period) or (ii) as a result of acts of God or the public enemy, labor disputes or strikes or for any other reason beyond the reasonable control of the Company.

(b) If the Company fails to comply with the first sentence of subsection (a) of this Section 4.14, the Company shall pay to the Issuer an amount equal to all ad valorem, gross receipts and compensating taxes abated as a result of the Project being owned by the Issuer less all amounts paid by the Company pursuant to Sections 6.4 and 6.5.

Section 4.15. Existence. Unless its successor or the transferee of its assets, as the case may be, assumes in writing all of the obligations of the Company under the Bond Documents, the Company will maintain its existence as a limited liability company and will not dispose of all or substantially all of its assets, other than through execution of this Agreement. The Company shall have the right to change its organizational structure if such a change is necessary to permit the Company as restructured to remain eligible for any tax credit, benefit or incentive for alternative

energy expenditure established by any local, state or federal government, provided such restructured organization assumes in writing all of the obligations of the Company under the Bond Documents. Original executed copies of such assumption will be delivered to each of the other Parties on or before the effective date of such succession or transfer. To the extent necessary under State law, the Company and its successors or transferees will become and remain authorized to transact business in the State and, if applicable, in good standing in the State.

Section 4.16 Insurance. The Company will keep the Project Property continuously insured against such risks and in such amounts, with such deductible provisions, as are customary in connection with the operation of facilities of the type, location and size comparable to the Project, as reasonably determined by the Company. Each policy of such insurance will show the Company as loss payee and the Issuer as an additional insured under such policies as the respective interests of such parties may appear. Such insurance may, to the extent permitted under applicable law, be provided by blanket policies maintained by the Company, by a captive insurance company controlled by the Company or through self-insurance. Such insurance will include extended coverage insurance and general liability insurance against liability for (i) claims for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Project Property, and (ii) liability with respect to the Project Property under the workers' compensation laws of the State (unless the Company has complied with the requirements of the law of the State for self-insurance).

Section 4.17 Subleases; Granting and Release of Easements; Amending or Modifying Subleases and Easements. The Company may at any time or times cause to be granted subleases, easements, licenses, rights-of-way (temporary or perpetual and including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property included in the Project and such grant will be free from the lien or security interests created by the Indenture or this Agreement, or the Company may cause to be amended, modified or released existing subleases, easements, licenses, rights-of-way and other rights or privileges in the nature of easements, held with respect to any property included in the Project Property with or without consideration, and the Issuer agrees that it will, at the expense of the Company, execute and deliver any instrument necessary or appropriate to confirm and grant, amend, modify or release any such sublease, easement, license, right-of-way or other right or privilege upon receipt of: (i) a copy of the instrument of grant, amendment, modification or release, and (ii) a written application of the Company signed by an authorized representative of the Company requesting such instrument and stating (1) that such grant, amendment, modification or release is not detrimental to the proper conduct of the business of the Company, and (2) that such grant, amendment, modification or release will not impair the effective use or materially interfere with the operation of the Project Property; will not materially diminish or impair the security intended to be given by or under this Agreement or the Indenture and will not materially diminish or impair the obligations of the Company under this Agreement or the Indenture.

ARTICLE V LEASE; TERM; POSSESSION; RENT

Section 5.1. Lease of the Project Property; Term.

(a) The Issuer hereby leases the Project Property to the Company pursuant to the terms of this Agreement. This Agreement shall become effective upon its execution and delivery, and the leasehold estate created hereby and the Term shall then begin, and subject to the provisions of this Agreement, the Term shall expire on the earlier of (i) _____, 2044 or (ii) on such earlier date as the payment or redemption and discharge of the whole amount of the principal and interest on the Bonds at the time outstanding shall have been made as provided in the Indenture, or on such earlier date as arrangements satisfactory to the Issuer and the Purchaser for such payment or redemption and discharge of the Bonds shall have been made. The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by the Company to the Purchaser in anticipation of making Bond advances under the Indenture.

(b) Upon the termination of this Agreement, all right, title and interest of the Issuer and the Purchaser under this Agreement shall thereupon cease, terminate and become void, the Bonds shall cease to be entitled to any benefit under this Agreement, and, except as otherwise provided in Section 6.7, all covenants, agreements and obligations of the Company to the Purchaser, the Issuer (except for the provisions pertaining to Issuer indemnification), and with respect to the School District, the School PILOTs, shall thereupon cease, terminate and become void.

Section 5.2. Quiet Enjoyment. So long as no Event of Default has occurred and is continuing, the Issuer will not take any action, other than pursuant to Section 4.11 or Article VIII, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project Property during the Term (except as necessary with respect to Eminent Domain or condemnation for public projects and purposes) and will, at the request of the Company and at the Company's expense, including all expenses incident to any legal action, to the extent that the Issuer may lawfully do so, join in any legal action in which the Company asserts its right to such possession and enjoyment.

Section 5.3. Basic Rent and Additional Payments.

(a) The Company will pay to the Purchaser for the account of the Issuer such amounts at such times as are required to make all payments of principal of, interest on and redemption price of the Bonds in accordance with the terms of the Bonds and the Indenture as and when due (the "Basic Rent"), and the Company shall take all such actions relating to the withholding and reporting of interest as are required by the Internal Revenue Code of 1986, as amended. A copy of the anticipated payment schedule for the Bonds is attached hereto as Schedule 5.3(a). The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of making Bonds advances under the Indenture.

(b) The Company will make payments (the "Additional Payments"): to or on behalf of the Issuer and the School Districts for all actual costs, expenses and taxes (including, but not limited to costs attributable to work performed by in-house staff and the fees of its outside

advisors including counsel and its financial advisor) paid or incurred by the Issuer or the School Districts in connection with (i) the discussion, review, negotiation, preparation, approval, execution and delivery of the Bonds, the Indenture, this Agreement, and the other documents and instruments related hereto and thereto through the Closing Date, all of which amounts shall be paid in full on or before the Closing Date, (ii) any amendments or modifications to any of the foregoing documents, instruments or agreements and the negotiation, preparation, approval, execution and delivery of any and all documents necessary to effect such amendments or modifications, (iii) the enforcement by the Issuer or the School Districts, during or after the Term of any of the rights or remedies of the Issuer or the School Districts under any of the foregoing documents, instruments or agreements including without limitation, costs and expenses of collection, whether or not suit is filed, (iv) the servicing and administration of the Bonds during the Term or thereafter, and (v) any requested subordination of the Issuer's interest in the Project Property to a Lender.

(c) Additional Payments that are not paid when due will bear interest at a rate equal to the prime rate as most recently published in the "Bonds, Rates and Yields" table of the Wall Street Journal, as in effect from time to time, plus 200 basis points until paid in full.

Section 5.4. Obligations Unconditional; Rights of Setoff.

(a) The obligation of the Company to pay Rent and to perform its other obligations under this Agreement is absolute and unconditional and, except as otherwise provided in 5.4(b) below, will not be subject to diminution by setoff, counterclaim, abatement or otherwise, whether as a result of Eminent Domain with respect to, damage to or destruction of or removal of all or any portion of the Project Property or any other event or condition. In the event the Issuer fails to perform its obligations under this Agreement, the Company may, subject to the limitations imposed by Section 11.3, institute such action against the Issuer as the Company may deem necessary to compel performance of those obligations of the Issuer set forth in Sections 4.5, 5.2, 7.1, 7.2, and Article X. The Company may also, at its own cost and expense and in its own name or, if necessary, in the name of the Issuer prosecute or defend any action or proceeding or take any other action involving third parties which the Company deems reasonably necessary in order to secure or protect its title to or its right of possession, occupancy and use of the Project Property. In such event, if no Event of Default has occurred and is continuing, the Issuer will cooperate with the Company, so long as it is not the adverse party, upon receipt of indemnity satisfactory to the Issuer against any out-of-pocket cost, expense (including reasonable counsel fees and expenses) or liability the Issuer may incur or suffer as a result of or in connection with such cooperation.

(b) Notwithstanding the above paragraph, it is the intention of this Agreement that the Company shall make Basic Rent payments to the Purchaser for the account of the Issuer, in such amounts and at such times as are required to make payments of principal of, interest on and redemption price of the Bond in accordance with the terms of the Bond Documents as and when due, and the parties acknowledge that all such Basic Rent payments may be offset against any monies due and payable to the Company from the Purchaser in connection with any funds advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of any Advances to the Acquisition Account (as defined in the Indenture) as provided for under Section 702 of the Indenture. The Purchaser will look only to the Company for payment of the Bonds and upon the security granted in the Indenture for the Company's obligations under this Agreement.

As described in Section 7.1, the Issuer will assign and pledge to the Purchaser certain of its rights, title and interests in and to this Agreement including the right to receive payments of Basic Rent hereunder.

Section 5.5. Net Lease. This Agreement will be deemed and construed to be a “net lease,” and the Company will pay Rent, absolutely net, and except as set forth in Section 5.4(b) hereof, free of any deductions and without abatement, diminution or setoff.

ARTICLE VI SPECIAL COVENANTS

Section 6.1. Recording and Filing; Further Assurances. The Company will, at the expense of the Company, take all actions that at the time are and from time to time may be reasonably necessary to perfect, preserve, protect and secure the interests of the Issuer and the Purchaser in and to the Rent and in the Project Property, including, without limitation, the recordation of this Agreement and the Indenture, the filing of financing statements and continuation statements and the execution, acknowledgment, delivery, filing and recordation of such other instruments as may reasonably be required in carrying out the intention of or facilitating the performance of this Agreement.

Section 6.2. Claims; Liens. The Company will pay and discharge and will indemnify and hold harmless the Issuer from (a) any lien or charge upon payments by the Company to, or for the account of, the Issuer under this Agreement (other than the Indenture) and (b) any taxes, assessments, impositions and other charges in respect of the Project Property. If any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the Issuer will give prompt notice to the Company of any such lien, taxes, assessments, impositions or other charges of which the Issuer has actual notice, and the Company will have the sole right and duty to assume the defense of the same and will have the power to litigate, compromise or settle the same.

Section 6.3. Release and Indemnification.

The Company releases the Issuer, its Commissioners, officials, employees and agents (each an “Indemnitee”) from, and will indemnify each Indemnitee against all liabilities, claims, costs and expenses imposed upon, incurred or asserted against any Indemnitee on account of: (a) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the installation, maintenance, operation and use of the Project Property; (b) the inaccuracy of any representation by the Company (regardless of whether the Company was aware of such inaccuracy at the time the representation was made) or any breach or default on the part of the Company in the performance of any representation, covenant or agreement of the Company under this Agreement, or any related document, or arising from any acts or failure to act by the Company, or any of its agents, contractors, servants, employees or licensees; (c) the Company’s failure to comply with any requirements of this Agreement; (d) suits, legal or administrative proceedings, demands, losses, liabilities, damages, claims, causes of action, costs and expenses resulting from or in any way connected with the presence, release or disposal in or under the Project Site of, any hazardous substances (as defined in CERCLA), hazardous

wastes (as defined in RCRA), oils, radioactive materials, asbestos in any form or condition, any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any Applicable Environmental Law; (e) any liability, whether under federal or state securities laws or otherwise, that may arise as a result of inaccurate information supplied by the Company in connection with the issuance of the Bonds or any subsequent sale of the Bonds; (f) any other loss, claim, damage, penalty, liability, disbursement, litigation expenses and attorneys' fees or court costs arising out of or in any way relating to the execution or performance of this Agreement, actions taken under the Indenture, the issuance of the Bonds, the ownership or leasing of the Project Property or any other cause whatsoever pertaining to the Project Property; and (g) any claim, action or proceeding brought with respect to the matters set forth in clauses (a) through (f). The Issuer will not be liable to the Company, and the Company releases and discharges the Issuer from any liability for any and all losses, costs, expenses (including attorneys' fees), damages, judgments, claims and causes of action paid, incurred or sustained by the Issuer as a result of or relating to any action, or failure or refusal to act on the part of the Purchaser or the Depositary with respect to the Bonds, the Bond Documents or the transactions contemplated thereby, including without limitation the exercise by the Purchaser of any of its rights thereunder. This Section 6.3 is not intended in any way to detract from provisions of the Bond Documents to the effect that the Issuer is not to incur any pecuniary liability with respect to the transactions contemplated by the Bond Documents.

Notwithstanding the fact that it is the intention of the parties that the Issuer will not incur pecuniary liability by reason of this Agreement or the undertakings of the Issuer under this Agreement, by reason of the issuance of the Bonds, the execution of the Bond Documents, the performance of any act required of it by the Bond Documents, the performance of any act related to the Bond Documents or the Bonds requested of it by the Company or its position as owner or lessor of the Project Property, nevertheless if the Issuer incurs any such pecuniary liability or the same is claimed or sought, then in such event the Company will indemnify and hold harmless the Issuer against all claims by or on behalf of any person arising out of the same and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from the Issuer, the Company will defend the Issuer in any such action or proceeding.

In case any action or proceeding is brought against any Indemnitee in respect of which indemnity may be sought hereunder, such Indemnitee will give notice of the action or proceeding to the Company, and the Company, upon receipt of that notice, will have the obligation and the right to assume the defense of the action or proceeding; provided that failure of an Indemnitee to provide such notice will not relieve the Company from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Company, in which case the liability of the Company under this Section shall be reduced only by an amount equal to the amount of the loss sustained by the Company solely as a result of such failure to notify. The Company will have no obligation to indemnify any Indemnitee with respect to any settlement entered into by such Indemnitee without the prior consent of the Company (which consent will not be unreasonably withheld).

The provisions of this Section will be enforceable by the Issuer to the full extent permitted by law, but will not include the gross negligence or willful misconduct of the Indemnitees. The

provisions of this Section will survive the payment of the Bonds and the termination of this Agreement.

Section 6.4. Payments to Issuer. So long as this Agreement remains in effect, the Company shall pay the County PILOT to the Issuer, on the first anniversary of this Agreement and, thereafter, on each succeeding anniversary of this Agreement until this Agreement is terminated or expires (each such payment date, a “PILOT Payment Date”). The payment provisions of this Section 6.4. may be amended by mutual agreement of the Company and the Issuer. In the event payment of any such PILOT is not made when due, the Issuer may impose a late fee equal to five percent (5%) of the amount not paid.

Section 6.5. Payments to School District. So long as this Agreement remains in effect, the Company shall pay the School PILOT to the School District on each PILOT Payment Date. The School PILOT has been negotiated with the School District and fully satisfies the requirements of Section 4-59-4(A) NMSA, 1978, as amended and supplemented. The payment provisions of this Section may be amended by mutual agreement of the Company, the Issuer and the School District. In the event payment of any such PILOT is not made when due, the School District may impose a late fee equal to five percent (5%) of the amount not paid.

ARTICLE VII ASSIGNMENT, LEASING AND SELLING

Section 7.1. Assignment of Rights by the Issuer. Concurrently with issuance of the Bonds, the Issuer will assign to the Purchaser certain of the Issuer’s rights, title and interests in and to this Agreement, pursuant to the Indenture, as security for payment of the principal of, interest on and redemption price of the Bonds. Thereafter, the Purchaser will be vested with, and authorized to exercise, such rights of the Issuer and the Purchaser under this Agreement. The Company consents to such assignment.

Section 7.2. No Other Transfer by Issuer. Except for the assignment described in Section 7.1 and Article X hereof or transfer to the Company in accordance with Section 4.13 or 8.3, the Issuer will not sell, assign, transfer or convey its rights, title or interests in this Agreement or the Project Property, or its obligations under this Agreement. Except for liens created or permitted by the Company, the Issuer will not cause or create any liens on the Project Property or the Project Site and will cooperate with the Company to defend the Project Property, the Project Site and the Company from and against any claims of lien.

Section 7.3. Assignment, Lease, Mortgage and Sale by the Company. The rights of the Company under this Agreement may be assigned, and the rights of the Company in the Project Property may be assigned, subleased, mortgaged or sold as a whole or in part by the Company. The Company may, without the consent of the Issuer, sublease, mortgage or sell the Project Property and assign its rights under this Agreement, in whole or in part. Notwithstanding the foregoing, any assignment, sublease, mortgage or sale of Project Property which purports to relieve the Company from liability for making payments of Rent and for the performance of its other obligations under this Agreement and its obligations for the Project Property, will require the assumption in writing by any assignee, sublessee or purchaser of the obligations of the Company

under this Agreement, and, only to the extent of the Company's relief from liability for making payments of Rent and for the performance of its other obligations under this Agreement and its obligations for the Project Property, the consent of the Issuer. Any mortgagee or assignee that does not directly hold an interest in the Project Property or whose interest is held solely for security purposes shall have no obligation or liability under this Agreement prior to the time the mortgagee or assignee directly holds an interest in this Agreement or the mortgagee or assignee directly succeeds to absolute title to the Company's interest. A mortgagee or the assignee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such interest or absolute title; provided, however, that such liability shall not include any liability for claims of the Issuer against the Company arising from the Company's failure to perform during the period prior to such mortgagee's or assignee's succession to the Company's interest in and under this Agreement.

Section 7.4 Leasehold Security Deeds / Cooperation of Issuer. The Issuer acknowledges the right of the Company to mortgage and/or give security interests in this Agreement under one or more leasehold security deeds (as the same may be amended, modified, consolidated, extended or refinanced, collectively, the "Leasehold Security Deed") and assign this Agreement, or any part or parts thereof, as collateral security for the Leasehold Security Deed. The Issuer hereby agrees to and will, at the Company's option and at the Company's sole expense, join in the Leasehold Security Deed in order to subject its fee interest in the Project to the lien of such Leasehold Security Deed provided that such Leasehold Security Deed will be fully non-recourse to the Issuer and the Issuer will, subject to obtaining all necessary approvals of the Issuer's County Commission to the extent required under applicable state laws, deliver such resolutions, or other documents or instruments as the holder of the Leasehold Security Deed reasonably requires in connection therewith. If the Company gives a Leasehold Security Deed with respect to this Agreement, or any part or parts hereof, the holder of the Leasehold Security Deed (the "Leasehold Mortgagee") will provide the Issuer and the Purchaser (as assignee of the Issuer under the Indenture) with notice of the Leasehold Security Deed and the name and address of the Leasehold Mortgagee.

Section 7.5 Company Financing Liens. The Company may from time to time grant one or more Company Financing Liens. The Issuer shall reasonably cooperate, at the expense of the Company, in connection with any such grant. In addition, the Issuer will grant such Company Financing Liens on its interest in the Project Property as the Company may from time to time reasonably request, all at the Company's expense, and only so long as the such Company Financing Lien does not involve any pecuniary liability or obligation of the Issuer except with respect to the Project Property and the application of the revenues therefrom.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

Section 8.1. Events of Default Defined. Each of the following events is an "Event of Default":

(a) Failure by the Company to (i) make any Rent payment (excluding PILOT payments) or Additional Payments when due which continues unremedied for a period of 30 days after the provision by the Issuer, the School District or the Purchaser of written notice of non-

payment, or (ii) make any PILOT payment when due which continues unremedied for a period of 15 days after the provision by the Issuer, the School District or the Purchaser of written notice of non-payment.

(b) Any representation of the Company in any Bond Document or in any document or agreement delivered to any of the other Parties in connection with the transactions contemplated by any Bond Document proves to have been incorrect in any material respect when made and remains incorrect for a period of 30 days after written notice specifying such error and requesting that it be remedied is given by the Issuer unless such error cannot be remedied within 30 days and the Company has instituted corrective action within 30 days after such notice and diligently pursues such action until such failure is remedied.

(c) A decree or order for relief by a court of competent jurisdiction is entered in an involuntary case under any federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days, or the commencement by the Company of a voluntary case under such law, or the consent by the Company either to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company or for any substantial part of its property, or the making by it of any assignment for the benefit of creditors, or the taking of action by the Company to authorize or effect any of the foregoing. Provided, however, neither the bankruptcy nor the insolvency of the Company shall be grounds for default as long as all Basic Rent payments, PILOT payments and Additional Payments, and all other monetary charges payable by the Company under this Agreement are paid in accordance with this Agreement.

(d) Failure by the Company to perform any of its obligations under this Agreement, other than the payment of Basic Rent, PILOT payments and Additional Payments for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Company by the Issuer or the Purchaser, unless such failure is of a type which cannot be reasonably remedied within 30 days and the Company has instituted corrective action within 30 days after such notice and diligently pursues such action until such failure is remedied.

Section 8.2. Remedies on Default. If an Event of Default occurs and is continuing, the Purchaser (or its assignee), as the assignee of the Issuer under the Indenture and on behalf of the Issuer, may, but is not required to, take any one or more of the following remedial steps:

(a) By written notice to the Company declare all amounts of Basic Rent payable for the remainder of the Term as are required to provide for the Payment of the Bond and all Additional Payments then owed to be immediately due and payable, whereupon the same will be immediately due and payable; or

(b) Take whatever action at law or in equity may appear necessary or desirable to collect the Rent then due and thereafter to become due or to enforce the performance and observance of any obligation of the Company under this Agreement or the Indenture; or

- (c) Exercise any remedies provided for in the Indenture; or
- (d) Terminate this Agreement.

As the assignee of the Issuer, subject to Section 8.3, the Purchaser (or its assignee) has the sole right and responsibility for the exercise of any remedies if an Event of Default occurs and is continuing.

Section 8.3. Issuer Remedies. If:

(a) the Company fails to comply with its obligations set forth in Sections 4.4, 4.5, 4.6, 4.7, 4.8, 4.12, 4.13, 4.14, 4.15, 4.16, or 6.3, and such failure continues for 30 days after the Issuer gives the Company written notice of such failure; or

(b) the Company fails to comply with its obligations under 5.3(b), 6.4 or 6.5 and such failure continues for 10 days after the Issuer or Purchaser or its assignee gives the Company written notice of such failure; or

(c) any representation of the Company in any Bond Document or any document or agreement delivered to any of the other Parties in connection with the transactions contemplated by the Bond Documents proves to have been incorrect in any material respect when made;

then, subject to Section 8.6 hereof, the Issuer may, in addition to exercising any other remedy, take whatever action at law or in equity is necessary to enforce the performance of the obligations of the Company under Sections 4.5, 4.6, 4.7, 4.8, 4.12, 4.13, 4.14, 4.15, 4.16, 5.3(b), 6.3, 6.4, and 6.5, as applicable. The Issuer's rights to enforce the Company's obligations under Sections 4.5, 4.6, 4.7, 4.8, 4.12, 4.13, 4.14, 4.15, 4.16, 5.3(b), 6.3, 6.4 and 6.5 are not assigned to the Purchaser under the Indenture. In addition, the Issuer may also immediately terminate this Agreement and reconvey the Project Property to the Company. Provided however if any conditions described in paragraphs 8.3(a) (b) or (c) cannot be cured within the time allotted for cure, if the Company initiates and proceeds with due diligence to effect a cure, a default will not be deemed to have occurred as long as the Company cures the default.

Section 8.4. Notice of Default. The Company will promptly give notice to the Purchaser and Issuer of the occurrence of any Event of Default or an event or condition (of which it has actual knowledge) which, with the passage of time or the giving of notice, or both, and in the absence of any corrective action, would result in an Event of Default.

Section 8.5. Agreement to Pay Attorneys' Fees and Expenses. If an Event of Default, or an event which with the giving of notice or the passage of time, or both, would constitute an Event of Default, occurs, and the Issuer incurs expenses, including attorneys' fees, in connection with the enforcement or administration of this Agreement, the Company will reimburse the Issuer for the reasonable expenses so incurred, upon request. Such amounts are deemed to be Additional Payments under Section 5.3.

Section 8.6. Right to Cure Defaults.

(a) To prevent termination of this Agreement, the Purchaser, any Institutional Investor and any mortgagee or assignee of the Company that holds an interest in the Project Property as security shall have a right, but not the obligation, at any time to perform any act necessary to cure any default and to prevent the termination of this Agreement. The Issuer will not terminate or suspend its performance under this Agreement until it first gives written notice of such default to the Purchaser, and any Institutional Investor and any mortgagee or assignee of which the Issuer has been given written notice and allows the Purchaser, any Institutional Investor and such mortgagee or assignee the right to cure such default within the applicable cure period under this Agreement. In addition, if the Purchaser, any Institutional Investor or such mortgagee or assignee gives the Issuer written notice prior to the expiration of the applicable cure period of the Purchaser's, any Institutional Investor's or such mortgagee's or assignee's intention to cure such default (which notice shall include a reasonable description of the time during which it anticipates to cure such default) and is diligently proceeding to cure such default, notwithstanding the applicable cure period under this Agreement the Purchaser, any Institutional Investor or the mortgagee or assignee shall have a period of sixty (60) days (or if such default is for failure by the Company to pay an amount to the Issuer which is due and payable under this Agreement, thirty (30) days) from the Purchaser's, any Institutional Investor's or the mortgagee's or assignee's receipt of the notice of such default from the Issuer to cure such default.

(b) If any default by the Company under this Agreement cannot be cured without obtaining possession of all or part of the Project Property, then any such default shall be deemed remedied if the Purchaser, any Institutional Investor, a mortgagee or assignee (a) in the time period provided in Section 8.3(a) and 8.3(b) and 8.6(a) (including the aggregate cure period provided under Section 8.6(a)) begins appropriate judicial or non-judicial proceedings to obtain the same; (b) diligently prosecutes any such proceedings to completion; and (c) after gaining possession of all or part of the Project Property, diligently proceeds to cure and perform all other obligations as and when the same are due in accordance with the terms of this Agreement. If the Purchaser, any Institutional Investor, a mortgagee or assignee is prohibited by any Court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the period specified above for commencing proceedings shall be extended for the period of such prohibition.

(c) If the Purchaser, any Institutional Investor, mortgagee or assignee (or a receiver requested by a mortgagee) succeeds to the interest of the Company in the Project Property, such successor party shall pay or cause to be paid the Basic Rent, PILOT payments, Additional Payments and all other monetary charges payable by the Company under this Agreement from the date in which the Purchaser, Institutional Investor, mortgagee or assignee (or a receiver requested by a mortgagee) succeeds to such interest and those which accrue thereafter during the term of this Agreement.

Section 8.7. Discontinuance of Proceedings on Default; Position of Parties Restored.

In case the Issuer shall have proceeded to enforce any right under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Issuer, then and in every such case, unless otherwise determined in

such proceeding or agreed by the Issuer and the Company, the Issuer and the Company will be restored to their former positions and rights under this Agreement with respect to the Project Property and all rights, remedies, and powers of the Issuer will continue as if no such proceedings had been taken.

Section 8.8. Proofs of Claim. In the case of any insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceedings affecting the Company, the Issuer will, to the extent permitted by law, be entitled to file such proofs of claims and other documents as may be necessary or advisable in order to have claims of the Issuer allowed in such proceedings for the entire amount due and payable by the Company to the Issuer under this Agreement, as the case may be, at the date of the institution of such proceedings and for any additional amounts which may become due and payable after such date.

ARTICLE IX PREPAYMENTS

The Company may at any time (including after the occurrence and during the continuance of an Event of Default) and for any reason cause all or any portion of the Bond to be redeemed in accordance with the provisions of the Indenture by giving notice of such redemption to the Issuer, the Purchaser and, if there are monies on deposit in the Acquisition Account (as defined in the Indenture), to the Depository not less than forty-five (45) days before the redemption date. Such notice will specify the redemption date and the principal amount of the Bonds to be redeemed. On the redemption date the Company will prepay the Rent in an amount equal to such principal amount plus accrued interest on such principal amount to the redemption date by payment of such amounts to the Purchaser, will pay all Additional Payments, plus interest, if any, owed to the Issuer, will pay all PILOT payments, if any, owed to the Issuer and the School District, and will pay all payments due under Section 6.7. The parties acknowledge that the Company may prepay, pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by the Company to the Purchaser in anticipation of making Bond advances under the Indenture.

ARTICLE X PURCHASE OF PROJECT PROPERTY

The Company will purchase and the Issuer will sell the Project Property for \$1.00 at the expiration or sooner termination of the Term. The Company will give written notice to the Issuer and to the Purchaser, if the Bonds are then unpaid or provision for their payment has not been made, and will specify therein the date of termination and closing such purchase which date shall be the same date and which date will be not less than 15 nor more than 90 days from the date such notice is mailed. At the closing of such purchase, the Issuer will, upon receipt of the purchase price, deliver to the Company or its nominee appropriate documents, including, but not limited to, a deed, and a bill of sale, prepared by the Company at the Company's expense, conveying to the Company without representation or warranty the Issuer's interest in the Project Property, as it exists at the time of such purchase, subject only to: (i) those liens and encumbrances, if any, to which the Project Property was subject when conveyed to the Issuer; (ii) those liens and

encumbrances created by the Company and/or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to perform any of its obligations under this Agreement; and (iv) any other lien arising as a matter of law. The Company may exercise its rights under this Article X, whether or not a Default or an Event of Default has occurred and is continuing, so long as all Additional Payments and PILOT payments due to the Issuer and the School Districts are paid on or before the date of closing of such purchase. If the Company fails to take all necessary action to have the Project Property assessed for tax purposes in the name of the Company at the expiration of the Term, the Issuer may execute, deliver and cause to be recorded, at the expense of the Company a bill of sale with respect to the Project Property and other appropriate documents reflecting the termination of this Agreement.

If at the time of closing the Indenture has not been satisfied in full and released of record, a release by the Purchaser of the Indenture will also be delivered to the Company (or its designee).

The right to prepay granted to the Company in this Agreement is and will remain prior and superior to the Indenture.

ARTICLE XI MISCELLANEOUS

Section 11.1. Remedies. No right or remedy conferred on any Party in this Agreement is intended to be exclusive of any other right or remedy conferred on such Party in this Agreement. Except as provided in Section 11.3, each such right or remedy is in addition to every other right or remedy provided in any of the Bond Documents or by law; provided, that the remedies of Purchaser and/or Issuer in respect of an Event of Default or other breach of any Bond Document by the Company shall be limited in all cases to those expressly provided in Article VIII hereof. No delay or omission of any Party to exercise any such right or remedy will impair any such right or remedy or be construed to be a waiver. Every such right or remedy may be exercised from time to time and as often as the relevant Party may deem expedient. No waiver by any Party of any right or remedy with respect to any Default or Event of Default will extend to or affect any other existing or subsequent Default or Event of Default.

Section 11.2. Beneficiaries. Nothing in this Agreement expressed or implied is intended or is to be construed to confer upon any Person other than the Parties and their successors and assigns (and, in the cases of Section 6.3 of this Agreement, the Indemnitees, and Section 6.4, the School Districts) any right, remedy or claim, legal or equitable.

Section 11.3. Limitation of Issuer's Liability. No agreements or provisions contained in the Bond Documents nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of Bond proceeds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer, its officials, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or obligate the Issuer financially in any way, except with respect to the revenues available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds, and their application as provided under the Indenture. No failure of the Issuer to comply with any terms,

covenants or agreements in this Agreement or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officials, employees, agents and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the revenues available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds. Nothing in this Agreement will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement herein or in the Indenture; provided, that no costs, expenses or other monetary relief will be recoverable from the Issuer except as may be payable from the funds available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds.

Notwithstanding any other provisions of this Agreement, none of the provisions of this Agreement shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder unless it shall have first been adequately indemnified to its satisfaction against the cost, expense and liability which may be incurred thereby.

Section 11.4. No Violation of Public Policies Regarding Indemnity. To the extent, if at all, a court of competent jurisdiction determines that Section 56-7-1 NMSA 1978 applies to any indemnification provisions in this Agreement, including certain types of insurance coverage as set forth in Section 56-7-1 NMSA 1978, such provisions shall not apply to or extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee or additional insured, as the case may be, its officers, employees or agents and shall further be limited, if required, by the provisions of Section 56-7-2 NMSA 1978.

Section 11.5. Notices. Any notice, demand, direction, request, consent, approval, report or other instrument authorized or required by this Agreement or the Bond Ordinance to be executed, given or filed will be in writing and will be deemed to have been sufficiently given or filed for all purposes of this Agreement when delivered by hand delivery or by overnight courier or on the third business day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer: Torrance County, New Mexico

If to the Purchaser: NMRD Data Center II --Britton, LLC
 c/o NM Renewable Development Data Center II, LLC

If to the Company: NM Renewable Development Data Center II, LLC

Any Party may, by notice to the other Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent.

Section 11.6. Severability. In case any one or more of the provisions of this Agreement is for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other

provision of this Agreement, but this Agreement will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the Issuer or the Company contained in this Agreement is for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of the Issuer or the Company to the full extent permitted by law.

Section 11.7. Successors. Wherever the Issuer is referred to in this Agreement, it will be deemed to include its successors and all covenants and agreements in this Agreement will bind and inure to the benefit of the Issuer's successors. Wherever the Company is referred to in this Agreement, it will be deemed to include its successors in interest to the Project Property and all covenants and agreements in this Agreement will bind and inure to the benefit of such successors.

Section 11.8. Title, Headings. The title and headings of the articles, section and subdivisions of this Agreement have been used for convenience only and do not modify or restrict any of the terms or provisions of this Agreement.

Section 11.9. Execution in Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together will constitute one instrument.

Section 11.10. Applicable Law. The validity, construction and effect of this Agreement will be governed by the law of the State of New Mexico applicable to agreements made and to be performed in the State of New Mexico.

Section 11.11. Obligations of Issuer Not Obligations of Officials Individually. No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bonds will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 11.12. Payments Due on Days That Are Not Business Days. If the date for any payment due hereunder is not a Business Day, as defined in the Indenture, then such payment will be made on the next Business Day and no interest on such payment will accrue for such period.

Section 11.13. Federal Income Tax Treatment of Lease. The Issuer and the Company acknowledge that this Agreement constitutes a financing for federal income tax purposes and not a lease of the Project Property, to the extent permitted by law. The Issuer and the Company further acknowledge that the Company shall, to the extent permitted by law, be entitled to all federal income tax attributes attributable to ownership of the Project Property, including the right to claim depreciation or cost recovery deductions and the right to claim any federal tax credits (or federal grants in lieu thereof) arising from ownership of the Project Property. Each of the Issuer and the Company agree not to file tax returns inconsistent with this Section 11.13.

Section 11.14. Amendments. Except for Section 6.5 which may be amended only by an instrument executed by the applicable School District, the Company and the Issuer, this Agreement

may be amended only by an instrument executed by the Issuer and the Company and consented to by the Purchaser.

Section 11.15. Further Assurances and Corrective Instruments. The Issuer and the Company agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments to this Agreement and such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of this Agreement.

The Company may cause a memorandum of this Agreement, in form and substance satisfactory to the Company and the Issuer, in the Issuer's reasonable judgment, to be kept, recorded and filed in such manner and in such places as may be required by law to fully evidence, preserve and protect the leasehold estate of the Company.

[SIGNATURE PAGES FOLLOW]

DATED AS OF _____, 2019.

(SEAL)

BOARD OF COUNTY COMMISSIONERS,
TORRANCE COUNTY, NEW MEXICO

Attest:

Torrance County Clerk

By _____
Its Chair

STATE OF NEW MEXICO)
)
COUNTY OF TORRANCE)

This instrument was acknowledged before me on this _____ day of _____, 2019, by _____, as Chair of the Torrance County Board of County Commissioners, governing body of Torrance County, a political subdivision of the State of New Mexico.

Notary Public

My Commission Expires: _____

(Signature Page for Lease Agreement)

EXHIBIT A
Project Property and Project Site

Project Property:

All solar generation equipment including solar tracking hardware and software, photovoltaic panels and inverters, support structures, and associated electrical generation equipment used to generate electricity from solar energy and related equipment including transformers, circuit breakers and switching and metering equipment used to connect the solar electrical generation plant to the electric grid and all other equipment and personal property which is now or hereafter acquired with Bond Proceeds and located at the Project Site.

Project Site:

The remainder of the Tract designated "3-B" located within the North Half (N1/2) of Section Eight (8) and the Southeast Quarter (SE1/4) of Section Five (5), Township Nine (9) North, Range Eight (8) East, NMPM Torrance County that is not located within the City of Moriarty

AND

The remainder of the Tr 3-A within N1/2 Sec 8 and SE1/4 Sec 5, Township 9 North, Range 8 East NMPM Torrance County that is not located within the City of Moriarty

AND

Tr. A-2, Lands/Current & A-1-A, Lands/Burson, Section 9, Township 9 North, Range 8 East. NMPM Torrance County

SCHEDULE 5.3(a)

PAYMENT SCHEDULE
 TORRANCE COUNTY, NEW MEXICO
 TAXABLE INDUSTRIAL REVENUE BOND
 (NM RENEWABLE DEVELOPMENT DATA CENTER II, LLC PROJECT)
 SERIES 2019-\$60,000,000

<u>Year</u>	<u>Maximum Total Debt Service</u>	<u>Principal Payments Required in such Period</u>	<u>Maximum Interest for such Period</u>
2020	2,400,000	0	2,400,000
2021	2,400,000	0	2,400,000
2022	2,400,000	0	2,400,000
2023	2,400,000	0	2,400,000
2024	2,400,000	0	2,400,000
2025	2,400,000	0	2,400,000
2026	2,400,000	0	2,400,000
2027	2,400,000	0	2,400,000
2028	2,400,000	0	2,400,000
2029	2,400,000	0	2,400,000
2030	2,400,000	0	2,400,000
2031	2,400,000	0	2,400,000
2032	2,400,000	0	2,400,000
2033	2,400,000	0	2,400,000
2034	2,400,000	0	2,400,000
2035	2,400,000	0	2,400,000
2036	2,400,000	0	2,400,000
2037	2,400,000	0	2,400,000
2038	2,400,000	0	2,400,000
2039	2,400,000	0	2,400,000
2040	2,400,000	0	2,400,000
2041	2,400,000	0	2,400,000
2042	2,400,000	0	2,400,000
2043	2,400,000	0	2,400,000
2044	62,400,000	60,000,000	2,400,000



*Agenda Item
No. 10-C*

_____, (PURCHASER)

TORRANCE COUNTY, NEW MEXICO

and

LA JOYA WIND, LLC

BOND PURCHASE AGREEMENT

Dated _____, 2019

\$290,000,000
Torrance County, New Mexico
Taxable Industrial Revenue Bonds
(La Joya Wind, LLC Project)
Series 2019A

BOND PURCHASE AGREEMENT

_____ (the "Purchaser"), **TORRANCE COUNTY, NEW MEXICO** (the "Issuer"), and **LA JOYA WIND, LLC** (the "Company"), agree:

Section 1. Recitals. The Issuer, the Purchaser, the Company and BOKF, NA, as depository (the "Depository") have entered into an Indenture dated as of _____, 2019 (the "Indenture"). Pursuant to the Indenture, the Issuer will issue its Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project), Series 2019A, in the maximum principal amount of \$290,000,000 (the "Series 2019A Bonds" or the "Bonds"). Capitalized terms used in this Bond Purchase Agreement (this "Agreement") but not defined herein shall have the meanings assigned to such terms in the Indenture.

Section 2. Purchase and Delivery. On the basis of the representations and covenants contained in this Agreement and subject to the terms and conditions contained in this Agreement, the Purchaser will purchase the Bonds from the Issuer and the Issuer will sell the Bonds to the Purchaser. As consideration for the sale of the Bonds, the Purchaser will make advances on the Bonds at the times and under the conditions specified in Section 702 of the Indenture. The Issuer will deliver the Bonds to the Purchaser as provided in Section 403 of the Indenture, or at such other time as is mutually agreeable to the Purchaser and the Issuer (the "Closing Date").

Section 3. Issuer Representations. The Issuer represents that, as of the date of this Agreement:

(a) Each of the representations of the Issuer in the Lease Agreement, dated as of _____, 2019 (the "Lease" and, together with the Indenture and this Agreement, the "Bond Documents"), between the Issuer and the Company, and the Indenture is true and correct as if made on and as of the date of this Agreement, which is _____, 2019.

(b) Pursuant to Ordinance No. 2019-__ duly adopted by the Board of County Commissioners of Torrance County on _____, 2019 (the "Bond Ordinance"), the Issuer duly authorized and approved (i) the execution and delivery by the Issuer of the Bond Documents and the performance by the Issuer of its obligations under the Bond Documents, and (ii) the issuance, execution and delivery of the Bonds. The Bond Ordinance has not been amended, modified or repealed.

Section 4. Company Representations. The Company represents that as of the date hereof:

(a) Each of the representations of the Company in the Lease is true and correct as if made on and as of the date of this Agreement.

(b) This Agreement and the Lease constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization,

moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

(c) The Company is a Delaware limited liability company, duly organized, validly existing and in good standing under the law of the State of Delaware and is a duly registered foreign limited liability company authorized to do business in the State of New Mexico and has full legal capacity, right, power and authority to own the Company's properties and conduct the Company's business. The Company has full legal capacity, right, power and authority to execute and deliver this Agreement and the Lease, to provide for the operation and management of the Project Property, and to take any and all such action as may be required on its part to carry out, give effect to and consummate the transactions contemplated by this Agreement and the Lease.

(d) Neither the execution and delivery of this Agreement and the Lease, nor the consummation of the transactions contemplated therein or the compliance with the provisions thereof, will conflict with, or constitute on the part of the Company a material violation of, or a material breach of or material default under any indenture, mortgage, commitment, note or other agreement or instrument to which the Company is a party or by which the Company is bound, or any material order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its activities or properties. All consents, approvals, authorizations and orders of governmental or regulatory authorities (except as required under state securities laws) which are required for the Company's execution and delivery of, consummation of the transactions contemplated by, and compliance with the provisions of this Agreement and the Lease have been obtained.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the best of the knowledge of the Company, threatened, against or affecting the Company, or the actions taken or contemplated to be taken by the Company, nor, to the best of the knowledge of the Company, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the business or financial condition of the Company, or the transactions contemplated by, or the validity or enforceability of, this Agreement or the Lease.

(f) No event has occurred and no condition exists which, upon issuance of the Bonds, would constitute (or with the giving of notice or lapse of time, or both, would constitute) an Event of Default under the Lease.

(g) The Company is not in violation of any provisions of, or in default under any statute, indenture, mortgage, commitment, note or other agreement or instrument to which it is a party or by which it is bound, or any order, rule, regulation or decision of any court or governmental agency or body having jurisdiction over it or any of its activities or properties, which violation would materially and adversely affect its business or financial condition.

Section 5. Purchaser Representations. The Purchaser represents and acknowledges that, as of the date of this Agreement:

(a) The Purchaser is purchasing the Bonds for its own account for investment and with no present intention of distributing or reselling the Bonds or any interest in the Bonds but without prejudice, however, to its right at all times to sell or otherwise dispose of all but not part of the Bond in compliance with the Securities Act of 1933, as amended, the regulations promulgated thereunder, applicable state securities laws and regulations and the terms of the Bonds, upon receipt of appropriate investor representations, an opinion of counsel experienced in securities law matters and satisfactory to the Issuer and in accordance with the applicable terms of the Indenture.

(b) The Purchaser understands that the Bonds are a special limited, and not general, obligation of the Issuer, are payable solely from the Basic Rent received under the Lease and from the security therefor as described in the Indenture but from no other sources. The Purchaser understands that the Bonds are not secured by any obligation or pledge of any monies received or to be received from taxation or from the State or any political subdivision, taxing district, or municipality thereof (including, without limitation, the Issuer), and that the Bonds will never represent or constitute a general obligation, debt or bonded indebtedness of the Issuer, the State, any political subdivision or municipality thereof, and that no right will exist to have taxes levied by the Issuer, the State, any political subdivision or municipality thereof, for the payment of principal of, premium, if any, and interest on the Bonds. The Purchaser understands that payment of the Bonds depends upon the general credit of the Company, and upon the security granted in the Indenture for the Company's obligations under the Lease.

(c) The Purchaser is an affiliate of the Company and has been afforded the opportunity to discuss the business, assets and financial position of the Company with the officers, employees and auditors of the Company; and has received such information concerning the Company and its business, assets and financial position, and the Project (as defined in the Lease) as it deems necessary in making its decision to purchase the Bonds.

(d) The Purchaser is duly and legally authorized to purchase the Bonds, has such knowledge and experience in financial and business matters (including the ownership of municipal conduit obligations) as are required for, and is capable of, evaluating the merits and risks of its purchase of the Bonds, is aware of the intended use of proceeds of the Bonds, and understands that interest on the Bonds is not excludable from gross income for federal income tax purposes.

(e) The Purchaser understands that neither the Issuer nor any of its officials, counsel, consultants or agents has undertaken to furnish any information with respect to the Company or to ascertain the accuracy of any information furnished to the Purchaser with respect to the Company, and the Purchaser has not requested or received any representations from the Issuer with respect to any such information, its accuracy or completeness. The Purchaser waives any requirement of due diligence in investigation or inquiry on the part of the Issuer, its officials, counsel, agents and consultants and all claims, actions or causes of action which the Purchaser may have from and after the date hereof against the Issuer, its officials, counsel, agents and

consultants growing out of any such action which any of the foregoing took, or could have taken, in connection with the authorization, execution, delivery, and sale of the Bonds to the Purchaser or in connection with any statement or representation by the Company which induced the Purchaser to purchase the Bonds.

(f) The Purchaser has received and reviewed copies of the Bond Documents and the Bond Ordinance.

(g) This Agreement constitutes the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

(h) The Purchaser has been informed by the Company and agrees that the Indenture has not been qualified under the Trust Indenture Act of 1939, and that the Bonds (i) are not being registered or otherwise qualified for sale under (a) the Securities Act of 1933, as amended, or (b) the "Blue Sky" laws and regulations of any state, (ii) will not be listed on any stock or other securities exchange, (iii) will not carry a rating from any rating service and (iv) will not be readily marketable. The Purchaser has been informed by the Company and agrees that a legend will be placed on the Bonds certificate or any other documents evidencing ownership of the Bonds to the effect that it has not been registered under the Securities Act of 1933, as amended, or the applicable state "Blue Sky" laws and that it may only be transferred in compliance with the Indenture and applicable securities laws.

(i) The execution, delivery and performance of this Agreement by the Purchaser will not constitute a default under any other agreement by which the Purchaser is bound.

(j) The Purchaser acknowledges that its purchase of the Bonds constitutes a transaction in a bond secured by the Indenture which is, among other things, a personal property security agreement, pursuant to which the Bonds are offered and sold as a unit.

Section 6. Indemnification.

(a) The Company and the Purchaser will, jointly and severally, indemnify, defend and hold harmless the Depository, as defined in the Indenture, each agent and employee of the Depository, the Issuer, each County Commission member, official, agent or employee of the Issuer and each person, if any, who has the power, directly or indirectly, to direct or cause the direction of the management and policies of the Issuer (each an "Indemnified Party" and, collectively, the "Indemnified Parties") from and against any and all losses, claims, damages, liabilities, joint or several, or expenses related thereto arising out of or in connection with or caused by any offering, sale or resale of the Bonds in violation of any federal or state securities laws or by an untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact made to any person or caused by an omission or alleged omission of any material fact in connection with the Bonds or the sale, resale or delivery thereof.

(b) In case a claim is made or any action is brought against one or more of the Indemnified Parties based upon the matters described in the preceding paragraph and in respect of which indemnity is sought against the Company or the Purchaser pursuant to the preceding paragraph, the Indemnified Party or Parties seeking indemnity shall promptly notify the Company and the Purchaser, in writing, and the Company or the Purchaser shall promptly assume or cause the assumption of the defense thereof, including the employment of counsel chosen by the Company or the Purchaser and approved in writing by the Issuer (provided, that such approval by the Issuer shall not be unreasonably withheld), the payment of all expenses (including reasonable counsel fees and expenses) and the right to negotiate and consent to settlement. If the Company and the Purchaser fail to assume or cause the assumption of the defense of such action or to retain counsel reasonably satisfactory to the Issuer within a reasonable time after notice of the commencement of such action, the reasonable fees and expenses of counsel retained by the Indemnified Party shall be paid by the Company or the Purchaser. If any Indemnified Party is advised in a written opinion of counsel that the defenses of such Indemnified Party should be handled by separate counsel, the Company or the Purchaser shall not have the right to assume or cause the assumption of the defense of such Indemnified Party, but the Company and/or the Purchaser shall be responsible for the fees and expenses of such separate counsel (the "Separate Counsel") retained by such Indemnified Party. Notwithstanding, and in addition to, any of the foregoing, any one or more of the Indemnified Parties shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnified Party or Indemnified Parties unless the employment of such counsel has been specifically authorized in writing by the Company and the Purchaser. Neither the Company nor the Purchaser shall be liable for any settlement of any such action effected without the written consent of the Company or the Purchaser, but if settled with the written consent of the Company and the Purchaser or if there is a final judgment for the plaintiff in any such action with or without consent, the Company and the Purchaser will indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.

(c) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in this Section 6 is for any reason held to be unavailable to the Indemnified Parties in accordance with its terms, the Purchaser and the Company shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by this Section 6 incurred by the Indemnified Parties in such proportions as determined by a court having jurisdiction of the matter.

(d) The covenants and agreements of the Purchaser and the Company under this Section 6 are joint and several.

Section 7. Conditions. The obligation of the Purchaser to purchase the Bonds and the obligation of the Issuer to sell the Bonds are subject to satisfaction of the following conditions precedent:

(a) The representations of the Issuer, the Purchaser and the Company in this Agreement will be true and correct on and as of the date the Bonds are issued (the "Closing Date") as if made on and as of the Closing Date.

(b) As of the Closing Date, no Default (as defined in the Indenture) or Event of Default (as defined in the Lease) will have occurred and be continuing, and no event will have occurred and be continuing which, with the lapse of time or the giving of notice or both, would constitute a Default or Event of Default.

(c) On or before the Closing Date, all actions required to be taken as of the Closing Date in connection with the Bonds, the Bond Ordinance and the Bond Documents by the Issuer, the Purchaser and the Company will have been taken, and the Issuer, the Purchaser and the Company will each have performed and complied with all agreements, covenants and conditions required to be performed or complied with by the Bond Ordinance and the Bond Documents.

(d) The Indenture will have been duly executed and delivered by the Issuer, the Purchaser and the Depository. The Lease will have been duly executed by the Issuer and the Company. Each of the Bond Documents, the Bond Ordinance and all other official action of the Issuer relating to the Bonds, the Project (as defined in the Lease) and the Bond Documents will be in full force and effect on the Closing Date and will not have been amended, modified or supplemented on or before the Closing Date.

(e) The Issuer, the Company and the Purchaser will have received the following, each dated the Closing Date:

(i) the approving opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A., Bond Counsel, substantially in the form of Exhibit A;

(ii) the opinion of counsel to the Company, substantially in the form of Exhibit B;

(iii) the opinion of the Attorney for the Issuer, substantially in the form set forth in Exhibit C;

(iv) the opinion of counsel to the Purchaser, substantially in the form set forth in Exhibit D;

(v) a certificate of and with reference to the Issuer and signed by a duly authorized officer of the Issuer to the effect set forth in subsections (a) and (c) of this Section 7 with respect to the Issuer;

(vi) a certificate of and with reference to the Company signed by a duly authorized officer of the Company to the effect set forth in subsections (a), (b) and (c) of this Section 7;

(vii) a certificate of and with reference to the Purchaser signed by a duly authorized officer of the Purchaser to the effect set forth in (a) and (c) of this Section 7;

(viii) a certificate of the Depository signed by a duly authorized officer of the Depository to the effect that (a) he or she is an authorized officer of the Depository; (b) the

Indenture has been duly executed and delivered by the Depositary; (c) the Depositary has all necessary corporate powers required to execute, deliver and perform its obligations under the Indenture; and (d) to the best of his or her knowledge, the execution and delivery by the Depositary of the Indenture and the performance by the Depositary of its obligations under the Indenture will not conflict with or constitute a breach of or default under any law, administrative regulation, consent decree or any agreement or other instrument to which the Depositary is subject or by which the Depositary is bound;

(ix) such additional legal opinions, certificates, proceedings, instruments and other documents as any such party or Bond Counsel may reasonably request; and

(x) an investment intent letter from the Purchaser in the form of the Certificate of Qualified Investor attached to the Indenture.

If any conditions to the obligations of the Purchaser or the Issuer under this Agreement are not satisfied and if the satisfaction of such conditions is not waived by the Purchaser and the Issuer, then, at the option of the Purchaser or the Issuer, respectively in accordance with their interests (1) the Closing Date will be postponed for such period, not to exceed five business days, as may be necessary for such conditions to be satisfied or (2) the obligations of the Purchaser and the Issuer under this Agreement will terminate, and neither the Purchaser nor the Issuer will have any further obligations or liabilities under this Agreement.

Section 8. Survival. All agreements, covenants and representations and all other statements of the Issuer and the Company and their respective officers set forth in or made pursuant to this Agreement will survive the Closing Date and the delivery of and payment for the Bonds.

Section 9. Notices. Any notice, demand, direction, request, consent, approval, report or other instrument authorized or required by any of the Bond Documents to be executed, given or filed will be in writing and will be deemed to have been sufficiently given or filed for all purposes of the Bond Documents when delivered by hand delivery or on the third Business Day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer:

Torrance County, New Mexico
Attn: County Manager
205 S. Ninth St.
Estancia, NM 87016
Email: wjohnson@tcnm.us

with a copy to: Jill Sweeney, Esq.
Sherman & Howard, L.L.C.
500 Marquette Avenue NW, Suite 1203
Albuquerque, NM 87102
Telephone: (505) 814-6958
E-mail: jsweeney@shermanhoward.com

If to the Purchaser:

If to the Company: La Joya Wind, LLC
251 Little Falls Drive
Wilmington, DE 19808
Attn:
Tel:
E-mail:

Any Party may, by notice to each of the other Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent.

Section 10. Remedies. No right or remedy conferred on any party in this Agreement is intended to be exclusive of any other right or remedy. No delay or omission of any party to exercise any such right or remedy may be exercised from time to time and as often as the relevant party may deem expedient. No waiver by any party of any right or remedy with respect to any Default or Event of Default will extend to or affect any other existing or subsequent Default or Event of Default.

Section 11. Severability. In case any one or more of the provisions of this Agreement or of the Bonds are for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of any of this Agreement or of the Bonds, but this Agreement and the Bonds will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the Issuer contained in this Agreement or the Bonds are for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of the Issuer to the full extent permitted by law.

Section 12. Obligations of Issuer Not Obligations of Officials Individually. No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bond will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 13. Limitation of Issuer's Liability. No agreements or provisions contained in this Agreement nor any agreement, covenant or undertaking by the Issuer contained in any

document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of the Bond proceeds or the issuance, sale and delivery of the Bond will give rise to any pecuniary liability of the Issuer, its officials, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or will obligate the Issuer financially in any way, except with respect to the Basic Rent available under the Lease and the Indenture provided by the Company and pledged to the payment of the Bonds, and their application as provided under the Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in this Agreement or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officials, employees, agents and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the funds available under the Lease or the Indenture provided by the Company and pledged to the payment of the Bonds. None of the provisions of the Bond Documents will require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under the Bond Documents. Nothing in this Agreement will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement in any of the Bond Documents; provided, that no costs, expenses or other monetary relief will be recoverable from the Issuer except as may be payable from the funds available under the Lease or the Indenture provided by the Company and pledged to the payment of the Bonds.

Section 14. Title, Headings. The title and headings of the articles and sections of this Purchase Agreement have been used for convenience only and do not modify or restrict any of the terms or provisions hereof.

Section 15. Execution in Counterparts. This Agreement may be executed in counterparts, all of which taken together will constitute one instrument.

Section 16. Applicable Law. The validity, construction and effect of this Agreement will be governed by the law of the State of New Mexico.

Section 17. Expenses. All costs and expenses relating to the preparation, issuance, delivery and sale of the Bonds and the preparation, execution and delivery of the Bond Ordinance, the Bond Documents and all other agreements, documents and instruments related to the transactions contemplated by the Bond Documents, including the fees and expenses of Issuer's outside review counsel, are to be paid by the Company.

Section 18. Performance of the Parties. The respective obligations of the parties hereunder are subject to the performance by each other party hereto of its own obligations hereunder.

[Signature pages follow]

DATED: _____

_____, as Purchaser

By: _____

Name: _____

Title: _____

LA JOYA WIND, LLC
as Company

By: _____

Name: _____

Title: _____

DATED AS OF _____.

BOARD OF COUNTY COMMISSIONERS
TORRANCE COUNTY, NEW MEXICO

By: _____
Ryan Schwebach, Chair

(SEAL)

ATTEST:

By: _____
Linda Jaramillo, County Clerk

Exhibit A

Form of Opinion of Bond Counsel

_____, 20__

Torrance County, New Mexico
Estancia, New Mexico

_____ [purchaser]

La Joya Wind, LLC
Wilmington, Delaware

BOKF, NA
Albuquerque, New Mexico

Re: \$290,000,000 Torrance County, New Mexico Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project), Series 2019A

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance and sale by Torrance County, New Mexico (the "Issuer") of its Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project), Series 2018 in the maximum principal amount of \$290,000,000 (the "Bonds").

The Bonds will bear interest on the outstanding principal amount at a per annum rate equal to five and 00/100 percent (5.00%). Interest on the Bonds is payable each December 1, beginning December 1, 2019, with the outstanding principal amount of the Bonds plus all interest thereon due and payable in full at their final maturity.

The Bonds are subject to redemption prior to maturity as described in the Indenture dated as of _____, 2019 (the "Indenture") among the Issuer, _____ (the "Purchaser"), La Joya Wind, LLC (the "Company") and BOKF, NA (the "Depositary").

The principal of, interest on and redemption price of the Bonds are not general obligations of the Issuer but special obligations payable solely from the revenues pledged under the Indenture. Neither the faith and credit nor the taxing power of the State of New Mexico or of any of its political subdivisions or municipalities, including the Issuer, is pledged to the payment of the principal of, interest on or redemption price of the Bonds. The principal of, interest on and redemption price of the Bonds will never constitute a debt or indebtedness of the Issuer within the

meaning of any provision or limitation of the constitution or laws of the State of New Mexico. The Bonds will never constitute nor give rise to a pecuniary liability of the State of New Mexico, any of its political subdivisions or of the Issuer or a charge against their general credit or taxing powers.

In connection with the issuance of the Bonds, we have examined (a) a certified copy of an ordinance passed by the Torrance County Commission on December 20, 2018 authorizing the issuance of the Bonds, pursuant to and under the provisions of NMSA 1978, Sections 4-59-1 to-16 (1975, as amended through 2015) (the "Act"); (b) the executed Bonds; (c) executed counterparts of the Indenture, the Lease Agreement dated as of _____, 2019 (the "Agreement") between the Issuer and the Company and the Bond Purchase Agreement dated the date hereof (the "Bond Purchase Agreement" and, together with the Indenture and the Agreement, the "Bond Documents") among the Purchaser, the Issuer and the Company; and (d) such other opinions, documents, certificates and letters as we deemed relevant in rendering this opinion.

Based on such examination, in our opinion:

1. The Issuer is a political subdivision of the State of New Mexico and has the power and authority, under the constitution and laws of the State of New Mexico, including the Act, to execute and deliver the Bond Documents, and to authorize, execute, issue and deliver the Bonds.
2. The terms and provisions of the Bonds and the Bond Documents comply in all respects with the requirements of the Act.
3. The Bonds have been validly authorized, executed and issued in accordance with the law of New Mexico and represent the valid and binding special obligation of the Issuer.
4. The Bond Documents have been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties to the Bond Documents, constitute legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.
5. Neither the offer nor sale of the Bonds to the Purchaser pursuant to the Bond Documents is required to be registered under any federal or New Mexico securities law. The Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.
6. The issuance and sale of the Bonds to the Purchaser is not subject to Rule 15c2-12 of the Securities and Exchange Commission.

Our opinion in paragraph 4 above, insofar as it relates to the enforceability of the Indenture, is subject to the following qualifications:

- (i) New Mexico law may require that notice of acceleration be given to the Company before foreclosure of the Indenture. *Comer v. Hargrave*, 1979-NMSC-059, 93 N.M. 170, 598 P.2d 213.
- (ii) We express no opinion as to title to or the priority of any lien on or security interest in any real or personal property.
- (iii) NMSA 1978, Section 42A-1-24(C) (2001) provides that a court which has heard and adjudicated a condemnation proceeding has the power over the condemnee's compensation to "make orders as the court deems necessary with respect to encumbrances, liens, rents, insurance and other just and equitable charges."

The foregoing opinions represent our legal judgment based upon a review of existing legal authorities that we deem relevant to render such opinions and are not a guarantee of a result.

Very truly yours,

Exhibit B

Form of Opinion of Counsel to the Company

[_____] , 2019

Torrance County, New Mexico
Estancia, New Mexico

_____ [purchaser]

BOKF, NA
Albuquerque, New Mexico

Ladies and Gentlemen:

We have represented La Joya Wind, LLC (the “Company”) in connection with (i) the Lease Agreement dated as of _____, 2019 (the “Agreement”) between Torrance County, New Mexico (the “Issuer”) and the Company, (ii) the Bond Purchase Agreement (the “Bond Purchase Agreement”) dated the date hereof, among _____ (the Purchaser”), the Issuer and the Company, pursuant to which the Purchaser has agreed to purchase the Issuer’s Taxable Industrial Revenue Bonds (New Mexico Wind Energy Center Repower Project), Series 2019A in the maximum principal amount of \$290,000,000 to be issued under the Indenture dated as of _____, 2019 (the “Indenture”) among the Issuer, the Purchaser, the Company and the Depository, and (iii) the Indenture. We have reviewed executed copies of the Bond Documents (as defined below), and certificates of officers of the Company and public officials and we have made such other investigations of law and fact as we have deemed necessary. The Agreement, the Indenture and the Bond Purchase Agreement are referred to herein as the Bond Documents.

Based upon the foregoing, in our opinion:

1. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware, is duly registered as a foreign limited liability company under the laws of New Mexico and has duly authorized the execution, delivery and performance of the Agreement, the Indenture and the Bond Purchase Agreement.

2. The execution, delivery and performance by the Company of the Agreement, the Indenture and the Bond Purchase Agreement will not conflict with, contravene, violate or constitute a breach of or default under the articles of organization or operating agreement of the Company or any law, rule, regulation, ordinance, or, to our knowledge, based on a certificate of an officer of the Company, any order, consent, decree, agreement or instrument to which the Company is a party or by which it or its properties, including the Project Property as defined in the Lease, is bound.

3. All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Company of the Agreement, the Indenture and the Bond Purchase Agreement have been obtained and are in full force and effect.

4. There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to our knowledge, threatened against the Company, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bond or the execution and delivery of any of the Bond Documents, (ii) in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents, or (iii) questions the authority of the Company to own or operate any of the Project Property, as defined in the Lease.

5. The Agreement, the Indenture and the Bond Purchase Agreement have been duly authorized, executed and delivered and constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

The opinions expressed in this opinion letter are limited to the federal laws of the United States, the laws of the State of New Mexico, and the Limited Liability Company Act of the State of Delaware.

Very truly yours,

Exhibit C

Form of Opinion of Counsel to the Issuer

[_____], 2019

Torrance County, New Mexico
PO Box 767
205 S. Ninth St.
Estancia, NM 87016

La Joya Wind, LLC
251 Little Falls Drive
Wilmington, DE 19808

\$290,000,000
Torrance County, New Mexico
Taxable Industrial Revenue Bonds
(La Joya Wind, LLC Project)
Series 2019A

Ladies and Gentlemen:

We have acted as special counsel to Torrance County, New Mexico (the "Issuer") in connection with the issuance by the Issuer of its Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project), Series 2019A in the maximum principal amount of \$290,000,000 (the "Bonds").

For the purposes of the opinions expressed in this letter, we have examined the following documents:

A. An executed copy of the Issuer's Resolution No. _____, establishing the Issuer's notice standards.

B. A copy of the letters from the Issuer to the Torrance County Assessor and to Silver City Consolidated Schools each dated _____, notifying such parties of the Issuer's intent to consider the Bond Ordinance (defined below).

C. The *Affidavit of Publication of Notice of the Intent to Consider the Bond Ordinance* dated as of [INSERT DATE], attesting to the publication of the notice of intent to consider the Bond Ordinance in the *Mountain View Telegraph* on _____.

D. The *Affidavit of Publication of Notice of the Intent to Consider the Bond Ordinance* dated as of [INSERT DATE], 2017, attesting to the publication of the notice of intent to consider the Bond Ordinance in the *Mountain View Telegraph* on _____.

E. An executed copy of Ordinance 2018-___ adopted by the Issuer on December 20, 2018 (the “Bond Ordinance”).

F. The *Affidavit of Publication of Notice of Adoption of Bond Ordinance* dated as of November 30, 2017, attesting to the publication of the notice of adoption of the Bond Ordinance in the *Mountain View Telegraph* on _____.

G. The Indenture dated as of _____ 1, 2019 (the “Indenture”), among the Issuer, _____ (the “Purchaser”), La Joya Wind, LLC (the “Company”) and BOKF, NA (the “Depository”).

H. The Lease Agreement dated as of _____ (the “Lease”), between the Issuer and the Company.

I. The Bond Purchase Agreement dated as of _____ (the “Bond Purchase Agreement”), among the Issuer, the Purchaser and the Company. The Bond Purchase Agreement, together with the Indenture and the Lease are collectively referred to herein as the “Bond Documents”).

J. Minutes from the Torrance County Board of County Commissioners meeting held on December 20, 2018.

K. The Issuer Certificate dated as of the date hereof and delivered by the Issuer in connection with the issuance of the Bonds.

L. The report of the records of the State of New Mexico [Tenth] Judicial District Court and the United States District Court for the District of New Mexico prepared by UCC Search, Inc., on [_____] (the “Court Records Report”).

In addition, we have examined such other records, documents, certificates, opinions and other matters as are in our judgment necessary or appropriate to enable us to render the opinions expressed herein.

Capitalized terms used herein and not otherwise defined in this opinion shall have the meanings ascribed to them in the Bond Documents. As used herein, the term “**knowledge**” means the current actual personal conscious awareness of facts and other information by the lawyers in the undersigned law firm actively involved in preparing this opinion letter, but does not include constructive knowledge or inquiry knowledge. The qualification of any statement in this opinion with respect to the existence or absence of facts “to our knowledge” means that, during the course of our representation, no information has come to the attention of any lawyer in the undersigned law firm actively involved in preparing this opinion letter which would give us actual knowledge of the existence or absence of such facts. However, we have not undertaken any investigation to determine the existence or absence of such facts, and no inference as to our knowledge thereof shall be drawn from the fact of our representation of any party or otherwise.

Based on our review of the foregoing and the assumptions, qualifications and limitations contained in this opinion, in our opinion:

1. The Issuer is a duly organized and validly existing political subdivision of the State of New Mexico under the Constitution and laws of the State of New Mexico.
2. To our knowledge, Ordinance Number 2018-____ was duly adopted by the Torrance County Board of County Commissioners (the “Commission”) on _____, 2019, (the “Bond Ordinance”) in accordance with all applicable laws and has not been repealed or rescinded.
3. Without opining as to the legality, validity or enforceability of the Bonds, the Indenture, the Lease Agreement and the Bond Purchase Agreement (all as defined in the Bond Ordinance), the adoption of the Bond Ordinance by the Board will not violate any provision of the Constitution or laws of the State of New Mexico.
4. To our knowledge, and based solely upon our examination of the Court Records Report, there is no action, suit, or proceeding before or in the State of New Mexico _____ Judicial District Court and the United States District Court for the District of New Mexico pending against the Issuer which seeks to or does restrain or enjoin the issuance or delivery of the Bonds, or in any manner questions the authority or proceedings for the issuance of the Bonds.

In giving the opinions contained in this letter, we have assumed without investigation:

- A. the authenticity of all documents submitted to us as originals, the genuineness of all signatures and the conformity to authentic originals of all documents submitted to us as copies;
- B. the truthfulness and accuracy of all factual (in no event legal) matters contained in the representations and warranties in the Bond Documents, the Issuer Certification Instrument, the Court Records Report and in the certificates executed and delivered at closing by officials of the Issuer on the Closing Date;
- C. that all statutes, judicial and administrative decisions, and rules and regulations of governmental agencies, constituting the law of New Mexico are generally available (*i.e.*, in terms of access and distribution following publication or other release) to lawyers practicing in New Mexico, and are in a format that makes legal research reasonably feasible;
- D. that the constitutionality or validity of a relevant statute, rule, regulation or agency action is not in issue unless a reported decision binding upon New Mexico courts has specifically addressed but not resolved, or has established, its unconstitutionality or invalidity; and

This opinion is limited to the matters expressly stated herein and is based on the assumptions and qualifications set forth herein and no further opinion may be inferred. This opinion is delivered to the addressees hereof in connection with the issuance of the Bonds, and the opinion and all conclusions stated herein may not be quoted or relied upon by any person other than the addressees hereof or for any purpose other than as stated herein without our prior written consent. We make no undertaking to supplement this opinion if facts or circumstances come to our attention or changes in the law occur after the date of this letter.

The foregoing opinions are limited to matters involving the law of the State of New Mexico and the Issuer, and we do not express any opinion as to the laws of any other jurisdiction.

Very truly yours,

,

Exhibit D

Form of Opinion of Counsel to the Purchaser

[_____], 2019

Torrance County, New Mexico
Estancia, New Mexico

La Joya Wind, LLC
Wilmington, Delaware

BOKF, NA
Albuquerque, New Mexico

Ladies and Gentlemen:

We have acted as counsel to _____, LLC (the “Purchaser”) in connection with the Indenture dated as of _____, 2019 (the “Indenture”) among BOKF, NA, as depositary (the “Depositary”), Torrance County, New Mexico (the “Issuer”), La Joya Wind, LLC (the “Company”) and the Purchaser, and the Bond Purchase Agreement (the “Bond Purchase Agreement”) dated the date hereof among the Purchaser, the Issuer and the Company, pursuant to which the Purchaser has agreed to purchase the Issuer’s Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project), Series 2019A in the maximum principal amount of \$290,000,000 to be issued under the Indenture. The Indenture, the Bond Purchase Agreement, and the Lease Agreement dated as of _____ between the Company and the Issuer are referred to herein as the “Bond Documents.” In connection with this transaction, we have examined executed copies of the Bond Documents, certificates of officers of the Purchaser and certificates of public officials and have made such other investigations of law and fact as we have deemed necessary.

Based upon the foregoing, in our opinion:

1. The Purchaser is a limited liability company duly organized and validly existing and in good standing under the laws of Delaware.
2. The execution, delivery and performance by the Purchaser of the Indenture and the Bond Purchase Agreement will not conflict with, contravene, violate or constitute a breach of or default under the Articles of Incorporation or the bylaws of the Purchaser or any law, rule, regulation, ordinance, or, to our knowledge, based on a certificate of an officer of the Purchaser, any order, consent, decree, agreement or instrument to which the Purchaser is a party or by which it or its property is bound.
3. All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Purchaser of the Indenture and the Bond Purchase Agreement have been obtained and are in full force and effect.

4. There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to our knowledge, threatened against the Purchaser, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents, or (ii) in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents.

5. The Indenture and the Bond Purchase Agreement constitute legal, valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

This opinion has been delivered at your request for the purposes in connection with the Bond Documents. Without our prior written consent, this opinion is not to be utilized or quoted for any other purpose and no one other than you is entitled to rely thereon. The opinions expressed in this opinion letter are limited to the federal laws of the United States, the laws of the State of New Mexico, and the Limited Liability Company Act of the State of Delaware.

Very truly yours,

File0004.DOCX



EAST TORRANCE

Soil & Water Conservation District

P.O. Box 58 Estancia, NM 87016

715 S. 5th Street, Estancia

505-384-2272 ext.5

Board of Supervisors

Ryan Schenckel
Chairman

March 20, 2019

Bill Wang
Vice-Chair

Jim Berlier
Secretary / Treasurer

*Torrance County Commission
Wayne Johnson, County Manager
PO Box 48
Estancia, NM 87016*

Spencer Hunsley
Member

Clayton Gardner
Member

David Patten
Member / Member

District Staff

Christy Kapp
District Manager

*Ref: \$675,000.000 (maximum) Torrance County, New Mexico, Taxable Industrial Revenue Bonds (La Joya Wind LLC Project), Series 2019 to be issued in one or more series or issues (the "Bonds")
(Or any other IRB's that may come to the Commission that are within the East Torrance Soil and Water Conservation District Boundaries.)*

Torrance County Commissioners:

District Partners

Agencia Estatal de Medio Ambiente
Ministerio de Agricultura, Pesca y Alimentación

Agencia Estatal de Medio Ambiente
Ministerio de Agricultura, Pesca y Alimentación

Agencia Estatal de Medio Ambiente
Ministerio de Agricultura, Pesca y Alimentación

Agencia Estatal de Medio Ambiente
Ministerio de Agricultura, Pesca y Alimentación

Agencia Estatal de Medio Ambiente
Ministerio de Agricultura, Pesca y Alimentación

Agencia Estatal de Medio Ambiente
Ministerio de Agricultura, Pesca y Alimentación

Agencia Estatal de Medio Ambiente
Ministerio de Agricultura, Pesca y Alimentación

Agencia Estatal de Medio Ambiente
Ministerio de Agricultura, Pesca y Alimentación

Agencia Estatal de Medio Ambiente
Ministerio de Agricultura, Pesca y Alimentación

Agencia Estatal de Medio Ambiente
Ministerio de Agricultura, Pesca y Alimentación

Agencia Estatal de Medio Ambiente
Ministerio de Agricultura, Pesca y Alimentación

Agencia Estatal de Medio Ambiente
Ministerio de Agricultura, Pesca y Alimentación

Agencia Estatal de Medio Ambiente
Ministerio de Agricultura, Pesca y Alimentación

Agencia Estatal de Medio Ambiente
Ministerio de Agricultura, Pesca y Alimentación

Agencia Estatal de Medio Ambiente
Ministerio de Agricultura, Pesca y Alimentación

Agencia Estatal de Medio Ambiente
Ministerio de Agricultura, Pesca y Alimentación

East Torrance Soil and Water Conservation District (East Torrance SWCD) board of supervisors located in Estancia, County of Torrance in New Mexico submits the following letter in response to the letter that provided us with notice of the intent of the Board of County Commissioners of Torrance County, New Mexico to consider the adoption of a bond ordinance would like to submit our comments and concerns.

The Conservation District is a legal subdivision of the state, like the county government or school district and has been in existence for 75 years. Supervisors are elected and serve voluntary and without pay. The soil and water conservation district are responsible under state law for conservation and sustainability of natural resources such as soil, water, air plants, animals and people. Funding for the District operations is obtained from three sources: State of New Mexico Budget appropriation (roughly \$12,000.00 year), Torrance County Mill levy Taxation (last year appropriations were (\$127,422.66) and federal grants in which we do not take any administrative pay from if awarded.

The East Torrance SWCD uses these funds for cost share projects that benefit everyone who lives within or own lands within the District Boundaries with the following cost share projects: Water Harvesting, residential or commercial drip irrigation, low flow water devices programs. Rangeland cost share assistance: for livestock pipelines, water storage facilities, cross fencing and erosion control project. Cropland cost share assistance: for irrigation pipelines, valves, flow meters, laser leveling, low energy sprinkler nozzles, and back flow prevention vales. Brush Management and Weed Management assistance: with over 93 acres being thinned each year. And Group projects such as just this past year East Torrance SWCD partnered with Torreon Fire Department with a \$60,000.00 sponsorship to help purchase a new brush truck in helping fighting fires within the Manzano Mountains and emergency service throughout the fire departments district. Other group projects include help funding of the Torreon Acequia project, Town of Estancia and Torreon fire department water harvesting systems which were paid in full by the District. East Torrance SWCD has also put in a solar heating unit at the Estancia public pool and sponsored with \$5000.00 last

Comments and / or concerns
Regarding the Ordinance and issuance of Bonds

year in helping to get the pool back up and running to open again last year. These projects benefit the whole community of Torrance County. These examples are just a few of the projects and activities that the District is involved with and do for the community and landowners.

All the projects and so much more is paid out of our financial assistance from the collections of our mill levy.

Prior to adopting an ordinance issuing industrial revenue bonds as a local public body, whose property tax base is affected by and issuance, and if granted; East Torrance SWCD will be impacted of the bonds; and asking the commission to allow East Torrance Soil and Water Conservation District to be a part of the negotiation of payments in lieu of taxes discussion as the school districts are doing.

In the past, the last negotiation of payments of an IRB, East Torrance SWCD was told during the public hearing at the Commission meeting that Torrance County would work with the SWCD on discussion on a possible payment to the SWCD since the negotiations were already completed with the funds that Torrance County receives. This discussion never took place and East Torrance SWCD did not receive anything from the last IRB.

During the 2019 Legislative Session a bill was run to address the IRB process and the Soil and Water Conservation District along with our State Association worked with Senators on the bill in the discussion of adding the SWCD's to the legislation as the school districts are. Unfortunately, time ran out and the bill was not heard on the house side.

We would like to remind the Commission, and all involved with the IRB in lieu of taxes to please consider bringing the Soil and Water Conservation District to the table to discuss payments in lieu of taxes as the school districts are allowed to just for the per fact that Soil and Water Conservation Districts are the ONLY entity that can by law put money on private, State and Federal lands for conservation projects and for beneficial use. Even if the District were able to receive \$20,000 a year that would be 1 to 5 projects that could be put back onto the land.

We appreciate you allowing us to submit our comments and looking forward in building our relationship with the new Commissioners and Manager in the upcoming months and years. If we can further assist or answer any other questions please do not hesitate in calling our District Manager, Cheri Lujan at 505-384-2272 ext 103.

Sincerely,



Bill Wrye
Vice Chairman, East Torrance SWCD

CC: Katherine McKinney, Modrall Sperling via e-mail

cl/file

TORRANCE COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS
ORDINANCE NO. _____

A MASTER ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF TORRANCE COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (LA JOYA WIND PROJECTS) TO BE ISSUED PURSUANT TO THE MASTER ORDINANCE AND SUPPLEMENTAL ORDINANCES IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$675,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF WIND ENERGY GENERATION FACILITIES FOR THE PURPOSE OF GENERATING ELECTRICITY; ESTABLISHING THE PAYMENTS IN LIEU OF TAXES AND OTHER PARAMETERS FOR THE ISSUANCE OF TAXABLE INDUSTRIAL REVENUE BONDS FOR EACH PHASE OF THE LA JOYA PROJECT; PROVIDING FOR SUPPLEMENTAL ORDINANCES TO BE ADOPTED UNDER THE MASTER ORDINANCE FOR EACH PHASE OF THE PROJECT; AUTHORIZING THE ISSUANCE AND SALE OF TORRANCE COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (LA JOYA WIND LLC PROJECT), SERIES 2019A FOR THE FIRST PHASE OF THE PROJECT IN A PRINCIPAL AMOUNT NOT TO EXCEED \$290,000,000; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, THE BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2019A BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Torrance County (the “County”) is a legally and regularly created, established, organized and existing political subdivision of the State of New Mexico (the “State”) created pursuant to NMSA 1978, Section 4-30-1 through -2 (1917); and

WHEREAS, pursuant to NMSA 1978, Sections 4-59-1 through -16 (1975, as amended through 2015) (the “Act”), the County is authorized to acquire industrial revenue projects to be located within the County, to issue industrial revenue bonds and to use the proceeds of such bonds for the purpose of promoting the use of the natural resources of the State and promoting industry and developing trade or other economic activity to secure and maintain a balanced and stable economy in the County to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, Avangrid Renewables, LLC is an Oregon limited liability company (the “Parent Company”);

WHEREAS, the Parent Company has presented to the Board of County Commissioners (the “Commission”) of Torrance County, New Mexico a proposal whereby the County would establish parameters for the issuance of Taxable Industrial Revenue Bonds, Series 2019A and Series 2019B (collectively, the “Bonds”) in an aggregate principal amount not to exceed \$675,000,000 for two or more phases of a La Joya Wind Project (described as La Joya I and La Joya II, and collectively referred to herein as the “La Joya Wind Project”) pursuant to which companies formed by the Parent Company (collectively, the “Project Company”) shall acquire, construct, and install wind energy generation facilities and associated electrical generating equipment and real property used to generate electricity from wind energy (the “Project Property”), located within the County and outside the corporate limits of any municipality in the County (the “Project Site”), to be used by the Company for the generation and transportation of electricity; and

WHEREAS, the Commission has determined that it is necessary and in the best interests of the County and the residents that the Bonds be issued in one or more series pursuant to the Act and that the specific terms, other than the terms of the 2019A Bonds (as herein defined) which are established herein, for the subsequent series of Bonds for the La Joya II Project (the “2019B Bonds”) be specified in a supplemental ordinance (the “Supplemental Ordinance”) within the parameters and limitations set forth in this ordinance (the “Master Bond Ordinance”);

WHEREAS, the Parent Company has proposed to establish payments in lieu of taxes (as defined herein) as set forth in this Master Bond Ordinance for the Bonds to be issued pursuant to this Master Bond Ordinance, to be shared by and among the County and Estancia Municipal School District and Vaughn Municipal Schools, as applicable based upon the location of the Project Site (the “School Districts”); and

WHEREAS, the County and the School Districts have negotiated and agreed upon the 2019A PILOT and the 2019B PILOT Agreement (both as defined herein) and the split of such payments between one or both of the School Districts, as applicable, and the County pursuant to NMSA 1978, Section 4-59-4(A)(2) (2003); and

WHEREAS, the 2019A Company has presented to the Commission a proposal whereby the County would issue its Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project), in an aggregate principal amount not to exceed \$290,000,000 (the “2019A Bonds”), and acquire, construct, and install wind energy generation facilities and associated electrical generating equipment and real property used to generate electricity from wind energy (the “2019A Project Property”), located at the 2019A Project Site as set forth in the 2019A Lease, to be used by La Joya Wind, LLC (the “2019A Company”) for the generation and transportation of electricity of up to 166 megawatts (the “2019A Project” or the “La Joya I Project”); and

WHEREAS, under the Company’s proposal related to the issuance of the first installment of the Bonds, the County would enter into an Indenture (the “2019A Indenture”) with the purchaser of the 2019A Bonds (the “2019A Purchaser”) and BOKF, NA (the “2019A

Depository”), pursuant to which and together with this Master Bond Ordinance, the County would issue the 2019A Bonds; and

WHEREAS, under the Company’s proposal, the County and the 2019A Company would enter into a lease agreement (the “2019A Lease”), pursuant to which the 2019A Company will lease the 2019A Project Property for the La Joya I Project from the County, and the 2019A Company will make payments sufficient to pay the principal of and interest on the 2019A Bonds and to pay all of the other obligations pursuant to the provisions of the 2019A Lease and this Master Bond Ordinance;

WHEREAS, with approval of the Supplemental Ordinance and the issuance of the 2019B Bonds for the La Joya II Project, the County will enter into an Indenture (the “2019B Indenture”) with the purchaser of the series of Bonds authorized pursuant to the Master Bond Ordinance and the Supplemental Ordinance (the “2019B Purchaser”) and a depository to be named in the Supplemental Ordinance (the “2019B Depository”), pursuant to which and together with this Master Bond Ordinance and the Supplemental Ordinance, the County would issue the series 2019B Bonds for the La Joya II Project; and

WHEREAS, under the Parent Company’s proposal, for the 2019B Bonds to be issued for the La Joya II Project for a company (the “2019B Company”) to be formed by the Parent Company for the La Joya II Project, the County would enter into the 2019B Indenture with the 2019B Purchaser of the 2019B Bonds and the 2019B Depository, pursuant to which and together with this Master Bond Ordinance and a supplemental ordinance (collectively with the Master Bond Ordinance, the “2019B Bond Ordinance”), the County would issue the 2019B Bonds; and

WHEREAS, under the Parent Company’s proposal the 2019B Company and the County would enter into a Lease Agreement (the “2019B Lease”), pursuant to which the 2019B Company will lease the Project Property for the La Joya II Project from the County, and the 2019B Company will make payments sufficient to pay the principal of and interest on the 2019B Bonds issued for the La Joya II Project and to pay all other obligations incurred pursuant to the provisions of the 2019B Lease, this Master Bond Ordinance, and the Supplemental Ordinance; and

WHEREAS, the County is authorized to enter into, deliver and perform all of its obligations under the 2019A Bond Documents (as defined below) and to issue, execute and deliver the 2019A Bonds pursuant to the Act and this Master Bond Ordinance; and

WHEREAS, the 2019A Bonds in a principal amount not to exceed \$290,000,000 will be issued, sold and delivered by the County in a private sale to the 2019A Purchaser pursuant to the bond purchase agreement to be dated as of the initial date of delivery of the 2019A Bonds among the County, the 2019A Purchaser and the 2019A Company (the “2019A Bond Purchase Agreement” and together with the 2019A Indenture, and 2019A Lease, the “2019A Bond Documents”); and

WHEREAS, the proceeds of the 2019A Bonds shall be applied to pay the costs of acquiring, constructing and installing the 2019A Project Property and to pay certain costs associated with the issuance and sale of the 2019A Bonds; and

WHEREAS, the Commission has determined that it is in the best interest of the County to establish the parameters for the Bonds to be issued pursuant to this Master Bond Ordinance and to issue the 2019A Bonds and to execute and deliver the 2019A Bond Documents and other documents related thereto; and

WHEREAS, the County will enter into the 2019A Bond Documents in connection with the issuance of the 2019A Bonds; and

WHEREAS, the County is authorized to issue the Bonds under the Act and this Master Bond Ordinance, and after having considered the Company's proposal, has concluded that it is desirable at this time to authorize the issuance of the first installment of the Bonds designated as the 2019A Bonds to finance the 2019A Project and that the County's issuance of the 2019A Bonds will constitute and be a valid public purpose; and

WHEREAS, this Commission has been advised by Bond Counsel that the disclosure provisions of Rule 15c2-12 of the Securities and Exchange Commission are not applicable to this transaction inasmuch as the 2019A Bonds are being sold in a private sale to the 2019A Purchaser without participation of an underwriter; and

WHEREAS, there has been published in *The Independent* and the *Albuquerque Journal*, newspapers of general circulation in the County, public notice of the Commission's intention to adopt this Master Bond Ordinance, which notice contained certain information concerning the ownership, purpose, location and size of the La Joya Wind Project and the amount of the Bonds to be issued to finance the La Joya Project, which notice was published at least fourteen (14) days prior to final action upon this Master Bond Ordinance; and

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF TORRANCE COUNTY, NEW MEXICO:

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Master Bond Ordinance previously taken by the Commission and the officials of the County directed toward approval of the issuance and sale of the Bonds be approved and the same hereby are ratified, approved and confirmed.

Section 2. FINDINGS.

A. General. The Commission hereby declares that it has considered all relevant information presented to it relating to the Bonds and the La Joya Wind Project and hereby finds and determines that the issuance of the Bonds pursuant to the Master Bond Ordinance to provide funds for the acquisition, construction and installation of the Project

Property is necessary and advisable and in the interest of and will promote the use of the natural resources of the State, industry and trade and a sound and proper balance in the State between agriculture, commerce and industry.

B. The Commission finds that:

(1) The Bonds will be issued for the purpose of financing the acquisition, construction and installation of the La Joya Wind Project.

(2) The aggregate face amount of obligations to be issued with respect to financing the La Joya Wind Project pursuant to this Master Bond Ordinance will not collectively exceed \$675,000,000.

(3) The Project Site is located within the County and outside the corporate limits of any municipality located in the County.

(4) The developer of the 2019A Project is the 2019A Company.

(5) The aggregate principal amount of the 2019A Bonds will not exceed \$290,000,000.

(6) The Bonds may be issued in two or more series.

Section 3. BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Bonds pursuant to this Master Bond Ordinance and the applicable Supplemental Ordinance in a principal amount not to exceed \$675,000,000 and the use of the proceeds of the Bonds to finance the cost of the La Joya Wind Project including payment of transaction expenses related thereto are hereby approved and confirmed. The sale of the 2019A Bonds at par at a purchase price not to exceed \$290,000,000 is approved.

B. Form and Terms.

Subject to the limitations set forth in this Master Bond Ordinance, the 2019A Bonds and 2019B Bonds, to be issued subsequently in one or more series, shall be issued in a principal amount not to collectively exceed \$675,000,000 and bearing interest at the rates and maturing on the dates set forth in the 2019A Indenture and 2019B Indenture, respectively. The 2019A Bonds shall (i) be in the form and denomination and shall be numbered and dated as set forth in the 2019A Indenture, and (ii) be payable as to principal and interest and subject to redemption in the amounts, upon the conditions and at the times and prices set forth in the 2019A Indenture. The 2019B Bonds shall (i) be in the form and denomination and shall be numbered and dated as set forth in the 2019B Indenture, and (ii) be payable as to principal and interest and subject to redemption in the amounts, upon the conditions and at the times and prices set forth in

the 2019B Indenture presented to the Commission at the time of adoption of the Supplemental Ordinance.

C. Execution. The 2019A Bonds and 2019B Bonds shall be signed by the Chair of the Commission.

D. Interest Rate. The interest rate on the 2019A Bonds shall be 5% per annum. The interest rate on the 2019B Bonds shall be as set forth in the Supplemental Ordinance for the 2019B Bonds.

E. PILOT Payments.

1. 2019A PILOT Agreement. For the 2019A Bonds, the 2019A Company shall pay annual payments in lieu of taxes (the “2019A PILOT”) equal to \$3,250 per megawatt of generating capacity of the 2019A Project, which 2019A PILOT shall be split between the County and the School Districts as provided in the 2019A Lease Agreement.

2. 2019B PILOT Agreement. Pursuant to this Master Bond Ordinance for the 2019B Bonds to be issued pursuant to a Supplemental Ordinance, the 2019B Company shall pay annual payments in lieu of taxes (the “2019B PILOT”) to be split between the County and the applicable School Districts located within the boundaries of the La Joya II Project, equal to \$2,500 per megawatt of generating capacity for the La Joya II Project authorized pursuant to the Supplemental Ordinance or such greater 2019B PILOT as provided in the table below depending upon the price per megawatt hour negotiated in the applicable power purchase agreement (the “PPA Price”) in place for the La Joya II Project (the “2019B PILOT Agreement”); provided, however, if the PPA Price is not made publicly available by the power purchaser, the 2019B PILOT agreed upon by the County and one or both of the School Districts, as applicable, and to be split with the appropriate School District(s) shall be \$3,250 per megawatt of generating capacity for the La Joya II Project.

Price / 2019B PILOT Schedule	La Joya II PPA PRICE (\$ / megawatt hour)	La Joya II PILOT (\$/megawatt generating capacity)
Range of PPA Prices	\$ 18.00 - 18.99	\$ 2,500.00
	\$ 19.00 - 19.99	\$ 2,638.89
	\$ 20.00 - 20.99	\$ 2,777.78
	\$ 21.00 - 21.99	\$ 2,916.67
	\$ 22.00 - 22.99	\$ 3,055.56
	\$ 23.00 - 23.99	\$ 3,194.44
	\$ 24.00 or higher	\$ 3,250.00

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The 2019A Bond Documents in the forms presented to the

Commission are hereby approved. The Chair of the Commission of the County is authorized to approve the form, terms and provisions of the 2019A Bond Documents on behalf of the Commission, provided that such form, terms and provisions are consistent with this Master Bond Ordinance, and to execute and deliver in the name and on behalf of the County, and the County Clerk or Deputy County Clerk are hereby authorized to attest, as necessary, the 2019A Bond Documents. The Chair and the County Clerk are further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including security agreements, and to do such other acts and things, either prior to or after the date of delivery of the 2019A Bonds, as are necessary or appropriate to consummate the transactions contemplated by the 2019A Bond Documents. The Chair, the County Manager and/or Clerk and other officers of the County shall take such action as is necessary to effectuate the provisions of the 2019A Indenture and shall take such action as is necessary in conformity with the Act to finance the costs of the La Joya I Project and to carry out related transactions as contemplated by this Master Bond Ordinance and the 2019A Bond Documents, including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the 2019A Bonds.

The 2019B Documents shall be submitted to the Commission and approved as to form at the time of adoption of the Supplemental Ordinance.

Section 5. DELIVERY OF THE 2019A BONDS. Upon the execution of the 2019A Bond Documents, the satisfaction of the conditions set forth in the 2019A Bond Documents and upon receipt of the purchase price for the 2019A Bonds, the 2019A Bonds shall be executed, authenticated and delivered to the 2019A Purchaser. The 2019A Bonds shall not be valid for any purpose until the 2019A Bonds have been properly authenticated as set forth in the 2019A Indenture.

Section 6. FUNDS AND ACCOUNTS. There is established in the 2019A Indenture, and on and after the date on which the 2019A Bonds are issued there shall be maintained, the funds and accounts as set forth in the 2019A Indenture. Other funds and accounts may be established as are necessary under the 2019A Indenture.

Section 7. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER MATTERS RELATED TO THE 2019A BONDS. The following determinations are made:

A. The maximum amount necessary in each year to pay the principal of and interest on the 2019A Bonds, assuming issuance of the 2019A Bonds as of June 1, 2019, in the maximum aggregate principal amount of \$290,000,000 and bearing interest at the rate of 5.00%, is as follows:

Year	Total Debt Service	Principal	Interest
2019	\$ 7,250,000	-0-	\$ 7,250,000
2020	14,500,000	-0-	14,500,000
2021	14,500,000	-0-	14,500,000
2022	14,500,000	-0-	14,500,000
2023	14,500,000	-0-	14,500,000
2024	14,500,000	-0-	14,500,000
2025	14,500,000	-0-	14,500,000
2026	14,500,000	-0-	14,500,000
2027	14,500,000	-0-	14,500,000
2028	14,500,000	-0-	14,500,000
2029	14,500,000	-0-	14,500,000
2030	14,500,000	-0-	14,500,000
2031	14,500,000	-0-	14,500,000
2032	14,500,000	-0-	14,500,000
2033	14,500,000	-0-	14,500,000
2034	14,500,000	-0-	14,500,000
2035	14,500,000	-0-	14,500,000
2036	14,500,000	-0-	14,500,000
2037	14,500,000	-0-	14,500,000
2038	14,500,000	-0-	14,500,000
2039	14,500,000	-0-	14,500,000
2040	14,500,000	-0-	14,500,000
2041	14,500,000	-0-	14,500,000
2042	14,500,000	-0-	14,500,000
2043	14,500,000	-0-	14,500,000
2044	14,500,000	-0-	14,500,000
2045	14,500,000	-0-	14,500,000
2046	14,500,000	-0-	14,500,000
2047	14,500,000	-0-	14,500,000
2048	304,500,000	290,000,000	14,500,000

B. The 2019A Bonds will bear interest at the rate of five percent (5%) per annum, or such other lower rate as is set forth in the Indenture.

C. The 2019A Bonds may be redeemed at any time without premium.

D. It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund for the maintenance of the Project Property.

E. The 2019A Lease shall require that the 2019A Company maintain the Project Property in safe repair and in such operating condition as is needed for its operations and carry proper insurance with respect to the Project Property as provided in the 2019A Lease.

F. The 2019A Lease shall require the 2019A Company to make lease payments in an amount sufficient to pay the principal of and interest on the 2019A Bonds as principal and interest become due and to pay all Related Costs (as defined in the 2019A Lease).

G. The 2019A Lease shall include a provision that the 2019A Company pay the County and the School Districts the 2019A PILOT payments for so long as the 2019A Bonds are outstanding.

Section 8. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER MATTERS RELATED TO 2019B BONDS. The following determinations are made:

A. The maximum amount necessary in each year to pay the principal of and interest and the interest rate on the 2019B Bonds authorized by this Master Bond Ordinance and the Supplemental Ordinance shall be set forth in the Supplemental Ordinance.

B. The 2019B Bonds will bear interest at the rate set forth in the Supplemental Ordinance or at such lower rate as is set forth in the Indenture for the 2019B Bonds.

C. The 2019B Bonds may be redeemed at any time without premium.

D. It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund for the maintenance of the Project Property associated with the La Joya II Project.

E. The 2019B Lease shall require that the 2019B Company maintain the Project Property for the La Joya II Project in safe repair and in such operating condition as is needed for its operations and carry proper insurance with respect to the Project Property as provided in the 2019B Lease.

F. The 2019B Lease shall require the 2019B Company to make lease payments in an amount sufficient to pay the principal of and interest on the 2019B Bonds as principal and interest become due and to pay all Related Costs (as defined in the 2019B Lease).

G. The 2019B Lease shall include a provision that the 2019B Company pay the County and one or both of the School Districts, as applicable, payments in lieu of taxes pursuant to the 2019B PILOT Agreement set forth in this Master Bond Ordinance for so long as the 2019B Bonds are outstanding.

H. If the 2019B Bonds are issued after 2019, the 2019B Bonds shall be renamed in the Supplemental Ordinance with a designation corresponding to the year of issuance of the 2019B Bonds, and references in this Master Bond Ordinance to the 2019B Bonds shall be deemed applicable to such renamed series of 2019B Bonds.

Section 9. LIMITED OBLIGATIONS. The Bonds shall be special limited obligations of the County, payable solely from the Base Rent (as defined in the respective 2019A Lease and 2019B Lease) paid by the 2019A Company and 2019B Company, respectively, to the County as described in the respective 2019A Indenture and 2019B Indenture and any other property or interest of the County specifically pledged under the Indenture and shall never constitute a debt or indebtedness of the County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing contained in this Master Bond Ordinance or in the Bond Documents for the 2019A Bonds and 2019B Bonds or any other instruments shall be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the 2019A Bonds and 2019B Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing powers, nor shall the breach of any agreement contained in this Master Bond Ordinance, the Bond Documents, the 2019A Bonds, the 2019B Bonds or any other instrument be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, the County having no power to pay out of its general funds.

Section 10. APPROVAL OF INDEMNIFICATION. The Commission specifically requires that the 2019A Lease and 2019B Lease contain provisions relating to indemnification which provide that the Company shall indemnify and hold harmless the County and its Commission, officials, employees and agents against liability to the Company, or to any third parties, that may be asserted against the County or its Commission, officials, members, officers, employees or agents with respect to the County's ownership of the Project Property or the issuance of the Bonds and arising from the condition of the Project Property or the acquisition, construction and operation of the Project Property by the Company, except to the extent NMSA 1978, Section 56-7-1 (2005) may preclude such indemnity, and except claims for any loss or

damage to the extent caused by the gross negligence or willful misconduct of the County or its Commission, or any official, employee or agent of the County.

Section 11. BOND ORDINANCE IRREPEALABLE. After the any of the Bonds are issued, the Master Bond Ordinance shall be and remain irrepealable until the Bonds, including interest, are fully paid, canceled and discharged in accordance with the Indenture.

Section 12. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Master Bond Ordinance are repealed by this Master Bond Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 13. SEVERABILITY. If any section, paragraph, clause or provision of the Master Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of the Master Bond Ordinance.

Section 14. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Master Bond Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the Chair of the Commission, and by the signature of the County Clerk or any Deputy County Clerk, and shall be recorded in the ordinance book of the County, kept for that purpose, and shall be in full force and effect thereafter in accordance with the laws of the State, and notice of adoption thereof shall be published once in a newspaper which maintains an office in, and is of general circulation in the County.

Done this 10th day of April, 2019.

BOARD OF COUNTY COMMISSIONERS,
TORRANCE COUNTY, NEW MEXICO

By: _____
Ryan Schwebach, Chair

By: _____
Kevin McCall, Commissioner

By: _____
Javier Sanchez, Commissioner

(SEAL)

ATTEST:

By: _____
Linda Jaramillo, County Clerk

TORRANCE COUNTY, NEW MEXICO,
as Issuer

_____, LLC,
as Purchaser

LA JOYA WIND, LLC
as Company

and

BOKF, NA,
as Depositary

INDENTURE

Dated as of _____ 1, 2019

Securing

\$290,000,000
Torrance County, New Mexico
Taxable Industrial Revenue Bonds
(La Joya Wind, LLC Project)
Series 2019A

This instrument constitutes a security agreement with respect to certain personal property, including certain after-acquired property as set forth herein, under the laws of the State of New Mexico.

TABLE OF CONTENTS

ARTICLE I - RECITALS.....	1
SECTION 101. THE ACT.....	1
SECTION 102. GOVERNMENT PROCEEDING.....	1
SECTION 103. INDENTURE; LIEN; COLLATERAL PLEDGE.....	1
SECTION 104. THE AGREEMENT.....	1
SECTION 105. CONDITIONS PRECEDENT PERFORMED.....	2
ARTICLE II - DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION.....	2
SECTION 201. MEANINGS OF WORDS AND TERMS.....	2
SECTION 202. RULES OF CONSTRUCTION.....	4
SECTION 203. BONDS NOT GENERAL OBLIGATIONS OF ISSUER.....	4
ARTICLE III - GRANT.....	5
SECTION 301. ASSIGNMENT AND PLEDGE.....	5
SECTION 302. RELEASE.....	5
ARTICLE IV - AUTHORIZATION, FORM, EXECUTION AND DELIVERY OF BONDS.....	5
SECTION 401. AUTHORIZATION; AUTHORIZED AMOUNT OF THE BOND.....	5
SECTION 402. FORM OF BOND.....	5
SECTION 403. EXECUTION AND DELIVERY; PAYMENT.....	6
SECTION 404. REGISTRATION AND TRANSFER OF THE BONDS.....	6
SECTION 405. LOST, STOLEN, DESTROYED AND MUTILATED BOND.....	6
SECTION 406. CANCELLATION AND DESTRUCTION OF THE BONDS BY ISSUER.....	7
SECTION 407. APPLICATION OF PAYMENTS FOR BONDS.....	7
ARTICLE V - REDEMPTION.....	7
SECTION 501. REDEMPTION.....	7
ARTICLE VI - BOND REVENUES AND FUNDS.....	7
SECTION 601. SOURCE OF PAYMENT OF THE BONDS.....	7
SECTION 602. CREATION OF THE BOND FUND, PAYMENTS.....	7
SECTION 603. USE AND CUSTODY OF THE BOND FUND.....	8
SECTION 604. REPAYMENT TO THE COMPANY FROM THE BOND FUND.....	8
SECTION 605. INVESTMENTS.....	8
SECTION 606. NON-PRESENTMENT OF THE BONDS.....	8
SECTION 607. NO LIABILITY.....	8
ARTICLE VII - ACQUISITION FUND.....	9
SECTION 701. CREATION OF THE ACQUISITION FUND; DEPOSITS.....	9
SECTION 702. DISBURSEMENTS.....	9
SECTION 703. RECORDS.....	10
SECTION 704. DEPOSITARY MAY RELY ON REQUISITIONS.....	10
SECTION 705. STATUS REPORTS.....	10
SECTION 706. COMPLETION DATE.....	10
SECTION 707. PAYMENT ON ACCELERATION.....	10
SECTION 708. INVESTMENTS.....	10
SECTION 709. NO LIABILITY.....	11

ARTICLE VIII - PARTICULAR COVENANTS AND PROVISIONS.....	11
SECTION 801. EXTENT OF COVENANTS; DISCLAIMER OF LIABILITY	11
SECTION 802. PERFORMANCE; AUTHORITY	11
SECTION 803. OFFICE OR AGENCY	11
SECTION 804. OBLIGATIONS UNDER THE AGREEMENT	12
SECTION 805. USE AND POSSESSION BY THE COMPANY	12
SECTION 806. INSTRUMENTS OF FURTHER ASSURANCE.....	12
SECTION 807. RECORDING OF INDENTURE. SUPPLEMENTAL INDENTURES AND OTHER DOCUMENTS	12
ARTICLE IX - EVENTS OF DEFAULT AND REMEDIES.....	12
SECTION 901. EVENTS OF DEFAULT.....	12
SECTION 902. REMEDIES ON EVENTS OF DEFAULT	13
SECTION 903. RIGHTS AND REMEDIES OF PURCHASER	14
SECTION 904. ISSUER AND DEPOSITARY NOT RESPONSIBLE	14
SECTION 905. APPLICATION OF MONEYS	14
SECTION 906. PURCHASER TO FILE PROOFS OF CLAIM	14
SECTION 907. DELAY OR OMISSION; NO WAIVER.....	15
SECTION 908. NO WAIVER OF ONE DEFAULT TO AFFECT ANOTHER	15
SECTION 909. DISCONTINUANCE OF PROCEEDINGS ON DEFAULT; POSITION OF PARTIES RESTORED.....	15
SECTION 910. WAIVERS OF EVENTS OF DEFAULT	15
SECTION 911. LENDER RIGHT TO CURE DEFAULTS.....	15
ARTICLE X - THE DEPOSITARY	15
SECTION 1001. ACCEPTANCE OF DUTIES	15
SECTION 1002. COMPENSATION.....	16
SECTION 1003. QUALIFICATION	16
SECTION 1004. RESIGNATION AND REMOVAL.....	16
SECTION 1005. SUCCESSOR DEPOSITARY	17
ARTICLE XI - SUPPLEMENTS AND AMENDMENTS TO INDENTURE	17
SECTION 1101. OTHER SUPPLEMENTAL INDENTURES	17
SECTION 1102. CONSENT OF THE COMPANY	17
ARTICLE XII - MISCELLANEOUS PROVISIONS	17
SECTION 1201. NOTICES	18
SECTION 1202. REMEDIES.....	18
SECTION 1203. BENEFICIARIES	19
SECTION 1204. SEVERABILITY	19
SECTION 1205. OBLIGATIONS OF ISSUER NOT OBLIGATIONS OF OFFICIALS INDIVIDUALLY	19
SECTION 1206. PAYMENTS DUE ON DAYS THAT ARE NOT BUSINESS DAYS.....	19
SECTION 1207. LIMITATION OF ISSUER'S LIABILITY	19
SECTION 1208. SUCCESSORS.....	20
SECTION 1209. TITLE, HEADINGS	20
SECTION 1210. CONSENTS AND APPROVALS.....	20
SECTION 1211. EXECUTION IN COUNTERPARTS	20
SECTION 1212. APPLICABLE LAW	20

EXHIBIT A FORM OF BOND 1
EXHIBIT B REQUISITION AND CERTIFICATE NO..... 1
EXHIBIT C COMPLETION CERTIFICATE 1
EXHIBIT D CERTIFICATE OF QUALIFIED INVESTOR 1

TORRANCE COUNTY, NEW MEXICO, a political subdivision existing under the laws of the State of New Mexico (together with its successors and assigns, the “Issuer”), _____, a Delaware limited liability company (together with its successors and assigns, and transferees of the Bonds, the “Purchaser”), LA JOYA WIND, LLC, a Delaware limited liability company (the “Company”) and BOKF, NA (together with its successors and assigns, the “Depository”), agree:

ARTICLE I - RECITALS

Section 101. The Act. Pursuant to NMSA 1978, Sections 4-59-1 to -16 (1975, as amended through 2015) (the “Act”), the Issuer is authorized to acquire, construct and equip certain industrial or commercial projects and to issue industrial revenue bonds to finance such projects and certain related costs. Such bonds are payable by the Issuer solely out of revenue of the leasing of such projects. Such bonds may be further secured by, among other things, a mortgage and lien upon the properties acquired, constructed and equipped as part of the Project (as defined in Section 102). Under the Act, a project may include land, buildings, machinery, equipment and other property deemed necessary in connection with such project.

Section 102. Government Proceeding. The Company has presented to the Board of County Commissioners of Torrance County, New Mexico (the “Issuer”) a proposal relating to the issuance of taxable industrial revenue bonds to finance the acquisition, construction and installation of wind energy generation facilities and associated electrical generating equipment and real property used to generate electricity from wind energy (the “Project Property”), which is located at a site in the County outside the corporate limits of any municipality (the “Project Site”). The Issuer, by County Ordinance No. 2019-__ adopted on _____, 2019 (the “Ordinance”), authorized, among other matters, (i) the issuance of its Torrance County, New Mexico, Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project), Series 2019A (the “Series 2019A Bonds” or the “Bonds”), in the principal amount not to exceed \$290,000,000 with the Bonds being substantially in the form of Exhibit A, and (ii) the execution and delivery of this Indenture.

Section 103. Indenture; Lien; Collateral Pledge. The Bonds are to be issued under this Indenture (together with any and all amendments and supplements, this “Indenture”), which constitutes a collateral pledge of the Agreement (defined below).

Section 104. The Agreement. The Issuer has entered into a Lease Agreement (together with any and all amendments and supplements, the “Agreement”), dated as of the date of this Indenture, with the Company under which the Issuer has leased the Project Property to the Company, and the Company has agreed to make rental payments in amounts sufficient to pay the principal of, interest on and redemption price of the Bonds. For the purpose of providing security for the payment of the principal of, interest on and redemption price of the Bonds, the Issuer wishes to assign to the Purchaser certain of its interests in the Agreement but reserving its rights under the Agreement to certain payments, reimbursement for certain costs and expenses, and to give consents and to be indemnified.

Section 105. Conditions Precedent Performed. The Issuer is not aware of any act, condition or thing required on the part of the Issuer by the Constitution and laws of the State of New Mexico to happen, exist or be performed precedent to and in the execution and delivery of this Indenture, the Agreement and the issuance of the Bonds, except such as do exist and have happened and been performed.

ARTICLE II - DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 201. Meanings of Words and Terms. All capitalized words and terms defined in the Agreement have the same meanings when used in this Indenture if not also defined in this Indenture. Defined terms in all Bond Documents have consistent meanings unless otherwise expressed. In addition:

“Acquisition Fund” has the meaning assigned in Section 701.

“Act” has the meaning assigned in Section 101.

“Advance” has the meaning assigned in Section 702.

“Agreement” has the meaning assigned in Section 104.

“Authorized Company Representative” means any one of the persons at the time designated to act on behalf of the Company in a certificate furnished to the Issuer and the Depository containing the specimen signatures of such persons and signed on behalf of the Company by an officer of the Company.

“Bond Documents” means this Indenture, the Agreement and the Bond Purchase Agreement.

“Bond Fund” has the meaning assigned in Section 602.

“Bond Purchase Agreement” means the Bond Purchase Agreement dated the date of the execution and delivery of this Indenture among the Purchaser, the Issuer and the Company.

“Bonds” have the meaning assigned in Section 102.

“Business Day” means any day that is not a Saturday or Sunday or a day on which banking institutions in the State or in the County of payment are authorized or required to close.

“Certificate of Qualified Investor” means the certificate attached hereto as Exhibit D.

“Company” has the meaning assigned in the first paragraph of this Indenture.

“Completion Certificate” means a certificate by the Company certifying that the Project is complete and all costs have been paid for or provisions have been made for their payment, in the form attached hereto as Exhibit C.

“Depository” has the meaning assigned in the first paragraph of this Indenture.

“Event of Default” has the meaning assigned in Section 901.

“Final Maturity Date” means the thirtieth anniversary of the date of this Indenture.

“Indenture” has the meaning assigned in Section 103.

“Issue Date” means the date of issuance and delivery of the Bond to the Purchaser.

“Issuer” has the meaning assigned in the first paragraph of this Indenture.

“Lender” or “Lenders” means any and all persons or successors in interest thereof lending money or extending credit related to the Project (including any financing lease, monetization of tax benefits, back-leverage financing or credit derivative arrangement) to the Company or to an Affiliate of the Company including: (i) for the construction, permanent or interim financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project Property and related right from the Company, and/or (b) participating (directly or indirectly) as an equity investor in the Project primarily in connection with the utilization of applicable federal tax credits or tax depreciation benefits associated with holding an ownership interest in the Project, or (c) participating as a lessor under a lease finance arrangement relating to the Project (which arrangement shall not be deemed to include the Lease Agreement, and which person or persons shall not include Company or any of its Affiliates).

“Ordinance” has the meaning assigned in Section 102.

“Parties” means the Company, the Issuer, the Purchaser and the Depository.

“Party” means any one of the Parties.

“Payment Date” means the thirtieth anniversary of the date of this Indenture.

“Payment of the Bonds” means payment in full of the principal of, interest on and redemption price of the Bonds in accordance with their terms and the provisions of this Indenture and payment of all fees and expenses of the Issuer, the Purchaser and the Depository payable by the Company under this Indenture, the Agreement or the Bond Purchase Agreement.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision.

“Project” means the acquisition, construction and installation of the Project Property.

“Project Property ” means (i) wind energy generation equipment, towers, transformers and associated electrical generating equipment used to generate electricity from wind energy and other personal property of any kind whether now owned or hereafter acquired with the proceeds of the Bonds prior to the Completion Date as further described in Exhibit A of the Agreement and (ii) any rights of the Company in, or related to, the Project Property now owned or hereafter acquired under easements, agreements or leases assigned to the Issuer.

“Project Site” means the real property in Torrance County, New Mexico described in Exhibit A to the Agreement.

“Record Date” means each December 1 while the Bonds are outstanding.

“Related Costs” means expenditures incurred or to be incurred by the Company with respect to the Project, including, without limitation, the acquisition, installation, construction and commissioning of the Project Property.

“State” means the State of New Mexico.

Section 202. Rules of Construction.

(a) The captions and headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

(b) All references in this Indenture to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Indenture unless some other reference is established.

(c) Any inconsistency between the provisions of the Agreement and the provisions of this Indenture will be resolved in favor of the provisions of the Agreement.

Section 203. Bonds Not General Obligations of Issuer. Neither the faith and credit nor the taxing power of the State or of any of its political subdivisions, including the Issuer, is pledged to the payment of the principal of, interest on or redemption price of the Bonds. The Bonds will be payable by the Issuer solely out of the Basic Rent, proceeds and receipts and other security pledged hereby. The principal of, interest on and redemption price of the Bonds will never constitute a debt or indebtedness or general obligation of the Issuer within the meaning of any State constitutional provision or statutory limitation. The Bonds will never constitute or give rise to a pecuniary liability of the Issuer or be a charge against its general credit or a charge against the general credit or the taxing powers of the State or any political subdivision thereof.

ARTICLE III - GRANT

Section 301. Assignment and Pledge. In consideration of the purchase of the Bonds by the Purchaser, and in order to secure the payment of the principal of (including, without limitation, all sums advanced by the Purchaser, with interest thereon, in accordance with the terms of this Indenture and the other Bond Documents (all references in this Indenture to the payment of principal of the Bonds shall include such sums)), interest on and redemption price of the Bonds, and in order to secure the performance by the Issuer of its obligations under this Indenture and the Bonds, the Issuer assigns and pledges to the Purchaser and grants a mortgage and a security interest to the Purchaser in: (i) all the Issuer's right, title and interest in and to the Agreement and any other easement, lease, sublease, license, concession or other grant of a possessory or use interest in the Project Property to the extent the Issuer has any interest therein but reserving its rights under the Agreement to payments under Sections 5.3(b), 6.2, 6.3 and 6.4 of the Agreement, to reimbursement for certain costs and expenses, to receive notices, to give consents and to be indemnified; (ii) the moneys and investments in the Acquisition Fund and the Bond Fund and all reserves payable to the Issuer pursuant to the Agreement or this Indenture (including, without limitation, insurance and eminent domain proceeds) with respect to the Project Property; (iii) all lease rentals, revenues, profits, and receipts receivable by or on behalf of the Issuer from the Project Property; and (iv) the Project Property.

Section 302. Release. If (i) the principal of and interest on the Bonds are paid by the Issuer in full to the Bond Fund, as provided for herein, (ii) the Purchaser has received all sums due it under the Bond Documents, and (iii) the Issuer keeps, performs and observes all agreements, covenants and provisions under this Indenture, then all obligations of the Issuer as to the Bonds under this Indenture will terminate, and the Purchaser will cancel and discharge the lien of this Indenture and execute and deliver to the Issuer and the Company such instruments in writing as may be required to evidence such discharge. The Clerk of the Issuer is authorized to accept a certificate of the Purchaser stating that all principal and interest due on the Bonds has been paid as evidence of the satisfaction of this Indenture.

ARTICLE IV - AUTHORIZATION, FORM, EXECUTION AND DELIVERY OF BONDS

Section 401. Authorization; Authorized Amount of the Bond. The Bonds are hereby authorized to be issued under this Indenture and secured by this Indenture. The Bonds will be issued as one series of fully registered bonds without coupons, in the maximum principal amount not to exceed \$290,000,000. The Bonds will be numbered consecutively beginning with R-1. The Bonds may not be issued under this Indenture except in accordance with this Article.

Section 402. Form of Bond. The Bonds will be in substantially the form of Exhibit A. The Bonds will be dated the date of the execution and delivery of this Indenture and will bear interest on Advances made pursuant to Section 702 at the rate of Five and No/100 percent (5.000%). All interest on the Bonds will be calculated from the date of advance for all periods on the basis of a 360-day year of twelve thirty-day months. Accrued interest shall be payable annually on each December 1, beginning December 1, [2020][to be confirmed], with the outstanding principal amount of the Bonds plus all unpaid interest thereon due and payable in full on the Final

Maturity Date. Principal and interest, as applicable, will be payable by the Issuer from the Basic Rent received from the Company to the owner of the Bonds on the immediately preceding Record Date upon presentation of the Bonds for cancellation at the offices of the Issuer. All payments will be made in lawful money of the United States.

Section 403. Execution and Delivery; Payment. The Bonds will be signed by the Chairperson of the Board of County Commissioners of the Issuer or other officer designated by the Board to sign the Bonds, and delivered to the Purchaser on the date of the execution and delivery of this Indenture. Subject to the terms and conditions of the Bond Purchase Agreement, the Purchaser will purchase the Bonds and will pay the purchase price of the Bonds to the Issuer as set forth in Section 701.

Section 404. Registration and Transfer of the Bonds. The Company, on behalf of the Issuer, will cause to be kept at its office a book for the registration and transfer of the Bonds. The registration book will be open to inspection by the Issuer upon advance notice during the Company's normal business hours.

The Bonds, together with the obligation to fund advances thereunder, may be transferred by the Purchaser in whole, but not in part, in person or by duly authorized attorney, in the registration book upon (i) surrender of the Bonds, (ii) delivery of a written transfer instrument, and (iii) compliance with Securities Act of 1933, as amended (the "Federal Securities Act"), and applicable state securities laws as established to the satisfaction of the Issuer, and delivery to the Issuer and the Company of (A) an opinion, in form and substance satisfactory to the Issuer, from legal counsel experienced in securities laws matters, which counsel must be satisfactory to the Issuer, to the effect the transfer complies with the Federal Securities Act and applicable state securities laws and (B) written representations from the transferee, in form and substance satisfactory to the Issuer (including, but not limited to the form of Certificate of Qualified Investor), necessary to establish such compliance all as further set forth in the Bond form attached as Exhibit A. Such Issuer approval shall be in writing. The Issuer agrees that it will cooperate in delivering a new Bond, registered in the name of the transferee. The person requesting the transfer will pay any tax or fee or other charge imposed on the transfer and will pay the Issuer's expenses in connection therewith. The Issuer may deem and treat the person in whose name the Bond is registered as the absolute owner thereof for the purpose of receiving payment and for all other purposes, and all such payments made to any such registered owner or upon its written order will be valid and effectual to satisfy and discharge the liability upon the Bond, to the extent of the sum or sums paid; and the Issuer will not be affected by any notice to the contrary.

The Issuer acknowledges that the Purchaser may assign its rights to receive payments of principal, interest and any amounts due under the Bonds to any party without the consent of the Issuer.

Section 405. Lost, Stolen, Destroyed and Mutilated Bond. If the Issuer receives satisfactory evidence that any Bonds have been lost, stolen, destroyed or mutilated and receives satisfactory indemnity, and the mutilated Bonds are surrendered and cancelled, then the Issuer will execute and deliver new Bonds. The applicant for new Bonds will pay any charges and expenses in connection with the issuance of the new Bonds. New Bonds issued under this Section 405 will

be an original contractual obligation of the Issuer and will be entitled to all of the benefits of this Indenture. The provisions of this Section 405 with respect to the replacement of the lost, stolen, destroyed or mutilated bonds are exclusive.

Section 406. Cancellation and Destruction of the Bonds by Issuer. If the Bonds are delivered to the Issuer for cancellation, the Bonds will be cancelled immediately and destroyed by the Issuer.

Section 407. Application of Payments for Bonds. All payments received by or on behalf of the Issuer under the Agreement with respect to the Bonds will be applied first to accrued interest on the Bonds on the next date for the payment of such interest and, second, to the unpaid principal of the Bonds. If such payments exceed accrued interest on and the unpaid principal of the Bonds, and any other amounts owed, the excess will be paid to the Company. The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of making Bond advances under this Indenture.

ARTICLE V - REDEMPTION

Section 501. Redemption. If the Company gives notice to the Issuer, the Depositary and the Purchaser pursuant to Article IX of the Agreement that the Company has elected to cause redemption of the Bonds in full or in part and the Company pays the redemption price, all or such portion of the Bonds will be deemed redeemed by the Issuer on the date indicated in such notice at a redemption price equal to the principal amount to be redeemed plus accrued interest on such principal amount to the redemption date. If the Company redeems the Bonds in full before the Completion Date, any monies held in the Acquisition Fund shall be returned to the Company.

ARTICLE VI - BOND REVENUES AND FUNDS

Section 601. Source of Payment of the Bonds. The Bonds and all payments by the Issuer under this Indenture are not general obligations of the Issuer, and shall never constitute indebtedness of the Issuer, but are the limited, special obligations of the Issuer payable solely from revenues and receipts derived from the leasing of the Project Property under the Agreement and other security pledged to payment of the Bonds under this Indenture. The Project Property has been leased under the Agreement and the Basic Rent is to be remitted by the Company directly to the Purchaser on or before each Payment Date, subject to the rights of offset set forth in Section 5.4(b) of the Agreement. The portion of the Basic Rent necessary to pay amounts owing on the Bonds is to be deposited in the Bond Fund (except for any payments which are satisfied pursuant to the exercise of the right of offset as set forth in Section 5.4(b) of the Agreement). The Basic Rent is sufficient in amount to insure the prompt payment of the principal and accrued interest on the Bonds and the entire amount of the Basic Rent is pledged to the payment of principal and accrued interest on the Bonds.

Section 602. Creation of the Bond Fund, Payments. A fund shall be created for the benefit of Issuer by the Company and designated "La Joya Wind, LLC Project Series 2019A Bond

Fund” (the “Bond Fund”). There will be deposited into the Bond Fund, as and when received (i) the Basic Rent (except to the extent offset pursuant to Section 5.4(b) of the Agreement), and (ii) all other moneys required to be deposited into the Bond Fund pursuant to this Indenture and the Agreement. The interest and other income received on investments of the Bond Fund moneys as provided in Section 708 will be retained in the Bond Fund. The Company covenants that so long as the Bonds are outstanding, it will deposit or cause to be deposited solely from the sources stated in Section 601, into the Bond Fund for Issuer’s account, sufficient sums from revenues and receipts from the Project Property promptly to meet and pay the installments of interest, or of principal and interest, as applicable, on the Bonds (except to the extent that any payments of principal, interest or redemption price are to be made pursuant to the right of offset set forth in Section 5.4(b) of the Agreement). The Parties acknowledge that NMSA 1978, Section 4-59-3 (2002) provides that it is not intended that any county itself be authorized to operate any manufacturing, industrial or commercial enterprise under the Act and, accordingly, the Issuer has no intention of taking possession of or operating the Project Property.

Section 603. Use and Custody of the Bond Fund. The moneys in the Bond Fund will be used solely for payment of principal of and interest on the Bonds, except as provided in Sections 604 and 905. The Bond Fund will be in the custody of the Company, and the Company will withdraw sufficient funds from the Bond Fund to pay the installments of principal and interest on the Bonds as due (except to the extent that any payments of principal, interest or redemption price are to be made pursuant to the right of offset set forth in Section 5.4(b) of the Agreement).

Section 604. Repayment to the Company from the Bond Fund. Any amounts remaining in the Bond Fund after actual payment in full of the Bonds, the fees, charges and expenses of the Issuer and the Purchaser, administrative expenses and other amounts required to be paid by the Company under the Agreement will be paid to the Company upon expiration of the Agreement.

Section 605. Investments. Moneys on deposit in the Bond Fund may be invested and reinvested by the Company. Such investments will be deemed at all times to be a part of the Bond Fund. Any interest received on any such investment and any profit realized from such investment will be credited to the Bond Fund. Any loss resulting from any such investment will be charged to the Bond Fund. The Company will use all reasonable efforts to sell at the best price obtainable or present for redemption any such investment when necessary in order to provide cash to meet any payment or transfer from the Bond Fund.

Section 606. Non-presentment of the Bonds. If the Bonds are not presented for payment when the final payment of principal and interest is due, and if there are funds sufficient to make such final payment deposited with the Company, all liability of the Issuer for payment of the Bonds will cease. Interest shall not accrue after the Final Maturity Date. The Purchaser will be restricted to such funds for any claim against the Issuer relating to the Bonds.

Section 607. No Liability. The Issuer will not be liable or responsible for any misapplication of funds, loss, liability or expense (or failure to realize profits) with respect to the Bond Fund and Company shall indemnify and hold the Issuer harmless from and against all claims,

liabilities or whatsoever nature arising from or relating to the Bond Fund or Company's management of the Bond Fund.

ARTICLE VII - ACQUISITION FUND

Section 701. Creation of the Acquisition Fund; Deposits. A fund is hereby created with the Depository and designated "La Joya Wind, LLC Project Series 2019A Acquisition Fund" (the "Acquisition Fund"). Subject to the terms of the Bond Purchase Agreement, the Purchaser will purchase the Bonds on the date of execution and delivery of the Indenture and will pay the purchase price of the Bonds through the Advances described in Section 702. The proceeds of the sale of the Bonds, the interest and other income received on investments of the Acquisition Fund moneys as provided in Section 708 will be retained in the Acquisition Fund. The moneys in the Acquisition Fund will be held by the Depository and will be applied to the payment of Related Costs and, pending such application, will be subject to a lien in favor of the Purchaser or its assignee to secure payment of principal and accrued interest on the Bonds. The Acquisition Fund will be in the custody of the Depository, and the Depository is authorized and directed to wire from or issue checks on the Acquisition Fund for the payment of Related Costs pursuant to Section 702.

Section 702. Disbursements. The Company may request Advances from time to time to finance the Project (each, an "Advance") by delivery of a Requisition Notice to the Purchaser and the Depository in the form attached hereto as Exhibit B (the "Requisition Notice"). On or before the fifth business day following receipt of the Requisition Notice from the Company requesting an Advance, so long as no Event of Default has occurred and is continuing, the Purchaser will pay or cause to be paid the amount of the Advance requested in such Requisition Notice to the Depository for deposit in the Acquisition Fund, provided, however, that the aggregate amount of such Advances shall not exceed \$290,000,000 for the Series 2019A Bonds. The Depository will make payments of Related Costs from the Acquisition Fund not later than the business day following the date of receipt of payment of the amount of the Advance from Purchaser, provided that immediately available funds are on deposit therein. The Requisition Notice signed by an Authorized Company Representative shall state to whom the payment is to be made, the general purpose for which the obligation to be paid was incurred, and that:

(a) obligations in the stated amounts were incurred for Related Costs and are due and payable (or, if the Company is indicated as the payee, were duly paid by the Company) and that each item is a proper charge against the Acquisition Fund and has not been the subject of a previous withdrawal from the Acquisition Fund; and

(b) to the best knowledge of such Authorized Company Representative there has not been filed with or served upon the Issuer or the Company notice of any lien, right or attachment upon, or claim, other than such lien, right, attachment or claim as are filed or made in the ordinary course of constructing and operating the Project, affecting the right of any such payees to receive payment of, the respective amounts stated in such requisition which has not been released or will not be released simultaneously with the payment of such obligation; and

(c) with respect to any item for payment for labor or to contractors, builders or materialmen, (i) the obligations stated have been properly incurred, (ii) such work was actually

performed or such materials or supplies were actually furnished or installed in or about the Project, and (iii) either such materials or supplies are not subject to any lien or security interest or any such lien or security interest will be released or discharged upon payment of the requisition.

Section 703. Records. The Depositary will keep and maintain all Requisition Notices and adequate records pertaining to the Acquisition Fund, and payments made therefrom, which will be open to inspection by the Issuer, the Purchaser, the Company, or their agents, upon advance notice, during normal business hours.

Section 704. Depositary May Rely on Requisitions. All writings, requisitions and certificates received by the Depositary as conditions of payment from the Acquisition Fund, and which are proper and complete on their face, may be conclusively relied upon by the Depositary and will be retained by the Depositary, subject at all reasonable times, upon advance notice, to examination by the other Parties and their respective agents and representatives.

Section 705. Status Reports. At least annually, the Depositary will make a written report covering all receipts and moneys then on deposit in the Acquisition Fund, and will report any investments of such moneys and all transfers and disbursements of such moneys as of and for the preceding year. The reports will be prepared in conformity with the provisions of this Indenture, and copies of each report will be filed with the Purchaser, the Company, and, if requested by the Issuer, with the Issuer, not later than the fifteenth day of the month following the year covered by the report.

Section 706. Completion Date. Upon receipt of a certificate substantially in the form of Exhibit C signed by an Authorized Company Representative establishing the Construction Completion Date, as established in Section 4.4 of the Agreement, the Depositary will set aside in the Acquisition Fund the moneys necessary for the payment of the Related Costs incurred by the Company but not then due or payable as set forth in such certificate, and then will transfer any other moneys remaining in the Acquisition Fund to the Company or its assignee.

Section 707. Payment on Acceleration. If the Purchaser declares the unpaid principal of and accrued interest on the Bonds to be immediately due and payable pursuant to Section 902(a), the Depositary will promptly, upon receipt of notice of such declaration from the Purchaser or its assignee, return all moneys then held for the credit of the Acquisition Fund in accordance with Section 905 to the Purchaser or its assignee for application to the unpaid principal of and accrued interest on the Bonds.

Section 708. Investments. Moneys on deposit in the Acquisition Fund may be invested and reinvested by the Depositary, at the written direction of an Authorized Company Representative. Such investments will be deemed at all times to be a part of the Acquisition Fund. Any interest received on any such investment and any profit realized from such investment will be credited to the Acquisition Fund. Any loss resulting from any such investment will be charged to the Acquisition Fund. The Depositary will use all reasonable efforts to sell at the best price obtainable or present for redemption any such investment when necessary in order to provide cash to meet any payment or transfer from the Acquisition Fund. Neither the Depositary nor the Issuer will be responsible for any loss, liability or expense (or failure to realize profits) resulting from

any such investment. The Depository may make any such investment through its own or its affiliated bond or investment department, unless otherwise directed in writing by an Authorized Company Representative.

Section 709. No Liability. Issuer will not be liable or responsible for any misapplication of funds, loss, liability or expense (or failure to realize profits) with respect to the Acquisition Fund and the Company shall indemnify and hold Issuer harmless from and against all claims, liabilities or whatsoever nature arising from or relating to the Acquisition Fund or the Company's management of the Acquisition Fund.

ARTICLE VIII - PARTICULAR COVENANTS AND PROVISIONS

Section 801. Extent of Covenants; Disclaimer of Liability. It is expressly made a condition of this Indenture that any covenants, stipulations, obligations, representations or agreements herein contained or contained in the Bonds or this Indenture do not and will never give rise to a personal or pecuniary liability of any present or future officer, employee or agent of the Issuer, or be a charge against the general credit or taxing powers of the Issuer, and in the event of a breach of such covenant; stipulation, obligation, representation or agreement, no personal or pecuniary liability of any present or future officer, employee or agent of the Issuer, or charge payable by the Issuer directly or indirectly from the revenues of the Issuer, other than the Basic Rent, will arise therefrom. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR OF ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE ISSUER, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, INTEREST ON OR REDEMPTION PRICE OF THE BONDS. THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE OF THE BONDS WILL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OR GENERAL OBLIGATION OF THE ISSUER WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR LAWS OF THE STATE. THE BONDS OR THIS INDENTURE WILL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE STATE, ANY OF ITS POLITICAL SUBDIVISIONS OR OF THE ISSUER OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS. NONE OF THE PROVISIONS OF THIS INDENTURE SHALL REQUIRE THE ISSUER TO EXPEND OR RISK ITS OWN FUNDS OR TO OTHERWISE INCUR FINANCIAL LIABILITY IN THE PERFORMANCE OF ANY OF ITS DUTIES OR IN THE EXERCISE OF ANY OF ITS RIGHTS OR POWERS HEREUNDER.

Section 802. Performance; Authority. The Issuer covenants that it will faithfully perform all covenants and provisions contained in this Indenture and in the Bonds. The Issuer represents that it is duly authorized under the Constitution and laws of the State of New Mexico, including the Act, to issue the Bonds, to execute and deliver this Indenture, to grant a security interest in the property described in this Indenture, to pledge the rentals and other revenues described in this Indenture and that it has, to its knowledge, taken all actions required on its part for the issuance of the Bonds, and for the execution and delivery of this Indenture and the Agreement.

Section 803. Office or Agency. The Issuer will maintain an office or agency in Torrance County, New Mexico, while the Bonds are outstanding and where demands with respect to this

Indenture or the Bonds may be made. The office of the County Clerk of the Issuer will be such agency until further notice.

Section 804. Obligations Under the Agreement. The Issuer: (i) will perform all of its obligations under the Agreement; (ii) will not execute or agree to any change, amendment or modification of or supplement to the Agreement except in accordance with the provisions thereof and Section 1101 of this Indenture; and (iii) will not agree to any abatement, reduction or diminution of the Basic Rent without the written approval of the Purchaser. The parties acknowledge that the Issuer has no obligation to enforce the Agreement but any actions taken by the Issuer to enforce the Agreement shall be at the expense of the Company.

Section 805. Use and Possession by the Company. So long as not otherwise provided in this Indenture or the Agreement, the Company will be permitted to possess, use and enjoy the Project Property so as to carry out its obligations under the Agreement.

Section 806. Instruments of Further Assurance. The Issuer will, at the expense of the Company or the Purchaser, execute, acknowledge, deliver and perform such supplemental indentures or such further acts, instruments, documents and transfers as the Depository or the Purchaser may reasonably require for better assuring, transferring, mortgaging and pledging unto the Depository or the Purchaser all the property and revenues and receipts pledged to the payment of the Bonds under this Indenture.

Section 807. Recording of Indenture. Supplemental Indentures and Other Documents. The Company will cause this Indenture, the Agreement, and all supplements to this Indenture and the Agreement, as well as all security instruments, financing statements, continuation statements and any other instruments as may be required, to be recorded or filed in such manner and places as required to fully preserve and protect the security of the Purchaser and the rights of the Depository, including recording in the real estate records of Torrance County, New Mexico. The Depository will have no responsibility to make any such filings except for filings as the Company may from time to time request, and the Issuer will have no responsibility to make any such filings.

ARTICLE IX - EVENTS OF DEFAULT AND REMEDIES

Section 901. Events of Default. Each of the following events is an “Event of Default:”

(a) Failure to pay any installment of principal or interest due under the Bonds when due and such failure continues unremedied for a period of 30 days after the provision by the Issuer or the Purchaser of written notice of non-payment;

(b) An Event of Default under the Agreement or any other Bond Document (other than this Indenture) occurs and is continuing;

(c) The Issuer, the Company or the Depository fails to perform any covenant contained in this Indenture or the Bond Documents, other than as specified in subsections (a) and (b) above, and such failure is not cured within 30 days after receipt by the Company of the written

notice of such failure unless the Purchaser shall agree in writing to the extension of such time prior to its expiration.

(d) Any bankruptcy, insolvency, reorganization, etc. of the Issuer, the Company or the Depositary.

Section 902. Remedies on Events of Default. Upon the occurrence of an Event of Default, the Purchaser will have the following rights and remedies:

(a) **Acceleration.** The Purchaser or its assignee may, by written notice given to the other Parties, declare the principal amount of the Bonds outstanding to be immediately due and payable and principal and interest thereon will become immediately due and payable; provided, however, that the Purchaser or its assignee, by written notice to the other Parties, may annul such declaration and destroy its effects and waive any such default: (i) if all covenants, conditions and agreements with respect to which such default shall have been made shall be fully performed, (ii) all arrears shall have been paid on any installment of interest and principal which has been theretofore due, plus (to the extent permitted by law) interest thereon from the due dates, and (iii) all reasonable charges and expenses of the Issuer, the Purchaser, the Depositary and their agents and counsel shall have been paid or provided for. Any such declaration that the Bonds are due and payable will be deemed to be a redemption of the Bonds;

(b) **Suit for Judgment on the Bonds.** The Purchaser will be entitled to sue either for the specific enforcement of any covenant or agreement contained herein, or in any of the Bond Documents, or in and of the execution of any power herein granted and/or for and recover judgment, either before or after or during the pendency of any proceedings for the enforcement of the lien of this Indenture or for the enforcement of any of its rights, but any such judgment against the Issuer will be enforceable only against the funds and accounts related to and held under this Indenture for the Bonds. There will not be authorized any deficiency judgment against the Issuer. No recovery of any judgment by the Purchaser will in any manner or to any extent affect the lien of this Indenture or any rights, powers or remedies of the Purchaser hereunder, but such lien, rights, powers and remedies of the Purchaser will continue unimpaired; and

(c) **Enforcement of Rights under Agreement.** The Purchaser or its assignee may, as assignee of specified interests of the Issuer in the Agreement, enforce any remedy available to the Issuer under the Agreement (except the remedies of the Issuer pursuant to Section 8.3 of the Agreement) and under any other lease, sublease, license or other grant of a possessory or use interest in the Project Property.

No right or remedy confirmed on any Party hereunder is intended to be exclusive of any other right or remedy confirmed on such Party hereunder, but each and every such right or remedy will be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute; provided, that the remedy of Purchaser in respect of an Event of Default or other breach hereunder or any other Bond Document shall be limited in all cases to those expressly provided in Section 902.

Section 903. Rights and Remedies of Purchaser. The Purchaser will not have the right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust related thereto or for the appointment of a receiver or any other remedy hereunder, unless an Event of Default has occurred and is continuing of which the Company has been notified, it being understood and intended that the Purchaser will not have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its actions or to enforce any right hereunder except in the manner herein provided. Nothing in this Indenture will, however, affect or impair the right of the Purchaser to enforce the payment of the principal of and interest on the Bonds, when due or at and after the maturity thereof, or the obligation of the Issuer to pay the principal and interest on the Bonds at the time and place and from the revenues provided in this Indenture or in the Bonds.

Section 904. Issuer and Depositary Not Responsible. Neither the Issuer nor the Depositary has any responsibility or right to act on behalf of the Purchaser with respect to any Event of Default. All rights and remedies arising from or related to any Event of Default are solely the rights and remedies of the Purchaser; provided that, upon request and at the expense of the Purchaser, the Issuer will cooperate with the Purchaser in the lawful enforcement of such rights and remedies upon receipt of indemnity satisfactory to the Issuer in the Issuer's sole discretion against any out-of-pocket costs and expenses incurred by the Issuer in its sole discretion (including any counsel fees and expenses) or liability the Issuer may incur or suffer as a result of or in connection with such cooperation.

Section 905. Application of Moneys. All moneys received by the Purchaser pursuant to any right given or action taken under the provisions of this Article will, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys, be applied (i) first to pay the fees and expenses of the Issuer and the Depositary; (ii) then to pay sums advanced by the Purchaser (other than Advances) pursuant to the Bond Documents, with interest thereon; (iii) then to the payment of charges due the Purchaser pursuant to the Bond Documents, and (iv) then to the payment of interest and principal and premium, if any, due and unpaid on the Bonds. Whenever moneys are to be applied pursuant to the provisions of this Section 905, such moneys will be applied at such times, and from time to time, as the Purchaser will determine.

Whenever the Bonds and interest thereon have been paid under the provisions of this Section 905 and all expenses and charges of the Purchaser, the Issuer and the Depositary (and their respective counsel and agents) have been paid, any balance remaining will be paid to the Company.

Section 906. Purchaser to File Proofs of Claim. In the case of any insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceedings affecting the Project Property or the Company, the Purchaser and the Issuer will, to the extent permitted by law, be entitled to file such proofs of claims and other documents as may be necessary or advisable in order to have claims of the Purchaser or the Issuer, respectively, allowed in such proceedings for the entire amount due and payable by the Issuer, or by the Company, as the case may be, under the Indenture or the Agreement, at the date of the institution of such proceedings and for any additional amounts which may become due and payable after such date.

Section 907. Delay or Omission; No Waiver. No delay or omission of the Purchaser to exercise any right or power accruing upon any Event of Default will exhaust or impair any such right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence therein; and every power and remedy given by this Indenture to the Purchaser may be exercised from time to time and as often as may be deemed expedient by the Purchaser.

Section 908. No Waiver of One Default to Affect Another. No waiver of any Event of Default by the Purchaser will extend to or affect any subsequent or any other then existing Event of Default or shall impair any rights or remedies consequent thereon.

Section 909. Discontinuance of Proceedings on Default; Position of Parties Restored. In case the Purchaser shall have proceeded to enforce any right under this Indenture by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Purchaser, then and in every such case the Issuer and Purchaser will be restored to their former positions and rights under this Indenture with respect to the Project Property and all rights, remedies, and powers of the Purchaser will continue as if no such proceedings had been taken.

Section 910. Waivers of Events of Default. The Purchaser may, in its discretion, waive any Event of Default and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds. In case of any such waiver or rescission, or in case any proceeding taken by the Purchaser on account of any such Event of Default shall have been discontinued or abandoned or determined adversely to the Purchaser, then in every such case the Issuer and the Purchaser shall be restored to their former respective positions and rights hereunder, and the Event of Default which was waived will be considered to be cured, but no waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 911. Lender Right to Cure Defaults. If an Event of Default has occurred and is continuing under this Indenture of which the Company has been notified, any mortgagee or assignee of the Company that holds an interest in the Project Property as security, including but not limited to a Lender, shall at any time have the right, but not the obligation, to perform any act necessary to cure any such Event of Default and to prevent the release and discharge of this Indenture. Such right to cure must be performed no later than sixty (60) days following the applicable cure period provided in Section 901.

ARTICLE X - THE DEPOSITARY

Section 1001. Acceptance of Duties. The Depositary accepts the duties imposed on it by this Indenture, but only on the following express terms and conditions:

(a) The Depositary undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations will be read into this Indenture against the Depositary.

(b) In the absence of negligence or willful misconduct on its part, the Depositary may conclusively rely on certificates or notices furnished to the Depositary and

conforming to the requirements of this Indenture or the Agreement, as the case may be; but if any such certificates or notices are specifically required to be furnished to the Depository under this Indenture or the Agreement, the Depository will examine the same to determine whether they conform to the requirements of this Indenture or the Agreement, as the case may be.

(c) The Company hereby indemnifies and holds harmless the Depository from and against any and all loss, liability, cost, damage and expense, including, without limitation, reasonable counsel fees, which the Depository may suffer or incur by reason of any action, claim or proceeding brought against the Depository arising out of or relating in any way to this Indenture or any transaction to which the Indenture relates unless such action, claim or proceeding is the result of the negligence or willful misconduct of the Depository. The indemnification shall survive the resignation, removal and termination of the Depository. No provision of this Indenture will be construed to relieve the Depository from liability for its own negligence or willful misconduct.

(d) The Depository may consult with counsel and other professionals and the advice of such counsel and other professionals shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Depository hereunder in good faith and in reliance thereon.

(e) The Depository shall be under no obligation to take any action or exercise any right or power under the Indenture unless the Company shall first have provided to the Depository, its directors, officers, agents and employees, security or indemnity satisfactory to the Depository against the costs (including without limitation reasonable fees of attorneys), expenses and liabilities that might be incurred by the Depository in connection herewith.

Section 1002. Compensation. The Company will pay directly to the Depository its reasonable fees and charges and all of its reasonable expenses (including reasonable counsel fees and expenses).

Section 1003. Qualification. The Depository must be an association or a corporation organized and doing business under the laws of the United States of America or of any state and be subject to supervision or examination by federal or state banking authorities. If at any time the Depository ceases to be eligible in accordance with the provisions of this Section 1003, it will resign immediately in the manner and with the effect specified in Section 1004.

Section 1004. Resignation and Removal.

(a) No resignation or removal of the Depository and no appointment of a successor Depository will become effective until the acceptance of appointment by the successor Depository under Section 1005.

(b) The Depository may resign at any time upon 10 business days' written notice to the other Parties. If an instrument of acceptance by a successor Depository has not been delivered to the retiring Depository within 30 days after the giving of such notice of resignation, the retiring Depository may petition any court of competent jurisdiction for the appointment of a successor Depository.

(c) The Depositary may be removed at any time by the Company upon 10 business days' written notice to the other Parties.

(d) The Depositary will be automatically removed on the occurrence of the Completion Date of the Project and the application of all moneys on deposit in the Acquisition Fund as provided in Section 706. No successor Depositary will thereafter be appointed and each reference to the Depositary in this Indenture and the Agreement will thereafter be ineffective.

(e) If the Depositary resigns or is removed (except as provided in subsection (d) of this Section 1004), the Company will promptly appoint a successor Depositary and give written notice of such appointment to the Issuer, the Purchaser and the retiring or removed Depositary.

Section 1005. Successor Depositary.

(a) Every successor Depositary appointed under this Indenture will execute, acknowledge and deliver to its predecessor and the other Parties an instrument accepting such appointment, and thereupon such successor Depositary, without any further act, will become fully vested with all the rights, and be subject to all the obligations, of its predecessor; but such predecessor will, nevertheless, on the request of its successor, the Issuer, the Company or the Purchaser execute and deliver an instrument transferring to such successor Depositary all the rights of such predecessor under this Indenture. Every predecessor will deliver all property, including all records relating hereto, and moneys held by it under this Indenture to its successor. The Issuer and the Purchaser will execute, acknowledge and deliver any instrument, satisfactory to each of them, required by any successor Depositary to more fully and certainly vest in such Depositary the rights vested in the predecessor Depositary by this Indenture.

(b) Notwithstanding any of the foregoing provisions of this Article, any Person qualified to act as Depositary under this Indenture with or into which the Person acting as Depositary may be merged or consolidated, or to which the assets and business of such Person may be sold, will automatically become the successor Depositary.

ARTICLE XI - SUPPLEMENTS AND AMENDMENTS TO INDENTURE

Section 1101. Other Supplemental Indentures. This Indenture may be supplemented or amended only by one or more instruments executed by the Issuer, the Purchaser and the Depositary.

Section 1102. Consent of the Company. Any supplemental indenture affecting the rights of the Company will not be effective unless and until the Company shall have consented in writing to the execution and delivery of such supplemental indenture.

ARTICLE XII - MISCELLANEOUS PROVISIONS

Section 1201. Notices. Any notice, demand, direction, request, consent, report or other instrument authorized or required by any of the Bond Documents to be executed, given or filed (excluding Uniform Commercial Code filings, recordings and other governmental filings) will be in writing and will be deemed to have been sufficiently given or filed for all purposes of the Bond Documents when delivered by hand delivery or overnight courier mail or other electronic means, or on the third Business Day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer: Torrance County, New Mexico
Attn: County Clerk
PO Box 767
205 S. Ninth St.
Estrancia, NM 87016
Telephone: (505) 544-4350
FAX: (505) 384-4080

with a copy to: Jill Sweeney, Esq.
Sherman & Howard, L.L.C.
500 Marquette Avenue NW, Suite 1203
Albuquerque, NM 87102
Telephone: (505) 814-6958
E-mail: jsweeney@shermanhoward.com

If to the Purchaser:

If to the Company: La Joya Wind, LLC
251 Little Falls Drive
Wilmington, DE 19808
Attn:
Tel: 302-636-5401
E-mail:

If to the Depositary: BOKF, NA
100 Sun Avenue NE, Suite 500
Albuquerque, NM 87102
Attention: Corporate Trust
Tel: (505) 222-8447

Any Party may, by notice to each of the other Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent. Receipt by the Issuer, the Company and the Depositary of a notice from a transferee of the Bonds will constitute notice of such a different address for the Purchaser.

Section 1202. Remedies. No right or remedy conferred on any Party in any of the Bond Documents is intended to be exclusive of any other right or remedy conferred on such Party in any

of the Bond Documents. Each such right or remedy is in addition to every other right or remedy provided in any of the Bond Documents, or any other applicable agreement or contract; provided, that the remedy of the Issuer or the Purchaser in respect of an Event of Default or other breach hereunder or any other Bond Document shall be limited in all cases to those expressly provided in Section 902 hereunder or Article VIII of the Agreement, as the case may be. No delay or omission of any Party to exercise any such right or remedy will impair any such right or remedy or be construed to be a waiver. Every such right or remedy may be exercised from time to time and as often as the relevant Party may deem expedient. No waiver by any Party of any right or remedy with respect to any default or Event of Default will extend to or affect any other existing or subsequent default or Event of Default.

Section 1203. Beneficiaries. Nothing in any of the Bond Documents expressed or implied is intended or is to be construed to confer upon any Person other than the Parties any right, remedy or claim, legal or equitable.

Section 1204. Severability. In case any one or more of the provisions of any of the Bond Documents or of the Bonds are for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of any of the Bond Documents or of the Bonds, but the Bond Documents and the Bonds will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the any Party contained in any of the Bond Documents or the Bonds is for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of such Party to the full extent permitted by law.

Section 1205. Obligations of Issuer Not Obligations of Officials Individually. No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bonds will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 1206. Payments Due on Days That Are Not Business Days. If the date for any payment called for under any of the Bond Documents or the Bonds is not a Business Day, then such payment will be made on the next Business Day and no interest on such payment will accrue for the period after the scheduled date for such payment.

Section 1207. Limitation of Issuer's Liability. No agreements or provisions contained in any Bond Document nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of Bond proceeds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer, its officers, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or obligate the Issuer financially in any way, except with respect to the Basic Rent, and its application as provided under this Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in any Bond Document or in any document executed by the Issuer in connection with the Bonds will

subject the Issuer, its officers and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the Basic Rent. Without limiting the requirement to perform its duties or exercise its rights and powers under the Bond Documents upon receipt of appropriate indemnity or payment, none of the provisions of any Bond Document will require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under any Bond Document.

Section 1208. Successors. Wherever a Party is referred to in this Indenture, it shall be deemed to include its successors, and all covenants and agreements in this Indenture will bind and inure to the benefit of the such Party's successors.

Section 1209. Title, Headings. The title and headings of the articles, sections and subdivisions of this Indenture have been used for convenience only and will not modify or restrict any of the terms or provisions of this Indenture.

Section 1210. Consents and Approvals. In any action requiring the consent or approval of a party to this Indenture, such consent or approval will not be unreasonably withheld.

Section 1211. Execution in Counterparts. Each of the Bond Documents may be executed in multiple counterparts, all of which taken together will constitute one instrument. Any Party may execute any of the Bond Documents by executing any such counterpart of such Bond Document.

Section 1212. Applicable Law. The validity, construction and effect of each of the Bond Documents will be governed by and construed in accordance with the laws of the State applicable to agreements made and to be performed in the State of New Mexico.

[Signature pages follow]

BOARD OF COUNTY COMMISSIONERS,
TORRANCE COUNTY, NEW MEXICO

By: _____
Ryan Schwebach, Chair

(SEAL)

ATTEST:

By: _____
Linda Jaramillo, County Clerk

STATE OF NEW MEXICO)
)
COUNTY OF TORRANCE)

This instrument was acknowledged before me on this ____ day of _____, 2019, by Ryan Schwebach, as Chair of the Board of County Commissioners, Torrance County, New Mexico

(NOTARY SEAL)

Notary Public

My Commission Expires: _____

LA JOYA WIND, LLC

By: _____

Name: _____

Title: Vice President

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____, 2019, by _____, as Vice President of La Joya Wind, LLC, a Delaware limited liability company.

(NOTARY SEAL)

Notary Public

My Commission Expires: _____

_____, LLC,
a Delaware limited liability company
as Purchaser

By: _____

Name: _____

Title: _____

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____, 2019,
by _____, as _____ of _____, a Delaware
limited liability company.

(NOTARY SEAL)

Notary Public

My Commission Expires: _____

(Purchaser Signature Page to Indenture)

BOKF, NA,
as Depositary

By: _____

Name: _____

Title: _____

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this _____ day of _____, 2019,
by _____, as _____ of BOKF, NA, as Depositary.

(NOTARY SEAL)

Notary Public

My Commission Expires: _____

EXHIBIT A
FORM OF BOND

**THIS BOND IS TRANSFERABLE ONLY UPON COMPLIANCE
WITH THE RESTRICTIVE TERMS PROVIDED BELOW**

No. R-1

Up to \$290,000.000

United States of America
State of New Mexico

Torrance County, New Mexico
Taxable Industrial Revenue Bonds
(La Joya Wind, LLC Project)
Series 2019

Registered Owner: _____

FINAL MATURITY DATE	INTEREST RATE	ISSUE DATE
_____, 20__	_____ %	_____, 2019

Torrance County, a political subdivision of the State of New Mexico existing under the Constitution and laws of the State of New Mexico (the "Issuer"), for value received, promises to pay, solely from the sources described below, to _____, LLC (together with its successors and assigns, and transferees as permitted below, the "Purchaser") Two Hundred Ninety Million Dollars (\$290,000,000) (subject to prior optional redemption as described below) or so much of such amount as has been advanced by the Purchaser and is outstanding and to pay, solely from such sources, to the Purchaser, interest on principal amounts advanced with respect to this Bond from the dates of such Advances at the Interest Rate specified above (computed on the basis of a 360-day year consisting of twelve 30-day months) until payment of such principal amount. Interest at the rate of Five and No/100 Percent (5.00%) of the principal amount of the Bonds outstanding shall be payable annually on each December 1, beginning December 1, 2019, with the outstanding principal amount of the Bonds plus all interest thereon due and payable in full on the Final Maturity Date.

This Bond is issued under and pursuant to the Constitution and laws of the State of New Mexico, particularly NMSA 1978, Sections 4-59-1 to -16 (1975, as amended through 2015), as amended, and under and pursuant to Ordinance 2019-___ duly adopted by the Issuer on _____, 2019.

The principal of, interest on and redemption price of this Bond are payable solely from Basic Rent derived by the Issuer from the Lease Agreement dated as of [_____], 2019 (the "Agreement") between the Issuer and La Joya Wind, LLC (the "Company"), which has been pledged and assigned by the Issuer to the Purchaser under the Indenture, dated as of [_____],

2019 (together with any amendments and supplements, the “Indenture”) among the Issuer, the Purchaser, the Company and BOKF, NA (the “Depositary”).

Reference is made to the Indenture and the Agreement for the provisions, among others, with respect to the custody and application of the proceeds of the sale of this Bond, the collection and disposition of income and other revenues, a description of the account charged with and pledged to the payment of the principal of, interest on and redemption price of this Bond, the nature and extent of the security, the terms and conditions under which this Bond is issued and amounts are to be advanced with respect to this Bond by the Purchaser, and the rights, duties and obligations of the Issuer, the Company, the Purchaser and the Depositary.

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW MEXICO OR OF ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE ISSUER, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, INTEREST ON OR REDEMPTION PRICE OF THIS BOND. THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE OF THIS BOND WILL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR LAWS OF THE STATE OF NEW MEXICO. THIS BOND WILL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE STATE OF NEW MEXICO, ANY OF ITS POLITICAL SUBDIVISIONS OR OF THE ISSUER OR A CHARGE AGAINST THEIR GENERAL CREDIT OR TAXING POWERS.

This Bond may be called for redemption as provided in the Indenture, at the option of the Company as a whole or in part on any date selected by the Company, at a redemption price equal to the principal amount to be redeemed plus interest accrued on such principal amount to the redemption date.

If an Event of Default (as defined in the Indenture) occurs, the Purchaser may cause the then unpaid principal amount of this Bond and all accrued interest to be immediately due and payable as provided in the Indenture. Neither the Issuer nor the Depositary has any right or responsibility to act on behalf of the Purchaser with respect to any Event of Default.

THIS BOND MAY BE TRANSFERRED IN WHOLE BUT NOT IN PART. SUBJECT TO THE LAST PARAGRAPH OF SECTION 404 OF THE INDENTURE AND NOTWITHSTANDING ANY PROVISION OF THIS BOND TO THE CONTRARY, NEITHER THIS BOND NOR ANY INTEREST IN THIS BOND MAY BE, DIRECTLY OR INDIRECTLY, OFFERED, SOLD, HYPOTHECATED, ENCUMBERED OR OTHERWISE TRANSFERRED OR DISPOSED OF (INDIVIDUALLY AND COLLECTIVELY, A “TRANSFER”) EXCEPT IN COMPLIANCE WITH SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), AND APPLICABLE STATE SECURITIES LAWS AS ESTABLISHED TO THE SATISFACTION OF THE ISSUER, AND ANY SUCH PURPORTED TRANSFER OF THIS BOND WILL NOT BE EFFECTIVE UNLESS THE TRANSFEROR PROVIDES TO THE ISSUER, THE DEPOSITARY AND THE COMPANY (A) AN OPINION, IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, FROM LEGAL COUNSEL EXPERIENCED IN SECURITIES LAWS MATTERS, WHICH COUNSEL MUST BE SATISFACTORY TO THE ISSUER, TO THE EFFECT THE TRANSFER COMPLIES WITH THE ACT AND

APPLICABLE STATE SECURITIES LAWS AND (B) WRITTEN REPRESENTATIONS FROM THE TRANSFEREE, IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, NECESSARY TO ESTABLISH SUCH COMPLIANCE.

All acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this Bond and the execution of the Indenture have happened, exist and have been performed as so required.

The validity, construction and performance of this Bond are governed by the law of New Mexico applicable to agreements made and to be performed in New Mexico.

TORRANCE COUNTY, NEW MEXICO

By: _____
Ryan Schwebach, Chair
Board of County Commissioners

(SEAL)

ATTEST:

By: _____
Linda Jaramillo, County Clerk

SCHEDULE OF ADVANCES AND PAYMENTS

<u>Date</u>	<u>Amount Of Advance</u>	<u>Amount of Principal Payment or Redemption</u>	<u>Resulting Principal Amount</u>	<u>Notation Made By</u>
-------------	------------------------------	--	---	-----------------------------

EXHIBIT B

REQUISITION AND CERTIFICATE NO.

To: _____, LLC, as Purchaser
BOKF, NA, as Depository

The undersigned, pursuant to the Indenture dated as of [_____] , 2019 (the "Indenture"), among Torrance County, New Mexico (the "Issuer"), _____, LLC (the "Purchaser"), La Joya Wind, LLC (the "Company") and BOKF, NA (the "Depository"), requests on behalf of the Company, the disbursement of \$ _____ from the Acquisition Fund (as defined in the Indenture) to pay the following costs and expenses (or to reimburse the Company for payment of such costs and expenses) related to the Project (as defined in the Indenture) or to the issuance of the Bond (as defined in the Indenture):

<u>Amount</u>	<u>General Classification Of Expenditure</u>	<u>Payee</u>
\$		

Amount of this requisition: \$ _____

The undersigned certifies that:

(1) obligations in the stated amounts were incurred for Related Costs (as defined in the Indenture) and are due and payable (or, if the Company is indicated as the Payee, were duly paid by the Company) and that each item is a proper charge against the Acquisition Fund and has not been the subject of a previous withdrawal from the Acquisition Fund;

(2) to the best knowledge of the undersigned there has not been filed with or served upon the Issuer or the Company notice of any lien, right or attachment upon, or claim affecting the right of any such payee to receive payment of, the respective amounts stated in such requisition which has not been released or will not be released simultaneously with the payment of such obligation; and

(3) with respect to any item for payment for labor or to contractors, builders or materialmen, (i) the obligations stated have been properly incurred, (ii) such work was actually performed or such materials or supplies were actually furnished or installed in or about the Project, and (iii) either such materials or supplies are not subject to any lien or security interest or any such lien or security interest will be released or discharged upon payment of this requisition.

DATED: _____

LA JOYA WIND, LLC

Authorized Company Representative

Acknowledged:
BOKF, NA

By: _____

Its: _____

EXHIBIT C

COMPLETION CERTIFICATE

The undersigned Authorized Company Representative, pursuant to Section 706 of the Indenture, dated as of [_____], 2019 (the "Indenture"), among Torrance County, New Mexico, _____, LLC, as Purchaser, La Joya Wind, LLC (the "Company") and BOKF, NA, as Depositary, states that, except for specified amounts remaining in the Acquisition Fund for any specified Related Costs as described in Appendix A hereto incurred by the Company, but not now due and payable, the Project is complete and all costs of labor, services, materials and supplies in connection with the Project Property have been paid for or provisions have been made for their payment. After the transfer of remaining moneys in the Acquisition Fund to the Company pursuant to Section 706 of the Indenture, the Company will have sole responsibility for the payment of any Related Cost in excess of the amount specified to be retained in the Acquisition Fund.

Moneys set aside for payment of pending expenses equal \$ _____ and total disbursements equal \$ _____.

DATED: _____

LA JOYA WIND, LLC

Authorized Company Representative

EXHIBIT D

CERTIFICATE OF QUALIFIED INVESTOR

Torrance County, New Mexico

BOKF, NA, as Depositary

La Joya Wind, LLC

Re: Torrance County, New Mexico Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project), Series 2019A

Please be advised that the undersigned is purchasing the captioned Series 2019A Bonds (hereinafter referred to as the "Bonds"). Such purchase is for the account of the undersigned, for the purpose of investment and not with a present intent for distribution or resale. In the event that the undersigned transfers such Bonds, the undersigned shall comply with all provisions of the Indenture dated as of [_____], 2019A (as amended from time to time, the "Indenture"), among Torrance County, New Mexico (the "Issuer"), _____, LLC, as Purchaser, La Joya Wind, LLC (the "Company") and BOKF, NA, as Depositary (the "Depositary"), as described in the Bonds. The undersigned assumes all responsibility for complying with any applicable federal and state securities laws in such regard and must present to the Depositary, the Issuer and the Company a Certificate of Qualified Investor executed by the proposed transferee, among other things as may be required by the agreements authorizing the Bonds, before such transfer will be effective.

The undersigned acknowledges that it is one of the following:

1. a bank as defined in Section 3(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), or savings and loan association or other institution as defined in Section 3(a)(S)(A) of the Securities Act, whether acting in its individual or fiduciary capacity; broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"); insurance company as defined in Section 2(13) of the Securities Act; insurance company as registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act; Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; plan established and maintained by a state, its political subdivision, or any agency or instrumentality of a state or its political subdivision, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

2. a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;

3. an organization described in Section 501(c)(3) of the Internal Revenue Code with total assets in excess of \$5,000,000;

4. a natural person whose individual net worth, or joint net worth with that person's spouse, at the time of this purchase exceeds \$1,000,000, excluding the value of the primary residence of such person;

5. a natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with the person's spouse in excess of \$300,000 in each of those years and who reasonably expects reaching the same income level the current year; or

6. one or more of the following, as indicated, that it is acting for its own account or the accounts of other Qualified Institutional Buyers and that it in the aggregate owns and/or invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the Company:

(a) an insurance company, as defined in Section 2(13) of the Securities Act;

(b) an investment company registered under the Investment Company Act of 1940, as amended, or any business development company as defined in Section 2(a)(48) of that Act;

(c) a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958;

(d) a plan established and maintained by a state, its political subdivision or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees;

(e) an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974;

(f) a trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in Paragraph (d) or (e) above, and not a trust fund that includes as participants individual retirement accounts or H.R. 10 plans;

(g) a business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (the "Investment Advisers Act");

(h) an organization described in Section 501(c)(3) of the Internal Revenue Code, a corporation (other than a bank as defined in Section 3(a)(2) of the Securities Act or a savings and loan association or other institution referenced in Section 3(a)(5)(A) of the Securities Act or a foreign bank or savings and loan association or equivalent institution), partnership or similar business trust; or

(i) an investment adviser registered under the Investment Advisers Act;

7. a dealer registered pursuant to Section 15 of the Exchange Act, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$10 million of securities of issuers that are not affiliated with the dealer, provided that securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as a participant in a public offering shall not be deemed to be owned by such dealer; or

8. a dealer registered pursuant to Section 15 of the Exchange Act acting in a riskless principal transaction on behalf of a qualified institutional buyer; or

9. an investment company registered under the Investment Company Act, acting for its own account or for the accounts of other qualified institutional buyers, that is part of a family of investment companies which own in the aggregate at least \$100 million in securities of issuers, other than issuers that are affiliated with the investment company or are part of such family of investment companies. "Family of investment companies" means any two or more investment companies registered under the Investment Company Act, except for a unit investment trust whose assets consist solely of shares of one or more registered investment companies, that have the same investment adviser (or, in the case of unit investment trusts, the same depositor), provided that, for purposes of this section:

(a) each series of a series company (as defined in Rule 18f-2 under the Investment Company Act) shall be deemed to be a separate investment company; and

(b) investment companies shall be deemed to have the same adviser (or depositor) if their advisers (or depositors) are majority-owned subsidiaries of the same parent, or if one investment company's adviser (or depositor) is a majority-owned subsidiary of the other investment company's adviser (or depositor);

10. an entity, all of the equity owners of which are qualified institutional buyers, acting for its own account or the accounts of other qualified institutional buyers; or

11. a bank as defined in Section 3(a)(2) of the Securities Act, any savings and loan association or other institution as referenced in Section 3(a)(5)(A) of the Securities Act, or any foreign bank or savings and loan association or equivalent institution, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with it and that has an audited net worth of at least \$25 million as demonstrated in its latest annual financial statements, as of a date not more than 16 months preceding the date of sale in the case of a U.S. bank or savings and loan association, and not more than 18 months preceding such date of sale for a foreign bank or savings and loan association or equivalent institution; or

12. any entity that is acquiring the Bond for the purpose of facilitating investment therein by “qualified institutional buyers” as defined under Rule 144A promulgated under the Securities Act; or

13. The parent, affiliate or subsidiary of La Joya Wind, LLC.

The undersigned further acknowledges that (i) interest on the Bonds is not exempt from gross income for federal income tax purposes, and (ii) an opportunity was available to obtain and that the undersigned has obtained all materials which were regarded as necessary to evaluate the merits and risks of investment in the Bonds and after such evaluation, the undersigned understands and knows that investment in the Bonds involves certain risks, including, but not limited to, those related to limited security and source for payment of the Bonds and the probable lack of any secondary market for the Bonds.

The undersigned acknowledges, warrants and represents that the undersigned is experienced in transactions such as those relating to the Bonds and that the undersigned is knowledgeable and fully capable of independently evaluating the risks involved in investing in the Bonds. The undersigned further acknowledges that neither the Issuer nor any of its officials, counsel, agents or consultants is responsible for any information contained in or omitted from the materials furnished, whether directly or by any other means, relating to the Bonds and acknowledges that the undersigned will not look and has not looked to any of them to obtain such information on its behalf.

_____,
a Delaware limited liability company

By: LA JOYA WIND, LLC,
a Delaware limited liability company
its sole member

By: _____

Name: _____

Title: _____

Address for Notices and
Payment of principal and interest:

Attn: _____

TORRANCE COUNTY, NEW MEXICO

and

LA JOYA WIND, LLC

LEASE AGREEMENT

Dated as of ____1, 2019

\$290,000,000
Torrance County, New Mexico
Taxable Industrial Revenue Bonds
(La Joya Wind, LLC Project)
Series 2019A

TABLE OF CONTENTS

ARTICLE I RECITALS	1
ARTICLE II DEFINITIONS AND RULES OF CONSTRUCTION	2
SECTION 2.1. DEFINITIONS	2
SECTION 2.2. RULES OF CONSTRUCTION	4
ARTICLE III REPRESENTATIONS	5
SECTION 3.1. ISSUER REPRESENTATIONS.	5
SECTION 3.2. COMPANY REPRESENTATIONS.	5
ARTICLE IV THE PROJECT AND THE COMPANY	7
SECTION 4.1. ACQUISITION, EQUIPPING AND COMPLETION.....	7
SECTION 4.2. PLANS AND SPECIFICATIONS; CHANGES	7
SECTION 4.3. NO WARRANTY OF CONDITION OR SUITABILITY BY ISSUER	8
SECTION 4.4. COMPLETION DATE.....	8
SECTION 4.5. GROSS RECEIPTS AND COMPENSATING TAX.....	8
SECTION 4.6. COMPLIANCE WITH LAW.....	9
SECTION 4.7. TAXES AND UTILITY CHARGES	10
SECTION 4.8. MAINTENANCE	10
SECTION 4.9. REPLACEMENT AND REMOVAL OF PROJECT PROPERTY	10
SECTION 4.10. EMINENT DOMAIN; DAMAGE; DESTRUCTION	11
SECTION 4.11. ACCESS AND INSPECTION.....	11
SECTION 4.12. ASSESSMENT IN THE COMPANY’S NAME	11
SECTION 4.13. USE OF PROJECT PROPERTY.....	12
SECTION 4.14. EXISTENCE.....	12
SECTION 4.15. SUBLEASES; GRANTING AND RELEASE OF EASEMENTS; AMENDING OR MODIFYING SUBLEASES AND EASEMENTS	12
SECTION 4.16. INSURANCE.....	13
ARTICLE V LEASE; TERM; POSSESSION; RENT	13
SECTION 5.1. LEASE OF THE PROJECT PROPERTY; TERM.....	13
SECTION 5.2. QUIET ENJOYMENT	13
SECTION 5.3. BASIC RENT AND ADDITIONAL PAYMENTS.....	14
SECTION 5.4. OBLIGATIONS UNCONDITIONAL; RIGHTS OF SETOFF	14
ARTICLE VI SPECIAL COVENANTS	15
SECTION 6.1. RECORDING AND FILING; FURTHER ASSURANCES	15
SECTION 6.2. CLAIMS; LIENS. THE.....	15
SECTION 6.3. RELEASE AND INDEMNIFICATION.....	16
SECTION 6.4. PAYMENTS IN LIEU OF TAXES TO THE ISSUER AND THE SCHOOL DISTRICTS	17
SECTION 6.5. GASB 77 REPORTING INFORMATION.....	18
ARTICLE VII ASSIGNMENT, LEASING AND SELLING	18
SECTION 7.1. ASSIGNMENT OF RIGHTS BY THE ISSUER	18

SECTION 7.2.	NO OTHER TRANSFER BY ISSUER.....	18
SECTION 7.3.	ASSIGNMENT, LEASE, MORTGAGE AND SALE BY THE COMPANY	18
SECTION 7.4	COLLATERAL ASSIGNMENT	19
ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES		19
SECTION 8.1.	EVENTS OF DEFAULT DEFINED	19
SECTION 8.2.	PURCHASER REMEDIES	20
SECTION 8.3.	ISSUER REMEDIES	21
SECTION 8.4.	NOTICE OF DEFAULT	21
SECTION 8.5.	AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.....	21
SECTION 8.6.	RIGHT TO CURE DEFAULTS.....	21
ARTICLE IX PREPAYMENTS.....		22
ARTICLE X PURCHASE OF PROJECT PROPERTY		22
ARTICLE XI MISCELLANEOUS		23
SECTION 11.1.	REMEDIES	23
SECTION 11.2.	BENEFICIARIES	23
SECTION 11.3.	LIMITATION OF ISSUER'S LIABILITY	23
SECTION 11.4.	NO VIOLATION OF PUBLIC POLICIES REGARDING INDEMNITY.....	24
SECTION 11.5.	NOTICES	24
SECTION 11.6.	SEVERABILITY	25
SECTION 11.7.	SUCCESSORS	25
SECTION 11.8.	TITLE, HEADINGS	25
SECTION 11.9.	EXECUTION IN COUNTERPARTS	25
SECTION 11.10.	APPLICABLE LAW	25
SECTION 11.11.	OBLIGATIONS OF ISSUER NOT OBLIGATIONS OF OFFICIALS INDIVIDUALLY.....	25
SECTION 11.12.	PAYMENTS DUE ON DAYS THAT ARE NOT BUSINESS DAYS.....	25
SECTION 11.13.	FEDERAL INCOME TAX TREATMENT OF LEASE.....	26
SECTION 11.14.	AMENDMENTS	26
SECTION 11.15.	FURTHER ASSURANCES AND CORRECTIVE INSTRUMENTS	26
SECTION 11.16.	RECORDATION	26
SECTION 11.17.	SURVIVALS	26
EXHIBIT A PROJECT PROPERTY AND PROJECT SITE		1
SCHEDULE 5.3(A).....		1

TORRANCE COUNTY, NEW MEXICO, a political subdivision of the State of New Mexico (together with its successors and assigns, the “Issuer”), as lessor, and LA JOYA WIND, LLC, a Delaware limited liability company (together with its successors and assigns, the “Company”), as lessee, agree:

ARTICLE I RECITALS

Capitalized terms not otherwise defined herein shall have the meanings defined in Section 2.1 hereof, unless the context clearly requires otherwise.

A. The Company has requested that the Issuer issue its Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project), Series 2019A in the maximum principal amount of \$290,000,000 (the “Series 2019A Bonds”, the “2019A Bonds” or the “Bonds”). The proceeds of the Bonds will be used to finance the acquisition, construction and installation of wind energy generation facilities and associated electrical generating equipment and real property (the “Project Property”) used to generate electricity from wind energy (the “Project”), which Project shall be located at a site (the “Project Site”) within the County and outside the corporate limits of any municipality.

B. The Issuer is authorized under NMSA 1978, Sections 4-59-1 to -16 (1975, as amended through 2015) (the “Act”) to acquire certain projects and issue its industrial revenue bonds in payment therefor and has determined that it is desirable to acquire the Project Property for purposes of the Project pursuant to Ordinance No. 2019-__ adopted by the Board of County Commissioners of Torrance County on March 27, 2019 (the “Bond Ordinance”) and has in the Bond Ordinance authorized the issuance of the Bonds.

C. The Bonds are to be issued under an Indenture dated as of ____1, 2019 (together with any and all amendments and supplements, the “Indenture”) among the Issuer, the Company, _____ as purchaser (the “Purchaser”), and BOKF, NA as Depositary (the “Depositary”). The Bonds will be a special limited obligation of the Issuer payable as therein provided and the Bonds will not constitute a debt or pledge of the credit of the Issuer, and the Purchaser or owners of the Bonds will have no right to have taxes levied by the Issuer or to require the Issuer to use any revenues for the payment of the Bonds, except for Basic Rent (as defined in Section 2.1 hereof).

D. The proceeds of the Bonds will be used to finance the acquisition of the Project Property leased to the Company under this Lease Agreement (together with all amendments and supplements, this “Agreement”).

E. The Company will make a payment in lieu of taxes PILOT equal to \$3,250 per megawatt of generating capacity of the Project for each year in which the Series 2019A Bonds are outstanding.

F. As of the Effective Date, the Company has conveyed the Project Site described in Exhibit A to the Issuer pursuant to a special warranty deed. The Project Property, which shall be located on the Project Site, is to be leased to the Company pursuant to this Agreement.

G. The Series 2019A Bonds are to be purchased under a Bond Purchase Agreement dated as of _____, 2019 (together with any and all amendments and supplements, the "Bond Purchase Agreement") among the Issuer, the Purchaser and the Company.

H. The Series 2019A Bonds will be secured by the Indenture which constitutes, among other things, a collateral pledge of this Agreement.

In consideration of the premises and the mutual representations and agreements hereinafter contained, the Issuer and the Company agree as follows (provided that any obligation of the Issuer created by or arising out of this Agreement will never constitute a general debt of the Issuer or give rise to any pecuniary liability of the Issuer, but will be payable solely out of Basic Rent).

ARTICLE II DEFINITIONS AND RULES OF CONSTRUCTION

Section 2.1. Definitions. All words and terms defined in the Indenture have the same meanings when used in this Agreement. In addition:

"Additional Payments" has the meaning assigned in Section 5.3(b).

"Affiliate" means an entity the control or ownership of which is held in common with the control or ownership of another entity.

"Affiliated Entities" means Affiliates that are under common control or ownership.

"Applicable Environmental Law" means any applicable law, statute, ordinance, regulation, order or rule relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or materials or pertaining to health or the environment, including, without limitation, CERCLA and RCRA, as each is amended and in effect from time to time.

"Basic Rent" has the meaning assigned in Section 5.3(a).

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

"Closing Date" means the date of execution and delivery of the Bonds.

"Construction Completion Date" has the meaning assigned in Section 4.4.

“County PILOT” means the payment in lieu of taxes to be made by the Company to the County, in an annual amount equal to \$ _____.

“Eminent Domain” means the taking of title to, or the temporary use of; all or any part of the Project Property pursuant to eminent domain or condemnation proceedings, or by any settlement or compromise of such proceedings, or any voluntary conveyance of all or any part of the Project Property during the pendency of, or as a result of a threat of, such proceedings.

“Event of Default” has the meaning assigned in Section 8.1.

“Facility” means the wind energy generating facility located in Torrance County, New Mexico, and its related supporting equipment and all improvements thereon for the generation and transmission of electricity.

“Indemnitee” has the meaning assigned in Article VI.

“Lender” or “Lenders” means any and all persons or successors in interest thereof (a) lending money or extending credit related to the Project (including any financing lease, monetization of tax benefits, backleverage financing or credit derivative arrangement) to the Company or to an Affiliate of the Company including: (i) for the construction, permanent or interim financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and related rights from the Company, and/or (b) participating (directly or indirectly) as an equity investor in the Project primarily in connection with the utilization of applicable federal tax credits or tax depreciation benefits associated with holding an ownership interest in the Project, or (c) participating as a lessor under a lease finance arrangement relating to the Project (which such arrangement shall not be deemed to include this Agreement, and which person or persons shall not include Company or any of its Affiliates).

“PILOT” means, collectively, the County PILOT and the School PILOT in an annual amount equal to \$3,250 per megawatt of generating capacity of the 2019A Project, which PILOT shall be split between the County and the School Districts.

“Proceeds,” when used with respect to any insurance proceeds or any award resulting from, or other amount received in connection with, Eminent Domain, means the gross proceeds from the insurance or such award or other amount.

“Project” means the acquisition, construction and installation of the Project Property in the Facility.

“Project Property” means (i) wind energy generation equipment, towers, transformers and associated electrical generating equipment used to generate electricity from wind energy and other personal property of any kind as further described in Exhibit A, whether now owned or

hereafter acquired, but only to the extent that such property is acquired with the proceeds of the Bonds, or the acquisition is reimbursed with the proceeds of the Bonds, prior to the Completion Date, and (ii) any rights of the Company in, or related to, the Project Property now owned or hereafter acquired under easements, agreements or leases assigned, subleased or otherwise transferred to the Issuer.

“Project Site” means the real property in Torrance County, New Mexico described in Exhibit A.

“RCRA” means the Resource Conservation and Recovery Act of 1976.

“Related Costs” means expenditures incurred or to be incurred with respect to the Project, including, without limitation, the acquisition, assembly and installation of the Project Property.

“Rent” means Basic Rent and any Additional Payments under this Agreement.

“School Districts” means, collectively, the Estancia Municipal School District and Vaughn Public School District.

“School PILOT” means the payment in lieu of taxes to be made by the Company to the County on behalf of the School Districts, of which the Estancia Municipal School District shall receive ___% and the Vaughn Public School District shall receive ___%.

“State” means the state of New Mexico.

“Term” means the duration of the leasehold estate created by this Agreement pursuant to Section 5.1 hereof.

“TRD” means the New Mexico Taxation and Revenue Department.

Section 2.2. Rules of Construction.

(a) The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(b) All references in this Agreement to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Agreement unless some other reference is established.

(c) Any inconsistency between the provisions of this Agreement and the provisions of the Indenture will be resolved in favor of the provisions of this Agreement.

ARTICLE III REPRESENTATIONS

Section 3.1. Issuer Representations. The Issuer represents that, as of the date of delivery of this Agreement:

(a) The Issuer is a political subdivision, organized and existing under the laws of the State.

(b) The Issuer has duly authorized by an ordinance of the governing body of the Issuer adopted at a meeting duly called and held by the affirmative vote of not less than a majority of its members, the execution, delivery and performance of the Bond Documents, the Bonds and the issuance of the Bonds, all for the purpose of financing the Project including the acquisition, construction and installation of the Project Property and paying certain costs related to the issuance of the Bonds.

(c) To the knowledge of the Issuer, the execution, delivery and performance by the Issuer of the Bond Documents will not conflict with or create a material breach of or material default under the Act or any other law, rule, regulation or ordinance applicable to the Issuer or any agreement or instrument to which the Issuer is a party or by which it is bound, and there is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body, pending or threatened against the Issuer, which seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents or in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents.

(d) To the knowledge of the Issuer, this Agreement and the Indenture constitute legal, valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity and other applicable laws.

Section 3.2. Company Representations. The Company represents that, as of the date of delivery of this Agreement:

(a) The Company is a limited liability company duly organized and validly existing under the laws of Delaware, is in good standing under the laws of Delaware, is authorized to do business in New Mexico, and has duly authorized the execution, delivery and performance of this Agreement and the Bond Purchase Agreement.

(b) The Company has full legal right, power and authority to carry out and consummate the transactions contemplated by this Agreement and the Bond Purchase Agreement.

(c) The execution, delivery and performance by the Company of this Agreement and the Bond Purchase Agreement and the application by the Company of the proceeds of the issuance and sale of the Bonds as provided in the Bond Documents do not and will not conflict

with, contravene, violate or constitute a breach of or default under the articles of organization or operating agreement of the Company or any material agreement to which the Company is a party or by which the Company or its properties or the Project Property is bound or any law, rule, regulation, ordinance, order, consent, or decree, applicable to the Company, its properties or the Project Property if such conflict, contravention, violation, breach or default could materially affect the ability of the Company to perform its obligations under the Bond Documents.

(d) This Agreement and the Bond Purchase Agreement constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity.

(e) No Event of Default, or event or condition which, with notice or lapse of time or both, would constitute an Event of Default, with respect to the Company has occurred and is continuing. The Company has not received any written notice of any currently existing material violation of any zoning, land use, environmental or other similar law or regulation applicable to the Project Property, the Project Site or the Project.

(f) There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to the knowledge of the Company, threatened against the Company, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents, (ii) questions the validity or enforceability of the Bonds or any of the Bond Documents, (iii) questions the authority of the Company to own or operate any of the Project Property, or (iv) if adversely determined, would have a material adverse effect on the Project Property or the Company's ability to perform its obligations under the Bond Documents.

(g) All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Company of this Agreement and the Bond Purchase Agreement have been obtained and are in full force and effect.

(h) The Company acknowledges that the Issuer has made no warranty or representation, express or implied, that the amount in the Acquisition Fund, as defined in Section 701 of the Indenture, will be sufficient to pay the Related Costs or that the Project Property will be suitable for the Company's needs.

(i) The Company will not use or operate the Project, or permit the Project to be used or operated, in any way which would adversely affect the qualification of the Project as a "project" under the Act.

(j) The acquisition, construction and installation of the Project Property by the Company and the operation thereof will comply in all material respects with applicable zoning, planning, building, environmental and other regulations of the governmental authorities having

jurisdiction over the Facility, and all permits, licenses, consents and permissions necessary for the Facility have been or will be obtained in due course.

(k) The Project Property is located in Torrance County and is or will be an electric generation facility which does not require location approval and a certificate of convenience and necessity prior to construction or operation of the facility pursuant to the New Mexico Public Utility Act, NMSA 1978, Sections 62-3-1 to -5 (1967, as amended through 2009).

(l) No representation made by the Company in this Agreement and no statement made by the Company in any written information, material or report furnished to the Issuer or the Purchaser in connection with the transactions contemplated by this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the representation or statement, in light of the circumstances under which it is made, not misleading.

(m) The representations of the Company in this Section 3.2 and in any other instrument delivered by the Company in connection with the transactions contemplated by the Bond Documents will survive the execution and delivery of this Agreement, and the issuance, sale and delivery of the Bonds as representations of facts existing as of the date of execution and delivery of the Bond Documents or other instrument containing such representation.

(n) The Company has arranged for all of the Company's right, title and interest in and to the Project Property to be transferred to the Issuer.

ARTICLE IV THE PROJECT AND THE COMPANY

Section 4.1. Acquisition, Equipping and Completion. The Company will use reasonable commercial efforts to acquire, construct and install the Project Property as agent for the Issuer under the Act and applicable TRD regulations. To the extent necessary, after all proceeds of the issuance of the Bonds have been exhausted, the Company will finance the completion of the Project with other funds. The Project Property will at all times during the Term be located within Torrance County, New Mexico. The Issuer makes no warranty that the proceeds of the issuance and sale of the Bonds will be sufficient to pay all the Related Costs. The Company will obtain at the necessary time all licenses and permits required for the occupancy and operation of the Project Property and the Project.

Section 4.2. Plans and Specifications; Changes. The Company may make changes, supplements, amendments and additions, omissions or substitutions for components of the Project Property without the approval of the Issuer or the Purchaser. If the Company elects to make any such change, supplement, amendment, addition, omission or substitution which would make the description of the Project Property contained in Exhibit A materially inaccurate, the Company will revise the description of the Project Property set forth in Exhibit A accordingly and will deliver a copy of such revised Exhibit A, certified by an Authorized Company Representative, to the Issuer and the Purchaser, and may record an addendum or amendment to this Agreement executed solely by an Authorized Officer of the Company. The Issuer and Company will take such further actions as necessary to effect such change including executing,

delivering, and recording a bill of sale, assignment and any amendments to the Bond Documents. Notwithstanding the foregoing, the Company will not make any changes, supplements, amendments, additions, omissions, or substitutions or otherwise change or operate the Project Property or permit the Project Property, the Project or the Facility to be operated so as to cause the Project Property and the Project not to be a “project” within the meaning of the Act as in effect on the date of issuance of the Bonds, and the Company will not take or omit to take any action which will result in the Bond proceeds being applied in violation of the Bond Documents.

Section 4.3. No Warranty of Condition or Suitability by Issuer. THE COMPONENTS OF THE PROJECT PROPERTY HAVE BEEN DESIGNATED AND SELECTED BY THE COMPANY. THE ISSUER HAS NOT MADE AN INSPECTION OF ANY PORTION OF THE PROJECT PROPERTY. THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO ANY PORTION OF THE PROJECT PROPERTY OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY OF THE SAME, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP IN THE SAME. ALL RISKS INCIDENT TO THE PROJECT PROPERTY ARE TO BE BORNE BY THE COMPANY. THE ISSUER WILL HAVE NO LIABILITY WITH REGARD TO OR ARISING OUT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN ANY PORTION OF THE PROJECT PROPERTY, WHETHER PATENT OR LATENT. THE PROVISIONS OF THIS SECTION 4.3 HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PORTION OF THE PROJECT PROPERTY, WHETHER ARISING UNDER THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT.

Section 4.4. Completion Date. The Company will complete the Project as promptly as practicable and, in any event, within five (5) years of the date of this Agreement. On the date the Project is complete and a certificate of occupancy has been obtained for the Facility (if such certificate is required to be obtained) (the “Completion Date”), the Company will deliver to the Issuer and the Depositary a certificate signed by an Authorized Company Representative stating that, except for specified amounts remaining in the Acquisition Fund for any specified Related Costs incurred by the Company but not then due and payable, the Project is complete and all costs of labor, services, materials and supplies in connection with the Project have been paid for or provisions have been made for their payment. After the transfer of remaining moneys in the Acquisition Fund to the Company pursuant to Section 706 of the Indenture, the Company will have sole responsibility for the payment of any Related Costs in excess of the amount specified to be retained in the Acquisition Fund. Upon completion, the Project Property will comply in all material respects with all building codes, and other laws, ordinances, rules and regulations applicable to the Project Property or the Facility.

Section 4.5. Gross Receipts and Compensating Tax. To the extent required by law, if at all, the Company, either on its own behalf or as agent for the Issuer pursuant to Section 4.1 and this Section, will file returns for reporting and paying compensating tax which may be become due because of the Projects and promptly will pay, as a Related Cost, any gross receipts

or compensating tax which may become due from the Issuer under any such returns. To the extent consistent with or required by State law, the Issuer will cooperate with the Company in the obtaining of Nontaxable Transaction Certificates from the TRD for delivery to suppliers with respect to the Project Property as may be applicable under the New Mexico Gross Receipts and Compensating Tax Act. The Company will pay any gross receipts or compensating tax plus applicable penalty and interest which is found by the TRD to be due from the Company or the Issuer because of the purchase or use of the Project Property or any component of the Project Property by the Company or the Issuer. The Company may request any rulings from the TRD which the Company determines might be necessary or desirable to clarify the New Mexico gross receipts and compensating tax results of transactions related to the Project and may dispute, in any manner authorized by the New Mexico Tax Administration Act, any gross receipts or compensating tax liability imposed on the Company or the Issuer because of the Project. The Issuer will join in any reasonable modifications to this Agreement which are necessary or desirable to obtain Nontaxable Transaction Certificates or otherwise reduce the gross receipts and compensating tax imposed on the Company or the Issuer as a result of or in connection with the acquisition, assembly and installation of the Project Property and will otherwise cooperate with the Company to address any reasonable request of the Company regarding issues raised by TRD with respect to Non-Taxable Transaction Certificates. The Company will pay such gross receipts taxes and compensating taxes as may be required by law for all purchases of property other than Project Property, for all purchases after the Completion Date and for any purchases in amounts greater than the proceeds of the Bonds.

Section 4.6. Compliance With Law.

(a) The Company will obtain or cause to be obtained all necessary permits and approvals, for the occupancy, operation and maintenance of the Project Property and will comply in all material respects with all Applicable Environmental Laws and all lawful requirements of any governmental body, agency or department regarding the use, condition or operation of the Project Property. The Company may in good faith contest the validity or the applicability of any such requirement. During the period of such contest and any related appeal, this Section 4.6 will be deemed satisfied with respect to the requirement so contested.

(b) To the extent that the use which the Company makes of the Project Property results in the manufacturing, treatment, refining, transportation, generation, storage, disposal or other release or presence of any hazardous substance or solid waste on or to the Project Site, such use will be in accordance with law, including any applicable regulations. For purposes of this paragraph, the terms "hazardous substance" and "release" will have the meanings specified in CERCLA, and the term "disposal" (or "disposed") will have the meaning specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning will apply subsequent to the effective date of such amendment, and provided, further, to the extent that the laws of the State establish a meaning for "hazardous substance," "release," or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning will apply; provided, further, that the term "hazardous substance" will also include those listed in the U.S. Department of Transportation Table (49 C.F.R. 172.101) and amendments thereto from time to time.

(c) The Company agrees to promptly notify the Purchaser and the Issuer of any material violation of any Applicable Environmental Laws of which the Company becomes aware.

(d) The Company shall, at the Company's sole cost and expense, remove or take remedial action as and to the extent required by Applicable Environmental Laws with regard to any hazardous substance brought onto the Project Site or released from the Project Site by the Company or its employees, agents or contractors. If the Company fails to timely take any action required under this Section after notice from the applicable governmental entity having jurisdiction under Applicable Environmental Laws, the Issuer may, but shall have no obligation to, perform or arrange for the performance of such action and the Company shall, promptly upon demand therefore, reimburse the Issuer for all reasonable and customary costs actually incurred by the Issuer in connection with the completion of such performance. The Company shall indemnify, defend, protect and hold the Issuer and the Issuer's commissioners, employees and agents free and harmless from any liability (including, without limitation, costs, reasonable attorneys and consulting fees, investigation and laboratory fees and litigation expenses) arising out of (a) a release of any hazardous substance in, on or under the Project Site or (b) the violation by the Company or its employees, agents or contractors of any Applicable Environmental Laws at the Project Site. The indemnity obligations stated in this Section (i) are in addition to the other indemnity obligations of Company hereunder, and shall survive the termination of this Agreement, but (ii) shall specifically exclude any liabilities or amounts arising out of or related to the gross negligence or misconduct of the Issuer or the Issuer's trustees, employees and agents.

Section 4.7. Taxes and Utility Charges. The Company will pay or cause to be paid, as and when due, (i) all taxes, assessments, and governmental and other charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project Property, (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project Property and (iii) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by any lien on the Project Property. The Company may, in good faith, contest the amount or validity of any such levy, tax, assessment or other charge by appropriate legal proceedings. During the period of such contest and any related appeal, this Section 4.7 will be deemed satisfied with respect to any such levy, tax, assessment or other charge so contested.

Section 4.8. Maintenance. The Issuer will not be under any obligation to, and will not, operate, maintain or repair the Project Property. The Company will, at its own expense, keep the Project Property in safe repair and in such operating condition as is needed for its operations. The Company will not be under any obligation to renew, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable, inappropriate or unnecessary equipment.

Section 4.9. Replacement and Removal of Project Property. The Company may replace or remove and/or sell, trade in exchange or otherwise dispose of any machinery, equipment or fixtures constituting a part of the Project Property, without any responsibility or accountability to the Issuer, and thereby acquire title to such machinery, equipment or fixtures, provided that such replacement or removal will not change the nature of the Project as a qualified

“project” as defined in and as contemplated by the Act. Upon the request and at the expense of the Company, the Issuer will deliver to the Company appropriate instruments evidencing the acquisition by the Company of title to any machinery, equipment or fixtures permitted by this Section 4.9 to be so replaced or removed. The provisions of Article X govern the delivery and form of any such instruments. The removal from the Facility of any portion of the equipment, if any, pursuant to the provisions of this Section will not entitle the Company to any abatement or diminution in amount of the Basic Rent, Additional Payments, School PILOT or County PILOT payable under this Agreement. The Company may acquire machinery, equipment or other property (other than fixtures) which does not constitute a part of the Project Property and title to any such property will not thereby be transferred to the Issuer.

Section 4.10. Eminent Domain; Damage; Destruction. The Company will give prompt notice to the Issuer and the Purchaser of any material damage to or destruction of the Project Property. If either the Issuer or the Company receives notice of the proposed taking of all or any part of the Project Property by Eminent Domain, it will give prompt notice to the other and the Purchaser. Any such notice will describe generally the nature and extent of such damage, destruction, taking or proposed taking. The Proceeds resulting from the exercise of Eminent Domain with respect to or from any damage to or destruction of all or any portion of the Project Property shall at the option of the Purchaser, be applied to the prepayment of the Bonds or paid to the Company. All proceeds of insurance resulting from claims for losses to the Project and all proceeds of any condemnation award will be paid to the Company.

Section 4.11. Access and Inspection. The Company authorizes the Issuer and the Purchaser and their duly authorized agents during regular business hours, upon two (2) days prior written notice, (i) such rights of access to the Project Property as may be reasonably necessary to inspect the progress of the Project and (ii) the right of entry onto the Project Site for any purpose contemplated by this Agreement. Such rights of access and entry will not be terminated, curtailed or otherwise limited by any sale, assignment, lease or other transfer of the Project Property by the Company to any other Person. During any such access or entry, the Issuer and the Purchaser shall comply with all safety related rules and policies of the Company and its contractors.

Section 4.12. Assessment in the Company's Name. If this Agreement has not been terminated on or before the thirtieth anniversary of the Closing Date, the Company will take all necessary action to have the Project Property assessed for property tax purposes in the name of the Company on or within 30 days before the thirtieth anniversary of the Closing Date, and the Company will pay all ad valorem taxes on the Project Property from and after the thirtieth anniversary of the Closing Date. If the Project Property must be conveyed to the Company to accomplish such assessment, the Issuer will convey the Project Property to the Company, and this Agreement will thereafter be construed to be an installment sale agreement and all terms and provisions of this Agreement will remain in full force and effect. The provisions of Article X govern the manner and form of any such conveyance. Notwithstanding the foregoing, if the Company fails to take all necessary action to have the Project Property assessed for property tax purposes in the name of the Company thirty (30) days before or on the thirtieth anniversary of the Closing Date, the Issuer may terminate this Agreement and execute, deliver and cause to be recorded, at the expense of the Company, appropriate documents reflecting such termination. In

anticipation of the conveyance of the Project Property by the Issuer to the Company, the Issuer will, upon the request of the Company, deliver to an escrow agent agreed to by the Issuer and the Company appropriate documents, including, but not limited to, a quitclaim deed, an assignment of easements and other real property rights and a bill of sale, prepared by the Company at the Company's expense, conveying to the Company the Issuer's interest in the Project Property; such documents to be delivered to the Company at the time of purchase of the Project Property.

Section 4.13. Use of Project Property. The Company will use the Project Property or cause the Project Property to be used during the Term so as to constitute a "project" within the meaning of the Act as in effect on the date of issuance of the Bonds. Temporary cessation of operations, or cessations of operations during holiday periods, for maintenance or retooling, for reasonable periods for the repair or replacement of facilities damaged or destroyed, resulting from labor disputes, strikes or because of short-term slack demand, riots or acts of God or the public enemy, shortages of materials or supplies or for any other reason beyond the reasonable control of the Company, or under similar circumstances will not constitute a failure by the Company to comply with this Section 4.13.

Section 4.14. Existence. Unless its successor or the transferee of its assets, as the case may be, assumes in writing all of the obligations of the Company under the Bond Documents, the Company will maintain its existence as a legal entity and will not dispose of all or substantially all of its assets, other than through execution of this Agreement. The Company shall have the right to change its organizational structure so long as such a change does not result in the Project failing to constitute a "project" within the meaning of the Act as in effect on the date of issuance of the Bonds, provided such restructured organization assumes in writing or is liable for, by operation of law all of the obligations of the Company under the Bond Documents. Original executed copies of such assumption will be delivered to each of the other parties on or before the effective date of such succession or transfer. To the extent necessary under State law, the Company and its successors or transferees will become and remain authorized to transact business in the State and, if applicable, in good standing in the State.

Section 4.15. Subleases; Granting and Release of Easements; Amending or Modifying Subleases and Easements. The Company may at any time or times cause to be granted subleases, easements, licenses, rights-of-way (temporary or perpetual and including the dedication of public highways) subject to the Indenture and this Agreement, or the Company may cause to be amended, modified or released existing subleases, easements, licenses, rights-of-way and other rights or privileges in the nature of easements, held with respect to any property included in the Project Property with or without consideration, and the Issuer agrees that it will, at the expense of the Company, execute and deliver any instrument necessary or appropriate to confirm and grant, amend, modify or release any such sublease, easement, license, right-of-way or other right or privilege upon receipt of: (i) a copy of the instrument of grant, amendment, modification or release, and (ii) a written application of the Company signed by an authorized representative of the Company requesting such instrument and stating (1) that such grant, amendment, modification or release is not detrimental to the proper conduct of the business of the Company, and (2) that such grant, amendment, modification or release will not impair the effective use or materially interfere with the operation of the Project Property; will not materially diminish or impair the security intended to be given by or under this Agreement or the Indenture

and will not materially diminish or impair the obligations of the Company or the rights of the Issuer under this Agreement or the Indenture.

Section 4.16. Insurance. The Company will keep the Project Property continuously insured against such risks and in such amounts, with such deductible provisions, as are customary in connection with the operation of facilities of the type, location and size comparable to the Facility, as reasonably determined by the Company. Each policy of such insurance will show the Company as loss payee and the Issuer as an additional insured under such policies as the respective interests of such parties may appear. Such insurance may, to the extent permitted under applicable law, be provided by blanket policies maintained by the Company, by a captive insurance company controlled by the Company or through self-insurance. Such insurance will include extended coverage insurance and general liability insurance against liability for (i) claims for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Project Property, and (ii) liability with respect to the Project Property under the workers' compensation laws of the State (unless the Company has complied with the requirements of the law of the State for self-insurance).

ARTICLE V LEASE; TERM; POSSESSION; RENT

Section 5.1. Lease of the Project Property; Term.

(a) This Agreement shall become effective upon its execution and delivery, and the leasehold estate created hereby and the Term shall then begin, and subject to the provisions of this Agreement, the Term shall expire on the earlier of (i) the thirtieth (30th) anniversary of the date of this Agreement or (ii) on such earlier date as the payment or redemption and discharge of the whole amount of the principal and interest on the Bonds at the time outstanding shall have been made as provided in the Indenture, or on such earlier date as arrangements satisfactory to the Issuer and the Purchaser for such payment or redemption and discharge of the Bonds shall have been made. The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by the Company to the Purchaser in anticipation of making bond advances under the Indenture.

(b) Except as provided in Section 11.17, upon the termination of this Agreement, all right, title and interest of the Issuer and the Purchaser under this Agreement shall cease, terminate and become void, the Bonds shall cease to be entitled to any benefit under this Agreement, and all covenants, agreements and obligations of the Company to the Purchaser, the Issuer, and with respect to the School Districts, the School PILOT, shall thereupon cease, terminate and become void.

Section 5.2. Quiet Enjoyment. So long as no Event of Default has occurred and is continuing, the Issuer will not take any action, other than pursuant to Section 4.12 or Article VIII, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project Property during the Term (except as necessary with respect to Eminent Domain or condemnation for public projects and purposes) and will, at the request of the Company and at

the Company's expense, including all expenses incident to any legal action, to the extent that the Issuer may lawfully do so, join in any legal action in which the Company asserts its right to such possession and enjoyment.

Section 5.3. Basic Rent and Additional Payments.

(a) The Company will pay to the Purchaser for the account of the Issuer such amounts at such times as are required to make all payments of principal of, interest on and redemption price of the Bonds in accordance with the terms of the Bonds and the Indenture as and when due (the "Basic Rent"), and the Company shall take all such actions relating to the withholding and reporting of interest as are required by the Internal Revenue Code of 1986, as amended. A copy of the anticipated payment schedule for the Bonds is attached hereto as Schedule 5.3(a). The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of making bond advances under the Indenture.

(b) The Company will make the following payments (the "Additional Payments") to or on behalf of the Issuer: all actual costs, expenses and taxes (including, but not limited to costs attributable to work performed by in-house staff and the fees of its outside advisors including counsel and its financial advisor) paid or incurred by the Issuer in connection with (i) the discussion, review, negotiation, preparation, approval, execution and delivery of the Bonds, the Indenture, this Agreement, and the other documents and instruments related hereto and thereto through the Closing Date, all of which amounts shall be paid in full on or before the Closing Date, (ii) any amendments or modifications to any of the foregoing documents, instruments or agreements and the negotiation, preparation, approval, execution and delivery of any and all documents necessary to effect such amendments or modifications, (iii) the enforcement by the Issuer or the School Districts, during or after the Term of any of the rights or remedies of the Issuer or the School Districts under any of the foregoing documents, instruments or agreements including without limitation, costs and expenses of collection, whether or not suit is filed, (iv) the servicing and administration of the Bonds during the Term or thereafter, including the preparation of disclosures under GASB 77, and (v) any requested subordination of the Issuer's interest in the Project Property to a Lender.

Section 5.4. Obligations Unconditional; Rights of Setoff.

(a) The obligation of the Company to pay Rent and to perform its other obligations under this Agreement is absolute and unconditional and, except as otherwise provided in 5.4(b) below, will not be subject to diminution by setoff, counterclaim, abatement or otherwise, whether as a result of Eminent Domain with respect to, damage to or destruction of or removal of all or any portion of the Project Property or any other event or condition. In the event the Issuer fails to perform its obligations under this Agreement, the Company may, subject to the limitations imposed by Section 11.3, institute such action against the Issuer as the Company may deem necessary to compel performance of those obligations of the Issuer. The Company may also, at its own cost and expense and in its own name or, if necessary, in the name of the Issuer prosecute or defend any action or proceeding or take any other action involving third parties

which the Company deems reasonably necessary in order to secure or protect its title to or its right of possession, occupancy and use of the Project Site and the Project Property. In such event, if no Event of Default has occurred and is continuing, the Issuer will cooperate with the Company, so long as it is not the adverse party, upon receipt of indemnity satisfactory to the Issuer against any out-of-pocket cost, expense (including reasonable counsel fees and expenses) or liability the Issuer may incur or suffer as a result of or in connection with such cooperation.

(b) Notwithstanding the above paragraph, it is the intention of this Agreement that the Company shall make Basic Rent payments to the Purchaser for the account of the Issuer, in such amounts and at such times as are required to make payments of principal of, interest on and redemption price of the Bonds in accordance with the terms of the Bond Documents as and when due, and the parties acknowledge that all such Basic Rent payments may be offset against any monies due and payable to the Company from the Purchaser in connection with any funds advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of any Advances to the Acquisition Account (as defined in the Indenture) as provided for under Section 702 of the Indenture. The Purchaser will look only to the Company for payment of the Bonds and upon the security granted in the Indenture for the Company's obligations under this Agreement. As described in Section 7.1, the Issuer will assign and pledge to the Purchaser certain of its rights, title and interests in and to this Agreement including the right to receive payments of Basic Rent hereunder.

ARTICLE VI SPECIAL COVENANTS

Section 6.1. Recording and Filing; Further Assurances. The Company will, at the expense of the Company, take all actions that at the time are and from time to time may be reasonably necessary to perfect, preserve, protect and secure the interests of the Issuer and the Purchaser in and to the Rent and in the Project Property, including, without limitation, the recordation of this Agreement and the Indenture, the filing of financing statements and continuation statements and the execution, acknowledgment, delivery, filing and recordation of such other instruments as may reasonably be required in carrying out the intention of or facilitating the performance of this Agreement. The Issuer will cooperate with the Company in all such matters.

Section 6.2. Claims; Liens. The Company will pay and discharge and will indemnify and hold harmless the Issuer from (a) any lien or charge upon payments by the Company to, or for the account of, the Issuer under this Agreement (other than the Indenture) and (b) any taxes, assessments, impositions and other charges in respect of the Project Property. If any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the Issuer will give prompt notice to the Company of any such lien, taxes, assessments, impositions or other charges of which the Issuer has actual notice, and the Company will have the sole right and duty to assume the defense of the same and will have the power to litigate, compromise or settle the same.

Section 6.3. Release and Indemnification.

(a) Except as provided in this Section 6.3, the Company releases the Issuer, its Commissioners, officials, employees and agents (each an “Indemnitee”) from, and will indemnify each Indemnitee against all liabilities, claims, costs and expenses (“Losses”) imposed upon, incurred or asserted against, any Indemnitee on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the installation, maintenance, operation and use of the Project Property; (ii) the inaccuracy of any representation by the Company (regardless of whether the Company was aware of such inaccuracy at the time the representation was made) or any breach or default on the part of the Company in the performance of any representation, covenant or agreement of the Company under this Agreement, or any related document, or arising from any acts or failure to act by the Company, or any of its agents, contractors, servants, employees or licensees; (iii) the Company’s failure to comply with any requirements of this Agreement; (iv) suits, legal or administrative proceedings, demands, losses, liabilities, damages, claims, causes of action, costs and expenses resulting from or in any way connected with the presence, release or disposal in or under the Project Site of, any hazardous substances (as defined in CERCLA), hazardous wastes (as defined in RCRA), oils, radioactive materials, asbestos in any form or condition, any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any Applicable Environmental Law; (v) any action by the Company in connection with the authorization, issuance and sale of the Bonds; (vi) any liability, whether under federal or state securities laws or otherwise, that may arise as a result of inaccurate information supplied by the Company in connection with the issuance of the Bonds or any subsequent sale of the Bonds; (vii) any other loss, claim, damage, penalty, liability, disbursement, litigation expenses and attorneys’ fees or court costs arising out of or in any way relating to the execution of performance of this Agreement, actions taken under the Indenture, the ownership or leasing of the Project Property or any other cause whatsoever pertaining to the Project Property; and (viii) any claim, action or proceeding brought with respect to the matters set forth in clauses (i) through (viii). The Issuer will not be liable to the Company, and the Company releases and discharges the Issuer from, any liability for any and all losses, costs, expenses (including attorneys’ fees), damages, judgments, claims and causes of action paid, incurred or sustained by the Company as a result of or relating to any action, or failure or refusal to act on the part of the Purchaser or the Depositary with respect to the Bonds, the Bond Documents or documents and the transactions contemplated thereby, including without limitation the exercise by the Purchaser of any of its rights thereunder. This Section 6.3 is not intended in any way to detract from provisions of the Bond Documents to the effect that the Issuer is not to incur any pecuniary liability with respect to the transactions contemplated by the Bond Documents.

(b) Notwithstanding the fact that it is the intention of the parties that the Issuer will not incur pecuniary liability by reason of this Agreement or the undertakings of the Issuer under this Agreement, by reason of the issuance of the Bonds, the execution of the Bond Documents, the performance of any act required of it by the Bond Documents, the performance of any act related to the Bond Documents or the Bonds requested of it by the Company or its position as owner or lessor of the Project Property, nevertheless if the Issuer incurs any such pecuniary liability or the same is claimed or sought, then in such event the Company will indemnify and

hold harmless the Issuer against all claims by or on behalf of any person arising out of the same and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from the Issuer, the Company will defend the Issuer in any such action or proceeding.

(c) In case a claim is made or any action or proceeding is brought against an Indemnitee based on matters described in this Section 6.3 and for which indemnity is sought against the Company pursuant to this Section 6.3, the Indemnitee shall promptly notify the Company in writing, and the Company, upon receipt of that notice, and the Company shall promptly assume or cause the assumption of the defense thereof, including the employment of counsel chosen by the Company and approved in writing by the Issuer (provided, that such approval by the Issuer shall not be unreasonably withheld or delayed), the payment of all expenses and the right to negotiate and consent to settlement. The failure of an Indemnitee to provide timely notice will not relieve the Company from any of its obligations under this Section 6.3 unless that failure prejudices the defense of the claim or action by the Company, in which case the liability of the Company under this Section 6.3 shall be reduced only by an amount equal to the amount of the loss sustained by the Company solely as a result of such failure to notify. If Indemnitee is advised in a written opinion of counsel that there may be legal defenses available to Indemnitee which are adverse to or in conflict with those available to the Company, or that the defenses of Indemnitee should be handled by separate counsel, the Company shall not have the right to assume or cause the assumption of the defense of Indemnitee. If the Company fails to assume or cause the assumption of the defense of such action or to retain counsel reasonably satisfactory to the Issuer within a reasonable time after notice of the commencement of such action, the fees and expenses of counsel retained by Indemnitee shall be paid by the Company. Notwithstanding, and in addition to any of the foregoing, Indemnitee shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid solely by such Indemnitee unless the employment of such counsel has been specifically authorized in writing by the Company, or if representation by the counsel retained by the Company would be inappropriate due to actual or potential differing interests between such Indemnitee and any other party represented by such counsel in such proceeding. The Company shall not be liable for any such claim or in any such action (i) with respect to any settlement without the prior written consent of the Company, or (ii) with respect to the gross negligence or willful misconduct of any of the Indemnitee.

(d) The Company will have no obligation to release and/or indemnify any Indemnitee (i) with respect to any settlement entered into by such Indemnitee without the prior consent of the Company (which consent will not be unreasonably withheld or delayed), or (ii) for Losses to the extent that such Losses are caused by the negligence or willful misconduct of any of the Indemnitees.

(e) The provisions of this Section 6.3 will survive the payment of the Bonds and the termination of this Agreement.

Section 6.4. Payments in lieu of Taxes to the Issuer and the School Districts. The Company shall pay the County PILOT to the Issuer, and the School PILOT to the School

Districts, on the first anniversary of the date of this Agreement and, thereafter, on each succeeding anniversary, so long as the Issuer continues to be the owner of the Project Property. The School PILOT has been negotiated with the School Districts and fully satisfies the requirements of NMSA 1978, Section 4-59-4(A) (2003), as amended and supplemented. The payment provisions of this Section 6.4 may be amended only by a written agreement executed by all of the Company, the Issuer and the School Districts. The provisions of this Section 6.4 shall survive the termination of this Agreement

Section 6.5. GASB 77 Reporting Information. The Company shall provide, promptly upon the Issuer's request, annually or more frequently if the Issuer so requests, such information concerning (i) expenditures of Bond proceeds, (ii) the estimated value of the Project Property, (iii) estimates of the amounts and types of tax avoided by virtue of the issuance of all industrial revenue bonds by the Issuer for the benefit of the Company and any Affiliates of the Company, and (iv) all other information reasonably requested by the Issuer for the purpose of the Issuer's annual disclosure of tax expenditures under GASB 77.

ARTICLE VII ASSIGNMENT, LEASING AND SELLING

Section 7.1. Assignment of Rights by the Issuer. Concurrently with issuance of the Bonds, the Issuer will assign to the Purchaser certain of the Issuer's rights, title and interests in and to this Agreement, pursuant to the Indenture, as security for payment of the principal of, interest on and redemption price of the Bonds. Thereafter, the Purchaser will be vested with, and authorized to exercise, such rights of the Issuer and the Purchaser under this Agreement. The Company consents to such assignment.

Section 7.2. No Other Transfer by Issuer. Except for the assignment described in Section 7.1 and Article X hereof or transfer to the Company in accordance with Section 4.12 or 8.3, the Issuer will not sell, assign, transfer or convey its rights, title or interests in this Agreement or the Project Property, or its obligations under this Agreement. Except for tax liens created or permitted by the Company, the Issuer will not cause or create any liens on the Project Property or the Project Site and will cooperate with the Company to defend the Project Property, the Project Site and the Company from and against any claims of lien.

Section 7.3. Assignment, Lease, Mortgage and Sale by the Company. The rights and interests of the Company in, to and under this Agreement may be assigned, and the rights and interests of the Company in and to the Project Property may be assigned, subleased, mortgaged or sold as a whole or in part by the Company, without the consent of the Issuer, provided that under any such assignment or sale the Company remains liable for making payments of Rent and for the performance of its other obligations under this Agreement except where (i) the assignee or purchaser of all of the Company's interest in the Project Property assumes in writing the obligations of the Company under this Agreement, (ii) the financial standing of the assignee or purchaser immediately following such assignment or sale is the same or better than that of the Company immediately preceding such assignment or sale and (iii) the Issuer consents; provided that the Issuer's consent shall not be required where the Company and the assignee are Affiliated Entities. For purposes of this Agreement, "financial standing" shall

mean (a) the ownership or other beneficial possession of title to, all of the Project Property and all material rights and assets with respect to the Project, and (b) no material liabilities other than liabilities arising from, or in connection with, the Project. Any mortgagee or assignee that does not directly hold an interest in the Project Property or whose interest is held solely for security purposes shall have no obligation or liability under this Agreement prior to the time the mortgagee or assignee directly holds an interest in this Agreement or succeeds to absolute title to the Company's interest in the Project Property. A mortgagee or assignee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such interest or absolute title.

Section 7.4 Collateral Assignment. The Company shall be permitted to assign this Agreement to its Lenders as collateral for any financing or refinancing of the Project; provided, Company shall be responsible at Issuer's request for Issuer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, including reasonable attorneys' fees. Issuer shall, upon request by Company and, at Company's sole expense, cooperate reasonably to execute, or arrange for the delivery within thirty (30) days of such request or such longer time as is reasonable under the circumstances, those normal, reasonable and customary consents, certificates, opinions and other documents and provide such other normal and customary representations or warranties (all in a form reasonably acceptable to Issuer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof), as may be necessary to assist Company in consummating any financing or refinancing of the Project Property or any part thereof.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

Section 8.1. Events of Default Defined. Each of the following events is an "Event of Default":

(a) Failure by the Company to make any Rent payment, Additional Payments, or PILOT payments when due which continues unremedied for a period of 30 days after the provision by the Issuer, the School Districts or the Purchaser of written notice of non-payment.

(b) Any representation of the Company in any Bond Document or in any document or agreement delivered to any of the other parties in connection with the transactions contemplated by any Bond Document proves to have been incorrect in any material respect when made and remains incorrect for a period of 30 days after written notice specifying such error and requesting that it be remedied is given by the Issuer unless such error cannot be remedied within 30 days and the Company has instituted corrective action within 30 days after such notice and diligently pursues such action until such failure is remedied.

(c) A decree or order for relief by a court of competent jurisdiction is entered in an involuntary case under any federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 60

consecutive days, or the commencement by the Company of a voluntary case under such law, or the consent by the Company either to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company or for any substantial part of its property, or the making by it of any assignment for the benefit of creditors, or the taking of action by the Company to authorize or effect any of the foregoing. Provided, however, neither the bankruptcy nor the insolvency of the Company shall be grounds for default as long as all Basic Rent payments, PILOT payments and Additional Payments, and all other monetary charges payable by the Company under this Agreement are paid in accordance with this Agreement.

(d) Except as provided in Section 8.1(a), failure by the Company to perform any of its material obligations under this Agreement for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Company by the Issuer or the Purchaser, unless such failure is of a type which cannot reasonably be remedied within 30 days and the Company has instituted corrective action within 30 days after such notice and diligently pursues such action until such failure is remedied.

Section 8.2. Purchaser Remedies. The Issuer shall not be entitled to exercise any default remedies against the Company or the Project Property pursuant to this Agreement without the prior written consent of the Purchaser, except as (and then only to the extent) provided in Section 8.3 of this Agreement. If an Event of Default occurs and is continuing, the Purchaser (or its assignee), as the assignee of the Issuer under the Indenture and on behalf of the Issuer, may, but is not required to, take any one or more of the following remedial steps:

(a) By written notice to the Company declare all amounts of Basic Rent payable for the remainder of the Term as are required to provide for the Payment of the Bonds to be immediately due and payable, whereupon the same will be immediately due and payable;

(b) Take whatever action at law or in equity may appear necessary or desirable to collect the Rent then due and thereafter to become due or to enforce the performance and observance of any obligation of the Company under this Agreement or the Indenture;

(c) Exercise any remedies provided for in the Indenture; or

(d) Terminate this Agreement; provided, however, that upon any such termination, all amounts owed to the Issuer hereunder shall be paid, and the Issuer shall immediately reconvey the Project Property to the Company in accordance with Article X.

As the assignee of the Issuer, subject to Section 8.3, the Purchaser (or its assignee) has the sole right and responsibility for the exercise of any remedies if an Event of Default occurs and is continuing.

Section 8.3. Issuer Remedies. If:

(a) the Company fails to comply with its obligations set forth in Sections 4.4, 4.6, 4.11, 4.12, 5.3(b), 6.2, 6.3, 6.4, 6.5 or 8.5, and such failure continues for 60 days after the Issuer gives the Company written notice of such failure; or

(b) the Company fails to comply with its obligations under Section 5.3(b), such failure continues for 30 days after the Issuer or Purchaser or its assignee gives the Company written notice of such failure, and the Purchaser or its assignee exercises any of the remedies provided in Section 8.2 with respect to such failure; or

(c) any representation of the Company in any Bond Document or any document or agreement delivered to any of the other parties in connection with the transactions contemplated by the Bond Documents proves to have been incorrect in any material respect when made;

then, subject to Section 8.6 hereof, the Issuer may, in addition to exercising any other remedy available at law or in equity, immediately terminate this Agreement and reconvey the Project Property to the Company; provided, however, that if any conditions described in Subsections 8.3(a), (b) or (c) cannot be cured within the time allotted for cure, if the Company initiates and proceeds with due diligence to effect a cure, a default will not be deemed to have occurred as long as the Company cures the default within a reasonable period.

Section 8.4. Notice of Default. The Company will promptly give notice of the occurrence of any Event of Default to the Issuer, the Purchaser and the Depository.

Section 8.5. Agreement to Pay Attorneys' Fees and Expenses. If an Event of Default, or an event which with the giving of notice or the passage of time, or both, would constitute an Event of Default, occurs, and the Issuer incurs expenses, including reasonable attorneys' fees, in connection with the enforcement or administration of this Agreement, the Company will reimburse the Issuer for the reasonable expenses so incurred, upon request. Such amounts shall constitute Additional Payments.

Section 8.6. Right to Cure Defaults.

(a) To prevent termination of this Agreement, any mortgagee or assignee of the Company that holds an interest in the Project Property as security shall have a right, but not the obligation, at any time to perform any act necessary to cure any default and to prevent the termination of this Agreement. If any default by the Company under this Agreement cannot be cured without obtaining possession of all or part of the Project Property, then any such default shall be deemed remedied if a mortgagee or assignee (i) in the applicable cure period provided in Section 8.1 or within sixty (60) days thereafter begins appropriate judicial or non-judicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Project Property diligently proceeds to cure and perform all other obligations as and when the same are due in accordance with the terms of this Agreement. If a mortgagee or assignee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described

above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

(b) During any period of possession of the Project Property by a mortgagee (or a receiver requested by a mortgagee) and/or while any foreclosure proceedings instituted by a mortgagee are pending, the mortgagee shall pay or cause to be paid the Rent and all other monetary charges payable by the Company under this Agreement which accrue during the period of such possession.

ARTICLE IX PREPAYMENTS

The Company may at any time without penalty (including after the occurrence and during the continuance of an Event of Default) and for any reason cause all or any portion of the Bonds to be redeemed in accordance with the provisions of the Indenture by giving notice of such redemption to the Issuer, the Purchaser and, if there are monies on deposit in the Acquisition Account (as defined in the Indenture), to the Depository not less than forty-five (45) days before the redemption date, or such shorter period to which the Purchaser and the Company may agree. Such notice will specify the redemption date and the principal amount of the Bonds to be redeemed. On the redemption date the Company will prepay the Rent in an amount equal to such principal amount plus accrued interest on such principal amount to the redemption date by payment of such amounts to the Purchaser, will pay all Additional Payments, plus interest, if any, owed to the Issuer as of such date. The parties acknowledge that the Company may prepay, pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by the Company to the Purchaser in anticipation of making Bond advances under the Indenture.

ARTICLE X PURCHASE OF PROJECT PROPERTY

The Company will purchase and the Issuer will sell the Project Property for \$1.00 at the expiration or sooner termination of the Term. The Company will give written notice to the Issuer and to the Purchaser, if the Bonds are then unpaid or provision for their payment has not been made, and will specify therein the date of termination and closing such purchase which date shall be the same date and which date will be not less than 15 nor more than 90 days from the date such notice is mailed. At the closing of such purchase, the Issuer will, upon receipt of the purchase price, deliver to the Company or its nominee appropriate documents, including, but not limited to, a quitclaim deed, assignment of easements and other real property rights and a bill of sale, as applicable, prepared by the Company at the Company's expense, conveying to the Company without representation or warranty the Issuer's interest in the Project Property, as it exists at the time of such purchase, subject only to: (i) those liens and encumbrances, if any, to which the Project Property was subject when conveyed to the Issuer; (ii) those liens and encumbrances created by the Company and or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to perform any of its obligations under this Agreement; and (iv) any other lien arising as a matter of

law. The Company may exercise its rights under this Article X, whether or not a Default or an Event of Default has occurred and is continuing, so long as all Additional Payments and PILOT payments due to the Issuer and the School Districts are paid on or before the date of closing of such purchase. If the Company fails to take all necessary action to have the Project Property assessed for tax purposes in the name of the Company at the expiration of the Term, the Issuer may execute, deliver and cause to be recorded, at the expense of the Company, a bill of sale with respect to the Project Property and other appropriate documents reflecting the termination of this Agreement. If at the time of closing the Indenture has not been satisfied in full and released of record, a release by the Purchaser of the Indenture will also be delivered to the Company (or its designee). The right to prepay granted to the Company in this Agreement is and will remain prior and superior to the Indenture.

ARTICLE XI MISCELLANEOUS

Section 11.1. Remedies. No right or remedy conferred on any Party in this Agreement is intended to be exclusive of any other right or remedy conferred on such Party in this Agreement. Except as provided in Section 11.3, each such right or remedy is in addition to every other right or remedy provided in any of the Bond Documents or by law; provided, that the remedies of Purchaser and/or Issuer in respect of an Event of Default or other breach of any Bond Document by the Company shall be limited in all cases to those expressly provided in Article VIII hereof. No delay or omission of any Party to exercise any such right or remedy will impair any such right or remedy or be construed to be a waiver. Every such right or remedy may be exercised from time to time and as often as the relevant Party may deem expedient. No waiver by any Party of any right or remedy with respect to any Default or Event of Default will extend to or affect any other existing or subsequent Default or Event of Default.

Section 11.2. Beneficiaries. Nothing in this Agreement expressed or implied is intended or is to be construed to confer upon any Person other than the parties and their successors and assigns (and, in the case of Section 6.3 of this Agreement, the Indemnitees, and, in the case of Section 6.4, the School Districts) any right, remedy or claim, legal or equitable.

Section 11.3. Limitation of Issuer's Liability. No agreements or provisions contained in the Bond Documents nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of Bond proceeds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer, its officials, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or obligate the Issuer financially in any way, except with respect to the revenues available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds, and their application as provided under the Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in this Agreement or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officials, employees, agents and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the revenues available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds. Nothing in this Agreement

will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement in this Agreement or in the Indenture; provided, however, that no monetary relief will be recoverable from the Issuer except as may be payable from the funds available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds.

Notwithstanding any other provisions of this Agreement, none of the provisions of this Agreement shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder unless it shall have first been adequately indemnified to its satisfaction against the cost, expense and liability which may be incurred thereby.

Section 11.4. No Violation of Public Policies Regarding Indemnity. To the extent, if at all, a court of competent jurisdiction determines that NMSA 1978, Section 56-7-1 (2005), applies to any indemnification provisions in this Agreement, including certain types of insurance coverage as set forth in NMSA 1978, Section 56-7-1 (2005), such provisions shall not apply to or extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee or additional insured, as the case may be, its officers, employees or agents and shall further be limited, if required, by the provisions of NMSA 1978, Section 56-7-2 (2003).

Section 11.5. Notices. Any notice, demand, direction, request, consent, approval, report or other instrument authorized or required by this Agreement or the Bond Ordinance to be executed, given or filed will be in writing and will be deemed to have been sufficiently given or filed for all purposes of this Agreement when delivered by hand delivery or by overnight courier or on the third business day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer:	Torrance County, New Mexico Attn: County Clerk PO Box 767 205 S. Ninth St. Estancia, NM 87016 Telephone: (505) 544-4350 FAX: (505) 384-4080
-------------------	---

with a copy to:	Jill Sweeney, Esq. Sherman & Howard, L.L.C. 500 Marquette Avenue NW, Suite 1203 Albuquerque, NM 87102 Telephone: (505) 814-6958 E-mail: jsweeney@shermanhoward.com
-----------------	---

If to the Purchaser: _____

If to the Company: _____

Any Party may, by notice to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent.

Section 11.6. Severability. In case any one or more of the provisions of this Agreement is for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of this Agreement, but this Agreement will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the Issuer or the Company contained in this Agreement is for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of the Issuer or the Company to the full extent permitted by law.

Section 11.7. Successors. Wherever the Issuer is referred to in this Agreement, it will be deemed to include its successors and all covenants and agreements in this Agreement will bind and inure to the benefit of the Issuer's successors. Wherever the Company is referred to in this Agreement, it will be deemed to include its successors in interest to the Project Property and all covenants and agreements in this Agreement will bind and inure to the benefit of such successors.

Section 11.8. Title, Headings. The title and headings of the articles, sections and subdivisions of this Agreement have been used for convenience only and do not modify or restrict any of the terms or provisions of this Agreement.

Section 11.9. Execution in Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together will constitute one instrument.

Section 11.10. Applicable Law. The validity, construction and effect of this Agreement will be governed by the law of the State of New Mexico applicable to agreements made and to be performed in the State of New Mexico.

Section 11.11. Obligations of Issuer Not Obligations of Officials Individually. No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bonds will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 11.12. Payments Due on Days That Are Not Business Days. If the date for any payment due hereunder is not a Business Day, as defined in the Indenture, then such payment will be made on the next Business Day and no interest on such payment will accrue for such period.

Section 11.13. Federal Income Tax Treatment of Lease. The Issuer and the Company acknowledge that this Agreement constitutes a financing for federal income tax purposes and not a lease of the Project Property, to the extent permitted by law. The Issuer and the Company further acknowledge that the Company shall, to the extent permitted by law, be entitled to all federal income tax attributes attributable to ownership of the Project Property, including the right to claim depreciation or cost recovery deductions and the right to claim any federal tax credits (or federal grants in lieu thereof) arising from ownership of the Project Property. Each of the Issuer and the Company agree not to file tax returns inconsistent with this Section 11.13.

Section 11.14. Amendments. Except for Section 6.4 which may be amended only by an instrument executed by the School Districts, the Company and the Issuer, this Agreement may be amended only by an instrument executed by the Issuer and the Company and consented to by the Purchaser.

Section 11.15. Further Assurances and Corrective Instruments. The Issuer and the Company agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments to this Agreement and such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of this Agreement.

Section 11.16. Recordation. The Company may cause this Agreement, or a memorandum of this Agreement, in form and substance satisfactory to the Issuer, to be kept, recorded and filed in such manner and in such places as may be required by law to fully evidence, preserve and protect the leasehold estate of the Company.

Section 11.17. Survivals. The provisions of Sections 4.6, 4.12, 5.3(b), 6.2, 6.3, 6.4, 8.3, 8.5 and Article XI shall survive the termination of this Agreement.

[Signature pages follow]

BOARD OF COUNTY COMMISSIONERS,
TORRANCE COUNTY, NEW MEXICO

By: _____
Ryan Schweback, Chair

(SEAL)

ATTEST:

By: _____
Linda Jaramillo, County Clerk

STATE OF NEW MEXICO)
)
COUNTY OF TORRANCE)

This instrument was acknowledged before me on this _____ day of _____, 2019, by Ryan Schweback, as Chair of the Board of County Commissioners, Torrance County, New Mexico

(NOTARY SEAL)

Notary Public

My Commission Expires: _____

LA JOYA WIND, LLC

By: _____

Name: _____

Title: Vice President

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____, 2019, by _____, as Vice President of La Joya Wind, LLC, a Delaware limited liability company.

(NOTARY SEAL)

Notary Public

My Commission Expires: _____

EXHIBIT A

Project Property and Project Site

1. PROJECT PROPERTY: Wind energy generation facilities and associated electrical generating equipment and real property used to generate electricity from wind energy.
2. PROJECT SITE:
[see attached legal descriptions]

SCHEDULE 5.3(a)

PAYMENT SCHEDULE
TORRANCE COUNTY, NEW MEXICO
TAXABLE INDUSTRIAL REVENUE BONDS
(LA JOYA WIND, LLC PROJECT)
SERIES 2019A

\$290,000,000

Year	Total Debt Service	Principal	Interest
2020	20,000,000	-0-	20,000,000
2021	20,000,000	-0-	20,000,000
2022	20,000,000	-0-	20,000,000
2023	20,000,000	-0-	20,000,000
2024	20,000,000	-0-	20,000,000
2025	20,000,000	-0-	20,000,000
2026	20,000,000	-0-	20,000,000
2027	20,000,000	-0-	20,000,000
2028	20,000,000	-0-	20,000,000
2029	20,000,000	-0-	20,000,000
2030	20,000,000	-0-	20,000,000
2031	20,000,000	-0-	20,000,000
2032	20,000,000	-0-	20,000,000
2033	20,000,000	-0-	20,000,000
2034	20,000,000	-0-	20,000,000
2035	20,000,000	-0-	20,000,000
2036	20,000,000	-0-	20,000,000
2037	20,000,000	-0-	20,000,000
2038	20,000,000	-0-	20,000,000
2039	20,000,000	-0-	20,000,000
2040	20,000,000	-0-	20,000,000
2041	20,000,000	-0-	20,000,000
2042	20,000,000	-0-	20,000,000
2043	20,000,000	-0-	20,000,000
2044	20,000,000	-0-	20,000,000
2045	20,000,000	-0-	20,000,000
2046	20,000,000	-0-	20,000,000
2047	20,000,000	-0-	20,000,000
2048	20,000,000	-0-	20,000,000
2049	310,000,000	\$290,000,000	20,000,000

Schedule 5.3(a)



*Agenda Item
No. 11-A*



State of New Mexico
County of Torrance
RESOLUTION NO. 2019-_____

**AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION
FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE
NEW MEXICO FINANCE AUTHORITY**

WHEREAS, Torrance County (the "Governmental Unit") is a duly organized county created and formed pursuant to 4.30.1 NMSA 1978 and is a qualified entity under the New Mexico Finance Authority Act, Sections 6-21-1 through 6-21-31, NMSA 1978 ("Act"); and

WHEREAS, the New Mexico Finance Authority ("Finance Authority") is authorized pursuant to the Act, particularly Section 6-21-6.4 of the Act, to make grants from the local government planning fund (the "Fund") to qualified entities to evaluate and estimate the costs of implementing feasible alternatives for meeting water and wastewater public project needs or to develop water conservation plans, long-term master plans or economic development plans; and

WHEREAS, pursuant to the Act the Finance Authority has developed an application procedure whereby the Governing Body may submit an application ("Application") to the Finance Authority for planning grant financial assistance from the Fund; and

WHEREAS, the Board of County Commissioners of the Governmental Unit (the "Governing Body") desires to submit an Application for financial assistance from the Fund for a Planning Document, as defined in the Rules Governing the Local Government Planning Fund currently in effect and as specifically identified below, for the benefit of the Governmental Unit; and

WHEREAS, the Governing Body intends to submit the Planning Document to develop a Comprehensive Economic Development Strategy (CEDS) of Southern Torrance County ("Project") for the benefit of the Governmental Unit and its citizens; and

WHEREAS, the application prescribed by the Finance Authority to finance the Planning Document [in whole/in part] with financial assistance from the Fund has been completed, submitted to, and reviewed by the Governing Body, and this Resolution approving submission of the completed Application to the Finance Authority for its consideration and review is required as part of the Application.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY:

Section 1. That all lawful actions previously taken by the Governing Body and the Governmental Unit and their respective officers and employees in connection with the Application and the Project are hereby ratified, approved and confirmed.

Section 2. That the completed Application submitted to the Governing Body is hereby approved and confirmed.

Section 3. That the officers and employees of the Governmental Unit are hereby directed and requested to submit the completed Application to the Finance Authority, and are further authorized to take such other action as may be requested by the Finance Authority in connection with the Application and to proceed with arrangements for financing the Project.

Section 4. All acts and resolutions in conflict with this Resolution are hereby rescinded, annulled and repealed.

Section 5. This Resolution shall take effect immediately upon its adoption.

PASSES APPROVED AND ADOPTED this _____ day of _____, 2019.

TORRANCE COUNTY COMMISSION

By _____
Kevin McCall, District 1

By _____
Ryan Schwebach, District 2

By _____
Javier E. Sanchez, District 3

ATTEST:

County Clerk

Javier E. Sánchez
Torrance County Commissioner, District 3
367 Langley Rd.
Estancia, NM 87016

Date: March 21, 2019

Mr. Ryan Schwebach
Torrance County Commissioner, District 2
205 9th Street/P.O. Box 48
Estancia, NM 87016
Tel. (505) 544-4700

RE: Request for Support, Southern Torrance County CEDS

Dear Mr. Ryan Schwebach (Commissioner, District 2, Torrance County),

With regards to Torrance County's proposed grant application for a Comprehensive Economic Development Strategy (CEDS) for southern Torrance County: In no way does the submission of a grant application to NMFA for the creation of a CEDS for southern Torrance County seek to undermine or violate the existing contract between Torrance County and the Estancia Valley Economic Development Association (EVEDA) nor does the submission of said application demonstrate any intention whatsoever to create a special economic development district. Your support and approval of Torrance County's grant application is appreciated. For project details, please see scope of work, dated March 20, 2019. Thank you.

Sincerely,

Javier E. Sánchez
Torrance County Commissioner, District 3
367 Langley Rd.
Estancia, NM 87016
Tel. (505) 400-3192
Email: jsanch22@unm.edu

Javier E. Sánchez
Torrance County Commissioner, District 3
367 Langley Rd.
Estancia, NM 87016

Date: March 21, 2019

Mr. Kevin McCall
Torrance County Commissioner, District 1
205 9th Street/P.O. Box 48
Estancia, NM 87016
Tel. (505) 544-4700

RE: Request for Support, Southern Torrance County CEDS

Dear Mr. Kevin McCall (Commissioner, District 1, Torrance County),

With regards to Torrance County's proposed grant application for a Comprehensive Economic Development Strategy (CEDS) for southern Torrance County: In no way does the submission of a grant application to NMFA for the creation of a CEDS for southern Torrance County seek to undermine or violate the existing contract between Torrance County and the Estancia Valley Economic Development Association (EVEDA) nor does the submission of said application demonstrate any intention whatsoever to create a special economic development district. Your support and approval of Torrance County's grant application is appreciated. For project details, please see scope of work, dated March 20, 2019. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Sánchez', with a large, sweeping flourish at the end.

Javier E. Sánchez
Torrance County Commissioner, District 3
367 Langley Rd.
Estancia, NM 87016
Tel. (505) 400-3192
Email: jsanch22@unm.edu

Date: March 20, 2019

Scope of Work:
Southern Torrance County Comprehensive Economic Development Strategy (CEDS)

Thesis Question(s):

Where are we as a region?

Where do we want to go as a region?

How do we get there as a region?

How are we doing as a Region in getting there?

CEDS (Comprehensive Economic Development Strategy)

Southern Torrance County, made up of four municipalities and four land grants, is interested in compiling a regional strategic economic development plan. A common thread links the region's communities with regards to economic development, from land use types and economic base to geographic challenges and the lack of a direct major thoroughfare to urban areas such as the I-40 corridor provides for other communities in the East Mountain area. The shared challenges speak directly to the rural nature of the communities and their commonalities across historical and cultural lines. The plan's focus should be regional, but with sections (annexes) addressing the strategic visions of respective communities. The strategic plan should be designed to bring together the public and private sectors in the creation of an economic development roadmap to diversify and strengthen regional economies. Overall, the plan should account for public and private partnerships and investment, land use, commercial and industry stock, as well as social, recreational, arts, and cultural development. The required tasks would include the conduct of meetings, workshops, and stakeholder interviews. The plan would be divided into nine sections; an overview followed by eight community specific annexes and one special annex:

- Regional Overview
- Town of Estancia
- Town of Willard
- Town of Mountainair
- Town of Encino
- Chililí Land Grant
- Torreón Land Grant
- Tajique Land Grant
- Manzano Land Grant
- Special Annex: Torrance County Fairgrounds

The community annexes will include the following:

- Analysis of local economies (industrial and retail market analysis, including a SWOT analysis)
- Definition of economic development goals (from interviews and workshops with community leaders, representatives, and stakeholders).
- Determination of project opportunities (from interviews and workshops with community leaders, representatives, and stakeholders).

The Torrance County Fairgrounds annex will include the following:

- Vision, Goals, and Use Program

Date: March 20, 2019

- Overview; Vegetation; Passive Recreation, Education, and Interpretation' Buildings and Key Facilities; Parking and Circulation
- Phasing and Cost Estimate

CEDS Annual Performance Report

Include plan to undertake an annual performance report to include the following:

- Adjustment to the Strategy
- Report on Economic Development Activities.
- Evaluation of Progress on Action Plan and Goals
- Schedule of the Goals for the Next Year
- completed annually between revised CEDS

Scope of Work completed by:



Javier E. Sánchez
Torrance County Commissioner District 3
367 Langley Rd.
Estancia, NM 87016
Tel. (505) 400-3192



NEW MEXICO FINANCE AUTHORITY

NMFA Use Only:	
App. #:	-PP
FA assigned:	
Legislative Authorization	

LOCAL GOVERNMENT PLANNING FUND APPLICATION

I. GENERAL INFORMATION

A. APPLICANT /ENTITY

Application Date:	February 11, 2019
-------------------	-------------------

Applicant/Entity:		Torrance County			
Address:		205 9th Street / P.O. Box 48 Estancia, NM 87016			
County:		Torrance	Census Tract:		637
Federal Employer Identification Number (EIN) as issued by the IRS:					85-6000257
Legislative District: 1		Senate:	19 & 39	House:	50 & 70
Phone:	505-544-4700	Fax:	505-384-5294	Email Address:	wjohnson@tcnm.us
Individual Completing Application:		Javier Ernesto Sanchez			
Address:		367 Langley Rd. Estancia, NM 87016			
Phone:	505-400-3192	Fax:	N/A	Email Address:	jsanch22@unm.edu

B. CONSULTING PROFESSIONALS (Legal Counsel, Architect, Engineer, Planner etc.), if available:

Firm:					
Contact:					
Address:					
Phone:		Fax:		Email Address:	

C. PRIMARY CONTACT PERSON:

Name:		Wayne Johnson			
Contact:		Torrance County Manager			
Address:		205 9th Street / P.O. Box 48 Estancia, NM 87016			
Phone:	505-544-4700	Fax:	505-384-5294	Email Address:	wjohnson@tcnm.us

D. Organizational Readiness-to-proceed (Municipalities & Counties Skip to II)

1. Are you formally organized? Yes No

2. Do you have formally adopted by-laws? Yes No

If yes, please provide a copy.

3. Are you incorporated? Yes No

If yes, please provide a copy of your Articles of Incorporation.

4. Do you have regular board meetings? Yes No

If yes, please identify when and how often.

5. Do you keep formalized records of your Board meetings? Yes No

6. Do you have written Board rules and regulations? Yes No

If yes, please provide a copy.

II. PROJECT SUMMARY

A. Project Description. Complete the following information, use additional paper if necessary. Include any additional documents that may be useful in reviewing this project, i.e. architectural designs, feasibility studies, business plan, etc.

1. Type of Project

- Preliminary Engineering Report (PER)
- Environmental Information Document
- Local Economic Development Act plan & Comprehensive Economic Development plan
- Water Conservation Plan
- Comprehensive Plan

- Infrastructure Plan for project identified on the ICIP
- Economic Development Feasibility Study
- Asset Management Plan
- Water Master Plan
- Wastewater Master Plan
- Energy Audit

2. Please include a detailed description of the scope of the proposed plan to be funded. Attach additional pages as needed.

Comprehensive Economic Development Strategy for Torrance County, District 3

B. Sources of Funding

NMFA Planning Funds Requested \$50,000.00

Non-NMFA Funds (specify source & terms) _____

III. Water & Wastewater System Rates & Information (if applicable)

A. 1. List the current residential water or wastewater;

	Wastewater Rate per 6000 Gallons	Water Rate per 6,000 Gallons	Last Adjusted
Residential			
Commercial			

2. Is the water system metered? Yes No

If yes, what percentage? _____

3. Is the wastewater system metered? Yes No

If yes, what percentage? _____

4. How many connections? _____

5. How many certified operators? _____

IV. READINESS TO PROCEED ITEMS

A. The following items must accompany this application in order for this application to be considered complete:

- Map of service area, including census tract information
- 3 years of most recently completed fiscal year audit reports or unaudited financials
- Current unaudited financials
- Current fiscal year budget
- NMFA Application Resolution
- By-laws (if applicable) n/a

- Articles of incorporation (if applicable)
- Board rules and regulations (if applicable)
- Open Meetings Act Resolution
- Documentation that each non-NMFA project funding source has been approved, or is in the process of being approved (if applicable) n/a
- Joint Powers Agreement (if applicable) n/a
- Administrative Order (if applicable) n/a

Please Note: All water and wastewater planning documents must conform to Rural Utilities Services (RUS) Guidelines which is available from NMFA upon request. The scope and writer of any economic development feasibility study must be approved in advance by the Economic Development Department. A copy of any final report must be submitted to and accepted by the NMFA prior to disbursement of NMFA funds. NMFA may consult with the Departments of Environment, Economic Development or Finance & Administration in determining acceptability of any report.

V. CERTIFICATION

I certify that:

We have the authority to request and incur the debt described in this application and, upon award, will enter into a contract for the repayment of any NMFA loans and/or bonds.

We will comply with all applicable state and federal regulations and requirements.

To the best of my knowledge all information contained in this application is valid and accurate and the submission of this application has been authorized by the governing body of the undersigned jurisdiction.

Signature:

Title:

(highest elected official)

Jurisdiction:

Print Name:

Date:

Signature:

Date:

Finance Officer/Director:

RESOLUTION NO. _____

**AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION
FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE
NEW MEXICO FINANCE AUTHORITY**

WHEREAS, _____ (the "Governmental Unit") is a duly organized [name of type of entity] created and formed pursuant to [name of act, and citation to act, authorizing creation of, or creating, the Governmental Unit] and is a qualified entity under the New Mexico Finance Authority Act, Sections 6-21-1 through 6-21-31, NMSA 1978 ("Act"); and

WHEREAS, the New Mexico Finance Authority ("Finance Authority") is authorized pursuant to the Act, particularly Section 6-21-6.4 of the Act, to make grants from the local government planning fund (the "Fund") to qualified entities to evaluate and estimate the costs of implementing feasible alternatives for meeting water and wastewater public project needs or to develop water conservation plans, long-term master plans or economic development plans; and

WHEREAS, pursuant to the Act the Finance Authority has developed an application procedure whereby the Governing Body may submit an application ("Application") to the Finance Authority for planning grant financial assistance from the Fund; and

WHEREAS, the _____ of the Governmental Unit (the "Governing Body") desires to submit an Application for financial assistance from the Fund for a Planning Document, as defined in the Rules Governing the Local Government Planning Fund currently in effect and as specifically identified below, for the benefit of the Governmental Unit; and

WHEREAS, the Governing Body intends to submit the Planning Document to [evaluate and estimate the costs of implementing feasible alternatives for meeting water and wastewater public project needs] [develop a water conservation plan] [develop a long-term master plan] [develop an economic development plan] of _____ ("Project") for the benefit of the Governmental Unit and its citizens; and

WHEREAS, the application prescribed by the Finance Authority to finance the Planning Document [in whole/in part] with financial assistance from the Fund has been completed, submitted to, and reviewed by the Governing Body, and this Resolution approving submission of the completed Application to the Finance Authority for its consideration and review is required as part of the Application.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY:

Section 1. That all lawful actions previously taken by the Governing Body and the Governmental Unit and their respective officers and employees in connection with the Application and the Project are hereby ratified, approved and confirmed.

Section 2. That the completed Application submitted to the Governing Body is hereby approved and confirmed.

Section 3. That the officers and employees of the Governmental Unit are hereby directed and requested to submit the completed Application to the Finance Authority, and are further authorized to take such other action as may be requested by the Finance Authority in connection with the Application and to proceed with arrangements for financing the Project.

Section 4. All acts and resolutions in conflict with this Resolution are hereby rescinded, annulled and repealed.

Section 5. This Resolution shall take effect immediately upon its adoption.

PASSES APPROVED AND ADOPTED this _____ day of _____, 20__.

[NAME OF GOVERNMENTAL UNIT]

By _____
Authorized Officer

(Seal)

ATTEST:

Authorized Officer

Mayor
Nathan Dial

Mayor Pro Tem
Noah Sedillo



Trustees
Morrow Hall
Stella Chavez
Albert Lovato

February 21, 2019

LETTER OF SUPPORT

Dear Torrance County Commission,

I write on behalf of the Town of Estancia in support of Torrance County's application to the New Mexico Department of Finance for a grant to fund the production of a Comprehensive Development Strategy (CDS) for southern Torrance County. We strongly support this grant application and the focus on coordinating a comprehensive economic development strategy for the communities of southern Torrance County.

Through this letter, we acknowledge specific roles and responsibilities we will fulfill by our participation in this project. In the event this proposal is funded, we would expect our role in the development of a CDS to include:

- A pledge of participation by governing body resolution at the time of project funding.
- Designation of a representative to work on the effort and participate in meetings and workshops.
- Adoption of final strategy by governing body at project completion.

We look forward to working with you in developing a CDS for our region.

Sincerely,

Nathan Dial, Mayor of the Town of Estancia

Date: 3/11/19

Village of Willard

PO Box 204

Willard, NM 87063

LETTER OF SUPPORT

Dear Torrance County Commission,

I write on behalf of _____ in support of Torrance County's application to the New Mexico Department of Finance for a grant to fund the production of a Comprehensive Economic Development Strategy (CEDS) for southern Torrance County. We strongly support this grant application and the focus on coordinating a comprehensive economic development strategy for the communities of southern Torrance County.

Through this letter, we acknowledge specific roles and responsibilities we will fulfill by our participation in this project. In the event this proposal is funded, we would expect our role in the development of a CEDS to include:

- A pledge of participation by governing body resolution at the time of project funding.
- Designation of a representative to work on the effort and participate in meetings and workshops.
- Adoption of final strategy by governing body at project completion.

We look forward to working with you in developing a CEDS for our region.

Sincerely,

Louisa A. Mendez
Leatha Luna
Ricardo Garcia
Ernest Chavez

Date: March 4, 2019

Town of Mountainair
107 1/2 N. Roosevelt
Mountainair, NM 87036

LETTER OF SUPPORT

Dear Torrance County Commission,

I write on behalf of Mountainair in support of Torrance County's application to the New Mexico Department of Finance for a grant to fund the production of a Comprehensive Economic Development Strategy (CEDS) for southern Torrance County. We strongly support this grant application and the focus on coordinating a comprehensive economic development strategy for the communities of southern Torrance County.

Through this letter, we acknowledge specific roles and responsibilities we will fulfill by our participation in this project. In the event this proposal is funded, we would expect our role in the development of a CEDS to include:

- A pledge of participation by governing body resolution at the time of project funding.
- Designation of a representative to work on the effort and participate in meetings and workshops.
- Adoption of final strategy by governing body at project completion.

We look forward to working with you in developing a CEDS for our region.

Sincerely,

Mayor Pete [Signature]
Mayor Pro-Tem [Signature]
Jose R. Torres
Guarita Carrillo
Emu Jorg



Village of Encino

P.O. Box 163

Encino, NM 88321

(575) 584-2980 Fax (575) 584-9505

Clerk/Treasurer
Loretta Chavez

Deputy Clerk
Alysha Garcia

Mayor
Boyd W. Herrington

March 21, 2019

LETTER OF SUPPORT

Dear Torrance County Commission,


I write on behalf of the Village of Encino in support of Torrance County's application to the New Mexico Department of Finance for a grant to fund the production of a Comprehensive Economic Development Strategy (CEDS) for southern Torrance County. We strongly support this grant application and the focus on coordinating a comprehensive economic development strategy for the communities of southern Torrance County.

Through this letter, we acknowledge specific roles and responsibilities we will fulfill by our participation in this project. In the event this proposal is funded, we would expect our role in the development of a CEDS to include:

- A pledge of participation by governing body resolution at the time of project funding.
- Designation of a representative to work on the effort and participate in meetings and workshops.
- Adoption of final strategy by governing body at project completion.

We look forward to working with you in developing a CEDS for our region.

Sincerely,


Boyd Herrington - Mayor

Mayor Pro-Tem
William Murphy

Councilor
Ernie Garcia

Councilor
Victor R. Gallegos

Councilor
Michael D. Alarid



La Merced del Pueblo de Chilili
14 Old Chilili Road, Chilili, NM 87059
(505) 281-4726

Juan Sanchez, President
Herman John Ortiz, Secretary
Jesus Ortiz, Treasurer
Alex Gutierrez, Trustee
Andrew Gutierrez, Trustee

March 8, 2019

Commissioner Javier Sanchez
Torrance County

RE: Letter of Support

Dear Torrance County Commission,

The Board of Trustees of La Merced del Pueblo de Chilili write this letter of support of Torrance County's application to the New Mexico Department of Finance for a Grant to fund the production of a Comprehensive Economic Development Strategy (CEDS) for southern Torrance County, We strongly support this grant application and the focus on coordinating a comprehensive economic development strategy for the communities of southern Torrance County.

Through this letter, we acknowledge specific roles and responsibilities we will fulfill by our participation in this project. In the event this proposal is funded, we would expect our role in the development of a CEDS to include:


A pledge of participation by governing body resolution at the time of project funding.

Designation of a representative to work on the effort and participate in meetings and workshops.

Adoption of final strategy by governing body at project completion.

We look forward to working with you in developing a CEDS for our region.

Con Todo Respeto


Juan Sanchez
President of La Merced
Del Pueblo de Chilili.

Date: Feb. 20, 2019

La Merced del Pueblo

de Tajiique

8636 Hwy 55

Estancia NM 87016

LETTER OF SUPPORT

Dear Torrance County Commission,

I write on behalf of La Merced del Pueblo ^{de Tajiique} in support of Torrance County's application to the New Mexico Department of Finance for a grant to fund the production of a Comprehensive Economic Development Strategy (CEDS) for southern Torrance County. We strongly support this grant application and the focus on coordinating a comprehensive economic development strategy for the communities of southern Torrance County.

Through this letter, we acknowledge specific roles and responsibilities we will fulfill by our participation in this project. In the event this proposal is funded, we would expect our role in the development of a CEDS to include:

- A pledge of participation by governing body resolution at the time of project funding.
- Designation of a representative to work on the effort and participate in meetings and workshops.
- Adoption of final strategy by governing body at project completion.

We look forward to working with you in developing a CEDS for our region.

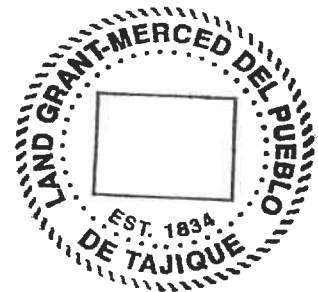
Sincerely,



Treasurer


Secretary


Mayor



Date: 3-18-19

Jason Quiñana
La Merced de Manzana
Land Grants

LETTER OF SUPPORT

Dear Torrance County Commission,

I write on behalf of La Merced de Manzana in support of Torrance County's application to the New Mexico Department of Finance for a grant to fund the production of a Comprehensive Economic Development Strategy (CEDS) for southern Torrance County. We strongly support this grant application and the focus on coordinating a comprehensive economic development strategy for the communities of southern Torrance County.

Through this letter, we acknowledge specific roles and responsibilities we will fulfill by our participation in this project. In the event this proposal is funded, we would expect our role in the development of a CEDS to include:

- A pledge of participation by governing body resolution at the time of project funding.
- Designation of a representative to work on the effort and participate in meetings and workshops.
- Adoption of final strategy by governing body at project completion.

We look forward to working with you in developing a CEDS for our region.

Sincerely,

Jason Quiñana
Anna Marie Nuy
Lucy Nuy
Alto

**PROFESSIONAL SERVICES AGREEMENT
FOR ECONOMIC DEVELOPMENT SERVICES**

This Agreement made and entered into the 1st day of July 2016 by and between TORRANCE COUNTY NEW MEXICO, a municipal corporation (the "County") and the ESTANCIA VALLEY ECONOMIC DEVELOPMENT ASSOCIATION, a nonprofit New Mexico Corporation ("EVEDA"). The purpose of this Agreement is to establish a EVEDA as a contractor to provide professional services for economic development for the County.

WHEREAS, the County desires to foster the economic development of the County for the purpose of providing employment opportunities and economic stability for its residents by making reasonable efforts to attract, retain and expand business and commercial enterprises within the County or its immediate vicinity;

WHEREAS, the County is in need of professional services to perform economic development activities necessary to attract, retain and expand business and commercial enterprises within the County or its immediate vicinity;

WHEREAS, the County has adopted Ordinance No. 2003-1 (the "Ordinance") as authorized by the Local Economic Development Act, NMSA 1978, §§ 5-10-1 through 5-10-13, ("LEDA") to conduct economic development;

WHEREAS, EVEDA is a certified regional economic development agency that is qualified to provide economic development services;

WHEREAS, the County desires to contract with EVEDA to perform economic development services authorized by the Ordinance and LEDA;

NOW, THEREFORE, for and in consideration of the premises and mutual obligations herein, the parties agree as follows:

- I. SCOPE OF SERVICES. EVEDA shall, through its own staff or its consultants, provide economic development services to the County as follows:
 - A. REVIEW, EVALUATION AND PRESENTATION OF ECONOMIC DEVELOPMENT PROJECT APPLICATIONS. EVEDA shall:
 1. Review applications for proposed economic development projects, including applications for industrial revenue bonds, within the County;
 2. Evaluate proposed economic development projects against the criteria established in the Ordinance and LEDA;
 3. Present proposed economic development projects to the County ;
 4. Recommend a proposed action to the County Commissioners regarding proposed economic development projects; and

5. Not enter into negotiations with any economic development project as a representative or on the behalf of the County without formal consent of the County.

B. RECRUITMENT OF ECONOMIC DEVELOPMENT PROJECTS. EVEDA shall work with the New Mexico Economic Development Department (NMEDD), governmental entities at the local, state and federal level, elected officials, economic development agencies, business organizations, and educational institutions to identify and recruit:

1. Businesses and enterprises to the County and its vicinity which would create new employment opportunities to residents of the County;
2. Businesses and enterprises within the County and its vicinity that are candidates for expansion which would increase employment opportunities to residents of the County; and
3. Businesses and enterprises within the County and its vicinity that may require economic development assistance in order to retain existing employment opportunities to residents of the County.

C. PLANNING. EVEDA shall:

1. Propose, from time to time, County economic development incentive policies;
2. Serve as a resource for economic development information, data and issues, to the County and the public and to provide current information and materials to the public; and
3. Allow an appointee of the County to sit as an ex-officio member to the Board of Directors of EVEDA.
4. REPORTS. A minimum of once during the term and additionally upon the County's request, EVEDA shall prepare and present in person a written comprehensive report to the County of EVEDA's activities related to this contract, including a summary of economic development project applications reviewed and a summary of economic development recruitment prospects.
5. EVEDA will permit authorized representatives of the County to inspect EVEDA's books and records upon reasonable notice, during ordinary business hours. During the term of this contract and thereafter until the County's annual audit of the fiscal year, EVEDA will also cooperate with the County's designated auditor in any reasonable manner.

II. COMPENSATION AND METHOD OF PAYMENT. In consideration of the performance by EVEDA, the County shall pay EVEDA the amount of \$25,000.00 annually for three consecutive years, payable on the first month of each quarter beginning on July 1, 2016 for the period beginning July 1, 2016 and ending June 30, 2019. Quarterly payments in the

amount of \$6,250.00 to be made in the months of July, October, January, April for each consecutive year.

- III. **TERM.** The effective date of this contract is July 1, 2016, and this contract shall expire on June 30, 2019. Activities conducted by EVEDA since the effective date of this contract, but before the date of the expiration of this contract, shall be deemed to have been performed by EVEDA in compliance with this contract.
- IV. **CONFLICT OF INTEREST.** No officer or employee of the County or member of the County Commissioners, and no employee of EVEDA, or member of EVEDA's Board of Directors, and no person who exercises any functions or responsibilities, in the review or approval of the undertaking or the carrying out of this agreement, shall participate in any decision relating to this agreement which is prohibited by law. Employees and members of EVEDA's Board of Directors shall disclose any conflict of interest with any economic development project or activity conducted by EVEDA on behalf of the County.
- V. **HOLD HARMLESS.** EVEDA and the County, in pursuance of the services provided for herein shall use reasonable care to avoid damage or injury to persons or property and shall save and hold harmless each other of and from any and all damages, injuries and expenses caused by the negligence of EVEDA or the County, their respective agents or employees, or by reason of the failure of EVEDA or the County to comply with the provisions of this agreement. In no way shall this provision be construed as a waiver of any immunity available to the County under New Mexico law.
- VI. **EQUAL OPPORTUNITY.**
 - A. **Non-Discrimination.** EVEDA agrees that no person shall be excluded from, or denied the benefits of, or be subjected to discrimination under, any program or activity of EVEDA, on the grounds of race, religion, national origin, color, sex, physical handicap, political affiliation or age.
 - B. **Nonsegregated Facilities.** EVEDA certifies that all employee facilities under its control are provided in a manner that segregation, whether by habit, local custom, or otherwise, and whether on the basis of race, religion, color, handicap, age, sex, national origin or political affiliation, cannot occur. Further EVEDA certifies that it will not assign, or permit employees to perform services at any location under its control where facilities are segregated.
 - C. **Employment.** EVEDA will not discriminate against any employee or applicant for employment because of race, religion, color, handicap, age, sex, national origin or political affiliation; and will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, with regard to any of the same factors. Moreover, EVEDA will state, in all solicitation or advertisements for employees, that all qualified applicants will receive consideration for employment without regard to the factors listed above.
 - D. **COMPLIANCE WITH LAW.** EVEDA will at all times conduct itself in accordance with the laws of the United States, the State of New Mexico, and the County of Estancia.

- VII. **RIGHT OF TERMINATION.** This agreement may be terminated by either party at any time after sixty (60) days notice in writing given to the opposite party. In the event of such termination, the County will have no obligation to make any additional payments as specified in Section II above.
- VIII. **ENTIRE AGREEMENT.** This Agreement represents the entire understanding between the parties and supersedes any prior agreements or understandings with respect to the subject matter of this Agreement. No verbal agreement of conversation with any officer, agent, or employee of the County, either before, during, or after execution of this agreement, shall affect or modify any of the terms or obligations of this Agreement.
- IX. **WAIVER OF BREACH.** The waiver by either party of a breach or violation of any provision of his Agreement will not operate as or be construed as a waiver of any subsequent breach of this Agreement.
- X. **COOPERATION AND DISPUTE RESOLUTION.** The parties agree that they will maintain effective liaison and close cooperation. If a dispute arises related to the obligations or performance of either party under this Agreement, representatives of the parties will meet in good faith to resolve the dispute.
- XI. **BINDING EFFECT.** This Agreement is binding upon, and inures to the benefit of, the parties to this Agreement and their respective successors and assigns.
- XII. **NOTICES.** Any notice that will be given in accordance with this Agreement, will be deemed appropriate when sent by certified mail to the following:

Torrance County Manager
Torrance County
PO Box 48
Estancia, NM 87016

and

Executive Director
EVEDA
PO Box 3209
Moriarty, NM 87035

- XIII. **PENALTIES.** The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
- XIV. **APPROVAL REQUIRED:** This Agreement shall not become effective or binding until signed by both parties.

IN WITNESS THEREOF this contract has been executed by the parties hereto in an original and one counterpart copy.

TORRANCE COUNTY NEW MEXICO

Commission Chair
(SEAL)

Date

ATTEST:

County Manager

Date

ESTANCIA VALLEY ECONOMIC DEVELOPMENT ASSOCIATION, INC.

President

Date

**TORRANCE COUNTY, NEW MEXICO
ORDINANCE NO. 2003-1**

**AN ORDINANCE RELATING TO ECONOMIC DEVELOPMENT PLANNING.
BE IT ORDAINED BY THE GOVERNING BODY OF THE COUNTY OF
TORRANCE, NEW MEXICO:**

Section 1. ECONOMIC DEVELOPMENT PLAN

1.1 Short Title.

This Ordinance may be cited as the "Economic Development Plan Ordinance."

Section 2. Authority.

- 2.1** The Economic Development Plan Ordinance is enacted pursuant to the statutory authority conferred upon municipalities to allow public support of economic development (N.M. Stat. Ann. Section 5-10-1 through Section 5-10-13-1978-). This Ordinance is adopted as part of the County's economic development plan.

Section 3. Purpose.

- 3.1** The purpose of the Economic Development Plan/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 County to enter into one or more joint powers agreement 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 for furthering or implementing economic development plan 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 increment of 0.0625%) may be imposed.

Section 4. Definitions as used in the Economic Development Plan 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 to 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 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;
- 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 County whereby the County 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 County Commissioners of Torrance.

Section 5. Economic Development Plan.

5.1 The County Manager 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 County 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 County at its discretion may bear the full cost or contribute a

portion of the costs including the waiver of applicable fees. The County, 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 County's part to offer any specific type or level of assistance.

Section 6. Estancia Valley Economic Development Association.

6.1 The governing body assigns the EVEDA Board of Directors the following responsibilities with regard to the economic development plan for the County of Torrance:

- 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 EVEDA shall at all times provide for a Board of Directors position for the County of Torrance, the County Manager shall appoint a member of the Board of Directors with the advice and consent of the County Commissioners.

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 County. Meeting the definition of a qualifying entity does not create any obligation on the part of the County of Torrance.

7.2 Applications from qualifying entities shall be submitted to the County of Torrance on forms provided by the County.

7.3 Applications shall contain the following information for business applicants.

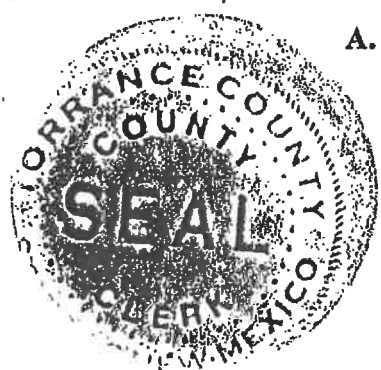
A. Identification information:

- 1) Complete name and address of entity;
- 2) Incorporation papers with by-laws;

State of New Mexico
County of Torrance

I, hereby certify that this instrument filed for record on the 27 of August A.D., 200 at 11:33 o'clock A M and recorded in book 299 at page 6

Witness my hand and Seal of Office
Linda Garamillo
County Clerk Torrance Co., N
Delicia Lume D



- 3) List of board of directors and executive director, with addresses; and resumes of all directors and officers.
- 4) Resumes of all directors and officers.

B. Evidence of financial solvency (personal statement of principals);

- 1) Financial statement (income statement and balance sheets) for the past three years;
- 2) Federal tax number, New Mexico State Taxation and Revenue number and County business license;
- 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;
- 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 economic assistance from the County, which meet the policies and objectives of the County's 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 companies and/or provide goods and services, which currently have to be imported into Torrance;
- C) Private companies seeking to build, expand or relocate facilities;
- D) Private companies which provide facilities or services which enhance the ability of Torrance businesses to operate;
- E) Organizations, which assist business start-ups or bring small companies together to increase their competitive abilities. This must involve a tangible project, which will create jobs 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 particularly 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 County when this plan is adopted may propose a restructuring of their projects as an economic development project.

Section 8.2 All applications for economic development projects requesting economic assistance from the County shall submit a cost benefit analysis. Preparing a cost benefit analysis shall be the responsibility of the applicant. The County retains the right to specify a format and methodology for the cost-benefit analysis. The EVEDA 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 County will recoup the value of its donation within a 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 category);
- 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 Torrance 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.

Section 8.3 All applicants for economic development projects requesting economic assistance from the County 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 Torrance 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 County shall clearly demonstrate the benefits, which will accrue to the community as a result of the donation of public resources. The County has considerable flexibility in determining what is considered as adequate benefits. Benefits such providing components or production capabilities, which enhance a targeted industry cluster, or addressing critical deficiencies in regional economy, may be recognized. The benefits claimed of 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 County 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 thing or service of value for the expansion or improvement of the economy. The County retains flexibility in defining the "substantive contributions". The benefits identified in the previous paragraphs may be accepted as adequate contributions on their own, or as 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 County shall be subject to an annual performance review conducted by the EVEDA. This review shall evaluate whether the project is attaining the goals and objectives set forth in the project participation agreement. This review shall be presented to the governing body for their 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 County shall retain a security interest, which shall be specific in the project participation agreement. The type security given shall depend upon the nature of economic development project and assistance provided by the County. Types of security may include, but are not limited to:
- A) Letter of credit in the County's name;
 - B) Performance bond equal to the County's contribution;
 - C) A mortgage or lien on the property or equipment;

- D) Pro-rated reimbursement of donation if company 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 County 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 County may choose to deny said assignment, lease or transfer or may negotiate a new agreement with the new operator, or the County 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 of ten years from the date the ordinance is adopted and the governing body passes the project participation agreement.

Section 10. Project Participation Agreement.

- 10.1 The qualifying entity shall prepare with the County 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 County 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 County's investment;
 - F) The procedures by which a project may be terminated and the County's investment recovered; and,
 - G) The time period for which the County shall retain an interest in the project. Each project agreement shall have a "sunset" clause after which the County 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 County, with such account clearly identified. These accounts shall be subject to an annual independent audit.

Section 12. Termination. The Governing body may terminate this ordinance and the County's 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 County monies remaining in the County project accounts shall be transferred to the County's general fund.

Section 13. Joint Regional Projects. The County 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.

ADOPTED BY THE GOVERNING BODY OF THE COUNTY OF TORRANCE ON THE 27TH DAY OF AUGUST, 2003.

THIS ORDINANCE SHALL BECOME EFFECTIVE THIRTY (30) DAYS FROM THE DATE IT IS RECORDED WITH THE COUNTY CLERK.



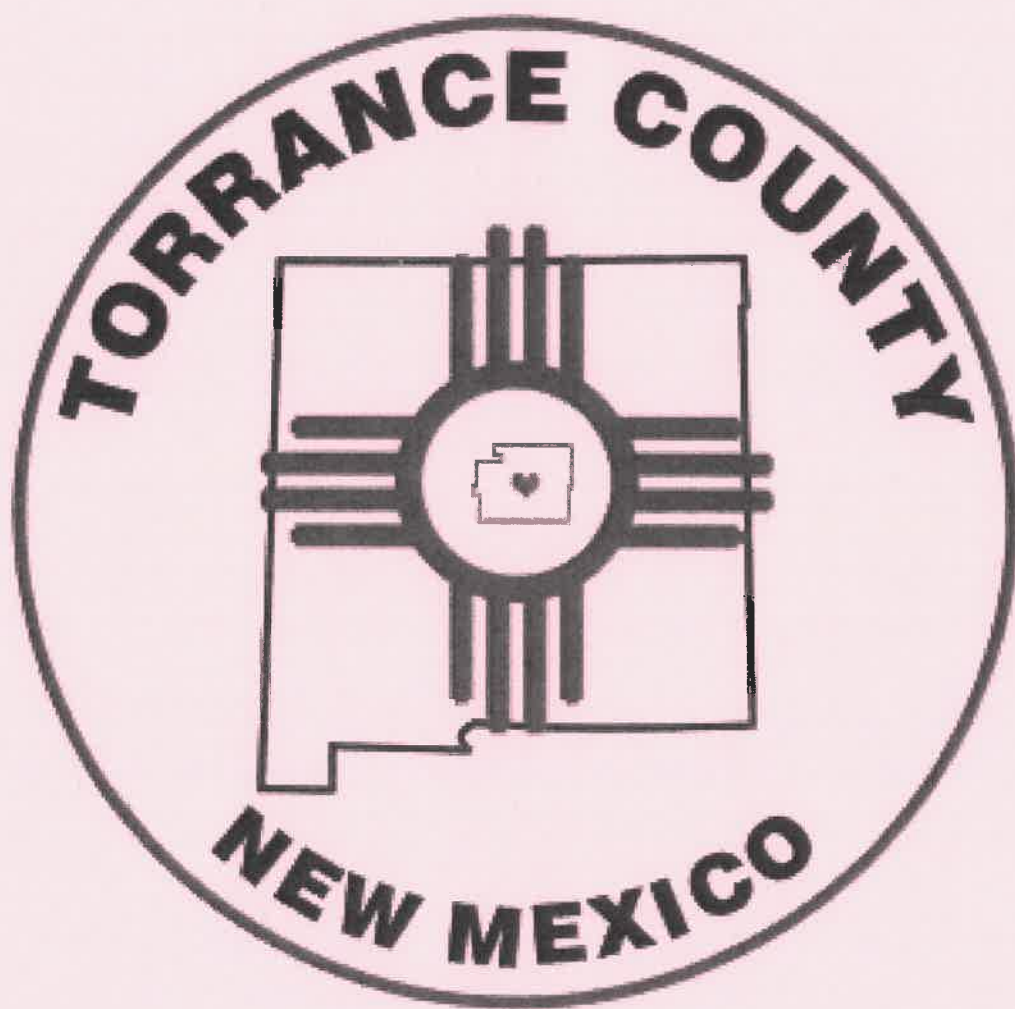
[Signature]
COUNTY CLERK

TORRANCE COUNTY COMMISSION

[Signature]
JIM FROST, DISTRICT 1

[Signature]
PAUL M. (TITO) CHAVEZ, DISTRICT 2

[Signature]
CHESTER RILEY, JR., DISTRICT 3



*Agenda Item
No. 12-A*



Torrance County

*P.O. Box 48
205 South Ninth Street
Estancia, New Mexico 87016
505-544-4700*

*Ryan Schwebach,
Chair
District 2*

March 25, 2019

*Kevin McCall
District 1*

To Whom It May Concern:

*Javier Sanchez
District 3*

On behalf of the Torrance County Commission, I wish to offer this letter of support and collaboration for Torrance County's application to support the PMS Mountainair Family Health Center funding under the Rural Primary Health Care Act (RPHCA).

*Wayne A. Johnson
County Manager*

Torrance County has collaborated with the Mountainair Health Center for many years and believes the services provided are an asset and a necessity to our rural communities. PMS provides primary care services to low and moderate income residents within the County, and has a policy not to deny services to anybody, regardless of income or socioeconomic status.

*Tracy Sedillo
Treasurer*

*Linda Jaramillo
Clerk*

RPHCA funding is very important to the residents of Torrance County because we have a large population of uninsured and medically underserved individuals and families. The Mountainair Family Health Center (MFHC) allows people who cannot otherwise afford care and treatment to receive accessible, local, culturally competent and high quality primary care services.

*Martin Rivera
Sheriff*

Torrance County owns the building that houses the Mountainair Family Health Center and leases that building to PMS. The County is happy to partner with PMS on any type of funding project that may lead to more thorough care of our residents. MFHC, in no small part due to its RPHCA funding, is able to meet the huge demand for affordable, accessible medical care here. We are very concerned that a loss of RPHCA funding would precipitate a reduction in hours or services, harming access to medical care in this remote area.

*Josie Chavez
Probate Judge*

Once again, we ask that you continue providing RPHCA funds to support the Mountainair Family Health Center. The residents of this county desperately need its services.

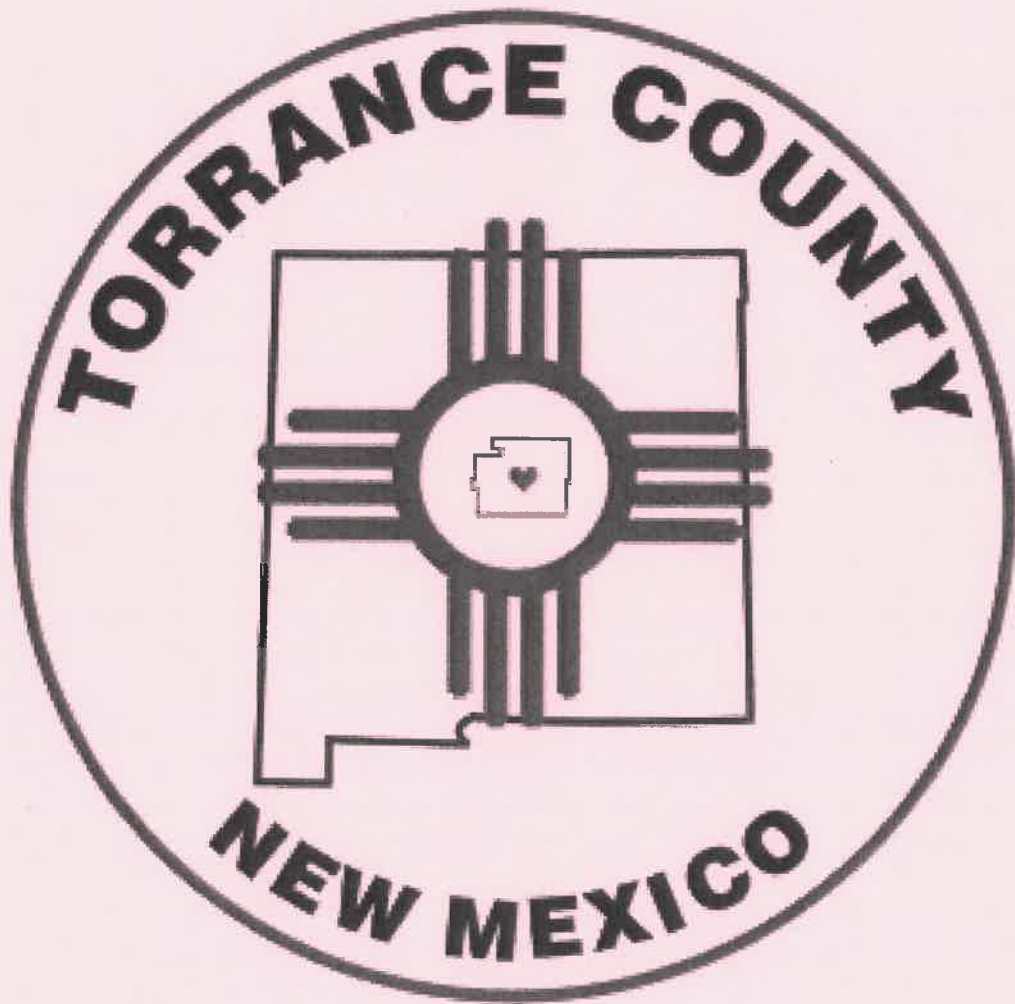
Sincerely,

Wayne Johnson

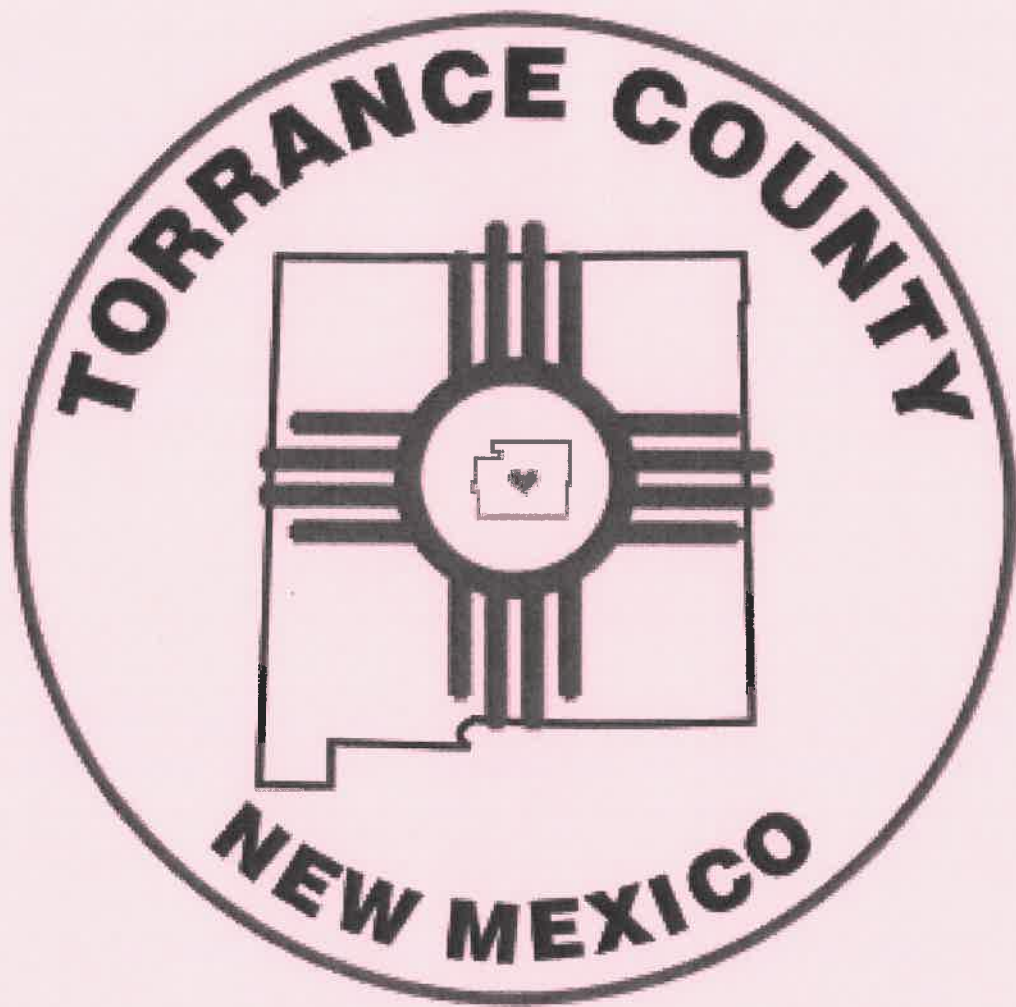
Torrance County Manager



*Agenda Item
No. 13-A*



*Agenda Item
No. 13-B*



*Agenda Item
No. 13-C*

- D. Community Organizations
- E. Media
- F. Minority Groups

Section 2. Term of Service. The committee chairperson and committee members shall be appointed to serve for a term to continue through June 2010. For cause stated in writing, the Mayor may remove a member of the Complete Count Committee.

Section 3. Duties and Powers. The Complete Count Committee shall be a working committee charged with the responsibility of planning and conducting local educational initiatives, as well as publicity and promotional activities to increase community participation in the Census. Activities may include, but are not limited to the following:

- A. Handle the creation, printing and distribution of posters, flyers, handouts and printed material for use by the media and others.
- B. Prepare materials for public service announcements on radio and television.
- C. Speak at public forums and meetings, fraternal organizations, business organizations and schools for the purpose of promoting and informing people of the census .
- D. Create census messages in utility bills, grocery bags, monthly billing statements and payroll checks.

Section 4. Staff. The City of Rio Rancho's Development Services Department shall provide support staff as resources allow.

ADOPTED THIS 10TH DAY OF DECEMBER, 2008.



Thomas E. Swisstack, Mayor

12/12/08

Date

ATTEST:



Roman Montoya, City Clerk
(SEAL)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

REVIEWED BY:

- | | |
|--|--|
| <input type="checkbox"/> City Attorney | <input type="checkbox"/> Public Safety |
| <input checked="" type="checkbox"/> Development Services | <input type="checkbox"/> Public Works |
| <input type="checkbox"/> Financial Services | <input type="checkbox"/> RRPS |
| <input type="checkbox"/> Fire and Rescue | <input type="checkbox"/> SSCAFCA |
| <input type="checkbox"/> Parks, Rec. and Com. Services | |
-

PREPARED BY: 

DATE: 11.21.08

DEPARTMENT DIRECTOR: 

DATE: 11.26.08

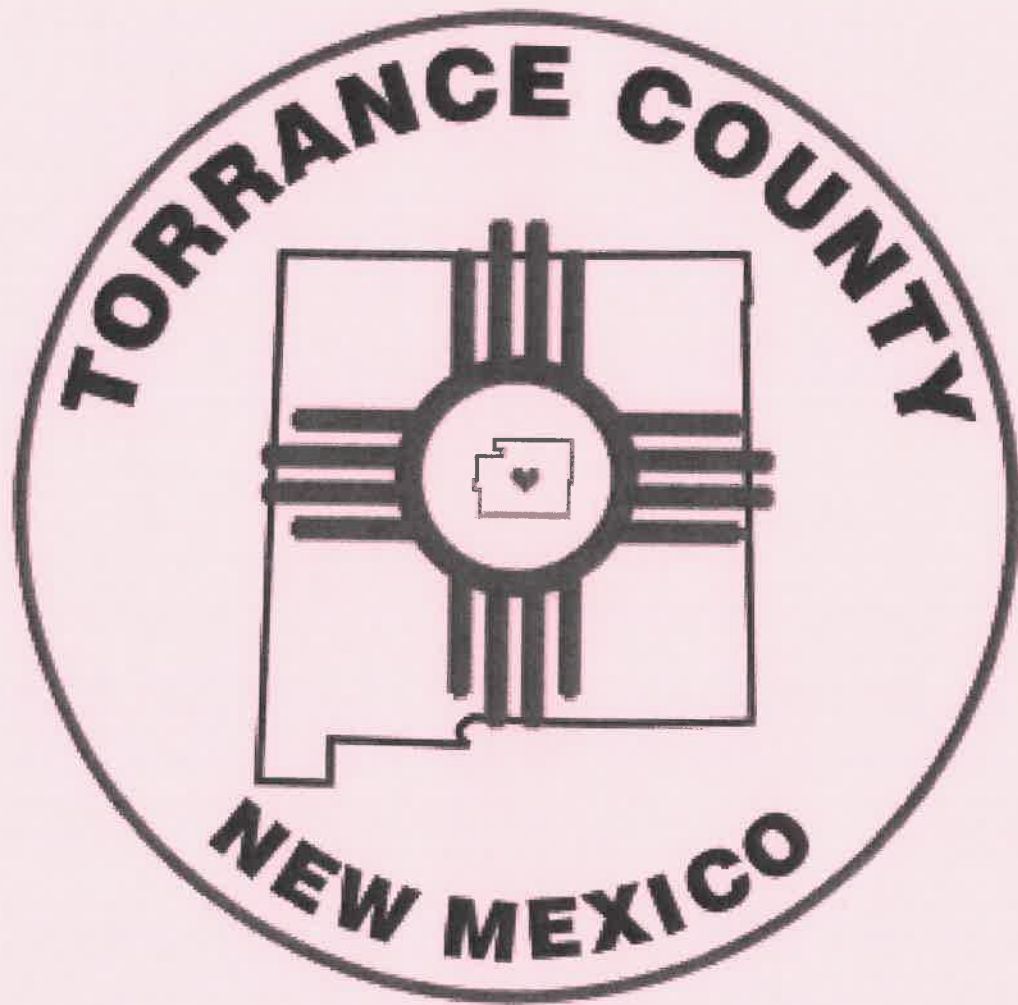
CITY MANAGER: 

DATE: 12.1.08

ATTACHMENT I: Proposed Resolution



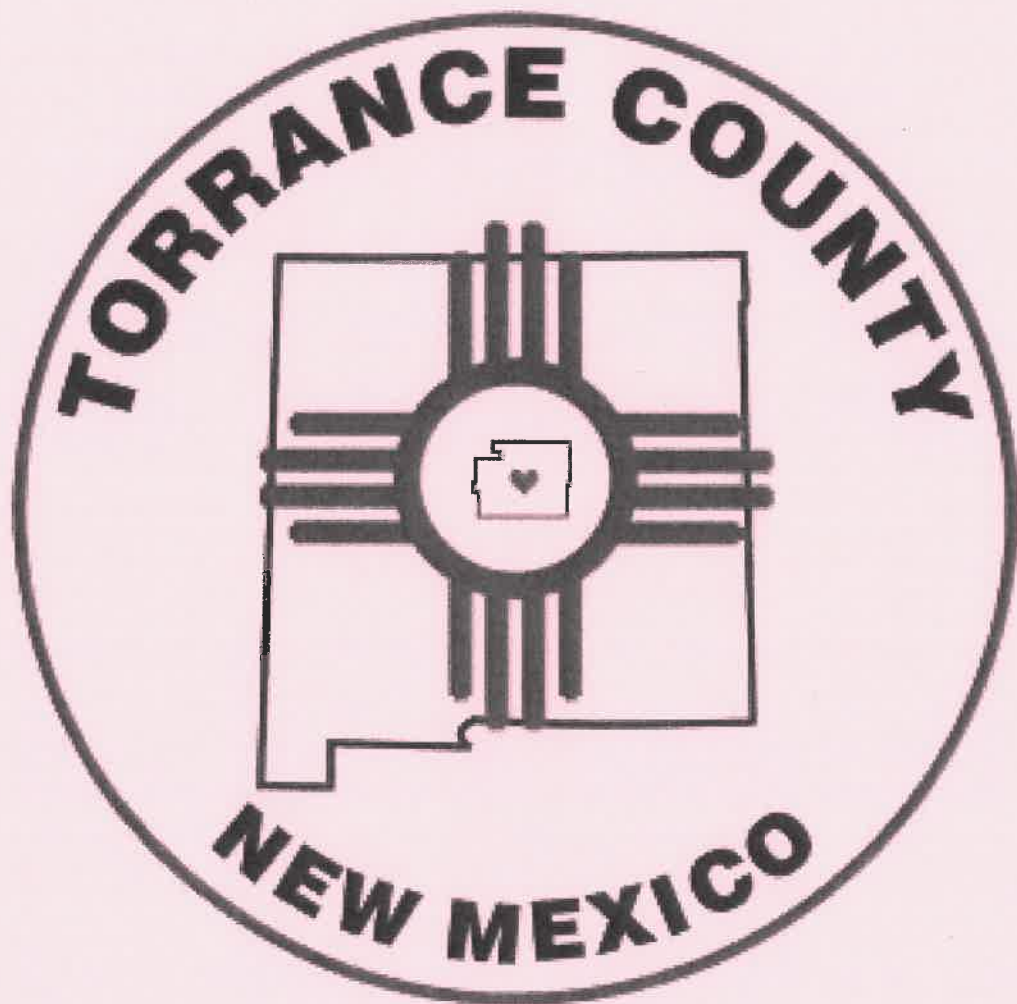
*Agenda Item
No. 13-D*



*Agenda Item
No. 14*



*Agenda Item
No. 15*



*Agenda Item
No. 16*