

RESOLUTION NO. 03

A RESOLUTION RELATING TO THE PROPOSED INDUSTRIAL REVENUE BONDS ENTITLED TORRANCE COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (NEW MEXICO RENEWABLE DEVELOPMENT DATA CENTER II, LLC PROJECT), SERIES 2019; DECLARING THE INTENT OF TORRANCE COUNTY TO ISSUE SUCH INDUSTRIAL REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT UP TO \$60,000,000 IN CONNECTION WITH A PROPOSED PROJECT LOCATED WITHIN THE BOUNDARIES OF TORRANCE COUNTY FOR THE PURPOSE OF INDUCING NEW MEXICO RENEWABLE DEVELOPMENT DATA CENTER II, LLC TO DEVELOP THE PROJECT SITE AND TO CONSTRUCT AND INSTALL THE PROJECT; AND DIRECTING THE COUNTY CLERK TO PUBLISH NOTICE OF INTENT TO CONSIDER AN ORDINANCE AUTHORIZING ISSUANCE AND SALE OF THE BONDS IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE COUNTY.

WHEREAS, the New Mexico legislature has passed the "County Industrial Revenue Bond Act" (the "Act"), Sections 4-59-1 to 4-59-16 inclusive, NMSA 1978, as amended, which authorizes Torrance County, New Mexico (the "County") to issue industrial revenue bonds and to acquire projects as defined in the Act; and

WHEREAS, the County desires to promote industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in the County, to promote the use of the natural resources of the County, and to promote a sound and proper balance in the State of New Mexico between agriculture, commerce and industry, and to promote the public health, safety, security, and the general welfare of the citizens of the County; and

WHEREAS, New Mexico Renewable Development Data Center II, LLC, a Delaware limited liability company (the "Company") has made a proposal to the County (the "Proposal") whereby the County will acquire from the Company land and equipment located in the County for a solar power generation facility which will constitute an industrial development project with up to 40 megawatts of generating capacity (the "Project"); and

WHEREAS, the County's issuance of industrial revenue bonds in one or more series (the "Bonds") to finance the Project will constitute one of the inducements whereby the Company will determine to proceed with the Project; and

WHEREAS, the Board of County Commissioners (the "Commission") of the County constitutes the governing body of the County within the meaning of the Act; and

WHEREAS, the Project has been considered by the Commission and the Commission has concluded that the Project will promote the health, safety, security, and general welfare of the citizens of the County, and the Commission desires to indicate its intent to consider proceeding with the issuance of the Bonds for the financing of the Project; and

WHEREAS, concurrently with the issuance of the Bonds, the Company will enter into an installment sale, lease or other financing agreement with the County under which the County will acquire the Project, and which will provide for the payment of installments, lease rentals or other payments by the Company from the revenues generated by the Project or other funds of the Company sufficient to pay the debt service on the Bonds, subject to the prior adoption by the Commission of an ordinance approving such agreements and authorizing issuance of the Bonds (the "Bond Ordinance"); and

WHEREAS, the County and the Company understand that the adoption of this Resolution shall not obligate the County to issue the Bonds except in full compliance with the terms of the Bond Ordinance to be considered for adoption by the Commission prior to the issuance of the Bonds and with the terms of the related bond documents in form satisfactory to the County; and

WHEREAS, Section 4-37-7 NMSA 1978 requires that publication of the title and a general summary of the subject matter of any proposed ordinance be made in a newspaper of general circulation within the County at least two weeks prior to the meeting of the Board of County Commissioners at which the ordinance is proposed for final passage.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF TORRANCE COUNTY, NEW MEXICO:

Section 1. All actions (not inconsistent with the provisions hereof) heretofore taken by the Commission and the officers and employees of the County, related to the Proposal, the acquisition of the Project, and the sale and issuance of the Bonds therefor, be and the same hereby are, ratified, approved and confirmed.

Section 2. The Commission has been informed as follows.

A. The Project will consist of a solar energy project with up to 40 megawatts of generating capacity.

B. The developer and operator of the Project will be the Company, or permitted successors or assignees.

C. The proposed Project site is located in an unincorporated area of the County.

D. The development, installation and operation of the Project are subject to land-use regulation and approval by the County.

E. The Company will make all necessary arrangements with the proposed bond purchaser for the purchase of the Bonds and the County shall have no responsibility to make such arrangements.

F. The Company has agreed to pay or reimburse the County for all costs of legal counsel, including independent bond counsel and financial advisors of the County directly related to adoption of this Resolution, consideration and adoption of the Bond Ordinance and issuance of the Bonds. The Company has agreed to such payment or reimbursement irrespective of whether the Bonds are issued.

G. The Company will make payments in lieu of taxes to the County and the Moriarty-Edgewood School District (the "School District") as agreed upon by those parties, which shall be as set forth in the Bond Ordinance or in the transaction documents approved by the Bond Ordinance, not later than the date on which the the Bonds are issued and delivered to the purchaser thereof.

Section 3. In order to promote the health, safety, security and general welfare of the citizens of the County, it is the Commission's intent to take all necessary and advisable steps to consider and, if appropriate, to effect the issuance of the Bonds in an aggregate principal amount up to \$60,000,000 in one or more series in order to defray part or all of the costs of the Project. The Bonds are to be entitled substantially as follows: "Torrance County, New Mexico Taxable Industrial Revenue Bonds (New Mexico Renewable Development Data Center II, LLC Project), Series 2019," provided, however, that the Bond Ordinance may authorize a different title and series designation for the Bonds.

Section 4. The Bonds shall be payable from the revenues of the Project or other moneys payable by the Company with respect thereto, and shall not constitute a debt or indebtedness of the County within the meaning of any provision or limitation of the Constitution or statutes of the State of New Mexico. In addition, if the Bonds are issued, the Company shall indemnify and hold harmless the County, the Commission and their respective officers, employees, designated representatives and agents (collectively, the "Indemnified Persons") from and against any liability to the Company or to any third parties that may be asserted against the County, the Commission or the other Indemnified Persons with respect to the County's ownership of or leasehold interest in the Project or the issuance of the Bonds. Nothing contained in this Resolution or in any other instrument shall be considered as obligating the County to any pecuniary liability or a charge upon the general credit of the County or against its taxing power, it being understood that no costs are to be borne by the County and that all costs incurred by the County in connection with

the Bonds are to be promptly reimbursed by the Company. The County's adoption of this Resolution shall not be deemed a conclusion or expression of approval by the County or any Indemnified Person of the Company or the Project.

Section 5. The Company, as agent for the County, will acquire the Project. For this purpose, by adoption of this Resolution, the County authorizes the Company to act as agent for the County for the purchase of "solar generation equipment" and "related equipment", as such terms are defined in Section 7-9-54.3 NMSA 1978. For other tangible personal property relating to the Project, the County will cooperate with the Company to obtain and allow use of Type 9 Nontaxable Transaction Certificates ("Certificates") that have been properly executed for acquisition of tangible personal property relating to the Project as applicable under the New Mexico Gross Receipts and Compensating Tax Act. The Company shall not use the Certificates other than for such things as may be permitted by law, if any, nor shall the Company use such Certificates after the completion of the Project. Prior to the use of such Certificates by the Company as agent for the County, the County Manager and the Company will agree to certain procedures regarding the use of the Certificates and protection of the County from any unpaid taxes determined to be due to the Taxation and Revenue Department. No costs, expenses or other monetary relief will be recoverable from the County by vendors of solar generation equipment. In connection with this Resolution, the Commission has been informed that the Company has expressed its understanding that a failure or refusal of the Commission, however arising, to adopt the Bond Ordinance will have the effect of voiding any benefits to the Company under the Act, including voiding the Certificates issued to the Company for capital equipment purchases and making such purchases subject to whatever tax would be due if such Certificates had not been issued.

Section 6. The County Commissioners and other appropriate County officials and employees are hereby authorized and empowered to take such steps and to do such things as may be necessary to achieve the purposes of this Resolution; provided, however, the issuance of the Bonds and the execution and delivery of any documents to which the County is a party in connection therewith shall be subject to the approval and authorization of the Commission pursuant to the Bond Ordinance, adopted following public notice of the Commission's intent to adopt such Bond Ordinance at least fourteen days prior to the consideration of the Bond Ordinance by the Commission at a public meeting, such public notice to specify the time, date and place of the Commission's public hearing on the Bond Ordinance and the meeting at which the Bond Ordinance will be considered. In particular, no provision of this Resolution shall in any way obligate the County or any other person to issue the Bonds or any other bonds, or to in any way finance the Project; and the County retains full and complete discretion with respect thereto.

Section 7. If Bonds are issued by the County, the documentation evidencing the obligations of the Company shall provide that the Company shall make annual payments in lieu of taxes to the County and the School District for the term set forth in that documentation.

Section 8. This Resolution shall not give rise to a pecuniary liability of the County and shall not give rise to a charge against its general credit or taxing powers.

Section 9. The County Clerk is hereby directed, in accordance with Section 4-37-7 NMSA 1978, as amended, to publish in the *Edgewood Independent* and the *Albuquerque Journal*, newspapers of general circulation within the County, the title and general summary of the ordinance relating to and authorizing issuance of the Bonds, substantially the form attached hereto as Exhibit A, at least two weeks prior to the meeting at which the County Commission will consider such ordinance. The County Clerk may undertake such publication upon her own initiative, following consultation with the County Manager and receipt by the County of a draft Bond Ordinance and any necessary documents related thereto.

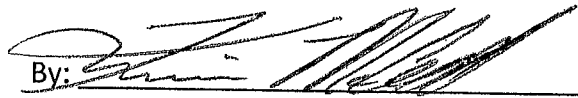
Section 10. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

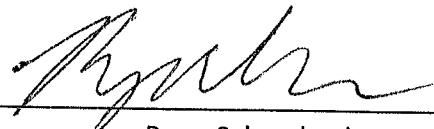
Section 11. All orders and resolutions, or parts thereof, in conflict with this Resolution are hereby repealed; provided, however, this repealer shall not be construed to revive any order, resolution or part thereof, heretofore repealed.

Section 12. This Resolution shall take effect immediately upon its adoption and approval by the Commission.

PASSED, ADOPTED, SIGNED AND APPROVED this 9th day of January 2019.

BOARD OF COUNTY COMMISSIONERS,
TORRANCE COUNTY, NEW MEXICO

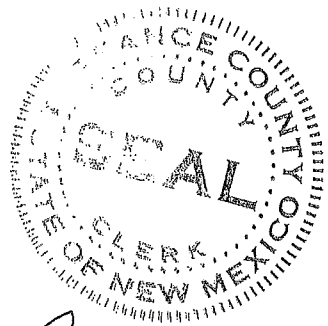
By: 
Kevin McCall

By: 
Ryan Schwebach

By: 
Javier Sanchez

(SEAL)

ATTEST:



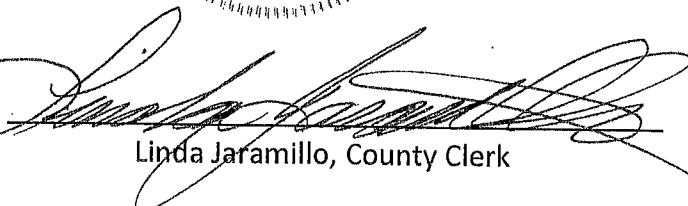
By: 
Linda Jaramillo, County Clerk

Exhibit A

**FORM OF NOTICE OF INTENT TO ADOPT
INDUSTRIAL REVENUE BOND ORDINANCE FOR PUBLICATION**

TORRANCE COUNTY, NEW MEXICO

**NOTICE OF INTENT TO ADOPT INDUSTRIAL REVENUE BOND
ORDINANCE**

Notice is hereby given of the title and general subject matter contained in an ordinance which the Board of County Commissioners of Torrance County, New Mexico, the governing body of the County, intends to adopt at a meeting on , _____, 2019 at the hour of _____ at Commission Chambers, 205 Ninth Street, Estancia, New Mexico relating to the authorization, issuance and sale by Torrance County, New Mexico of its industrial revenue bonds.

The title of the proposed Ordinance is:

AUTHORIZING THE ISSUANCE AND SALE OF TORRANCE COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (NEW MEXICO RENEWABLE DEVELOPMENT DATA CENTER II, LLC PROJECT), IN A MAXIMUM PRINCIPAL AMOUNT OF \$60,000,000 IN ONE OR MORE SERIES TO PROVIDE FUNDS TO FINANCE THE EQUIPPING OF AN INDUSTRIAL REVENUE BOND PROJECT FOR USE BY NEW MEXICO RENEWABLE DEVELOPMENT DATA CENTER II, LLC OR ITS SUCCESSORS OR ASSIGNS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE, A BOND PURCHASE AGREEMENT, THE BONDS AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE 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.

As proposed in the Ordinance: (1) the Bonds will be issued under the authority of the New Mexico County Industrial Revenue Bond Act, Chapter 4, Article 59, NMSA 1978, as amended; (2) the proceeds of the Bonds will finance the acquisition of equipment for a solar power generation facility in Torrance County, New Mexico (the "Project") for the use by New Mexico Renewable Development Data Center II, LLC (the "Company"); and (3) the Project will be leased to the Company.

Under the terms of a proposed Lease Agreement (the "Lease") between the County and the Company, the Company will be obligated to pay rent for the Project sufficient to pay, when due, the principal of, interest on and redemption price, if any, of the Bonds and to make certain other payments as provided in the Lease. The Bonds will be issued pursuant to an Indenture (the "Indenture") among the County, the bond purchaser and a depository. The Bonds will be sold to a bond purchaser pursuant to the terms of a proposed Bond Purchase Agreement.

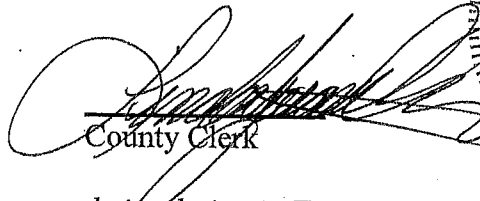
THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE OF THE BONDS WILL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR STATUTES OF THE STATE OF NEW MEXICO. THE BONDS WILL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS.


The Bonds will mature, bear interest, be subject to prior redemption and contain other terms and provisions all in accordance with the Indenture and the Ordinance.

A copy of the Ordinance in draft form is on file in the office of the County Clerk at 205 Ninth Street, Estancia, New Mexico and will be available for inspection during normal business hours. All members of the public are invited to attend the hearing, and will be provided opportunity to ask questions about, and to express their opinions concerning, the proposed Ordinance.

This notice is given pursuant to Section 4-37-7 NMSA 1978.

Dated: 1-9 2019.


County Clerk



The seal is circular with a double-line border. The outer ring contains the text "TORRANCE COUNTY" at the top and "STATE OF NEW MEXICO" at the bottom. The inner ring contains the text "COUNTY CLERK". In the center of the seal, the word "SEAL" is written in large, bold, capital letters.

(To be published once in a newspaper of general circulation in Torrance County at least two weeks before consideration of Bond Ordinance)