

RESOLUTION NO. [2019-58]

A RESOLUTION DECLARING THE INTENT OF TORRANCE COUNTY, NEW MEXICO (THE "COUNTY") TO ISSUE TAXABLE INDUSTRIAL REVENUE BONDS, IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$1,820,000,000 IN CONNECTION WITH INDUSTRIAL REVENUE BOND PROJECTS FOR THE GENERATION OF WIND ENERGY TO BE LOCATED WITHIN THE BOUNDARIES OF THE COUNTY, BUT OUTSIDE THE BOUNDARIES OF ANY INCORPORATED MUNICIPALITY, IN ORDER TO INDUCE COWBOY MESA LLC, A DELAWARE LIMITED LIABILITY COMPANY, DURAN MESA LLC, A DELAWARE LIMITED LIABILITY COMPANY, TECOLOTE WIND LLC, A DELAWARE LIMITED LIABILITY COMPANY, RED CLOUD WIND LLC, A DELAWARE LIMITED LIABILITY COMPANY, VIENTO LOCO LLC, A DELAWARE LIMITED LIABILITY COMPANY AND GALLINAS MOUNTAINS LLC, A DELAWARE LIMITED LIABILITY COMPANY, OR ANY AFFILIATED ENTITY THEREOF AND THEIR RESPECTIVE SUCCESSORS, ASSIGNS AND/OR THEIR AFFILIATES (EACH, AN "ENTITY" AND COLLECTIVELY, THE "ENTITIES"), TO DEVELOP THE PROJECT SITE AND ACQUIRE, CONSTRUCT, EQUIP AND INSTALL THE PROJECT BEING DEVELOPED BY EACH ENTITY IN ONE OR MORE PHASES.

WHEREAS, the New Mexico legislature has enacted the County Industrial Revenue Bond Act, NMSA 1978, Sections 4-59-1 to -16 (1975, as amended through 2015) (the "Act"), 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, acting through its Board of County Commissioners, 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 County and the State of New Mexico (the "State") between agriculture, commerce and industry, and to promote the public health, safety, security, general welfare, convenience and the prosperity of the inhabitants of the County; and

WHEREAS, the Entities submitted a proposal to the County (collectively, the "Proposal") whereby the County will acquire from each Entity, land and equipment located in the County which will constitute an industrial revenue project to be developed by an Entity in one or more phases (each, a "Project" and collectively, with respect to the Entities, the "Projects"); and

WHEREAS, the County will acquire each Project, through acquisition of leasehold interests, easements, rights-of-way, fee title, and other property rights and interests in land, title, including fee title, to facilities and capital equipment and other tangible personal property to be located in the County, but outside the boundaries of any incorporated municipality; and

WHEREAS, each Project will constitute a project as defined under the Act and the Projects are proposed to have the collective nameplate installed generation capacity of up to 1,300 megawatts; and

WHEREAS, the issuance of taxable industrial revenue bonds in one or more series for the Projects (collectively, the “Bonds”) by the County necessary to finance all or a part of the Projects, and tax incentives associated therewith, are inducements whereby the Entities will determine to acquire, construct, equip and install the Projects; and

WHEREAS, the Board of County Commissioners of the County (the “Governing Body”) constitutes the governing body of the County within the meaning of the Act; and

WHEREAS, the Projects have been considered by the Governing Body and the Governing Body has determined that each of the Projects will promote the health, safety, security and general welfare of the citizens of the County, and the Governing Body desires to indicate its intent to proceed with the issuance of the Bonds for the financing of each of the Projects; and

WHEREAS, concurrently with the issuance of the Bonds, the Entities will enter into lease agreements with the County providing for the payment by the Entities of lease rentals on their Projects sufficient to pay the debt service on the Bonds, subject to the prior adoption by the Governing Body of one or more ordinances approving such agreements and other related documents and authorizing issuance of the Bonds (individually, a “Bond Ordinance” and collectively, the “Bond Ordinances”); and

WHEREAS, the County and the Entities understand that the adoption of this resolution (the “Resolution”) shall not obligate the Governing Body or the County to adopt the Bond Ordinances or a Bond Ordinance for a Project, to issue the Bonds or obligate an Entity to proceed with its Project, except pursuant to the terms of the Bond Ordinances and related bond documents in forms satisfactory to the County as presented by the Entities prior to the issuance of the Bonds.

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 Governing Body and the officers, employees and designated representatives and agents of the County related to the Proposals, the acquisition, construction, equipping and installation of the Projects, and the sale and issuance of the Bonds therefor, are hereby ratified, approved and confirmed.

Section 2. The Governing Body has been informed by or on behalf of the Entities that:

A. The Projects will be located in the County, at the general locations as shown on the site map attached as Exhibit A hereto, although the boundaries of the Projects have not yet been definitively determined. The Projects will consist of leased land, easements, rights-of-way and other property rights and all necessary and useful facilities and capital equipment and other tangible personal property for a wind farm, including but not limited to, all supporting towers, turbines, blades, nacelles, rotors, supporting structures and improvements, electrical lines and related assets for use in the generation and transportation of electricity

B. The Projects will consist of wind energy projects and are proposed to have the collective nameplate installed generating capacity of up to 1,300 MW, with each Project to be constructed by an Entity or an affiliate.

C. The proposed Project sites are located in the unincorporated areas of the County outside the boundaries of any incorporated municipality.

D. The maximum aggregate face amount of the Bonds to be issued with respect to the Projects is \$1,820,000,000.

E. The developers of the Projects will be each of the Entities (or one or more affiliates of the Entities that enter into agreements with the Entities for the development of applicable Projects), and the Entities will determine if up to six (6) separate Projects will be developed (or if Projects will be combined or consolidated resulting in the development of the Projects by fewer Entities).

F. The operator of the Projects will be each of the Entities (or one or more affiliates of the Entities who will enter into agreements with the Entities for the operation of applicable Projects).

G. Each Entity or affiliate will make all necessary arrangements with proposed bond purchasers for purchase of the Bonds, and the County shall have no responsibility to make such arrangements.

H. The Entities have agreed to pay or reimburse the County for the reasonable costs of the contract county attorney, independent bond counsel, financial advisors of the County engaged in connection with issuance of the Bonds, and all other expenses of the County directly related to processing the application for issuance of the Bonds, adoption of this Resolution, consideration and adoption of the Bond Ordinances and issuance of the Bonds. The Entities have agreed to such payment or reimbursement of such processing fees and expenses irrespective of whether the Bonds are issued.

I. The Entities have proposed to make payments in lieu of taxes based on the collective nameplate installed generating capacity of the Projects, to be allocated between the County, and, as applicable, the Estancia Municipal School District, the Corona Public School District, and the Vaughn Municipal School District, as agreed upon by those parties, which shall be as set forth in the Bond Ordinances or in the transaction documents approved by the Bond Ordinances, not later than the date on which the Project Property (referred to below) is acquired by the County.

J. The development, installation and operation of the Projects are subject to land use regulation and approval by the County.

Section 3. In order to promote the health, safety, security, general welfare, convenience and prosperity of the inhabitants of the County, it is the Governing Body's intent, subject to the conditions provided in Section 10 below, to take all necessary and advisable steps to consider and, if appropriate, to effect the issuance of the Bonds in one or more series in an aggregate principal not to exceed \$1,820,000,000 in order to defray part or all of the costs of the Projects. The Bonds are to be entitled substantially as follows "Torrance County, New Mexico Taxable Industrial Revenue Bonds ([Entity name] Project), Series [series designation]," similar to "Series 2019," "Series 2020," or "Series 2021," as applicable, provided however, that in the Bond Ordinances the County may designate different Bond titles, including but not limited to the

series designation. This expression of the Governing Body's intent is conditioned upon the issuance of the Bonds on or before five (5) years from the date of the adoption of this Resolution.

Section 4. The Bonds shall be payable solely from the revenues derived from the lease of the property and property rights acquired with the proceeds of the Bonds with respect to each Project (the "Project Property" or "Leased Property") or other moneys payable by the Entities 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. In addition, if the Bonds are issued, the Entities shall indemnify and hold harmless the County, the Governing Body and their respective officers, employees, designated representatives and agents (collectively, the "Indemnified Persons") from and against any liability to the Entities or to any third parties that may be asserted against the County, the Governing Body or other Indemnified Persons with respect to the County's legal ownership of or leasehold interest in the Projects and the Project Property of each Project or the County's 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 by the Entities that no costs are to be borne by the County and that all costs incurred by the County directly related to the adoption of this Resolution, negotiations with the Entities and the issuance of the Bonds are to be promptly reimbursed by the Entities, as applicable. 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 Entities or the Projects.

Section 5. The County understands that the Entities do not intend that interest on the Bonds be excludable from gross income of the holders of the Bonds under the Internal Revenue Code of 1986, as amended. The County further understands and requires that the Bonds will not be sold to investors other than an affiliate or parent of the applicable Entity, i.e., the Projects will be internally or "self-funded" by or through the parents or affiliates of the applicable Entity and that the related bond documents to be approved at the time of adoption of the Bond Ordinances will require purchase of the Bonds by an affiliate or parent of the applicable Entity.

Section 6. The Entities will act as agent for the County with respect to the Projects and in the acquisition of the Project Property. The County authorizes the Entities to act as agent for the purchase of wind generation equipment used to generate electricity from wind energy and related equipment as defined in NMSA 1978, Section 7-9-54.3 (2010) with respect to the

Projects. The Entities, as agents for the County and consistent with Taxation and Revenue Department Regulation 3.2.212.22 NMAC (the "Regulation"), will acquire, construct, equip and install the Projects. The Entities will, consistent with State law and as agents for the County, apply to the Taxation and Revenue Department for Type 9 Nontaxable Transaction Certificates ("Certificates"). The Entities will deliver the Certificates to each person selling capital equipment and other tangible personal property to the Entities for the Projects as applicable under the New Mexico Gross Receipts and Compensating Tax Act and the Regulation. As required by the Regulation, by adoption of this Resolution, the County authorizes each Entity or an affiliate acquiring, constructing, equipping and installing a Project, to act as agent for the County with respect to the purchase of capital equipment and other tangible personal property for the Project of each Entity. The Entities shall not use the Certificates other than for the purchase of capital equipment and other tangible personal property, nor shall any Entity use such Certificates after the completion of its Project. Prior to the use of such Certificates by the Entities as agents for the County, the County Manager and the Entities will agree to certain procedures regarding the use of the Certificates and protection of the County from any unfunded tax liability. In the event of a combination or consolidation of Projects as provided in Section 2 E above, the County authorizes the Entities to request a transfer and will support such request for transfer of a previously issued Certificate to the Entity that owns the combined or consolidated assets. This Resolution is intended to be an "inducement resolution" as that term is used in, and for the purposes of, the Regulation. The Entities will indemnify the County for any taxes or penalties that may be levied or assessed against the County pertaining to use of the Certificates.

Section 7. It is the intention of the Governing Body that the Bonds will be issued with a term not to exceed thirty (30) years. The County intends to enter into an agreement for lease of each Project with the Entity that owns such Project providing that all *ad valorem* (property) taxes will be abated during the term of the Bonds, subject to payment by such Entity of annual payments in lieu of *ad valorem* (property) taxes. The County intends that the amount and terms of the annual payments in lieu of *ad valorem* (property) taxes, mutually satisfactory to the County, and, as applicable, the Estancia Municipal School District, the Vaughn Municipal School District, the Corona Public School District and each Entity, will be negotiated and agreed prior to the date on which the Project Property is acquired by the County, and such agreement

shall be included in the Bond Ordinances or the leases of the Projects to be entered into by the County and the Entities.

Section 8. The County Commissioners, County Clerk or Deputy County Clerk 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 a series of 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 by the Governing Body pursuant to the Bond Ordinances, adopted following public notice of the Governing Body's intent to adopt such Bond Ordinances at least fourteen days prior to the consideration of the Bond Ordinances by the Governing Body at a public meeting, such public notice to contain the title and a general summary of the subject matter of the Bond Ordinances. In connection with this Resolution, the Entities have expressed their understanding that a failure or refusal of the Governing Body, however arising, to adopt the Bond Ordinance for any of the Projects will have the effect of voiding any Certificates issued to an Entity following adoption of this Resolution for capital equipment and other tangible personal property purchases and making such purchases subject to whatever tax would be due if such Certificates had not been issued.

Section 9. This Resolution shall not in any way obligate the County or any other person to issue the Bonds, obligate the County to issue any other bonds or in any other way to finance the Projects; and the County retains full and complete discretion with respect thereto.

Section 10. 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 by the Governing Body pursuant to the Bond Ordinances following reasonable public notice of the time, date and place of the public hearing to be held on the proposed adoption of the Bond Ordinances. The County Manager is hereby authorized to put the consideration of the adoption of the Bond Ordinances on the agenda of the Governing Body in accordance with County procedures and to provide notice of the date and time of such meeting and availability of such agenda at least 72 hours in advance all in accordance with Resolution No. 2019-02 or any successor resolutions pertaining to notice of public meetings of the County.

Section 11. 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 12. 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 13. The adoption of this Resolution shall not require any further action by the Governing Body on behalf of the County regarding the issuance of the Bonds or the terms and conditions of their issuance, such action, including adoption of the Bond Ordinances, being at the full and complete discretion of the Governing Body on behalf of the County.


Section 14. This Resolution shall take effect immediately upon its adoption and approval by the Governing Body.

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PASSED, ADOPTED, SIGNED AND APPROVED this ____ day of November, 2019.

BOARD OF COUNTY COMMISSIONERS,
TORRANCE COUNTY, NEW MEXICO






Ryan Schwebach, Commissioner




Javier Sanchez, Commissioner



Kevin McCall, Commissioner

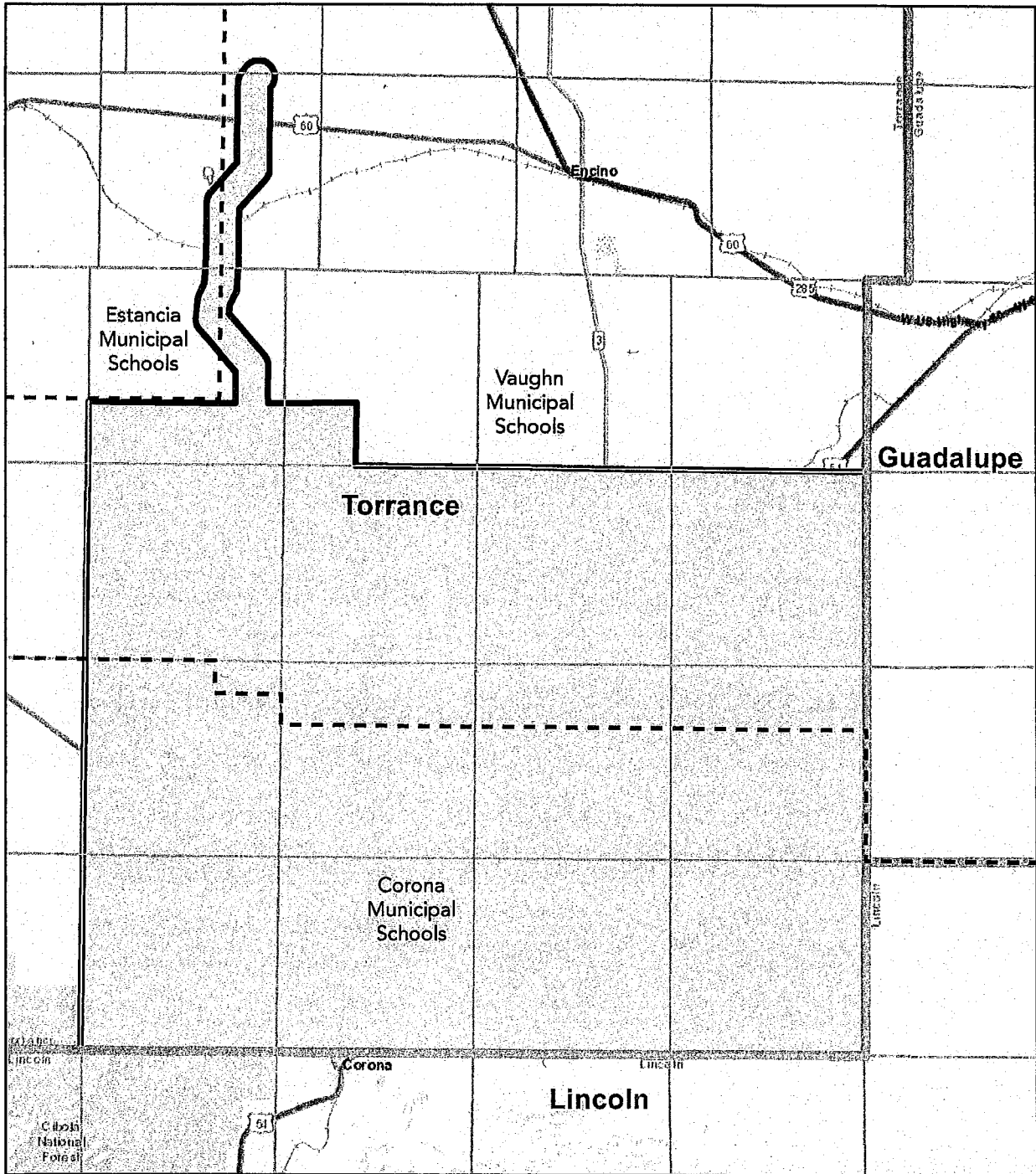
ATTEST:



Linda Jaramillo, County Clerk

EXHIBIT A – SITE MAP FOR PROJECTS

[ATTACHED]






-  School District
-  Township/Range
-  Project Land

EXHIBIT A
 Corona Wind Projects
 Torrance County,
 New Mexico

Privileged and Confidential



11/6/2019



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Commissioner [INSERT NAME] then moved that the resolution as filed with the County Clerk be passed and adopted. Commissioner [INSERT NAME] seconded the motion.

The question being upon the passage and adoption of said resolution, the motion was voted upon with the following result:

Those Voting Yea:

[Ryan Schwebach, Chair]
[Javier Sanchez, Member]
[Kevin McCall, Member]

Those Voting Nay:

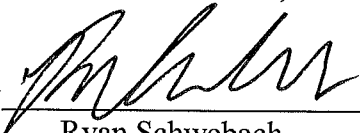
[None]

Those Absent:

[None]

The [Chair] thereupon declared that at least a majority of all the members of that Board having voted in favor thereof, the motion was carried and the resolution duly passed and adopted. After consideration of matters not relating to the resolution, the meeting on motion duly made, seconded and [unanimously] carried, was adjourned.

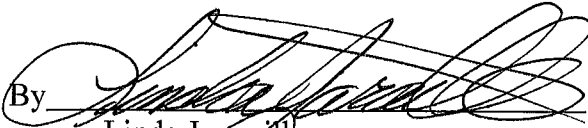
BOARD OF COUNTY COMMISSIONERS
TORRANCE COUNTY, NEW MEXICO

By 

Ryan Schwebach,
Chair



Attest:

By 

Linda Jaramillo,
County Clerk

