

RESOLUTION NO. 2019-[60]

A RESOLUTION RELATING TO THE PROPOSED INDUSTRIAL REVENUE BONDS TITLED TORRANCE COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (DURAN MESA LLC PROJECT), SERIES [2020]; TORRANCE COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (TECOLOTE WIND LLC PROJECT), SERIES [2020]; AND TORRANCE COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (RED CLOUD WIND LLC PROJECT), SERIES [2020] (COLLECTIVELY, THE "BONDS"); AND DIRECTING THE COUNTY CLERK TO PUBLISH NOTICE OF INTENT TO CONSIDER ORDINANCES AUTHORIZING THE ISSUANCE AND SALE OF THE BONDS IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE COUNTY.

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 health, safety, security, general welfare, convenience and the prosperity of the inhabitants of the County; and

WHEREAS, Duran Mesa LLC, a Delaware limited liability company authorized to do business in the State ("Duran Mesa"), Tecolote Wind LLC, a Delaware limited liability company authorized to do business in the State ("Tecolote"), and Red Cloud Wind LLC, a Delaware limited liability company authorized to do business in the State ("Red Cloud," and collectively with Duran Mesa and Tecolote, the "Company") have made a proposal to the County (the "Proposal") for acquisition by the County from the Company of a lease-hold and other interests in land and equipment and other tangible personal property located in the County which will constitute an authorized project under the Act, to be developed in one or more phases (the "Project"); and

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

WHEREAS, pursuant to Resolution 2019-[58], adopted November 13, 2019 (the "Inducement Resolution"), which is incorporated by reference herein, the Governing Body has previously expressed its intent to proceed with the issuance of the Bonds to be issued in one or more series, which constitutes one of the inducements whereby the Company will determine to proceed with the Project; and

WHEREAS, the Inducement Resolution requires that the Company's proposal to make payments in lieu of taxes based on the megawatt nameplate of installed electricity generating capacity of the Project (the "PILT"), to be allocated, as applicable, between and among the County, the Estancia Municipal School District, the Corona Public School District and the Vaughn Municipal School District, as agreed upon by those parties, be set forth in the ordinances approving the issuance and delivery of the Bonds (the "Bond Ordinance" or "Bond Ordinances") or in the transaction documents approved by each Bond Ordinance, not later than the date on which the Bonds are issued and delivered to the purchaser thereof; and

WHEREAS, the Inducement Resolution provided for issuance of the Bonds in calendar years 2019, 2020 or 2021, which may be postponed to the calendar year 2022, and therefore, the series designation for the Bonds should be Series 2020, Series 2021 or Series 2022, as applicable, or otherwise designated, as set forth in each Bond Ordinance; and

WHEREAS, the County and the Company understand that the adoption of this resolution (this "Resolution") shall not obligate the County to issue the Bonds except in full compliance with the terms of each Bond Ordinance to be adopted by the Governing Body and approval of the documents under which the County will acquire the Project and authorizing the issuance of the Bonds; and

WHEREAS, NMSA 1978, Section 4-37-7 (1981) 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 Governing Body 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 Governing Body and the officers and employees of the County, related to the Proposal, the acquisition, construction, equipping and installation of the Project, and the sale and issuance of the Bonds, are hereby ratified, approved and confirmed.

Section 2. 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 the Inducement Resolution, 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 \$1,400,000,000, in one or more series, in order to defray part or all of the costs of the Project. The Bonds are to be titled substantially as follows: "Torrance County, New Mexico Taxable Industrial Revenue Bonds (Duran Mesa LLC Project), Series 2020," "Torrance County, New Mexico Taxable Industrial Revenue Bonds (Tecolote Wind LLC Project), Series 2020," and "Torrance County, New Mexico Taxable Industrial Revenue Bonds (Red Cloud Wind LLC Project), Series 2020" provided, however, that in each Bond Ordinance, the County may designate a different title and series designation for any of the Bonds.

Section 3. The agreement requiring the Company to make PILT payments to the County, the Estancia Municipal School District, the Corona Public School District, and the Vaughn Municipal School District, as applicable and as agreed upon by those parties, shall be set forth in each Bond Ordinance or in the transaction documents approved by each Bond Ordinance.

Section 4. The members of the Governing Body 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, that 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 Governing Body pursuant to the Bond Ordinances.

Section 5. 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. 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 Governing Body retains full and complete discretion with respect thereto

Section 6. The Bond Ordinances shall be adopted following reasonable 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 specify the time, date and place of the Governing Body's public hearing on each Bond Ordinance and the meeting at which the Bond Ordinances will be considered, upon consultation with the applicable Company. The County Clerk is hereby directed, in accordance with NMSA 1978, Section 4-37-7 (1981), to publish in [*The Independent*], a newspaper of general circulation within the County, the title and general summary of the Bond Ordinances at least two weeks prior to the meeting at which the Governing Body will consider each Bond 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 of the Bond Ordinances and any necessary documents related thereto. The publication described in this Section 6 shall be in substantially in the form attached hereto as EXHIBIT A, with such changes as are not inconsistent herewith and approved by the County Manager. The County Manager is hereby authorized to put the consideration of the adoption of the Bond Ordinances on the agenda for the meeting of the Governing Body at which each Bond Ordinance will be considered in accordance with County procedures and to make such agenda available to the public at least 72 hours in advance of such meeting in accordance with Resolution No. [2019-02].

Section 7. 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.

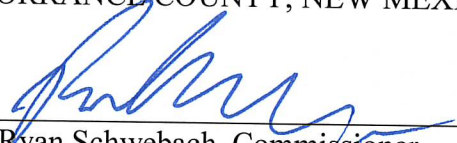
Section 8. All orders and resolutions, or parts thereof, in conflict with this Resolution are hereby repealed; provided, however, this repealer shall not be construed to revive any order, resolution or part thereof, heretofore repealed.

Section 9. This Resolution shall take effect immediately upon its adoption and approval by the Governing Body.

*[Signature page follows]*

PASSED, ADOPTED, SIGNED AND APPROVED this 5<sup>th</sup> day of December, 2019.

BOARD OF COUNTY COMMISSIONERS,  
TORRANCE COUNTY, NEW MEXICO

  
\_\_\_\_\_  
Ryan Schwebach, Commissioner

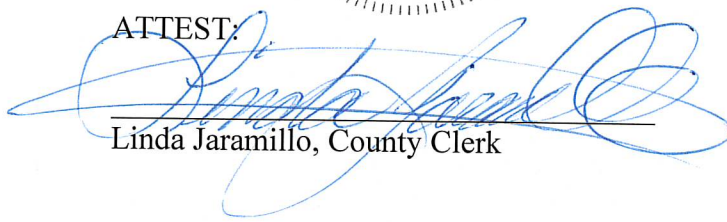
  
\_\_\_\_\_  
Javier Sanchez, Commissioner

  
\_\_\_\_\_  
Kevin McCall, Commissioner

(SEAL)



ATTEST:

  
\_\_\_\_\_  
Linda Jaramillo, County Clerk

*[Resolution No. 2019-[ ] Signature Page]*

**EXHIBIT A**

FORM OF NOTICE OF INTENT TO ADOPT BOND ORDINANCE

TORRANCE COUNTY, NEW MEXICO  
NOTICE OF MEETING AND INTENT TO ADOPT BOND ORDINANCE

Torrance County, New Mexico (the "County"), hereby gives notice of a regular Board of County Commissioners meeting on Wednesday, [January 8], 2019 at 8:00 a.m. in the Commission Chambers at the Administrative Offices of the County, located at 205 Ninth Street, Estancia, New Mexico. At such meeting, the Board of County Commissioners will hold a public hearing concerning, and will consider for adoption, an ordinance relating to the County's Taxable Industrial Revenue Bonds (Duran Mesa LLC Project), Series 2020, the County's Taxable Industrial Revenue Bonds (Tecolote Wind LLC Project), Series 2020, and the County's Taxable Industrial Revenue Bonds (Red Cloud Wind LLC Project), Series 2020 (collectively, the "Bonds"). Complete copies of each Ordinance are available for public inspection during the normal and regular business hours of the County Clerk, 205 Ninth Street, Estancia, NM 87016.

The title of each Ordinance (subject to amendment or substitution) is:

TORRANCE COUNTY, NEW MEXICO  
ORDINANCE NO. 2020-- \_\_\_\_\_

AUTHORIZING THE ISSUANCE AND SALE OF TORRANCE COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (DURAN MESA LLC PROJECT), IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$[350,000,000], TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF WIND ENERGY FACILITIES TO BE CONSTRUCTED IN ONE OR MORE PHASES FOR THE PURPOSE OF GENERATING ELECTRICITY AND LOCATED WITHIN THE COUNTY BUT OUTSIDE THE BOUNDARIES OF ANY INCORPORATED MUNICIPALITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, A SUBLEASE 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 PROJECTS; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

TORRANCE COUNTY, NEW MEXICO  
ORDINANCE NO. 2020-- \_\_\_\_\_

AUTHORIZING THE ISSUANCE AND SALE OF TORRANCE COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (TECOLOTE WIND LLC PROJECT), IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$[560,000,000], TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF WIND ENERGY FACILITIES TO BE CONSTRUCTED IN ONE OR MORE PHASES FOR THE PURPOSE OF GENERATING ELECTRICITY AND LOCATED WITHIN THE COUNTY BUT OUTSIDE THE BOUNDARIES OF ANY INCORPORATED MUNICIPALITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, A SUBLEASE 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 PROJECTS; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

TORRANCE COUNTY, NEW MEXICO  
ORDINANCE NO. 2020-- \_\_\_\_\_

AUTHORIZING THE ISSUANCE AND SALE OF TORRANCE COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (RED CLOUD WIND LLC PROJECT), IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$[490,000,000], TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF WIND ENERGY FACILITIES TO BE CONSTRUCTED IN ONE OR MORE PHASES FOR THE PURPOSE OF GENERATING ELECTRICITY AND LOCATED WITHIN THE COUNTY BUT OUTSIDE THE BOUNDARIES OF ANY INCORPORATED MUNICIPALITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, A SUBLEASE 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 PROJECTS; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

The titles set forth a general summary of the subject matter contained in each Ordinance.

As proposed in the Ordinances: (1) the Bonds will be issued under the authority of the New Mexico County Industrial Revenue Bond Act, NMSA 1978, Sections 4-59-1 to -16 (1975, as amended through 2015); (2) the proceeds of the Bonds will 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 in the County (the "Project") for the use by Duran Mesa LLC, Tecolote Wind LLC and Red Cloud Wind LLC and/or their

successors, assigns or affiliates (each, a “Company”); and (3) the Project will be leased to the Company by the County.

Under the terms of the proposed Lease Agreements (each, a “Lease”) between the County and each Company, each 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 each Lease. Each series of Bonds will be issued pursuant to an Indenture (the “Indenture”) proposed to be entered into among each Company, the County, the purchaser of the Bonds 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 LAWS 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 their respective Indenture and Ordinance.

This notice constitutes compliance with NMSA 1978, Section 4-37-7 (1981).

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Torrance County Manager’s Office at 205 9<sup>th</sup> Street Room 12 Estancia, NM 87106 (505) 544-4700 at least one week prior to the meeting or as soon as possible. Public documents, including the agendas and minutes, can be provided in various accessible formats. Please contact the Torrance County Clerk’s Office at 205 9<sup>th</sup> Street Room 1 Estancia, NM 87106 (505) 544-4350 if a summary or other type of accessible format is needed.

Dated this [20<sup>th</sup>] day of [December], 2019.

BOARD OF COUNTY COMMISSIONERS  
OF TORRANCE COUNTY, NEW MEXICO

By: \_\_\_\_\_  
Ryan Schwebach, Chair