

TORRANCE COUNTY, NEW MEXICO

RESOLUTION NO. 2021 - 37

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 \$3,500,000,000 (THE "BONDS") IN CONNECTION WITH AN INDUSTRIAL REVENUE BOND PROJECT 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 PATTERN SC HOLDINGS LLC, A DELAWARE LIMITED LIABILITY COMPANY, OR ANY AFFILIATED ENTITY THEREOF AND THEIR RESPECTIVE SUCCESSORS, ASSIGNS AND/OR THEIR AFFILIATES (COLLECTIVELY, THE "COMPANY"), TO DEVELOP THE PROJECT SITE AND ACQUIRE, CONSTRUCT, EQUIP AND INSTALL THE PROJECT BEING DEVELOPED BY THE COMPANY 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 2021) (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 Company submitted a proposal to the County (the "Proposal") whereby the County will acquire from the Company, land and equipment located in the County which will constitute an industrial revenue project to be developed by the Company in one or more phases (the "Project"); and

WHEREAS, the County will acquire the 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, the Project will constitute a project as defined under the Act and the Project is proposed to have the collective nameplate installed generation capacity of approximately 1,500 megawatts (subject to increase or reduction, provided, however, that the principal amount of the Bonds shall not exceed \$3,500,000,000); and

WHEREAS, the issuance of taxable industrial revenue bonds in one or more series for the Project (collectively, the “Bonds”) by the County is necessary to finance all or a part of the Project, and tax incentives associated therewith, are inducements whereby the Company will determine to acquire, construct, equip and install the Project; 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 Project has been considered by the Governing Body and the Governing Body has determined that the Project 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 the Project; and

WHEREAS, concurrently with the issuance of the Bonds, the Company will enter into a lease agreement with the County providing for the payment by the Company of lease rentals on the Project sufficient to pay the debt service on the Bonds, subject to the prior adoption by the Governing Body of an ordinance approving such an agreement and other related documents and authorizing issuance of the Bonds (the “Bond Ordinance”); and

WHEREAS, the County and the Company understand that the adoption of this resolution (the “Resolution”) shall not obligate the Governing Body or the County to adopt the Bond Ordinance for the Project, to issue the Bonds or obligate the Company to proceed with the Project, except pursuant to the terms of the Bond Ordinance and related bond documents in forms satisfactory to the County as presented by the Company 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 Proposal, the acquisition, construction, equipping and installation of the Project, and the sale and issuance of the Bonds therefor, in one or more series, are hereby ratified, approved and confirmed.

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

A. The Project will be located in the County, at the general location illustrated in green within the boundaries of the County on the site map attached as Exhibit A hereto, although the boundaries of the Project have not yet been definitively determined and therefore are subject to revision. The Project 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 Project will consist of a wind energy project and is proposed to have the nameplate installed generating capacity of approximately 1,500 MW (subject to increase or reduction, provided, however, that the principal amount of the Bonds shall not exceed \$3,500,000,000), with the Project to be constructed by the Company or an affiliate thereof.

C. The proposed Project site is 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 Project is \$3,500,000,000.

E. The developer of the Project will be the Company (or one or more affiliates of the Company that enter into agreements with the Company for the development of the Project).

F. The operator of the Project will be the Company (or one or more successors, assigns, or affiliates of the Company who will enter into agreements with the Company for the operation of the Project).

G. The Company or its affiliates 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 Company has agreed to pay or reimburse the County for the reasonable costs of 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 Ordinance and issuance of the Bonds. The Company has agreed to such payment or reimbursement of such processing fees and expenses irrespective of whether the Bonds are issued.

I. The Company has proposed to make payments in lieu of taxes based on the nameplate installed generating capacity of the Project, to be allocated between the County, the Corona Municipal School District, the Estancia Municipal School District, the Moriarty Municipal School District, the Mountainair Public School District, and the Vaughn Municipal School District (together, the "Districts"), 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 Project Property (referred to below) is acquired 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 8 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 \$3,500,000,000, 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 (Pattern SC Holdings LLC Project), Series [*series designation*]," similar to "Series 2021," "Series 2022," or "Series 2023," as applicable, provided however, that in the Bond Ordinance the County may designate a different Bond title, including but not limited to a designation of one or more series. This expression of the Governing Body's

intent is conditioned upon the issuance of the Bonds on or before three (3) 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 the Project (the “Project Property”) 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. In addition, if the Bonds are issued, the Company shall indemnify and hold harmless the County, the Governing Body and their respective officials, 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 Governing Body or other Indemnified Persons with respect to the County’s legal ownership of or leasehold interest in the Project and the Project Property or the County’s issuance of the Bonds, except to the extent NMSA 1978, Sections 56-7-1 (2005) and 56-7-2 (2003) apply, and except claims for any loss or damage arising out of or resulting from the gross negligence or willful misconduct of the County, the Governing Body or other Indemnified Persons. 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 County 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 Company and the issuance of the Bonds are to be promptly reimbursed by the Company, 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 Company or the Project.

Section 5. The County understands that the Company does 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 to affiliated entities of the Company or affiliates of affiliated entities of the Company or the parent of the Company and their respective successors and assigns, i.e., the Project will be internally or “self-funded”, and that the related bond documents to be approved at the time of adoption of the Bond Ordinance will require purchase of

the Bonds by affiliated entities of the Company or affiliates of affiliated entities of the Company or the parent of the Company and their respective successors and assigns.

Section 6. The Company will act as agent for the County with respect to the Project and in the acquisition of the Project Property. The County authorizes the Company 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 Project. The Company, as agent 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 Project. The Company 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 Company will deliver the Certificates to each person selling capital equipment and other tangible personal property to the Company for the Project 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 the Company or its affiliate to act as agent for the County in acquiring, constructing, equipping and installing the Project, to act as agent for the County with respect to the purchase of capital equipment and other tangible personal property for the Project. The Company shall not use the Certificates other than for the purchase of capital equipment and other tangible personal property, 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 may agree to certain procedures regarding the use of the Certificates and protection of the County from any unfunded tax liability. This Resolution is intended to be an "inducement resolution" as that term is used in, and for the purposes of, the Regulation. The Company 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 the Project with the Company or affiliate that owns the Project providing that all *ad valorem* (property) taxes will be abated during the term of the Bonds, subject to payment by such Company or affiliate of annual payments in lieu of *ad valorem* (property) taxes. The County

intends that the amount of annual payments in lieu of *ad valorem* (property) taxes to be paid to the County and the Districts, shall be determined not later than the date on which the Project Property is acquired by the County, and such agreement shall be included in the Bond Ordinance or in the transaction documents approved by the Bond Ordinance.

Section 8. The County Commissioners, the County Manager, the County Clerk or Deputy County Clerk and other appropriate County officials and employees, and advisors such as Bond Counsel to the County and the County's Financial Advisor (as directed by the County's officials), 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 Ordinance, adopted following public notice of the Governing Body's intent to adopt such Bond Ordinance at least fourteen days prior to the consideration of the Bond Ordinance 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 Ordinance and the meeting agenda to be made available to the public at least 72 hours in advance of such meeting, all in accordance with Resolution No. 2021-1 or any successor resolutions pertaining to notice of public meetings of the County In connection with this Resolution, the Company has expressed its understanding that a failure or refusal of the Governing Body, however arising, to adopt the Bond Ordinance for the Project will have the effect of voiding any Certificates issued to the Company 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 Project; and the County retains full and complete discretion with respect 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. 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 Ordinance, being at the full and complete discretion of the Governing Body on behalf of the County.

Section 13. 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 13th day of October, 2021.


BOARD OF COUNTY COMMISSIONERS,
TORRANCE COUNTY, NEW MEXICO



Ryan Schwebach, Chair

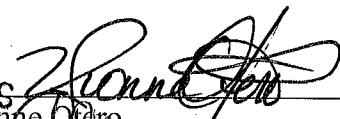


Kevin McCall, Vice Chair

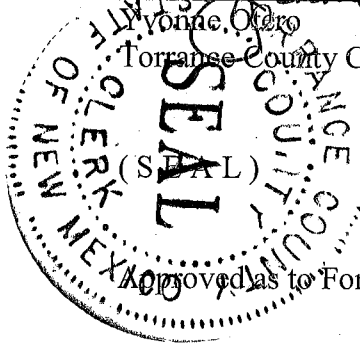


LeRoy M. Candelaria, Member

ATTEST:



Yvonne Otero
Torrance County Clerk

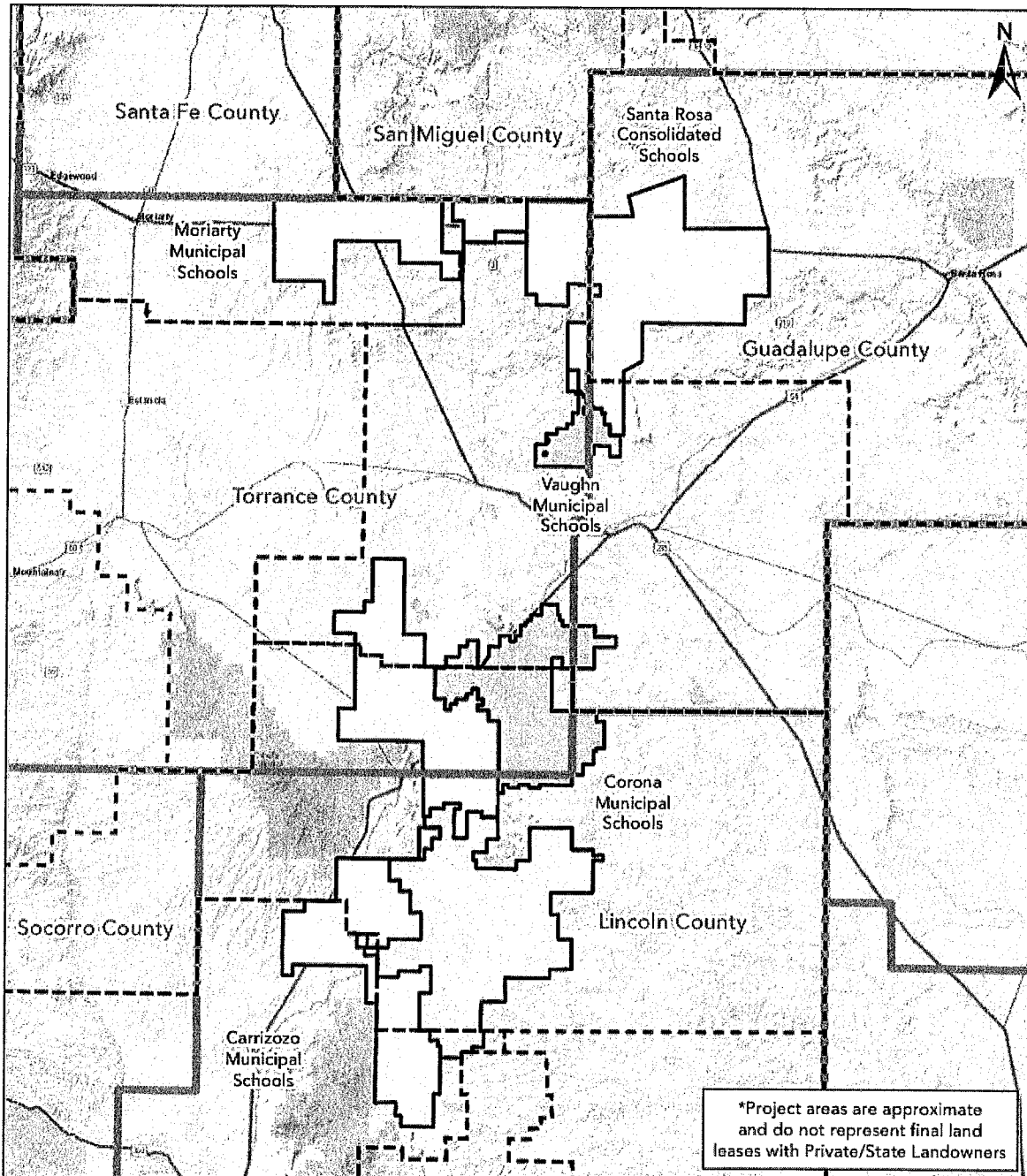

SEAL
CLERK OF TORRANCE COUNTY, NEW MEXICO

Approved as to Form and Sufficiency:




John M. Butrick, Esq.
Torrance County Attorney

[Signature page to Resolution No. _____]



School District
 Mesa Canyons Land
 SunZia Land
 Western Spirit Wind

**Pattern Wind Projects
New Mexico**

Privileged and Confidential

 8/5/2021

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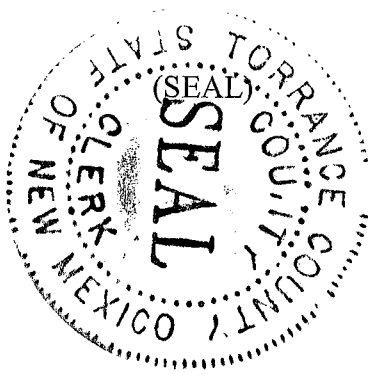
STATE OF NEW MEXICO)
) ss.
COUNTY OF TORRANCE)

I, Yvonne Otero, County Clerk of Torrance County, New Mexico (the "County"), do hereby certify:

1. The foregoing pages are a true, correct and complete copy of the record of the proceedings of the Board of County Commissioners (the "Board") of the County, constituting the governing body of the County, taken at a duly called regular, open meeting of the Board held in the Commission Chambers at the Administrative Offices of the County, located at 205 Ninth Street, Estancia, New Mexico, being the regular meeting place of the Board, on Wednesday, October 13, 2021, beginning at 9:00 a.m., insofar as the same relate to the proposed resolution, a copy of which is set forth in the official records of the proceedings of the County kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Notice of such meeting was given in compliance with the permitted methods of giving notice of meetings of the Board as required by the open meetings standards then in effect, i.e., the County's Open Meetings Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of Torrance County, New Mexico, this ____ day of October, 2021.



[Handwritten Signature]

Yvonne Otero
Torrance County Clerk