

RESOLUTION NO. R-18-41

A RESOLUTION RELATING TO THE PROPOSED INDUSTRIAL REVENUE BONDS ENTITLED GRANT COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (GREAT DIVIDE WIND FARM, LLC PROJECT), SERIES 2018; DECLARING THE INTENT OF GRANT COUNTY TO ISSUE SUCH INDUSTRIAL REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT UP TO \$400,000,000 IN CONNECTION WITH A PROPOSED PROJECT LOCATED WITHIN THE BOUNDARIES OF GRANT COUNTY FOR THE PURPOSE OF INDUCING GREAT DIVIDE WIND FARM, 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 Grant 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, Great Divide Wind Farm, LLC, a Delaware limited liability company (“Scout”), has made a proposal to the County (the “Proposal”) whereby the County will acquire from Great Divide Wind Farm, LLC, a Delaware limited liability company, formed by Scout and authorized to do business in New Mexico (the “Company”), land and equipment located in the County which will constitute an industrial development project with up to 250 megawatts of generating capacity, to be constructed in one or more phases (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; 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 GRANT 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 therefore, 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 wind energy project with up to 250 megawatts of generating capacity, and may be constructed in one or more phases.

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 has proposed to make payments in lieu of taxes based on the megawatt of generating capacity of the Project, to be allocated between the County and the Silver 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 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 \$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 entitled substantially as follows: "Grant County, New Mexico Taxable Industrial Revenue Bonds (Great Divide Wind Farm, LLC Project), Series 2018," provided, however, that the Bond Ordinance may authorize a different title and series designation for the Bonds. This expression of the Commission's intent is subject to the provisions of Section 6 of this Resolution and conditioned upon the issuance of the Bonds on or before December 31, 2021, or by such other deadline for issuance of the Bonds as may be provided by the Bond Ordinance or the documents executed and delivered in connection with issuance of 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 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 "wind 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 wind generation equipment.

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 Silver Consolidated Schools 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 *Silver City Daily Press*, a newspaper of general circulation within the County, a title and general summary of the ordinance relating to and authorizing issuance of the Bonds 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 18th day of October, 2018.

BOARD OF COUNTY COMMISSIONERS,
GRANT COUNTY, NEW MEXICO

Gerald W. Billings Jr., Commission Chairman



Gabriel Ramos, Commissioner



Brett Kasten, Commissioner

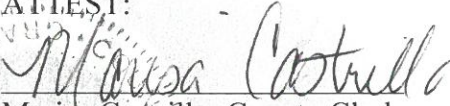
Alicia Edwards, Commissioner



Harry Browne, Commissioner

(SEAL)

ATTEST:



Marisa Castrillo, County Clerk

