

GRANT COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS
ORDINANCE NO. O-18-01

AUTHORIZING THE ISSUANCE AND SALE OF GRANT COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (GREAT DIVIDE WIND FARM, LLC PROJECT) SERIES 2019 IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$400,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF WIND ENERGY GENERATION FACILITIES FOR THE PURPOSE OF GENERATING ELECTRICITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, 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 PROJECTS; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Grant County, New Mexico (the “County”) is a legally and regularly created, established, organized and existing political subdivision of the State of New Mexico (the “State”) created pursuant to NMSA 1978, Sections 4-9-1 to -2 (1867, as amended through 1917); and

WHEREAS, pursuant to NMSA 1978, Sections 4-59-1 to -16 (1975, as amended through 2015) (the “Act”), the County is authorized to acquire industrial revenue projects to be located within the County, to issue industrial revenue bonds and to use the proceeds of such bonds for the purpose of promoting the use of the natural resources of the State and promoting industry and developing trade or other economic activity to secure and maintain a balanced and stable economy in the County to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, Great Divide Wind Farm, LLC (the “Company”), is a Delaware limited liability company, based in Boulder, Colorado; and

WHEREAS, the Company has presented to the Board of County Commissioners (the “Commission”) of the County a proposal whereby the County would issue its Taxable Industrial Revenue Bonds (Great Divide Wind Farm, LLC Project), Series 2019 (the “Bonds” or “2019 Bonds”), and acquire, construct, and install wind energy generation facilities and associated electrical generating equipment and real property used to generate electricity from wind energy (the “Project Property”), located within the County and outside the corporate limits of any municipality in the County (the “Project Site”), to be used by the Company for the generation and transportation of electricity (the “Project”); and

WHEREAS, on October 18, 2018, the Commission approved Resolution No. R-18-41, which, among other things, declared the Commission’s intent to issue the Grant County, New

Mexico Taxable Industrial Revenue Bonds (Great Divide Wind Farm, LLC Project) Series 2018 and issued notices to the property taxing jurisdictions within the County informing them that the Commission intended to consider an ordinance concerning those bonds at its December 20, 2018 Regular Meeting. Following the adoption of Resolution No. R-18-41 and the issuance of the notices to the property taxing jurisdictions, the Company informed the County Manager that it expects that the bonds discussed therein to be issued in calendar year 2019 and, therefore, the series designation should be indicated as Series 2019 rather than Series 2018. Therefore, any references to the Grant County, New Mexico Taxable Industrial Revenue Bonds (Great Divide Wind Farm, LLC Project) Series 2018 shall be construed to refer to the 2019 Bonds; and

WHEREAS, the Company has proposed to make payments in lieu of taxes (the "PILOT") equal to \$1,750 per megawatt of generating capacity of the Project, but in no event to be less than \$280,000, which represents the PILOT to be paid on a project with a 160 megawatt generating capacity, and such PILOT to be shared in equally between the County and the Silver Consolidated School District (the "District") with the County and the District each receiving one-half of the PILOT; and

WHEREAS, under the Company's proposal, the County would enter into an Indenture (the "Indenture") with an Affiliate of the Company (as defined in the Indenture) as the purchaser of the 2019 Bonds (the "Purchaser") and BOKF, NA (the "Depository"), pursuant to which and together with this ordinance (the "Bond Ordinance"), the County would issue the 2019 Bonds; and

WHEREAS, under the Company's proposal, the County and the Company would enter into the Lease Agreement (the "Lease"), pursuant to which the Company will lease the Project Property from the County and the Company will make payments sufficient to pay the principal of and interest on the 2019 Bonds and to pay all other obligations incurred pursuant to the provisions of the Lease and this Bond Ordinance; and

WHEREAS, the County is authorized to enter into, deliver and perform all of its obligations under the Bond Documents (as defined below) and to issue, execute and deliver the Bonds pursuant to the Act and the Bond Ordinance; and

WHEREAS, the 2019 Bonds in a principal amount not to exceed \$400,000,000 will be issued, sold and delivered by the County in a private sale to the Purchaser pursuant to the bond purchase agreement to be dated as of the initial date of delivery of the Bonds among the County, the Purchaser and the Company (the "Bond Purchase Agreement"); and

WHEREAS, the proceeds of the 2019 Bonds shall be applied to pay the costs of acquiring, constructing and installing the Project Property and to pay certain costs associated with the issuance and sale of the 2019 Bonds; and

WHEREAS, the Commission has determined that it is in the best interest of the County to issue the 2019 Bonds and to execute and deliver the Bond Documents (as defined below) and other documents related thereto; and

WHEREAS, the County will enter into the following documents in connection with the issuance of the 2019 Bonds:

1. The Lease
2. The Indenture
3. The Bond Purchase Agreement

(collectively referred to in this Bond Ordinance as the “Bond Documents”); and

WHEREAS, the County is authorized to issue the 2019 Bonds under the Act and after having considered the Company’s proposal, has concluded that it is desirable at this time to authorize the issuance of the 2019 Bonds to finance the Project and that the County’s issuance of the 2019 Bonds will constitute and be a valid public purpose; and

WHEREAS, this Commission has been advised by Bond Counsel that the disclosure provisions of Rule 15c2-12 of the Securities and Exchange Commission are not applicable to this transaction inasmuch as the 2019 Bonds are being sold in a private sale to the Purchaser without participation of an underwriter; and

WHEREAS, there has been published in the *Silver City Daily Press and Independent*, a newspaper of general circulation in the County, public notice of the Commission’s intention to adopt this Bond Ordinance, which notice contained certain information concerning the ownership, purpose, location and size of the Project and the amount of the 2019 Bonds to be issued to finance the Project, which notice was published at least fourteen (14) days prior to final action upon this Bond Ordinance; and

WHEREAS, the County, the Company and the District have negotiated and agreed upon the PILOT to be provided to the District pursuant to NMSA 1978, Section 4-59-4(A)(2) (2003).

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF GRANT COUNTY, NEW MEXICO:

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Bond Ordinance previously taken by the Commission and the officials of the County directed toward approval of the issuance and sale of the Bonds be approved and the same hereby are ratified, approved and confirmed.

Section 2. FINDINGS.

A. General. The Commission hereby declares that it has considered all relevant information presented to it relating to the Bonds and the Project and hereby finds and determines that the issuance of the Bonds pursuant to the Bond Ordinance to provide funds for the acquisition, construction and installation of the Project Property is necessary and advisable and in the interest of and will promote the use of the natural resources of the State, industry and trade and a sound and proper balance in the State between agriculture, commerce and industry.

B. The Commission finds that:

(1) The Bonds will be issued for the purpose of financing the acquisition, construction and installation of the Project.

(2) The aggregate face amount of obligations to be issued with respect to financing the Project will not collectively exceed \$400,000,000.

(3) The developer of the Project is the Company.

(4) The Project Site is located within the County and outside the corporate limits of any municipality located in the County.

Section 3. BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Bonds in a principal amount not to exceed \$400,000,000 and the use of the proceeds of the Bonds to finance the cost of the Project including payment of transaction expenses related thereto are hereby approved and confirmed. The sale of the Bonds at par at a purchase price not to exceed \$400,000,000 is approved.

B. Form and Terms.

Subject to the limitations set forth in this Bond Ordinance, the Bonds shall (i) be in the form and denomination and shall be numbered and dated as set forth in the Indenture, (ii) be payable as to principal and interest and subject to redemption in the amounts, upon the conditions and at the times and prices set forth in the Indenture; and (iii) be issued in a principal amount not to collectively exceed \$400,000,000, bearing interest at the rate and maturing on the date set forth in the Indenture.

C. Execution. The Bonds shall be signed by the Chair of the Board of County Commissioners of the County.

D. Interest Rate. The interest rate on the Bonds shall not exceed 5% per annum.

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The Bond Documents in the forms presented to the Commission are hereby approved. The Chair of the Board of County Commissioners of the County is authorized to approve the form, terms and provisions of the Bond Documents on behalf of the Commission, provided that such form, terms and provisions are consistent with this Bond Ordinance, and to execute and deliver in the name and on behalf of the County, and the County Clerk or Deputy County Clerk are hereby authorized to attest, as necessary, the Bond Documents. The Chair and the County Clerk or Deputy County Clerk are further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other

agreements, including security agreements, and to do such other acts and things, either prior to or after the date of delivery of the Bonds, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents. The Chair, the County Manager and County Clerk and/or Deputy County Clerk and other officers of the County shall take such action as is necessary to effectuate the provisions of the Indenture and shall take such action as is necessary in conformity with the Act to finance the costs of the Project and to carry out related transactions as contemplated by this Bond Ordinance and the Bond Documents, including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Bonds.

Section 5. DELIVERY OF BONDS. Upon the execution of the Bond Documents, the satisfaction of the conditions set forth in the Bond Documents and upon receipt of the purchase price for the Bonds, the Bonds shall be executed, authenticated and delivered to the Purchaser. The Bonds shall not be valid for any purpose until the Bonds have been properly authenticated as set forth in the Indenture.

Section 6. FUNDS AND ACCOUNTS. There is established in the Indenture, and on and after the date on which the Bonds are issued there shall be maintained, the funds and accounts as set forth in the Indenture. Other funds and accounts may be established as are necessary under the Indenture.

Section 7. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER MATTERS. The following determinations are made:

A. The maximum amount necessary in each year to pay the principal of and interest on the Bonds, assuming issuance of the Bonds as of December 1, 2019, in the maximum aggregate principal amount of \$400,000,000 and bearing a maximum interest rate of 5.00%, is as follows:

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Year	Total Debt Service	Principal	Interest
2019	\$20,000,000	-0-	\$20,000,000
2020	20,000,000	-0-	20,000,000
2021	20,000,000	-0-	20,000,000
2022	20,000,000	-0-	20,000,000
2023	20,000,000	-0-	20,000,000
2024	20,000,000	-0-	20,000,000
2025	20,000,000	-0-	20,000,000
2026	20,000,000	-0-	20,000,000
2027	20,000,000	-0-	20,000,000
2028	20,000,000	-0-	20,000,000
2029	20,000,000	-0-	20,000,000
2030	20,000,000	-0-	20,000,000
2031	20,000,000	-0-	20,000,000
2032	20,000,000	-0-	20,000,000
2033	20,000,000	-0-	20,000,000
2034	20,000,000	-0-	20,000,000
2035	20,000,000	-0-	20,000,000
2036	20,000,000	-0-	20,000,000
2037	20,000,000	-0-	20,000,000
2038	20,000,000	-0-	20,000,000
2039	20,000,000	-0-	20,000,000
2040	20,000,000	-0-	20,000,000
2041	20,000,000	-0-	20,000,000
2042	20,000,000	-0-	20,000,000
2043	20,000,000	-0-	20,000,000
2044	20,000,000	-0-	20,000,000
2045	20,000,000	-0-	20,000,000
2046	20,000,000	-0-	20,000,000
2047	20,000,000	-0-	20,000,000
2048	420,000,000	\$400,000,000	20,000,000

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B. The Bonds will bear interest at the rate of five percent (5.00%) per annum, or such other lower rate as is set forth in the Indenture.

C. The Bonds may be redeemed at any time without premium.

D. It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund for the maintenance of the Project Property.

E. The Lease shall require that the Company maintain the Project Property in safe repair and in such operating condition as is needed for its operations and carry proper insurance with respect to the Project Property as provided in the Lease.

F. The Lease shall require the Company to make lease payments in an amount sufficient to pay the principal of and interest on the Bonds as principal and interest become due and to pay all Related Costs (as defined in the Lease).

G. The Lease shall include a provision that the Company pay the County payments in lieu of taxes ("PILOT Payments") for so long as the Bonds are outstanding. The amount of the PILOT Payments shall be acceptable to the Commission and the Board of Education of the Silver Consolidated School District.

Section 8. LIMITED OBLIGATIONS. The Bonds shall be special limited obligations of the County, payable solely from the Base Rent (as defined in the Lease) paid by the Company to the County as described in the Indenture and any other property or interest of the County specifically pledged under the Indenture and shall never constitute a debt or indebtedness of the County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing contained in the Bond Ordinance or in the Bond Documents or any other instruments shall be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing powers, nor shall the breach of any agreement contained in the Bond Ordinance, the Bond Documents, the Bonds or any other instrument be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, the County having no power to pay out of its general funds, or otherwise contribute any part of the costs of constructing or equipping the Project Property, nor power to operate the Project Property as a business or in any manner except as lessor of the Project Property.

Section 9. APPROVAL OF INDEMNIFICATION. The Commission specifically requires that the Lease contain provisions relating to indemnification which provide that the Company shall indemnify and hold harmless the County and its Board of County Commissioners, officials, employees and agents against liability to the Company, or to any third

parties, that may be asserted against the County or its Board of County Commissioners, officials, members, officers, employees or agents with respect to the County's ownership of the Project Property or the issuance of the Bonds and arising from the condition of the Project Property or the acquisition, construction and operation of the Project Property by the Company, except to the extent NMSA 1978, Section 56-7-1 (2005) may preclude such indemnity, and except claims for any loss or damage to the extent caused by the gross negligence or willful misconduct of the County or its Board of County Commissioners, or any official, employee or agent of the County.

Section 10. BOND ORDINANCE IRREPEALABLE. After the Bonds are issued, the Bond Ordinance shall be and remain irrepealable until the Bonds, including interest, are fully paid, canceled and discharged in accordance with the Indenture.

Section 11. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

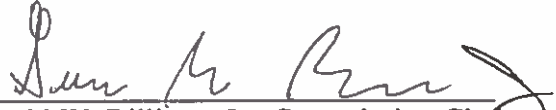
Section 12. SEVERABILITY. If any section, paragraph, clause or provision of the Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of the Bond Ordinance.

Section 13. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Bond Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the Chair of the Board of County Commissioners, and by the signature of the County Clerk or any Deputy County Clerk, and shall be recorded in the ordinance book of the County, kept for that purpose, and shall be in full force and effect thereafter in accordance with the laws of the State, and notice of adoption thereof shall be published once in a newspaper which maintains an office in, and is of general circulation in the County.

[Signature page follows]

Done this 20th day of December, 2018.

BOARD OF COUNTY COMMISSIONERS,
GRANT COUNTY, NEW MEXICO


Gerald W. Billings, Jr., Commission Chairman


Gabriel Ramos, Commissioner


Brett Kasten, Commissioner

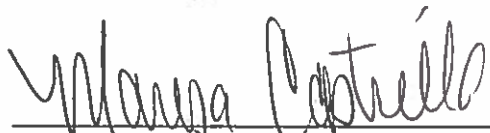

Alicia Edwards, Commissioner


Harry Browne, Commissioner

(SEAL)



ATTEST:

By: 
Marisa Castrillo, County Clerk