



LUNA COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS
ORDINANCE NO. 119

**AN ORDINANCE AMENDING TWO IRBS, THE FIRST AMONG THE COUNTY,
SOLAR PV DEVELOPMENT NM 18 II LLC AND CARNE SOLAR BONDCO, LLC
FOR THE CARNE SOLAR PROJECT, SERIES 2022A, AND THE SECOND AMONG
THE COUNTY, CARNE ENERGY STORAGE, LLC AND CARNE STORAGE
BONDCO, LLC FOR THE CARNE SOLAR PROJECT, SERIES 2022B**

AUTHORIZING THE AMENDMENT OF COUNTY ORDINANCES 115 AND 116 AND THE IRB TRANSACTIONS CONTEMPLATED THEREWITH; AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN LEASE AMENDMENTS AND SUBLEASE AMENDMENTS IN CONNECTION WITH THE AMENDMENT OF COUNTY ORDINANCES 115 AND 116; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE AMENDMENT OF COUNTY ORDINANCES 115 AND 116; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS AMENDING ORDINANCE.

WHEREAS, Luna County, New Mexico (the “County”) is a legally and regularly created, established, organized and existing county under the general laws of the State of New Mexico (the “State”); and

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 2023) (the “Act”), which authorizes Luna 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, the Act, at NMSA 1978, Section 4-59-2(F) (2020), defines the term “project” to include, among other things, a commercial enterprise in storing, warehousing, distributing or selling products of agriculture, mining or industry, including any electric generation or transmission facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or

CONTINUATION PAGE 2, ORDINANCE NO. 119

operation of the facility, pursuant to the Public Utility Act, NMSA 1978, Chapter 62, Articles 1 through 6 and 8 through 13; and

WHEREAS, on December 19, 2022, the County adopted: (i) Ordinance No. 115 (the “Series 2022A Bond Ordinance”) authorizing the issuance of the County’s Taxable Industrial Revenue Bonds (Carne Solar Project), Series 2022A (the “Series 2022A Bonds”) for the benefit of Solar PV Development NM II LLC, a New Mexico limited liability company authorized to do business in the State (the “Series 2022A Company”), to defray the costs associated with an approximately 130 megawatt (“MW”) solar energy generating system (the “Series 2022A Project”); and (ii) Ordinance No. 116 (the “Series 2022B Bond Ordinance” and together with the Series 2022A Bond Ordinance, the “Bond Ordinances”) authorizing the issuance of the County’s Taxable Industrial Revenue Bonds (Carne Solar Project), Series 2022B (the “Series 2022B Bonds” and together with the Series 2022A Bonds, the “Bonds”) for the benefit of Carne Energy Storage, LLC, a Delaware limited liability company authorized to do business in the State (the “Series 2022B Company” and together with the Series 2022A Company, the “Company”), to defray the costs associated with an approximately 65 MW battery energy storage system (the “Series 2022B Project” and together with the Series 2022A Project, the “Project”); and

WHEREAS, prior to the adopting the Bond Ordinances, the County adopted Resolution No. 22-89 on November 14, 2022, issuing an energy production facility special use permit to the Company for the Project (the “Permit”); and

WHEREAS, on June 23, 2023, the County issued the Bonds and acquired the Project; and

WHEREAS, in connection with the Bonds, the County entered into (i) that certain Lease Agreement between the Series 2022A Company and the County dated as of June 1, 2023 and recorded in the records of the County Clerk with Recording No. 202302630 (the “Series 2022A Lease”); (ii) that certain Lease Agreement between the Series 2022B Company and the County dated as of June 1, 2023 and recorded in the records of the County Clerk with Recording No. 202302633 (the “Series 2022B Lease” and together with the Series 2022A Lease, the “Leases”); (iii) that certain Sublease Agreement between the Series 2022A Company and the County dated as of June 1, 2023 and recorded in the records of the County Clerk with Recording No. 202302629 (the “Series 2022A Sublease”); and (iv) that certain Sublease Agreement between the Series 2022B Company and the County dated as of June 1, 2023 and recorded in the records of

LUNA COUNTY-NM
BERENDA MCWRIGHT, CLERK
202400121
2 of 8
01/12/2024 09:48:28 AM
BY PAULAG

CONTINUATION PAGE 3, ORDINANCE NO. 119

the County Clerk with Recording No. 202302632 (the “Series 2022B Sublease” and together with the Series 2022A Sublease, the “Subleases”); and

WHEREAS, the Company has requested that additional real property (the “Additional Property”) be incorporated into the Project through the County’s adoption of this ordinance (this “Amending Ordinance”), which would amend the Bond Ordinances, the Leases, the Subleases, and the Permit to include the Additional Property (the “Proposal”); and

WHEREAS, 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, the Proposal has been considered by the Governing Body and the Governing Body has determined that the Proposal 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 actions contemplated in connection with the Proposal;

WHEREAS, notice of the County’s intent to consider this Amending Ordinance for adoption was mailed by certified mail, return receipt requested, on or before December 10, 2023 to the County Assessor and each entity located within the County authorized to levy taxes on property in the County (the “Notice Letters”), allowing for comments to be transmitted by such entities to the County, consistent with NMSA 1978, Section 4-59-4.1(A) (2011); and

WHEREAS, the Notice of Intent to Adopt an Ordinance was duly published in The Deming Headlight on December 20, 2023 in accordance with Section 4-37-7, NMSA 1978, as amended, which publication is deemed to comply with the procedures and policies of the County with respect to such publications; and

WHEREAS, there have been filed with the County Clerk and presented to the Board the forms of the First Amendment to Lease Agreement between the County and the Series 2022A Company and consented to by Carne Solar Bondco, LLC (the “Series 2022A Lease Amendment”), the First Amendment to Lease Agreement between the County and the Series 2022B Company and consented to by Carne Storage Bondco, LLC (the “Series 2022B Lease Amendment” and together with the Series 2022A Lease Amendment, the “Lease Amendments”), the First Amendment to Sublease Agreement between the County and the Series 2022A Company (the “Series 2022A Sublease Amendment”), the First Amendment to Sublease Agreement between the County and the Series 2022B Company (the “Series 2022B Sublease

LUNA COUNTY-NM
BERENDA MCHRIGHT, CLERK
202400121
3 of 8
01/12/2024 09:48:28 AM
BY PAULAG

CONTINUATION PAGE 4, ORDINANCE NO. 119

Amendment” and together with the Series 2022A Sublease Amendment, the “Sublease Amendments”); and

WHEREAS, there is on deposit with the County Clerk the proposed form of this Amending Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY, NEW MEXICO THIS 11TH DAY OF JANUARY, 2024:

SECTION 1. *Ratification.* All actions not inconsistent with the provisions of this Amending Ordinance previously taken by the Board and the officials of the County directed toward the Proposal are approved and ratified.

SECTION 2. *Approval of Proposal.* The Proposal is hereby approved in all respects.

SECTION 3. *Approval of Lease Amendments and Sublease Amendments.* The Lease Amendments and the Sublease Amendments, substantially in the forms presented herewith, with such changes, insertions, deletions and modifications as may be approved by the Chair of the Board or County Manager and as may be recommended by Bond Counsel, are hereby ratified and approved. All such changes, insertions, deletions and modifications shall be deemed to have been approved by the County upon execution and delivery of the Amendment Documents, such execution and delivery to be conclusive evidence of such approval. The Chair of the Board or County Manager is hereby authorized and directed to execute and deliver the Lease Amendments and the Sublease Amendments on behalf of the County and the County Clerk or a deputy Clerk acting in her absence is hereby authorized and directed to attest the Lease Amendments and the Sublease Amendments when required.

SECTION 4. *Amendment of the Bond Ordinances and the Permit.* The Bond Ordinances and the Permit are hereby amended consistent with the Proposal to incorporate the Additional Property into the Project.

SECTION 5. *General Authorization.* The Board hereby authorizes, empowers and directs each of the officers (including the Board officers) and employees of the County, and its counsel, to execute, carry out or cause to be carried out, and to perform, such obligations of the County and such other actions as they, in consultation with Bond Counsel and advisors to the County in connection with the Proposal, shall consider necessary or advisable in connection with this Amending Ordinance, including but not limited to the obligations of the County contained in

LUNA COUNTY-NM
BERENDA MCWRIGHT, CLERK
202400121
4 of 8
01/12/2024 09:48:28 AM
BY PAULAG

CONTINUATION PAGE 5, ORDINANCE NO. 119

the Leases, the Lease Amendments, the Subleases, the Sublease Amendments and such other documents and any amendments, from time to time, thereto, deemed necessary.

SECTION 6. *Severability.* If any one or more provisions of this Amending Ordinance should be determined by a court of competent jurisdiction to be contrary to law, any such provision shall be deemed separable from the remaining provisions hereof and the invalidity or unenforceability thereof shall in no way affect the validity or the enforceability of the other provisions of this Amending Ordinance.

SECTION 7. *No Recourse and Liability.* All covenants, stipulations, obligations and agreements of the County contained in this Amending Ordinance, and in the documents hereby approved and authorized for execution shall be deemed to be the covenants, stipulations, obligations and agreements of the County, and all such covenants, stipulations, obligations and agreements shall be binding upon the County, and, except as otherwise provided in this Amending Ordinance and such documents, all rights, powers and privileges conferred, and duties and liabilities imposed, upon the County by the provisions of this Amending Ordinance and in the documents hereby approved and authorized for execution, shall be exercised or performed by the Board; provided that no covenant, stipulation, obligation or agreement herein contained or contained in any document hereby approved and authorized for execution shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, director, member, or employee of the County in his or her individual capacity, and neither the members of the Board nor any officials executing the Lease Amendments and the Sublease Amendments shall be liable personally on the Lease Amendments and the Sublease Amendments or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 8. *Repealer Clause.* All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

SECTION 9. *Effective Date; Termination Date.* Upon due adoption of this Amending Ordinance, it shall be recorded in the book of ordinances of the County kept for that purpose, and this Amending Ordinance shall be in full force and effect 30 days thereafter, in accordance with law.

LUNA COUNTY-NM
BERENDA MCWRIGHT, CLERK
202400121
5 of 8
01/12/2024 09:48:28 AM
BY PAULAG

CONTINUATION PAGE 6, ORDINANCE NO. 119

SECTION 10. *General Summary for Publication.* Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Amending Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

**LUNA COUNTY, NEW MEXICO
NOTICE OF ADOPTION OF ORDINANCE NO. 119**

NOTICE IS HEREBY GIVEN of the title and of a general summary of the subject matter of an ordinance, duly adopted and approved by the Board of County Commissioners of Luna County, New Mexico (the "County") on January 11, 2024.

Ordinance No. 119:

AN ORDINANCE AMENDING TWO IRBS, THE FIRST AMONG THE COUNTY, SOLAR PV DEVELOPMENT NM 18 II LLC AND CARNE SOLAR BONDCO, LLC FOR THE CARNE SOLAR PROJECT, SERIES 2022A, AND THE SECOND AMONG THE COUNTY, CARNE ENERGY STORAGE, LLC AND CARNE STORAGE BONDCO, LLC FOR THE CARNE SOLAR PROJECT, SERIES 2022B

AUTHORIZING THE AMENDMENT OF COUNTY ORDINANCES 115 AND 116 AND THE IRB TRANSACTIONS CONTEMPLATED THEREWITH; AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN LEASE AMENDMENTS AND SUBLEASE AMENDMENTS IN CONNECTION WITH THE AMENDMENT OF COUNTY ORDINANCES 115 AND 116; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE AMENDMENT OF COUNTY ORDINANCES 115 AND 116; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS AMENDING ORDINANCE.

The title sets forth a general summary of the subject matter contained in the Ordinance.

COMPLETE COPIES OF THE ORDINANCE ARE ON FILE IN THE OFFICE OF THE COUNTY CLERK, 700 S SILVER AVE, DEMING, NEW MEXICO 88030, AND ARE AVAILABLE FOR INSPECTION OR PURCHASE DURING REGULAR OFFICE HOURS. THIS NOTICE ALSO CONSTITUTES COMPLIANCE WITH SECTIONS 6-14-4 THROUGH 6-14-7, NMSA 1978.

LUNA COUNTY-NM
BERENDA MCWRIGHT, CLERK
202400121
6 of 8
01/12/2024 09:48:28 AM
BY PAULAG

CONTINUATION PAGE 7, ORDINANCE NO. 119

WITNESS my hand this 11 day of January, 2024.

/s/ Chris A. Brice

Chris A. Brice, County Manager

(End of Form of Ordinance for Publication)

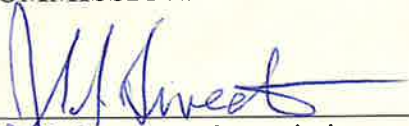
[Remainder of page intentionally left blank]

LUNA COUNTY-NM
BERENDA MCWRIGHT, CLERK
202400121
7 of 8
01/12/2024 09:48:28 AM
BY PAULAG

CONTINUATION PAGE 8, ORDINANCE NO. 119

PASSED and ADOPTED this 11th day of January, 2024.

**LUNA COUNTY BOARD OF COUNTY
COMMISSIONERS**



John S. Sweetser, Commissioner



Ray J. Trejo, Commissioner



Colette M. Chandler, Commissioner

ATTEST:



Berenda McWright, County Clerk

LUNA COUNTY-NM
BERENDA MCHRIGHT, CLERK
202400121
8 of 8
01/12/2024 09:48:28 AM
BY PAULAG

