

Be it remembered that at a Regular Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 14th day of November 2022, the following proceedings were had and entered of record.

RESOLUTION NO. 22-84

CALL TO ADOPT ORDINANCE 115; AN ORDINANCE APPROVING AN IRB BETWEEN LUNA COUNTY AND SOLAR PV DEVELOPMENT NM 18 II LLC AND CARNE ENERGY STORAGE LLC FOR THE CARNE SOLAR PROJECT; SERIES 2022A AND ORDINANCE 116; AN ORDINANCE APPROVING AN IRB BETWEEN LUNA COUNTY AND SOLAR PV DEVELOPMENT NM 18 II LLC AND CARNE ENERGY STORAGE LLC FOR THE CARNE SOLAR PROJECT; SERIES 2022B

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

WHEREAS, Carne Energy Storage, LLC, a Delaware limited liability company authorized to do business in the State (the “Company”) has made a proposal to the County (the “Proposal”) for acquisition by the County from the Company currently planned facilities and equipment and other tangible personal property to be located in the County relating to an approximately 130 megawatt (“MW”) solar energy generating system and associated approximately 65 MW battery energy storage system which will each constitute an authorized project under the Act to be developed by the Company in one or more phases (each a “Project” and collectively the “Projects”); and

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

WHEREAS, concurrently with the issuance of the Bonds, the Company will enter into lease agreements with the County providing for the payment by the Company of lease rentals on its Projects sufficient to pay the debt service on the Bonds, subject to the prior adoption by the Governing Body of one or more ordinances approving such agreements and other related documents and authorizing issuance of the Bonds (individually, a "Bond Ordinance" and collectively, the "Bond Ordinances"); and

WHEREAS, prior to issuing the Bonds and acquiring a Project, the Company will negotiate an annual in-lieu tax payment to be made, in compliance with the Act (collectively, the "PILOTs"); 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 Ordinances or a Bond Ordinance for any Project, to issue the Bonds or obligate the Company to proceed with any Project, except pursuant to the terms of the Bond Ordinance or Bond Ordinances 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 LUNA 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 Projects, and the sale and issuance of the Bonds therefor, are hereby ratified, approved and confirmed.

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

A. The Projects will be located in the unincorporated portions of the County, at the general locations previously described by the Company to the County, although the boundaries of the Projects have not yet been definitively determined. The Projects 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 solar energy generation project, including but not limited to, all solar thermal energy collection, concentration and heat transfer and conversion equipment; solar tracking hardware and software; photovoltaic panes and inverters; support structures; turbines and associated electrical generating equipment used to generate electricity from solar thermal energy and to store such electricity; and related equipment, as well as transformers, circuit breakers and switching and metering equipment and supporting structures and improvements, electrical lines and related assets for use in the generation, storage and transportation of electricity.

B. The Projects will consist of solar energy projects and are proposed to have the collective nameplate installed generating capacity of up to approximately 130 MW, with battery storage capacity of approximately 65 MW, with each Project to be developed, constructed and operated by the Company.

C. The proposed project sites are 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 Projects is \$335,000,000.

E. The Company 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.

F. The Company has agreed to pay or reimburse the County for the reasonable costs of its 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 or Bond Ordinances 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.

G. The Company has proposed to make PILOTs, which shall be as set forth in the Bond Ordinance or Bond Ordinances or in the transaction documents approved by the Bond Ordinance or Bond Ordinances, not later than the date on which the Project Property (referred to below) is acquired by the County.

H. The development, installation and operation of the Projects are subject to land use regulation and approval by the County, which approval the County has provided to the Company in the County's issuance of its final approval of the energy production facility permit on November 14, 2022.

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 Sections 10 and 11 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 \$335,000,000 in order to defray part or all of the

costs of the Projects. The Bonds are to be entitled substantially as follows “Luna County, New Mexico Taxable Industrial Revenue Bonds (Carne Solar Project), Series [series designation],” similar to “Series 2022A,” or “Series 2022B,” as applicable, provided however, that in the Bond Ordinance or Bond Ordinances the County may designate different Bond titles, including but not limited to the series designation. This expression of the Governing Body’s intent is conditioned upon the issuance of the Bonds on or before five (5) 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 each Project (the “Project Property” or “Leased 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 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, the Governing Body or other Indemnified Persons with respect to the County’s legal ownership of or leasehold interest in the Projects and the Project Property of each Project or the County’s 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 by the Company 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 Projects.

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 an affiliate or parent of the Company, i.e., the Projects will be internally or “self-funded” by or through the parents or affiliates of the Company and that the related bond documents to be approved at the time of adoption of the Bond Ordinance or Bond Ordinances will require purchase of the Bonds by an affiliate or parent of the Company.

Section 6. The Company will act as agent for the County with respect to the Projects and in the acquisition of the Project Property. The County authorizes the Company to act as agent for the purchase of solar generation equipment used to generate electricity from solar energy and related equipment as defined in NMSA 1978, Section 7-9-54.3 (2010) with respect to the Projects. 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 Projects. The Company will, consistent with State law and as agent for the County,

apply to the Taxation and Revenue Department for Type 9 Nontaxable Transaction Certificates (the "Certificates"). The Company will deliver the Certificates to each person selling capital equipment and other tangible personal property to the Company for the Projects 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 an affiliate acquiring, constructing, equipping and installing a Project, to act as agent for the County with respect to the purchase of capital equipment and other tangible personal property for the Projects. The Company shall not use the Certificates other than for the purchase of capital equipment and other tangible personal property, nor shall it use such Certificates after the completion of the Projects. 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 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 each Project with the Company providing that all ad valorem (property) taxes will be abated during the term of the Bonds, subject to payment by the Company of annual payments in lieu of ad valorem (property) taxes (i.e, the PILOTs). The County intends that the amount and terms of the annual payments in lieu of ad valorem (property) taxes, mutually satisfactory to the County will be negotiated and agreed prior to the date on which the Project Property is acquired by the County, and such agreement shall be included in the Bond Ordinance or Bond Ordinances or the leases of the Projects to be entered into by the County and the Company. The County Manager and County Attorney are hereby authorized and directed to negotiate such payments with the Company, the details of which shall be included in the Bond Ordinance or Bond Ordinances and/or the forms of the transaction documents approved therein.

Section 8. The County Commissioners, County Clerk or Deputy County Clerk 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 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 or Bond Ordinances, adopted following public notice of the Governing Body's intent to adopt such Bond Ordinances at least fourteen days prior to the consideration of the Bond Ordinance or Bond Ordinances 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 or Bond Ordinances. In connection with this Resolution, the Company has expressed its understanding that a failure or refusal of the Governing Body, however arising, to adopt a Bond Ordinance for any of the Projects will have the effect of voiding any Certificates issued to the Company for that Project 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 Projects; and the County retains full and complete discretion with respect thereto.

Section 10. 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 by the Governing Body pursuant to the Bond Ordinance or Bond Ordinances following reasonable public notice of the time, date and place of the public hearing to be held on the proposed adoption of the Bond Ordinance or Bond Ordinances.

Section 11. 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 each Bond Ordinance 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 the Bond Ordinance and the meeting at which the Bond Ordinance will be considered, upon consultation with the Company. The County Attorney is hereby directed, in accordance with NMSA 1978, Section 4-37-7 (1981), to publish in The Deming Headlight, 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 Attorney may undertake such publication upon his own initiative, following consultation with the County Manager, and the Company having addressed the amounts and terms of the PILOTs to be made by the Company to the County's satisfaction. The publications described in this Section 11 shall be in substantially in the forms attached hereto as EXHIBIT A, and EXHIBIT B, 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 the County's resolutions pertaining to notice of public meetings of the County.

Section 12. The County Manager is hereby authorized and directed to give notice of the County's intent to consider the Bond Ordinance or Bond Ordinances for adoption, which notice shall be provided to the County Assessor and each entity located within the County authorized to levy taxes on property in the County, so that comments can be transmitted by such entities to the County, such notice to be provided by certified mail, return receipt requested, at least 30 calendar days prior to the meeting at which final action is to be taken on the Bond Ordinance or Bond Ordinances, as required by NMSA 1978, Section 4-59-4.1(A) (2011).

Section 13. 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 14. 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 15. 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 or Bond Ordinances, being at the full and complete discretion of the Governing Body on behalf of the County.

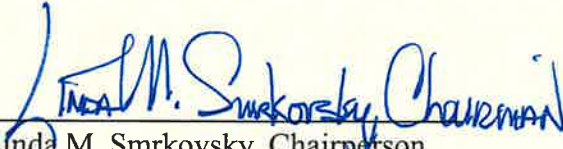
Section 16. This Resolution shall take effect immediately upon its adoption and approval by the Governing Body.

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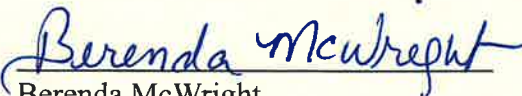
DONE THIS 14th DAY OF NOVEMBER, 2022

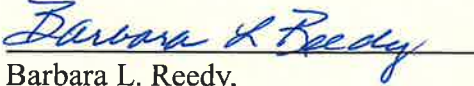
by the Board of County Commissioners of Luna County

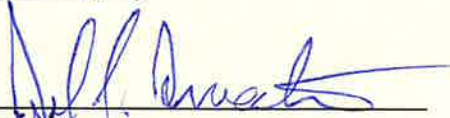
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LUNA COUNTY, NEW MEXICO


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