

LUNA COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS
ORDINANCE NO. 94



AUTHORIZING THE ISSUANCE AND SALE OF LUNA COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BOND (TPE ALTA LUNA, LLC PROJECT) SERIES 2015 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$50,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A SOLAR PHOTOVOLTAIC ELECTRIC GENERATING FACILITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, A BOND AND OTHER DOCUMENTS, IN CONNECTION WITH THE ISSUANCE OF THE BOND AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE; AND DECLARING AN EMERGENCY.

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BY MDUARTE

WHEREAS, Luna County (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 Sections 4-30-1 and 4-30-2, NMSA 1978, as amended; and

WHEREAS, pursuant to New Mexico Statutes Annotated, Sections 4-59-1 through 4-59-16 NMSA 1978, as amended (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, TPE Alta Luna, LLC (the "Company"), is a limited liability company organized under the laws of the State of Delaware and qualified to do business in the State of New Mexico; and

WHEREAS, the Company has presented to the Commission a proposal whereby the County would (i) issue its Taxable Industrial Revenue Bonds (TPE Alta Luna, LLC Project), Series 2015 (the "Bonds") in an aggregate principal amount of up to \$50,000,000, and (ii) acquire certain solar photovoltaic electric generating equipment and property used to generate electricity, and land and buildings related thereto (collectively, the "Project Property"), located within a part of the County which is outside the corporate limits of any municipality in the County, and to be used by Company for its operations relating to photovoltaic solar power generation; and

WHEREAS, the Company has requested that the County issue industrial revenue bonds for the purpose of providing funds to finance the acquisition, construction, installation and equipping of a photovoltaic solar power generation facility (the "Project"). The County has been advised by the Company that neither location approval nor a certificate of convenience and necessity are required prior to commencing construction or operation of the facility pursuant to the laws of the State; and

WHEREAS, under the Company's proposal, the County would enter into an Indenture of Trust (the "Indenture") with the Company, TPE Alta Luna IRB Holdings, LLC, a limited liability company organized under the laws of the State of Delaware (the "Purchaser") and a Depositary acceptable to the County and the Purchaser pursuant to which, together with this ordinance (the "Bond Ordinance"), the County would issue the Bonds; and

WHEREAS, under the Company's proposal, the County and the Company would enter into a Lease (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 Bonds and to pay all other obligations incurred pursuant to the provisions of the Lease and the Bond Ordinance; and

WHEREAS, in anticipation of entering into the Lease, the Company's proposal contemplates that the Company and the County will enter in to a Sublease Agreement pursuant to which the Company will sublease the Project Site to the County (the "Sublease");

WHEREAS, the Bonds in a principal amount not to exceed \$50,000,000 will be issued sold and delivered by the County, in a private sale to the Purchaser, pursuant to a 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 Bonds shall be applied to pay the costs of the Project and to pay certain costs associated with the transaction; and

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

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

1. Lease
2. Indenture
3. Bond Purchase Agreement
4. Bonds
5. The Sublease

The Lease, Indenture, Bond Purchase Agreement, Bonds and the Sublease are collectively referred to in this Bond Ordinance as the "Bond Documents;" and

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

WHEREAS, the County is authorized to issue the 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 Bonds to finance the Project and that the County's issuance of the 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 Bonds are being sold in a private sale without participation of an underwriter; and

WHEREAS, there has been published in *The Deming Highlight*, 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 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 acquisition of the Project Property has been approved by the Deming Public School District.

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

ARTICLE I THE PROJECT

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 this Bond Ordinance to provide funds for the Project 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:

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(1) The Bonds will be issued for the purpose of financing the Project.

(2) The aggregate face amount of obligations to be issued with respect to financing the Project is not to exceed \$50,000,000.

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

(4) The Project Property is located in the County 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 \$50,000,000 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 \$50,000,000 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 optional and mandatory redemption and defeasance 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 exceed \$50,000,000, bearing interest at the rate and maturing on the date set forth in the Indenture.

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

D. Interest Rate. The interest rate on the Bonds shall be four percent (4%).

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The Lease shall include a provision that the Company shall make annual payments in lieu of taxes ("PILOT Payments") to the County and the Deming Public School District for so long as the Bonds are outstanding. The amount of the annual PILOT Payments shall be acceptable to the Commission and the Deming Public School District.

The Bond Documents in the form presented to the Commission are hereby approved. The presiding officer 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 is hereby authorized to attest, as necessary, the Bond Documents.

The presiding officer of the Board of County Commissioners is further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including security agreements and subordination 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 presiding officer of the Board of County Commissioners the County Manager 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 for carrying out other 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, 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 July 1, 2015, in the maximum aggregate principal amount of \$50,000,000 and bearing an interest rate of 4%, is as follows:

<u>Year</u>	<u>Total Debt Service</u>	<u>Principal</u>	<u>Interest</u>
2015	\$-0-	\$-0-	\$-0-
2016	\$-0-	\$-0-	\$-0-
2017	\$-0-	\$-0-	\$-0-
2018	\$-0-	\$-0-	\$-0-
2019	\$-0-	\$-0-	\$-0-
2020	\$-0-	\$-0-	\$-0-
2021	\$-0-	\$-0-	\$-0-
2022	\$-0-	\$-0-	\$-0-
2023	\$-0-	\$-0-	\$-0-
2024	\$-0-	\$-0-	\$-0-
2025	\$-0-	\$-0-	\$-0-
2026	\$-0-	\$-0-	\$-0-
2027	\$-0-	\$-0-	\$-0-

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2028	\$-0-	\$-0-	\$-0-
2029	\$-0-	\$-0-	\$-0-
2030	\$-0-	\$-0-	\$-0-
2031	\$-0-	\$-0-	\$-0-
2032	\$-0-	\$-0-	\$-0-
2033	\$-0-	\$-0-	\$-0-
2034	\$-0-	\$-0-	\$-0-
2035	\$-0-	\$-0-	\$-0-
2036	\$-0-	\$-0-	\$-0-
2037	\$-0-	\$-0-	\$-0-
2038	\$-0-	\$-0-	\$-0-
2039	\$-0-	\$-0-	\$-0-
2040	\$101,000,000	\$50,000,000	\$51,000,000*

* Includes \$1,000,000 in accrued interest corresponding to the 6-month period from the assumed July 1, 2015 issue date through December 31, 2015; and \$2,000,000 in accrued interest per year thereafter through the maturity date of the Bonds.

B. The Bonds will bear interest at the rate of four percent (4%).

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 requires 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 requires 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.

G. The Bonds shall be issued on or before December 31, 2015.

Section 8. LIMITED OBLIGATIONS. The Bonds shall be a special limited obligation of the County, payable solely from the Basic 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 this Bond Ordinance or in the Bond Documents or any other instrument 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 this 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 New Mexico Statutes Annotated Section 56-7-1, 1978 Compilation, would preclude such indemnity, and except claims for any loss or damage arising out of or resulting from 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 irrevocable until the Bonds, including interest, are fully paid, canceled and discharged or there has been defeasance of the Bonds in accordance with the Indenture.

ARTICLE II MISCELLANEOUS

Section 1. 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 2. 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 3. EMERGENCY; RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. Because of the urgent need to obtain funding to effect the Project, the Commission and the Chairman of the Commission hereby find that an emergency exists which is declared to be an immediate danger to the public health, safety and welfare of the County, and upon due adoption of this emergency Bond Ordinance, shall be authenticated by the signature of

the presiding officer of the Board of 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, in accordance with law, and the Bond Ordinance shall be in full force and effect upon such publication.

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Done this 9th day of July, 2015.

Andrea Rodriguez
County Clerk
by Maria Rualloff

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



By [Signature]
Chair

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