

ROOSEVELT COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS
ORDINANCE NO.2024-03

AUTHORIZING THE ISSUANCE AND SALE OF ROOSEVELT COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (BLACKWATER SOLAR, LLC PROJECT), SERIES 2025 IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$315,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF SOLAR PHOTOVOLTAIC ELECTRIC GENERATING AND STORAGE FACILITIES FOR THE PURPOSE OF GENERATING AND STORING ELECTRICITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A SUBLEASE AGREEMENT, 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, Roosevelt 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 4-3-1 through 4-3-4, NMSA 1978; and

WHEREAS, pursuant to the Industrial Revenue Bond Act (Sections 4-59-1 through 4-59-16, NMSA 1978) (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, Blackwater Solar Center, LLC, a Delaware limited liability company (the "Company") has proposed to the County that it will construct and operate the Project (defined below); and

WHEREAS, the Company has presented to the Roosevelt County Board of County Commissioners (the "Commission") a proposal whereby the County would issue its Taxable Industrial Revenue Bonds (Blackwater Solar Center, LLC Project), Series 2025 (or such other series designation as set forth in the Indenture) (the "Bonds"), to finance the acquisition, construction, equipping and installation of certain solar photovoltaic electric generating and energy battery storage equipment and related facilities and real property (the "Project Property") used to generate and store electricity from solar energy related to the Blackwater Solar, LLC Project, which shall be located in the County and outside the corporate limits of any municipality in the County (the "Project Site"); and



WHEREAS, under the Company's proposal, the County would enter into an Indenture (the "Indenture") with an affiliated entity serving as the purchaser of the Bonds (the "Purchaser"), the Company, and BOKF, NA (the "Depository"), pursuant to which and 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 the Sublease Agreement, pursuant to which the Company will sublease its leasehold interest in the Project Site to the County, and 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 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 Bonds in a principal amount not to exceed \$315,000,000 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 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 Bonds; 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 (as defined below) and other documents related thereto; and

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

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

(collectively referred to in this Bond Ordinance as the "Bond Documents"); 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 to the Purchaser without participation of an underwriter; and

WHEREAS, there has been published in the *Eastern New Mexico News*, 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 Company will make payments in lieu of tax ("PILOT") to the County for each year in which the Bonds are outstanding, in a dollar amount per megawatt of generating/storage capacity of the Project, as agreed between the Company and the County, and such PILOTs to be allocated among the County, and the Portales Municipal School District, the Elida Municipal School District, the Texico Municipal School District, the Dora Municipal School District, the Floyd Municipal School District, the Melrose Municipal School District, and the House Municipal School District, (collectively, the "School Districts") as required by NMSA 1978, Section 4-59-4(A)(2) (2024), or in accordance with any subsequent amendments thereto as are in effect at the time of issuance of the Bonds; and

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF ROOSEVELT 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 equipping of the Project.

(2) The aggregate face amount of obligations to be issued with respect to financing the Project will not collectively exceed \$315,000,000.

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

(4) The Project Site consists of a tract consisting of approximately 2,018.65 acres in an unincorporated area of the County, and located approximately 12 miles northeast of Portales, New Mexico.

Section 3. BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Bonds in a principal amount not to exceed \$315,000,000 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 \$315,000,000 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, shall be numbered, dated, and contain the series designation 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 \$315,000,000, 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 the Commission.

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

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The Bond Documents in the form presented to the Commission are hereby approved. The Chair and Vice Chair of the Commission are each authorized to approve the final 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 Chair and Vice Chair of the Commission and the County Clerk are each 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 and Vice Chair of the Commission, 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 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 as set forth in the Bond Purchase Agreement and the Indenture, 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 31, 2025 in the maximum aggregate principal amount of \$315,000,000; the first, full annual interest payment for the Bonds being due on December 31, 2025; and the Bonds bearing a maximum interest rate of five percent (5%), is as follows:

<u>Year</u>	<u>Total Debt Service</u>	<u>Principal</u>	<u>Interest</u>
2025	\$15,750,000	-0-	\$15,750,000
2026	\$15,750,000	-0-	\$15,750,000
2027	\$15,750,000	-0-	\$15,750,000
2028	\$15,750,000	-0-	\$15,750,000
2029	\$15,750,000	-0-	\$15,750,000
2030	\$15,750,000	-0-	\$15,750,000
2031	\$15,750,000	-0-	\$15,750,000
2032	\$15,750,000	-0-	\$15,750,000
2033	\$15,750,000	-0-	\$15,750,000
2034	\$15,750,000	-0-	\$15,750,000
2035	\$15,750,000	-0-	\$15,750,000
2036	\$15,750,000	-0-	\$15,750,000
2037	\$15,750,000	-0-	\$15,750,000
2038	\$15,750,000	-0-	\$15,750,000
2039	\$15,750,000	-0-	\$15,750,000



2040	\$15,750,000	-0-	\$15,750,000
2041	\$15,750,000	-0-	\$15,750,000
2042	\$15,750,000	-0-	\$15,750,000
2043	\$15,750,000	-0-	\$15,750,000
2044	\$15,750,000	-0-	\$15,750,000
2045	\$15,750,000	-0-	\$15,750,000
2046	\$15,750,000	-0-	\$15,750,000
2047	\$15,750,000	-0-	\$15,750,000
2048	\$15,750,000	-0-	\$15,750,000
2049	\$15,750,000	-0-	\$15,750,000
2050	\$15,750,000	-0-	\$15,750,000
2051	\$15,750,000	-0-	\$15,750,000
2052	\$15,750,000	-0-	\$15,750,000
2053	\$15,750,000	-0-	\$15,750,000
2054	\$15,750,000	\$315,000,000	\$330,750,000

B. The Bonds will bear interest at a rate not to exceed five percent (5%), per annum.

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 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 Lease shall include provisions that the pay to each of the County and the School Districts a PILOT for so long as the Bonds are outstanding. The total amount of the PILOT for the Project shall be determined as provided in Section 8 of this Ordinance.

Section 8. APPROVALS PURSUANT TO SUBSEQUENT RESOLUTION OF THE COMMISSION. As a condition precedent to the issuance of the Bonds, the Commission shall adopt a resolution supplementing this Ordinance (the "Supplemental Resolution"), which shall approve the following:

A. the annual PILOT amount and related features for payment by the Company; and



B. a form of agreement addressing the use, maintenance and repair of County roads to be used by or on behalf of the Company for the mobilization, construction, operation and decommissioning of the Project (the "Road Use Agreement"), the execution and delivery of which shall be a condition precedent to the issuance of the Bonds.

The County will not be obligated to issue the Bonds unless and until the County adopts the Supplemental Resolution, and the County's adoption of the Supplemental Resolution is at the County's sole and absolute discretion.

Section 9. 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 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 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 10. 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 the Commission and its members, officials, employees and agents against liability to the Company, or to any third parties, that may be asserted against the County or the Commission, its members, 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 Section 56-7-1, NMSA 1978 may preclude such indemnity, and except to the extent that claims for any loss or damage arising out of or resulting from the negligence, gross negligence, or willful misconduct of the County, the Commission, any member thereof, or other official, employee or agent of the County.

Section 11. 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 12. 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 13. 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 14. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the Chair 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.

[Signature page follows]



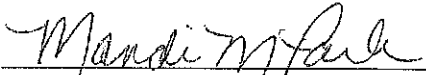
PASSED, ADOPTED, SIGNED AND APPROVED this 12th day of November, 2024.

BOARD OF COUNTY COMMISSIONERS,
ROOSEVELT COUNTY, NEW MEXICO

By: 
Tina Dixon, Chair

[SEAL]

ATTEST:

By: 
Mandi M. Park, County Clerk

