

ROOSEVELT COUNTY, NEW MEXICO

BOARD OF COMMISSIONERS

ORDINANCE 005-2005

AUTHORIZING THE ISSUANCE AND SALE OF ROOSEVELT COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BOND (SAN JUAN MESA WIND PROJECT, LLC PROJECT) SERIES 2005 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$148,500,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A WIND FARM FOR THE PURPOSE OF GENERATING ELECTRICITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, 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; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Roosevelt County is a legally and regularly created, established, organized and existing political subdivision of the State of New Mexico (the "State"); and

WHEREAS, pursuant to Sections 4-59-1 through 4-59-16, New Mexico Statutes Annotated, 1978 Compilation, as amended (the "Act"), Roosevelt County is authorized to acquire industrial revenue projects to be located within the county, to issue industrial revenue bond and to use the proceeds of such bond for the purpose of promoting agriculture and 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, San Juan Mesa Wind Project, LLC (the "Developer"), is a limited liability company organized under the laws of the State of Delaware and is a duly registered foreign limited liability company in the State of New Mexico; and

WHEREAS, the Developer requested that Roosevelt County issue industrial revenue bond for the purpose of providing funds to finance the acquisition, construction and equipping of a wind farm for the purpose of generating electricity for which both location approval and a certificate of convenience and necessity are not required prior to commencing construction or operation of the facility pursuant to the laws of the State; and

WHEREAS, the Developer has presented to the Roosevelt County Commission a proposal whereby the County would (a) issue its Taxable Industrial Revenue Bond (San Juan Mesa Wind Project, LLC Project), Series 2005 (the "Bond"), and (b) acquire and install supporting towers, nacelles, rotors and related equipment and land leases to construct a wind farm and related improvements (collectively, the "Project Property"), to be used by the Developer for the generation, transportation and delivery of electricity; and

WHEREAS, under the Developer's proposal, Roosevelt County would enter into an Indenture in the year 2005 (the "Indenture"), with the Purchaser and a Depositary acceptable to Roosevelt County and the Purchaser pursuant to which, together with this ordinance (the "Bond Ordinance"), the County would issue the Bond; and

WHEREAS, under the Developer's proposal Roosevelt County and the Developer would enter into a Lease Agreement dated in the year 2005 (the "Lease"), pursuant to which the Developer will lease the Project Property from Roosevelt County and the Developer will make

authorize the issuance of the Bond to finance the Project and that Roosevelt County's issuance of the Bond will constitute and be a valid public purpose; and

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

WHEREAS, there has been published in the *Portales News Tribune*, a newspaper of general circulation in Roosevelt 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 Bond 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 Elida School District.

BE IT ORDAINED BY THE COMMISSION, 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 Roosevelt County directed toward approval of the issuance and sale of the Bond be approved and the same hereby are ratified, approved and confirmed.

Section 2. FINDINGS.

A. General. The Commission hereby declares that it has considered as relevant information presented to it relating to the Bond and the Project and hereby finds and



payments sufficient to pay the principal of, redemption premium, if any, and interest on the Bond and to pay all other obligations incurred pursuant to the provisions of the Lease and the Bond Ordinance; and

WHEREAS, Roosevelt County is authorized to enter into the Lease, Indenture, and other related documents and to issue the Bond pursuant to the Act and the Bond Ordinance; and

WHEREAS, the Bond in an aggregate principal amount not to exceed \$148,500,000 will be issued, sold and delivered by Roosevelt County, in a private sale to San Juan Mesa Investments, LLC (the "Purchaser"), pursuant to a bond purchase agreement (the "Bond Purchase Agreement") among Roosevelt County, the Purchaser and the Developer; and

WHEREAS, the proceeds of the Bond 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 Roosevelt County to issue the Bond and to execute and deliver the Bond Documents, defined below, and other documents related thereto; and

WHEREAS, there have been filed with the Roosevelt County Clerk and presented to the County Commission the forms of the following documents:

1. Lease
2. Indenture
3. Bond Purchase Agreement

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

WHEREAS, Roosevelt County is authorized to issue the Bond under the Act and after having considered the Company's proposal, has concluded that it is desirable at this time to

determines that the issuance of the Bond pursuant to the Bond Ordinance to provide funds for the Project is necessary and advisable and in the interest of and will promote industry and trade and a sound and proper balance in the State between agriculture, commerce and industry.

B. The Commission finds that:

(1) The Bond 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 \$148,500,000.

(3) The Developer of the Project Property is San Juan Mesa Wind Project, LLC.

(4) The Project Property is located in Roosevelt County, New Mexico.

Section 3. BOND - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Bond in an aggregate principal amount not to exceed \$148,500,000 and the use of the proceeds of the Bond to finance the cost of the real estate easements, equipment, development, construction and installation of the Project including payment of expenses related thereto are hereby approved and confirmed.

The sale of the Bond at a purchase price of \$148,500,000 is approved.

B. Form and Terms.

Subject to the limitations set forth in this Bond Ordinance the Bond shall (i) be in the form and denominations 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) issued in a principal amount not to exceed \$148,500,000, bearing interest at the rates and maturing on the date set forth in the Indenture.

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

D. Interest Rate. The interest rate on the Bond shall not exceed 6% per annum.

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The form, terms and provisions of the Bond Documents in the form on deposit in the office of the Roosevelt County Clerk are in all respects approved, authorized and confirmed.

The presiding officer of the Board of Commissioners of Roosevelt County is authorized to execute and deliver in the name and on behalf of Roosevelt County, and the Roosevelt County Clerk or Deputy County Clerk is hereby authorized to attest, as necessary, the Bond Documents and the Bond with such changes therein as are not inconsistent with this Bond Ordinance.

The Roosevelt County Clerk is 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 Bond, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents.

The officers of Roosevelt 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 Bond.

Section 5. DELIVERY OF BOND. 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 Bond, the Bond shall be executed, authenticated and delivered to the Purchaser. No Bond shall be valid for any purpose until such Bond has 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 Bond is 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 INTEREST AND 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 Bond, assuming issuance of the Bond as of January 1, 2006, in the maximum principal amount of \$148,500,000 and bearing interest at the rate of 6%, is as follows:

<u>Year Ending December 31</u>	<u>Total Debt Service</u>	<u>Principal</u>	<u>Interest</u>
2006	\$12,946,906.57	\$4,036,906.57	\$8,910,000.00
2007	\$12,946,906.57	\$4,279,120.96	\$8,667,785.61
2008	\$12,946,906.57	\$4,535,868.22	\$8,411,038.35
2009	\$12,946,906.57	\$4,808,020.32	\$8,138,886.25
2010	\$12,946,906.57	\$5,096,501.53	\$7,850,405.04
2011	\$12,946,906.57	\$5,402,291.63	\$7,544,614.94



<u>Year Ending</u> <u>December 31</u>	<u>Total Debt</u> <u>Service</u>	<u>Principal</u>	<u>Interest</u>
2012	\$12,946,906.57	\$5,726,429.12	\$7,220,477.45
2013	\$12,946,906.57	\$6,070,014.87	\$6,876,891.70
2014	\$12,946,906.57	\$6,434,215.76	\$6,512,690.81
2015	\$12,946,906.57	\$6,820,268.71	\$6,126,637.86
2016	\$12,946,906.57	\$7,229,484.83	\$5,717,421.74
2017	\$12,946,906.57	\$7,663,253.92	\$5,283,652.65
2018	\$12,946,906.57	\$8,123,049.16	\$4,823,857.41
2019	\$12,946,906.57	\$8,610,432.11	\$4,336,474.46
2020	\$12,946,906.57	\$9,127,058.03	\$3,819,848.54
2021	\$12,946,906.57	\$9,674,681.51	\$3,272,225.06
2022	\$12,946,906.57	\$10,255,162.41	\$2,691,744.16
2023	\$12,946,906.57	\$10,870,472.15	\$2,076,434.42
2024	\$12,946,906.57	\$11,522,700.48	\$1,424,206.09
2025	\$12,946,911.77	\$12,214,067.71	\$ 732,844.06
Totals	\$258,938,136.60	\$148,500,000.00	\$110,438,136.60

B. 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.

C. The Lease requires that the Developer maintain the Project Property in good repair and condition (excepting reasonable wear and tear) and carry proper insurance with respect to the Project Property.

D. The Lease requires the Developer to make payments sufficient to pay the principal of, premium, if any, and interest on the Bond as principal and interest become due and to make all payments of or relating to the Project Property as they become due.

Section 8. LIMITED OBLIGATIONS. The Bond shall be a special limited obligation of Roosevelt County, payable solely from the revenues derived from the Lease, and payable by the Developer as described in the Indenture and any other property or interest of Roosevelt County specifically pledged under the Indenture and shall never constitute a debt or indebtedness of Roosevelt 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 Roosevelt 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 instrument shall be construed as obligating Roosevelt County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bond, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of Roosevelt County or against its taxing powers, nor shall the breach of any agreement contained in the Bond Ordinance, the Bond Documents, the Bond 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 Bond, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of Roosevelt County or against its taxing power, Roosevelt 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 and seller of the Project Property.

Section 9. APPROVAL OF INDEMNIFICATION. The Commission specifically approves the provisions of the Lease relating to indemnification which provide that the Developer shall indemnify and hold harmless Roosevelt County and its Boards of



Commissioners, officials, members, officers, employees and agents against liability to the Developer, or to any third parties that may be asserted against Roosevelt County or its Board of Commissioners, officials, members, officers, employees or agents with respect to the County's ownership of the Project Property or the issuance of the Bond and arising from the condition of the Project Property or the acquisition, construction and operation of the Project Property by the Developer, except to the extent Section 56-7-1 New Mexico Statutes Annotated, 1978 Compilation, applies, and except claims for any loss or damage arising out of or resulting from the gross negligence or willful misconduct of Roosevelt County or any member, officer, employee or agent of Roosevelt County.

Section 10. BOND ORDINANCE IRREPEALABLE. After any of the Bond is issued, the Bond Ordinance shall be and remain irrevocable until the Bond, including interest, are fully paid, canceled and discharged or there has been defeasance of the Bond in accordance with the Indenture.

Section 11. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Bond Ordinance is 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.

Done this 20th day of September, 2005.

ATTEST:

ROOSEVELT COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS

Sinda Connelly,
County Clerk Chief Deputy

By Gene Craigley
Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Janet



DJC

