



TORRANCE COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS
ORDINANCE NO. 05

A SUPPLEMENTAL ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF TORRANCE COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (LA JOYA WIND, LLC PROJECT II), SERIES 2019B TO BE ISSUED PURSUANT TO THE MASTER ORDINANCE NO. 2019-02 IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$385,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF WIND ENERGY GENERATION FACILITIES FOR THE PURPOSE OF GENERATING ELECTRICITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, THE BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2019B BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE 2019B BONDS AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Torrance 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 NMSA 1978, Section 4-30-1 through -2 (1917); and

WHEREAS, pursuant to NMSA 1978, Sections 4-59-1 through -16 (1975, as amended through 2015) (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, the Board of County Commissioners (the "Commission") of the County adopted the Master Ordinance No. 2019-02 (the "Master Bond Ordinance") establishing the payments in lieu of taxes and other details concerning the issuance of Torrance County, New Mexico Taxable Industrial Revenue Bonds (La Joya Projects) Series 2019A and Series 2019B (the "Bonds") in the combined aggregate principal amount not to exceed \$675,000,000 and authorized the issuance of the Series 2019A Bonds in an aggregate principal amount not to exceed \$290,000,000; and

WHEREAS, Avangrid Renewables, LLC an Oregon limited liability company (the "Parent Company") has presented to the Commission a proposal to issue the remaining \$385,000,000 principal amount of Bonds authorized pursuant to the Master Bond Ordinance; and

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B Y G E N E L L

WHEREAS, La Joya Wind, LLC (the "2019B Company") has presented to the Commission a proposal whereby the County would issue its Taxable Industrial Revenue Bonds, (La Joya Wind, LLC Project II), Series 2019B in an aggregate principal amount not to exceed \$385,000,000 (the "2019B Bonds"), and acquire, construct, and install wind energy generation facilities and associated electrical generating equipment and real property used to generate electricity from wind energy (the "2019B Project Property"), located at the 2019B Project Site as set forth in the 2019B Lease referred to below, to be used by the 2019B Company for the generation and transportation of electricity of up to 195 megawatts (the "2019B Project" or the "La Joya II Project"); and

WHEREAS, the Commission has determined that it is necessary and in the best interests of the County and the residents that the 2019B Bonds be issued under the parameters set forth in the Master Bond Ordinance; and

WHEREAS, the La Joya II Project shall be constructed within the boundaries of the Vaughn Municipal School District (the "School District"), and the Master Bond Ordinance established payments in lieu of taxes (as defined herein) for the 2019B Bonds, to be shared by and between the County and the School District; and

WHEREAS, the County and the School District are negotiating the split of the payment under the 2019B PILOT Agreement (as defined herein) between the School District and the County pursuant to NMSA 1978, Section 4-59-4(A)(2) (2003); and

WHEREAS, under the 2019B Company's proposal, the County would enter into an Indenture (the "2019B Indenture") with the purchaser of the 2019B Bonds (the "2019B Purchaser"), the 2019B Company and BOKF, NA (the "2019B Depository"), pursuant to which and together with the Master Bond Ordinance and this Supplemental Ordinance, the County would issue the 2019B Bonds; and

WHEREAS, under the 2019B Company's proposal, the County and the 2019B Company would enter into a lease agreement (the "2019B Lease"), pursuant to which the 2019B Company will lease the 2019B Project Property for the La Joya II Project from the County, and the 2019B Company will make payments sufficient to pay the principal of and interest on the 2019B Bonds and to pay all of the other obligations pursuant to the provisions of the 2019B Lease, the Master Bond Ordinance, and this Supplemental Ordinance; and

WHEREAS, the 2019B Bonds in a principal amount not to exceed \$385,000,000 will be issued, sold and delivered by the County in a private sale to the 2019B Purchaser pursuant to the bond purchase agreement to be dated as of the initial date of delivery of the 2019B Bonds among the County, the 2019B Purchaser and the 2019B Company (the "2019B Bond Purchase Agreement" and together with the 2019B Indenture, and 2019B Lease, the "2019B Bond Documents"); and

WHEREAS, the proceeds of the 2019B Bonds shall be applied to pay the costs of acquiring, constructing and installing the 2019B Project Property and to pay certain costs associated with the issuance and sale of the 2019B Bonds; and

WHEREAS, the Commission has determined that it is in the best interest of the County to issue the 2019B Bonds and to execute and deliver the 2019B Bond Documents and other documents related thereto; and

WHEREAS, the County is authorized to enter into, deliver and perform all of its obligations under the 2019B Bond Documents and to issue, execute and deliver the 2019B Bonds pursuant to the Act, this Supplemental Ordinance and the Master Bond Ordinance, and after having considered the 2019B Company's proposal, has concluded that it is desirable at this time to authorize the issuance of the 2019B Bonds to finance the 2019B Project and that the County's issuance of the 2019B 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 2019B Bonds are being sold in a private sale to the 2019B Purchaser without participation of an underwriter; and

WHEREAS, there has been published in *The Independent* and the *Albuquerque Journal*, newspapers of general circulation in the County, public notice of the Commission's intention to adopt this Supplemental Ordinance, which notice contained certain information concerning the ownership, purpose, location and size of the La Joya II Project and the amount of the 2019B Bonds to be issued to finance the La Joya II Project, which notice was published at least fourteen (14) days prior to final action upon this Supplemental Ordinance; and

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

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Supplemental Ordinance previously taken by the Commission and the officials of the County directed toward approval of the issuance and sale of the 2019B 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 2019B Bonds and the La Joya II Project and hereby finds and determines that the issuance of the 2019B Bonds pursuant to the Master Bond Ordinance and this Supplemental Ordinance to provide funds for the acquisition, construction and installation of the 2019B 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 2019B Bonds will be issued for the purpose of financing the acquisition, construction and installation of the La Joya II Project.

(2) The aggregate face amount of the 2019B Bonds to be issued with respect to financing the La Joya II Project pursuant to this Supplemental Ordinance will not exceed \$385,000,000.

(3) The 2019B Project Site is located within the County and outside the corporate limits of any municipality located in the County.

(4) The developer of the 2019B Project is the 2019B Company.

(5) The aggregate principal amount of the 2019B Bonds will not exceed \$385,000,000.

Section 3. SERIES 2019B BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the 2019B Bonds pursuant to the Master Bond Ordinance and this Supplemental Ordinance in a principal amount not to exceed \$385,000,000 and the use of the proceeds of the 2019B Bonds to finance the cost of the La Joya II Project including payment of transaction expenses related thereto are hereby approved and confirmed. The sale of the 2019B Bonds at par at a purchase price not to exceed \$385,000,000 is approved.

B. Form and Terms.

Subject to the limitations set forth in the Master Bond Ordinance and this Supplemental Ordinance, the 2019B Bonds shall be issued in a principal amount not to exceed \$385,000,000 and bearing interest at the rates and maturing on the dates set forth in the 2019B Indenture. The 2019B Bonds shall (i) be in the form and denomination and shall be numbered and dated as set forth in the 2019B Indenture, and (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 2019B Indenture presented to the Commission.

C. Execution. The 2019B Bonds shall be signed by the Chair of the Commission.

D. Interest Rate. The interest rate on the 2019B Bonds shall be 5% per annum.

E. PILOT Payments. Pursuant to the Master Bond Ordinance, the 2019B Company shall pay annual payments in lieu of taxes (the "2019B PILOT") to be split between the County and the School District, equal to \$2,500 per megawatt of generating capacity for the La Joya II Project authorized pursuant to the Supplemental Ordinance or such greater 2019B PILOT as provided in the table below depending upon the price per megawatt hour negotiated in the applicable power purchase agreement (the "PPA Price") in place for the La Joya II Project (the "2019B PILOT Agreement"); provided, however, if the PPA Price is not made publicly available by the power purchaser, the 2019B PILOT agreed upon by the County and the School District and to be split with the School District shall be \$3,250 per megawatt of generating capacity for the La Joya II Project.

Price / 2019B PILOT Schedule	La Joya II PPA PRICE (\$ / megawatt hour)	La Joya II PILOT (\$/megawatt generating capacity)
Range of PPA Prices	\$ 18.00 - 18.99	\$ 2,500.00
	\$ 19.00 - 19.99	\$ 2,638.89
	\$ 20.00 - 20.99	\$ 2,777.78
	\$ 21.00 - 21.99	\$ 2,916.67
	\$ 22.00 - 22.99	\$ 3,055.56
	\$ 23.00 - 23.99	\$ 3,194.44
	\$ 24.00 or higher	\$ 3,250.00

Pursuant to NMSA 1978, Section 4-59-4(A)(2) (2003), the County may issue the 2019B Bonds only after the County and the School District have agreed upon the percentage split of the 2019B PILOT to be received by the County and the School District.

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The 2019B Bond Documents in the forms presented to the Commission are hereby approved. The Chair of the Commission of the County is authorized to approve the form, terms and provisions of the 2019B Bond Documents on behalf of the Commission, provided that such form, terms and provisions are consistent with the Master Bond Ordinance and this Supplemental Ordinance, and to execute and deliver in the name and on behalf of the County, and the County Clerk or Deputy County Clerk are hereby authorized to attest, as necessary, the 2019B Bond Documents. The Chair and the County Clerk are 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 2019B Bonds, as are necessary or appropriate to consummate the transactions contemplated by the 2019B Bond Documents. The Chair, the County Manager and/or Clerk and other officers of the County shall take such action as is necessary to effectuate the provisions of the 2019B Indenture and shall take such action as is necessary in conformity with the Act to finance the costs of the La Joya II Project and to carry out related transactions as contemplated by the Master Bond Ordinance, this Supplemental Ordinance, and the 2019B 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 2019B Bonds.

Section 5. DELIVERY OF THE 2019B BONDS. Upon the execution of the 2019B Bond Documents, the satisfaction of the conditions set forth in the 2019B Bond Documents and upon receipt of the purchase price for the 2019B Bonds, the 2019B Bonds shall be executed, authenticated and delivered to the 2019B Purchaser. The 2019B Bonds shall not be valid for any purpose until the 2019B Bonds have been properly authenticated as set forth in the 2019B Indenture.

Section 6. FUNDS AND ACCOUNTS. There is established in the 2019B Indenture, and on and after the date on which the 2019B Bonds are issued there shall be maintained, the funds and accounts as set forth in the 2019B Indenture. Other funds and accounts may be established as are necessary under the 2019B Indenture.

Section 7. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER MATTERS RELATED TO THE 2019B BONDS. The following determinations are made:

A. The maximum amount necessary in each year to pay the principal of and interest on the 2019B Bonds, assuming issuance of the 2019B Bonds as of January 1, 2020, in the maximum aggregate principal amount of \$385,000,000 and bearing interest at the rate of 5.00%, is as follows:

<u>Year</u>	<u>Total Debt Service</u>	<u>Principal</u>	<u>Interest</u>
2020	\$ 19,250,000	-0-	\$ 19,250,000
2021	19,250,000	-0-	19,250,000
2022	19,250,000	-0-	19,250,000
2023	19,250,000	-0-	19,250,000
2024	19,250,000	-0-	19,250,000
2025	19,250,000	-0-	19,250,000
2026	19,250,000	-0-	19,250,000
2027	19,250,000	-0-	19,250,000
2028	19,250,000	-0-	19,250,000
2029	19,250,000	-0-	19,250,000
2030	19,250,000	-0-	19,250,000
2031	19,250,000	-0-	19,250,000
2032	19,250,000	-0-	19,250,000
2033	19,250,000	-0-	19,250,000
2034	19,250,000	-0-	19,250,000
2035	19,250,000	-0-	19,250,000
2036	19,250,000	-0-	19,250,000
2037	19,250,000	-0-	19,250,000
2038	19,250,000	-0-	19,250,000
2039	19,250,000	-0-	19,250,000
2040	19,250,000	-0-	19,250,000
2041	19,250,000	-0-	19,250,000
2042	19,250,000	-0-	19,250,000
2043	19,250,000	-0-	19,250,000
2044	19,250,000	-0-	19,250,000
2045	19,250,000	-0-	19,250,000
2046	19,250,000	-0-	19,250,000
2047	19,250,000	-0-	19,250,000
2048	19,250,000	-0-	19,250,000
2049	404,250,000	385,000,000	19,250,000

B. The 2019B Bonds will bear interest at the rate of five percent (5%) per annum, or such other lower rate as is set forth in the Indenture.

C. The 2019B 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 2019B Project Property.

E. The 2019B Lease shall require that the 2019B Company maintain the 2019B Project Property in safe repair and in such operating condition as is needed for its operations and carry proper insurance with respect to the 2019B Project Property as provided in the 2019B Lease.

F. The 2019B Lease shall require the 2019B Company to make lease payments in an amount sufficient to pay the principal of and interest on the 2019B Bonds as principal and interest become due and to pay all Related Costs (as defined in the 2019B Lease).

G. The 2019B Lease shall include a provision that the 2019B Company pay the County and the School District the 2019B PILOT payments for so long as the 2019B Bonds are outstanding.

H. If the 2019B Bonds are issued after 2019, the 2019B Bonds may be redesignated with a designation corresponding to the year of issuance of the 2019B Bonds, and references in the Master Bond Ordinance and this Supplemental Ordinance to the 2019B Bonds shall be deemed applicable to such renamed series of 2019B Bonds.

I. The foregoing details related to the 2019B Bonds are within the parameters established in the Master Bond Ordinance.

Section 8. LIMITED OBLIGATIONS. The 2019B Bonds shall be special limited obligations of the County, payable solely from the Base Rent (as defined in the 2019B Lease) paid by the 2019B Company to the County as described in the 2019B Indenture and any other property or interest of the County specifically pledged under the 2019B 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 the Master Bond Ordinance, this Supplemental Ordinance or in the 2019B Bond Documents or any other instruments shall be construed as obligating the County (except with respect to the 2019B Project Property and the application of the revenues therefrom and the proceeds of the 2019B Bonds, all as provided in the 2019B 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 Supplemental Bond Ordinance, the 2019B Bond Documents, the 2019B Bonds or any other instrument be construed as obligating the County (except with respect to the 2019B Project

Property and the application of the revenues therefrom and the proceeds of the 2019B Bonds, all as provided in the 2019B 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.

Section 10. APPROVAL OF INDEMNIFICATION. The Commission specifically requires that the 2019B Lease contain provisions relating to indemnification which provide that the 2019B Company shall indemnify and hold harmless the County and its Commission, officials, employees and agents against liability to the 2019B Company, or to any third parties, that may be asserted against the County or its Commission, officials, members, officers, employees or agents with respect to the County's ownership of the 2019B Project Property or the issuance of the 2019B Bonds and arising from the condition of the 2019B Project Property or the acquisition, construction and operation of the 2019B Project Property by the 2019B Company, except to the extent NMSA 1978, Section 56-7-1 (2005) may preclude such indemnity, and except claims for any loss or damage to the extent caused by the gross negligence or willful misconduct of the County or its Commission, or any official, employee or agent of the County.

Section 11. BOND ORDINANCE IRREPEALABLE. After the any of the 2019B Bonds are issued, the Master Bond Ordinance and this Supplemental Ordinance shall be and remain irrevocable until the 2019B Bonds, including interest, are fully paid, canceled and discharged in accordance with the 2019B Indenture.


Section 12. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Supplemental Ordinance are repealed by this Supplemental 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 this Supplemental 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 this Supplemental Ordinance.


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

Done this 13th day of November, 2019.

BOARD OF COUNTY COMMISSIONERS,
TORRANCE COUNTY, NEW MEXICO

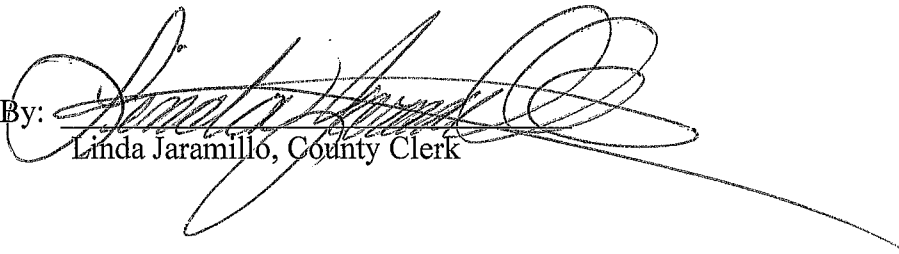
By: 
Ryan Schwebach, Chair

By: 
Kevin McCall, Commissioner

By: 
Javier Sanchez, Commissioner



ATTEST:

By: 
Linda Jaramillo, County Clerk

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