



# Quay County Government

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**AGENDA  
REGULAR SESSION  
QUAY COUNTY BOARD OF COMMISSIONERS  
July 8, 2024**

9:00 A.M. Call Meeting to Order  
Pledge of Allegiance  
Approval of Minutes-Regular Session June 27, 2024  
Approval/Amendment of Agenda

**Public Comment**

**New Business**

- I. Luis Carrasco, Quay County Bond Attorney**
- Request Approval of Caprock Wind Repower Lease Agreement (Series 2024A)
  - Request Approval of Caprock Wind Repower Indenture (Series 2024A)
  - Request Approval of Caprock Wind Repower Bond Purchase Agreement (Series 2024A)
  - Request Approval of Caprock Wind Repower Lease Agreement (Series 2024B)
  - Request Approval of Caprock Wind Repower Indenture (Series 2024A) **B**
  - Request Approval of Caprock Wind Repower Bond Purchase Agreement (Series 2024A) **B**
- II. Stephen Salas, Quay County Road Superintendent**
- Request approval of FY 24-25 Resolution No. 1 Local Government Road Fund Participation (CAP)
  - Request approval of FY 24-25 Resolution No. 2 LGRF Match Waiver Program Participation (CAP)
  - Request approval of FY 24-25 Resolution No. 3 Local Government Road Fund Participation (COOP)
  - Request approval of FY 24-25 Resolution No. 4 LGRF Match Waiver Participation (COOP)
  - Request approval of FY 24-25 Resolution No. 5 Local Government Road Fund Participation (SB)
  - Blade report
  - Road Update



DOC #CM-00582

07/22/2024 04:33 PM Doc Type: COCOM

Fee: (No FieldTag Finance.TotalFees found)

Quay County, NM

Pages: 300

Ellen White - County Clerk, County Cle



- III. Patsy Gresham, Quay County Treasurer**
- Presentation of **Treasurer's Report**
- IV. Samantha Salas, Quay County Finance Director**
- Request Approval of **FY 23-24 Resolution No. 56 Budgetary Increase to General Fund**
  - Request Approval of **FY 23-24 Resolution No. 57 Budgetary Increase to Bard Endee**
  - Request Approval of **FY 24-25 Resolution No. 6 Infrastructure Capital Improvement Plan**
  - Request Approval of **Payment Approval Report**
- V. Daniel Zamora, Quay County Manager**
- Request Approval of **State of New Mexico Public Education Department Intergovernmental Agreement (Summer Enrichment Internship Program)**
  - Request Approval of **State of New Mexico Department of Finance and Administration Grant Agreement (Dump Truck)**
  - Request Approval of **State of New Mexico Department of Finance and Administration Grant Agreement (Pneumatic Roller)**
  - Request Approval of **State of New Mexico Department of Finance and Administration Grant Agreement (QCSO Vehicle)**
  - **Manager's Report**
- VI. Commissioner Comments**
- VII. Adjourn**

## REGULAR SESSION-BOARD OF QUAY COUNTY COMMISSIONERS

July 8, 2024

9:00 A.M.

BE IT REMEMBERED THE HONORABLE BOARD OF QUAY COUNTY COMMISSIONERS met in regular session the 8<sup>h</sup> day of July, 2024 at 9:00 a.m. in the Quay County Commission Chambers, Tucumcari, New Mexico, for the purpose of taking care of any business that may come before them.

### PRESENT & PRESIDING:

Robert Lopez, Chairman  
Jerri Rush, Member  
Brian Fortner, Member  
Ellen L. White, County Clerk  
Daniel Zamora, County Manager

### OTHERS PRESENT:

Samantha Salas, Quay County Finance Director  
Dana Leonard, Quay County Assessor  
Patsy Gresham, Quay County Treasurer  
Dennis Garcia, Quay County Sheriff  
Stephen Salas, Quay County Road Superintendent  
Amanda Carl, Quay County Administrative Assistant  
Bill Kardokus, Quay County Emergency Manager  
Lucas Bugg, Quay County Fire Marshal  
Luis Carrasco, Quay County Bond Attorney  
Todd Carter, First Assembly of God Minister  
Ron Warnick, Quay County Sun

Chairman Lopez called the meeting to order followed by the Pledge of Allegiance.

A MOTION was made by Jerri Rush SECONDED by Brian Fortner to approve the June 27, 2024 regular session minutes. MOTION carried with Rush voting "aye", Lopez voting "aye" and Fortner voting "aye".

A MOTION was made by Brian Fortner, SECONDED by Jerri Rush to approve the Agenda after amending Item No. 1, Parts 5 & 6; reflecting Bond Series 2024 B instead of A. MOTION carried with all members voting "aye".

### Public Comments:

Minister Todd Carter, First Assembly of God Church in Tucumcari, introduced himself and said he and his wife are excited to be a part of Quay County and offered any services they might could assist with.

NEW BUSINESS:

Luis Carrasco, Quay County Bond Attorney, requested approval of the following items:

- Caprock Wind Repower Lease Agreement (Series 2024A)
- Caprock Wind Repower Indenture (Series 2024A)
- Caprock Wind Repower Bond Purchase Agreement (Series 2024A)
- Caprock Wind Repower Lease Agreement (Series 2024B)
- Caprock Wind Repower Indenture (Series 2024B)
- Caprock Wind Repower Bond Purchase Agreement (Series 2024B)

A MOTION was made by Brian Fortner, SECONDED by Jerri Rush to approve all items listed above presented by Carrasco on behalf of Caprock Wind. MOTION carried with all members voting “aye”. A copy of all documents is attached.

Quay County Road Superintendent, Stephen Salas, presented the following items for approval. Copies of all Resolutions is attached to these minutes:

- FY 24-25 Resolution No. 1 Local Government Road Fund Participation (CAP)

A MOTION was made by Jerri Rush, SECONDED by Brian Fortner to approve Resolution No. 1. MOTION carried with all members voting “aye”.

- FY 24-25 Resolution No. 2 LGRF Match Waiver Program Participation (CAP)

A MOTION was made by Jerri Rush, SECONDED by Brian Fortner to approve Resolution No. 2. MOTION carried with all members voting “aye”.

- FY 24-25 Resolution No. 3 Local Government Road Fund Participation (COOP)

A MOTION was made by Brian Fortner, SECONDED by Jerri Rush to approve Resolution No. 3. MOTION carried with all members voting “aye”.

- FY 24-25 Resolution No. 4 LGRF Match Waiver Participation (COOP)

A MOTION was made by Jerri Rush, SECONDED by Brian Fortner to approve Resolution No. 4. MOTION carried with all members voting “aye”.

- FY 24-25 Resolution No. 5 Local Government Road Fund Participation (SB)

A MOTION was made by Jerri Rush, SECONDED by Brian Fortner to approve Resolution No. 5. MOTION carried with all members voting “aye”.

Salas reported the crew at the Road Department are busy preparing for these upcoming projects with maintenance and clean up.

Patsy Gresham, Quay County Treasurer, presented the following Report of items of interest from the Treasurer's Office:

- Results of the recent Delinquent Property Tax Auction.
- Future use of ACH for some qualified vendors.
- Process for collection and distribution of fees collected for the various taxing authorities.

A copy of this Report is attached to these minutes.

Samantha Salas, Quay County Finance Director, requested approval of the following items:

- FY 23-24 Resolution No. 56; Budgetary Increase to General Fund for Assessor Office training in the amount of \$17,000.00. A MOTION was made by Jerri Rush, SECONDED by Brian Fortner to approve said Resolution. MOTION carried with all members voting "aye". A copy is attached.
- FY 23-24 Resolution No. 57; Budgetary Increase to Bard Endee in the amount of \$300,000.00. A MOTION was made by Brian Fortner, SECONDED by Jerri Rush to approve said Resolution. MOTION carried with all members voting "aye". A copy is attached.
- FY 24-24 Resolution No. 6; Infrastructure Capital Improvement Plan. A MOTION was made by Jerri Rush, SECONDED by Brian Fortner to approve said Resolution. MOTION carried with all members voting "aye". A copy is attached along with the ICIP.
- Payment Approval Report for the time period ending July 3, 2025. A MOTION was made by Brian Fortner, SECONDED by Jerri Rush to approve. MOTION carried with all members voting "aye".

Quay County Manager, Daniel Zamora presented items for approval and gave the Manager's Report:

- State of New Mexico Public Education Department Intergovernmental Agreement (Summer Enrichment Internship Program) A MOTION was made by Jerri Rush, SECONDED by Brian Fortner to approve the Agreement. MOTION carried with all members voting "aye". A copy of the Agreement is attached.
- Three (3) State of New Mexico Department of Finance Grant Agreements for a Dump Truck, Pneumatic Roller and Quay County Sheriff Department Vehicle. A MOTION was made by Brian Fortner, SECONDED by Jerri Rush to approve the Three (3) Agreements as presented. MOTION carried with all members voting "aye". Copies are attached.

Manager's Report:

- Staff is working on the finalization of the ICIP, Budget and Asset Inventory in preparation of the upcoming Audit to begin in September.
- IT issues remain a constant, however the new contract is in place with Henry Martinez and this should begin eliminating end user issues.

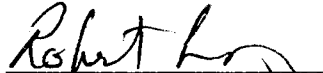
Commissioners Comments:

Fortner informed everyone of the death of Larry Wallin, former Logan Village Manager.

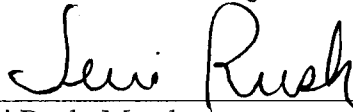
A MOTION was made by Jerri Rush, SECONDED by Brian Fortner to adjourn. MOTION carried with all members voting "aye". Time noted 10:00 a.m.

Respectfully submitted by Ellen White, County Clerk.

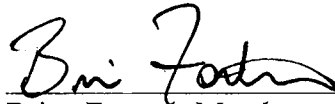
BOARD OF QUAY COUNTY COMMISSIONERS

  
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Robert Lopez, Chairman

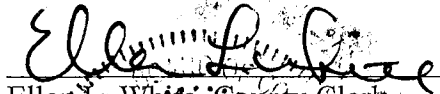
  
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Jerri Rush, Member

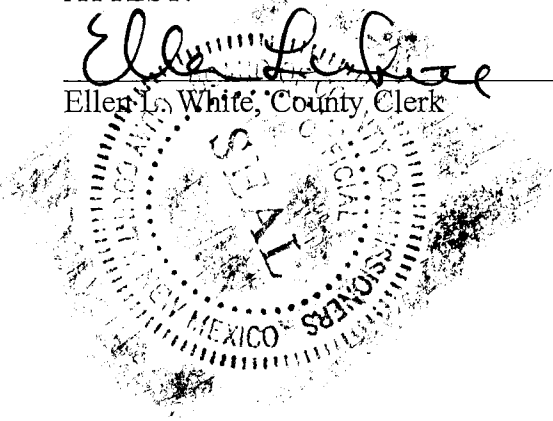
  
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Brian Fortner, Member

ATTEST:

  
\_\_\_\_\_

Ellen L. White, County Clerk



QUAY COUNTY, NEW MEXICO

and

CAPROCK WIND, LLC

LEASE AGREEMENT

Dated as of July 10, 2024

Up to \$35,000,000  
Quay County, New Mexico  
Taxable Industrial Revenue Bonds  
(Caprock Wind Repower Project)  
Series 2024A

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**SCHEDULE 5.3(A) ..... ..**

QUAY COUNTY, NEW MEXICO, a political subdivision of the State of New Mexico (together with its successors and assigns, the “Issuer” or “County”), as lessor, and CAPROCK WIND, LLC, a Delaware limited liability company (together with its successors and assigns, the “Company”), as lessee, agree:

**ARTICLE I  
RECITALS**

Capitalized terms not otherwise defined herein shall have the meanings defined in Section 2.1 hereof, unless the context clearly requires otherwise.

A. The Company has requested that the Issuer issue its Taxable Industrial Revenue Bonds (Caprock Wind Repower Project), Series 2024A, in the maximum principal amount of \$35,000,000 (the “Bonds”). The proceeds of the Bonds will be used to finance the acquisition, construction, equipping, and installation of electrical generating equipment used to generate electricity from wind energy for the purpose of replacing functionally and economically obsolete electrical generating equipment now installed in the existing wind farm located at the Project Site (as defined below) with new equipment (collectively, the “Project” as further defined below).

B. The Issuer is authorized under the County Industrial Revenue Bond Act, NMSA 1978, Sections 4-59-1 to -16 (1975, as amended through 2023) (the “Act”) to acquire certain projects and issue its industrial revenue bonds in payment therefor and has determined that it is desirable to acquire the Project Property (as defined below) for purposes of the Project (as defined below) pursuant to Ordinance No. 57 adopted by the Board of County Commissioners of Quay County (the “Board”) on May 28, 2024 (the “Bond Ordinance”) and has in the Bond Ordinance authorized the issuance of the Bonds.

C. The Bonds are to be issued under an Indenture dated as of July 10, 2024 (together with any and all amendments and supplements, the “Indenture”) among the Issuer, the Company, Caprock Wind Investments, LLC as purchaser of the Bonds (together with its successors and assignees, and transferees of the Bonds the “Purchaser”), and BOKF, N.A., Albuquerque, New Mexico as Depositary (the “Depositary”).

D. The Bonds will be a special limited obligation of the Issuer payable solely from Basic Rent (as defined below) paid by the Company to the Issuer. The Bonds will not constitute a debt or indebtedness of the Issuer and shall not constitute or give rise to any pecuniary liability of the Issuer or a charge against its general credit or taxing power. The Purchaser or owners of the Bonds will have no right to have taxes levied by the Issuer or to require the Issuer to use any revenues for the payment of the Bonds, except for Basic Rent (as defined below).

E. The proceeds of the Bonds will be used to finance the Project (as defined below), the costs of acquiring, constructing, equipping, and installing the Project Property (as defined below) and to pay certain costs associated with the issuance and the sale of the Bonds.

F. The Project Property (as defined below) will be leased to the Company under this Lease Agreement (together with all amendments and supplements, this “Agreement”).

G. As of the Effective Date (as defined below), the Company has conveyed the Project Site (as defined below and described in Exhibit A) to the Issuer pursuant to a special warranty deed.

H. The Company will make annual payments in lieu of taxes (the “PILOT,” as such term is further defined below) equal to \$3,650 per megawatt of injection capability of the Combined Project as described in Section 6.4, but in no event will the Combined PILOT (as defined below) be less than \$292,000, which amount represents the PILOT that would be due for a project with an injection capability of 80 megawatts, for each year in which the Bonds are outstanding, in accordance with the Act.

I. The Company anticipates that the Combined Project (as defined below) will have at least 80 megawatts of injection capability.

J. The PILOT will be allocated by the Issuer to the School Districts (as defined below) as required by NMSA 1978 Section 4-59-4(A)(2) (2023) (or pursuant to the requirements of the Act relating to the distribution of the PILOTs in effect at the time of issuance of the Bonds), annually beginning on the anniversary of the Effective Date of this Agreement (as defined below) and ending on July 10, 2054.

K. The Bonds are to be purchased under a Bond Purchase Agreement dated as of July 10, 2024 (together with any and all amendments and supplements, the “Bond Purchase Agreement”) among the Issuer, the Purchaser and the Company.

L. The Bonds will be secured by the Indenture which constitutes, among other things, a collateral pledge of this Agreement.

In consideration of the premises and the mutual representations and agreements hereinafter contained, the Issuer and the Company agree as follows (provided that any obligation of the Issuer created by or arising out of this Agreement will never constitute a general debt of the Issuer or give rise to any pecuniary liability of the Issuer, but will be payable solely out of Basic Rent (as defined below)).

## ARTICLE II DEFINITIONS AND RULES OF CONSTRUCTION

**Section 2.1. Definitions.** All words and terms defined in the Indenture have the same meanings when used in this Agreement. In addition:

“2024B Bonds” means the Quay County, New Mexico Taxable Industrial Revenue Bonds (Caprock Wind Phase II Project), Series 2024B, which are being issued concurrently with the Bonds.

“2024B PILOT” means an amount equal to \$3,650 per megawatt of injection capability of the 2024B Project.

“2024B Project” means the Phase II project to be financed with proceeds of the 2024B Bonds.

“Additional Payments” has the meaning assigned in Section 5.3(b).

“Affiliate” means an entity the control or ownership of which is held in common with the control or ownership of another entity.

“Affiliated Entities” means Affiliates that are under common control or ownership.

“Applicable Environmental Law” means any applicable law, statute, ordinance, regulation, order or rule relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or materials or pertaining to health or the environment, including, without limitation, CERCLA and RCRA, as each is amended and in effect from time to time.

“Basic Rent” has the meaning assigned in Section 5.3(a).

“Bond Counsel” means Rodey, Dickason, Sloan, Akin & Robb, P.A., Albuquerque, New Mexico.

“Bond Documents” means collectively (i) this Agreement, (ii) the Indenture, and (iii) the Bond Purchase Agreement.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

“Closing Date” means the date of execution and delivery of the Bonds.

“Combined PILOT” means, collectively, the PILOT and the 2024B PILOT, which in no event will be less than \$292,000 on an annual basis.

“Combined Project” means the Project and the 2024B Project.

“Completion Date” has the meaning assigned in Section 4.4.

“County PILOT” means the amount specified in Section 6.4(b) of this Agreement that is allocated to the County for expenditure as it may so determine.

“County Road” means any road or highway that is maintained by the County, or for which there is an expectation that the County maintain such road or highway.

“Effective Date” means July 10, 2024.

“Eminent Domain” means the taking of title to, or the temporary use of all or any part of the Project Property pursuant to eminent domain or condemnation proceedings, or by any settlement or compromise of such proceedings, or any voluntary conveyance of all or any part of the Project Property during the pendency of, or as a result of a threat of, such proceedings.

“Equipment” means that equipment and other personal property as described in Exhibit A attached hereto.

“Event of Default” has the meaning assigned in Section 8.1.

“Facility” means the wind energy generating facility identified on Exhibit A attached hereto and located in Quay County, New Mexico, and its related supporting equipment and all improvements thereon for the generation and transmission of electricity.

“Improvements” means all improvements to the Project Site, including but not limited to, any buildings or other structures, the Equipment and all other equipment and personal property of any kind acquired with the proceeds of the Bonds prior to the Completion Date which is subject to depreciation for federal income tax purposes and is installed or located at the Project Site and used as part of the Project described in Exhibit A attached hereto.

“Indemnitee” has the meaning assigned in Article VI of this Agreement.

“Lender” or “Lenders” means any and all persons or successors in interest thereof (a) lending money or extending credit related to the Project (including any financing lease, monetization of tax benefits, back leverage financing or credit derivative arrangement) to the Company or to an Affiliate of the Company including: (i) for the acquisition, construction, permanent or interim financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and related rights from the Company, and/or (b) participating (directly or indirectly) as an equity investor in the Project primarily in connection with the utilization of applicable federal tax credits or tax depreciation benefits associated with holding an ownership interest in the Project, or (c) participating as a lessor under a lease finance arrangement relating to the Project (which such arrangement shall not be deemed to include this Agreement, and which person or persons shall not include Company or any of its Affiliates).

“Payment of the Bonds” means payment in full of the principal, interest on and redemption price of the Bonds in accordance with their terms and the provisions of the Indenture, and payment of all fees and expenses of the Issuer, the Purchaser and the Depositary payable by the Company and/or an Affiliate Entity under the Indenture, the Agreement or the Bond Purchase Agreement.

“PILOT” means the payments in lieu of taxes the Company will pay to the Issuer (as described in Section 6.4 below) in an amount equal to \$3,650 per megawatt of injection capability of the Combined Project.

“Proceeds,” when used with respect to any insurance proceeds or any award resulting from, or other amount received in connection with, Eminent Domain, means the gross proceeds from the insurance or such award or other amount.

“Project” means replacing functionally and economically obsolete electricity generating equipment now installed in the existing wind farm at the Project Site with new equipment to be used for the purpose of generating electricity from wind energy, including without limitation, all associated Improvements and Equipment.

“Project Property” means (i) any rights of the Company in, or related to, the Project Site, now owned or hereafter acquired under easements, agreements or leases and assigned or subleased by the Company to the Issuer; and (ii) the Improvements.

“Project Site” means the real property located within the County but outside the boundaries of any incorporated municipality upon which the Project is to be located described in Exhibit A attached hereto as may be amended or supplemented from time to time pursuant to Section 4.2 of this Agreement.

“RCRA” means the Resource Conservation and Recovery Act of 1976.

“Related Costs” means expenditures incurred or to be incurred by the Company with respect to the Project, including, without limitation, the acquisition, construction, equipping and installation of the Project Property.

“Rent” means Basic Rent and any Additional Payments under this Agreement.

“School Districts” means, collectively, the Grady Municipal School District, the House Municipal School District, the Logan Municipal School District, the Melrose Municipal School District, the San Jon Municipal School District and the Tucumcari Public School District.

“School PILOT” means the amount specified in Section 6.4(b) of this Agreement and determined in accordance with the provisions of NMSA 1978, Section 4-59-4(A)(2) (2023), which amount shall be allocated among the School Districts and distributed by the Issuer to the School Districts pursuant to the provisions of NMSA 1978, Section 4-59-4(A)(2) (2023).

“State” means the state of New Mexico.

“Term” means the period commencing on the Effective Date and extending to the earlier of: (i) the date of Payment of the Bonds; (ii) the date of termination of this Agreement pursuant to Section 8.2 (d); or (iii) July 10, 2054.

“TRD” means the New Mexico Taxation and Revenue Department.

**Section 2.2. Rules of Construction.**

(a) The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(b) All references in this Agreement to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Agreement unless some other reference is established.

(c) Any inconsistency between the provisions of this Agreement and the provisions of the Indenture will be resolved in favor of the provisions of this Agreement.

**ARTICLE III  
REPRESENTATIONS**

**Section 3.1. Issuer Representations.** The Issuer represents that, as of the date of delivery of this Agreement:

(a) The Issuer is a political subdivision, organized and existing under the laws of the State.

(b) The Issuer has duly authorized by an ordinance of the governing body of the Issuer, adopted at a meeting duly called and held, by the affirmative vote of not less than a majority of its members, the execution, delivery and performance of the Bond Documents, the Bonds and the issuance of the Bonds, all for the purpose of financing the Project including the acquisition, construction and installation of the Project Property and paying certain costs related to the issuance of the Bonds.

(c) To the knowledge of the Issuer, the execution, delivery and performance by the Issuer of the Bond Documents will not conflict with or create a material breach of or material default under the Act or any other law, rule, regulation or ordinance applicable to the Issuer or any agreement or instrument to which the Issuer is a party or by which it is bound, and there is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body, pending or threatened against the Issuer, which seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents or in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents.

(d) To the knowledge of the Issuer, this Agreement and the Indenture constitute legal, valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity and other applicable laws.

**Section 3.2. Company Representations.** The Company represents that, as of the date of delivery of this Agreement:

(a) The Company is a limited liability company duly organized and validly existing under the laws of Delaware, is in good standing under the laws of Delaware, is authorized to do business in New Mexico, and has duly authorized the execution, delivery and performance of this Agreement, the Indenture and the Bond Purchase Agreement.

(b) The Company has full legal right, power and authority to carry out and consummate the transactions contemplated by this Agreement, the Indenture and the Bond Purchase Agreement.

(c) The execution, delivery and performance by the Company of this Agreement, the Indenture and the Bond Purchase Agreement and the application by the Company of the proceeds of the issuance and sale of the Bonds as provided in the Bond Documents do not and will not conflict with, contravene, violate or constitute a breach of or default under the articles of organization or operating agreement of the Company or any material agreement to which the Company is a party or by which the Company or its properties or the Project Property is bound or any law, rule, regulation, ordinance, order, consent, or decree, applicable to the Company, its properties or the Project Property if such conflict, contravention, violation, breach or default could materially affect the ability of the Company to perform its obligations under the Bond Documents.

(d) This Agreement, the Indenture and the Bond Purchase Agreement constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity.

(e) No Event of Default, or event or condition which, with notice or lapse of time or both, would constitute an Event of Default, with respect to the Company has occurred and is continuing. The Company has not received any written notice of any currently existing material violation of any zoning, land use, environmental or other similar law or regulation applicable to the Project Property, the Project Site or the Project.

(f) There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to the knowledge of the Company, threatened against the Company, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents, (ii) questions the validity or enforceability of the Bonds or any of the Bond Documents, (iii) questions the authority of the Company to own or operate any of the Project Property, or (iv) if adversely determined, would have a material adverse effect on the Project Property or the Company's ability to perform its obligations under the Bond Documents.

(g) All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Company of this Agreement, the Indenture and the Bond Purchase Agreement have been obtained and are in full force and effect.



(h) The Company acknowledges that the Issuer has made no warranty or representation, express or implied, that the amount in the Acquisition Fund, as defined in Section 701 of the Indenture, will be sufficient to pay the Related Costs or that the Project Property will be suitable for the Company's needs.

(i) The Company will not use or operate the Project, or permit the Project to be used or operated, in any way which would adversely affect the qualification of the Project as a "project" under the Act.

(j) The acquisition, construction and installation of the Project Property by the Company or its agents and assigns and the operation thereof will comply in all material respects with applicable zoning, planning, building, environmental and other regulations of the governmental authorities having jurisdiction over the Facility, and all permits, licenses, consents and permissions necessary for the Facility have been or will be obtained in due course.

(k) The Project Property is located in Quay County and is or will be an electric generation facility which does not require both location approval and a certificate of convenience and necessity prior to construction or operation of the facility pursuant to the New Mexico Public Utility Act, NMSA 1978, Sections 62-3-1 to -5 (1967, as amended through 2019).

(l) No representation made by the Company in this Agreement and no statement made by the Company in any written information, material or report furnished to the Issuer or the Purchaser in connection with the transactions contemplated by this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the representation or statement, in light of the circumstances under which it is made, not misleading.

(m) The representations of the Company in this Section 3.2 and in any other instrument delivered by the Company in connection with the transactions contemplated by the Bond Documents will survive the execution and delivery of this Agreement, and the issuance, sale and delivery of the Bonds as representations of facts existing as of the date of execution and delivery of the Bond Documents or other instrument containing such representation.

(n) The Company has arranged for all of the Company's right, title and interest in and to the Project Property to be transferred to the Issuer.

(o) The Company does not intend to utilize any County Road for the construction, installation, or operation of the Project or Project Property.

The representations of the Company in this Section 3.2 and in any certificate or other instrument delivered by the Company pursuant to any of the Bond Documents or in connection with the transactions contemplated by the Bond Documents will survive the execution and delivery of this Agreement and the issuance, sale and delivery of the Bonds.

**ARTICLE IV  
THE PROJECT AND THE COMPANY**

**Section 4.1. Construction, Acquisition, Equipping and Completion.** The Company will use reasonable commercial efforts to acquire, construct, install and equip the Project and will undertake to complete the Project as promptly as practicable, as agent for the Issuer under the Act and applicable TRD regulations. To the extent necessary, after all proceeds of the issuance of the Bonds have been exhausted, the Company will finance the completion of the Project with other funds. The Project Property will at all times during the Term be located within Quay County, New Mexico. The Issuer makes no warranty that the proceeds of the issuance and sale of the Bonds will be sufficient to pay all the Related Costs. The Company will obtain at the necessary time all licenses and permits required for the occupancy and operation of the Project Property and the Project.

**Section 4.2. Plans and Specifications; Changes.** The Company may make changes, supplements, amendments and additions, omissions or substitutions for components of the Project Property without the approval of the Issuer or the Purchaser. If the Company elects to make any such change, supplement, amendment, addition, omission or substitution which would make the description of the Project Property contained in Exhibit A materially inaccurate, the Company will revise the description of the Project Property set forth in Exhibit A accordingly and will deliver a copy of such revised Exhibit A, certified by an Authorized Company Representative, to the Issuer and the Purchaser, and may record an addendum or amendment to this Agreement executed by an Authorized Officer of the Company and the Board's chairperson or the County Manager. The Issuer and Company will take such further actions as necessary to effect such change including executing, delivering, and recording a bill of sale, assignment and any amendments to the Bond Documents. Notwithstanding the foregoing, the Company will not make any changes, supplements, amendments, additions, omissions, or substitutions or otherwise change or operate the Project Property or permit the Project Property, the Project or the Facility to be operated so as to cause the Project Property and the Project not to be a "project" within the meaning of the Act as in effect on the date of issuance of the Bonds, and the Company will not take or omit to take any action which will result in the proceeds of the Bonds being applied in violation of the Bond Documents.

**Section 4.3. No Warranty of Condition or Suitability by Issuer.** THE COMPONENTS OF THE PROJECT PROPERTY HAVE BEEN DESIGNATED AND SELECTED BY THE COMPANY. THE ISSUER HAS NOT MADE AN INSPECTION OF ANY PORTION OF THE PROJECT PROPERTY. THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO ANY PORTION OF THE PROJECT PROPERTY OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY OF THE SAME, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP IN THE SAME. ALL RISKS INCIDENT TO THE PROJECT PROPERTY ARE TO BE BORNE BY THE COMPANY. THE ISSUER WILL HAVE NO LIABILITY WITH REGARD TO OR ARISING OUT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN ANY PORTION OF THE PROJECT PROPERTY, WHETHER PATENT OR LATENT. THE PROVISIONS OF THIS SECTION 4.3 HAVE BEEN

NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PORTION OF THE PROJECT PROPERTY, WHETHER ARISING UNDER THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT.

**Section 4.4. Completion Date.** The Company will complete the Project as promptly as practicable and, in any event, within three (3) years of the Effective Date of this Agreement. On the date the Project is complete and a certificate of occupancy has been obtained for the Facility (if such certificate is required to be obtained) (the “Completion Date”), the Company will deliver to the Issuer and the Depository a certificate signed by an Authorized Company Representative stating that, except for specified amounts remaining in the Acquisition Fund for any specified Related Costs incurred by the Company but not then due and payable, the Project is complete and all costs of labor, services, materials and supplies in connection with the Project have been paid for or provisions have been made for their payment. After the transfer of remaining moneys in the Acquisition Fund to the Company pursuant to Section 706 of the Indenture, the Company will have sole responsibility for the payment of any Related Costs in excess of the amount specified to be retained in the Acquisition Fund. Upon completion, the Project Property will comply in all material respects with all building codes, and other laws, ordinances, rules and regulations applicable to the Project Property or the Facility.

**Section 4.5. Gross Receipts and Compensating Tax.** The Company will act as agent for the County with respect to the Project and in its acquisition of the Project Property. To the extent required by law, if at all, the Company, either on its own behalf or as agent for the Issuer pursuant to Section 4.1 and this Section 4.5, will file returns for reporting and paying compensating tax which may become due because of the Project and promptly will pay, as a Related Cost, any gross receipts or compensating tax which may become due from the Issuer under any such returns. To the extent consistent with or required by State law, the Issuer will cooperate with the Company in the obtaining of Non-Taxable Transaction Certificates (“NTTCs”) from the TRD for delivery to suppliers with respect to the Project Property as may be applicable under the New Mexico Gross Receipts and Compensating Tax Act. The Company will pay any gross receipts or compensating tax plus applicable penalty and interest which is found by the TRD to be due from the Company or the Issuer because of the purchase or use of the Project Property or any component of the Project Property by the Company or the Issuer. The Company may request any rulings from the TRD which the Company determines might be necessary or desirable to clarify the New Mexico gross receipts and compensating tax results of transactions related to the Project and may dispute, in any manner authorized by the New Mexico Tax Administration Act, any gross receipts or compensating tax liability imposed on the Company or the Issuer because of the Project. The Issuer will join in any reasonable modifications to this Agreement which are necessary or desirable to obtain NTTCs or otherwise reduce the gross receipts and compensating tax imposed on the Company or the Issuer as a result of or in connection with the acquisition, assembly and installation of the Improvements, the Project Property, or the Company’s operations at the Project Site, and will otherwise cooperate with the Company to address any reasonable request of the Company regarding issues raised by TRD with respect to NTTCs. The Company will pay such gross receipts taxes and compensating taxes as may be required by law for all purchases of property other than

Project, for all purchases after the Completion Date and for any purchases in amounts greater than the proceeds of the Bonds.

**Section 4.6. Compliance With Law.**

(a) The Company will obtain or cause to be obtained all necessary permits and approvals, for the occupancy, operation and maintenance of the Project Property and will comply in all material respects with all Applicable Environmental Laws and all lawful requirements of any governmental body, agency or department regarding the use, condition or operation of the Project Property and the Project. The Company may in good faith contest the validity or the applicability of any such requirement. During the period of such contest and any related appeal, this Section 4.6 will be deemed satisfied with respect to the requirement so contested.

(b) To the extent that the use which the Company makes of the Project Property or the Project results in the manufacturing, treatment, refining, transportation, generation, storage, disposal or other release or presence of any hazardous substance or solid waste on or to the Project Site, such use will be in accordance with law, including any applicable regulations. For purposes of this paragraph, the terms “hazardous substance” and “release” will have the meanings specified in CERCLA, and the term “disposal” (or “disposed”) will have the meaning specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning will apply subsequent to the effective date of such amendment, and provided, further, to the extent that the laws of the State establish a meaning for “hazardous substance,” “release,” or “disposal” which is broader than that specified in either CERCLA or RCRA, such broader meaning will apply; provided, further, that the term “hazardous substance” will also include those listed in the U.S. Department of Transportation Table (49 C.F.R. 172.101) and amendments thereto from time to time.

(c) The Company agrees to promptly notify the Purchaser and the Issuer of any material violation of any Applicable Environmental Laws of which the Company becomes aware.

(d) The Company shall, at the Company’s sole cost and expense, remove or take remedial action as and to the extent required by Applicable Environmental Laws with regard to any hazardous substance brought onto the Project Site or released from the Project Site by the Company or its employees, agents or contractors. If the Company fails to timely take any action required under this Section 4.6 after notice from the applicable governmental entity having jurisdiction under Applicable Environmental Laws, the Issuer may, but shall have no obligation to, perform or arrange for the performance of such action and the Company shall, promptly upon demand therefore, reimburse the Issuer for all reasonable and customary costs actually incurred by the Issuer in connection with the completion of such performance. The Company shall indemnify, defend, protect and hold the Issuer and the Issuer’s commissioners, officers, employees and agents free and harmless from any liability (including, without limitation, costs, reasonable attorneys and consulting fees, investigation and laboratory fees and litigation expenses) arising out of (a) a release of any hazardous substance in, on or under the Project Site or (b) the violation by the Company or its employees, agents or contractors of any Applicable Environmental Laws at the Project Site. The indemnity obligations stated in this Section 4.6 (i) are in addition to the other indemnity obligations of Company hereunder, and shall survive the termination of this Agreement,

but (ii) shall specifically exclude any liabilities or amounts arising out of or related to the gross negligence or misconduct of the Issuer or the Issuer's trustees, employees and agents.

**Section 4.7. Taxes and Utility Charges.** The Company will pay or cause to be paid, as and when due, (i) all taxes, assessments, and governmental and other charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project Property, (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project Property and (iii) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by any lien on the Project Property. The Company may, in good faith, contest the amount or validity of any such levy, tax, assessment or other charge by appropriate legal proceedings. During the period of such contest and any related appeal, this Section 4.7 will be deemed satisfied with respect to any such levy, tax, assessment or other charge so contested.

**Section 4.8. Maintenance.** The Issuer will not be under any obligation to, and will not, operate, maintain or repair the Project Property. The Company will, at its own expense, keep the Project Property in safe repair and in such operating condition as is needed for its operations. After completion of the Project, the Company will not be under any obligation to renew, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable, inappropriate or unnecessary equipment. Notwithstanding the foregoing, the Company will comply with its decommissioning obligations contained in Exhibit B attached hereto and incorporated herein by reference.

**Section 4.9. Replacement and Removal of Project Property.** The Company may replace or remove and/or sell, trade in exchange or otherwise dispose of any machinery, equipment or fixtures constituting a part of the Project Property, without any responsibility or accountability to the Issuer, and thereby acquire title to such machinery, equipment or fixtures, provided that such replacement or removal will not change the nature of the Project as a qualified "project" as defined in and as contemplated by the Act. Upon the request and at the expense of the Company, the Issuer will deliver to the Company appropriate instruments evidencing the acquisition by the Company of title to any machinery, equipment or fixtures permitted by this Section 4.9 to be so replaced or removed. The delivery and form of any such instruments will be consistent with the conveyance instruments described in Article X. The removal from the Facility of any portion of the equipment, if any, pursuant to the provisions of this Section 4.9 will not entitle the Company to any abatement or diminution in amount of the Basic Rent, Additional Payments, or PILOT payable under this Agreement. The Company may acquire machinery, equipment or other property (other than fixtures) which does not constitute a part of the Project Property and title to any such property will not thereby be transferred to the Issuer.

**Section 4.10. Eminent Domain; Damage; Destruction.** The Company will give prompt notice to the Issuer and the Purchaser of any material damage to or destruction of the Project Property. If either the Issuer or the Company receives notice of the proposed taking of all or any part of the Project Property by Eminent Domain, it will give prompt notice to the other and the Purchaser. Any such notice will describe generally the nature and extent of such damage, destruction, taking or proposed taking. The Proceeds resulting from the exercise of Eminent Domain with respect to or from any damage to or destruction of all or any portion of the Project Property shall at the option of the Purchaser, be applied to the prepayment of the Bonds or paid to

the Company. All proceeds of insurance resulting from claims for losses to the Project and all proceeds of any condemnation award will be paid to the Company.

**Section 4.11. Access and Inspection.** The Company authorizes the Issuer and the Purchaser and their duly authorized agents during regular business hours, upon two (2) days prior written notice, (i) such rights of access to the Project Property as may be reasonably necessary to inspect the progress of the Project and (ii) the right of entry onto the Project Site for any purpose contemplated by this Agreement. Such rights of access and entry will not be terminated, curtailed or otherwise limited by any sale, assignment, lease or other transfer of the Project Property by the Company to any other Person. During any such access or entry, the Issuer and the Purchaser shall comply with all safety related rules and policies of the Company and its contractors.

**Section 4.12. Assessment in the Company's Name.** If this Agreement has not been terminated on or before the thirtieth (30<sup>th</sup>) anniversary of the Closing Date, the Company will take all necessary action to have the Project Property assessed for property tax purposes in the name of the Company on or within thirty (30) days before the thirtieth (30<sup>th</sup>) anniversary of the Closing Date, and the Company will pay all ad valorem taxes on the Project Property from and after the thirtieth (30<sup>th</sup>) anniversary of the Closing Date. If the Project Property must be conveyed to the Company to accomplish such assessment, the Issuer will convey the Project Property to the Company, and this Agreement will thereafter be construed to be an installment sale agreement and all terms and provisions of this Agreement will remain in full force and effect. The provisions of Article X govern the manner and form of any such conveyance. Notwithstanding the foregoing, if the Company fails to take all necessary action to have the Project Property assessed for property tax purposes in the name of the Company thirty (30) days before or on the thirtieth (30<sup>th</sup>) anniversary of the Closing Date, the Issuer may terminate this Agreement and execute, deliver and cause to be recorded, at the expense of the Company, appropriate documents reflecting such termination. In anticipation of the conveyance of the Project Property by the Issuer to the Company, the Issuer will, upon the request of the Company, deliver to an escrow agent agreed to by the Issuer and the Company appropriate documents, including, but not limited to, a quitclaim deed, an assignment of easements and other real property rights and a bill of sale, prepared by the Company at the Company's expense, conveying to the Company the Issuer's interest in the Project Property; such documents to be delivered to the Company at the time of purchase of the Project Property.

**Section 4.13. Use of Project Property.** The Company will use the Project Property or cause the Project Property to be used, and the Issuer grants the Company the full right to use, or cause the Project Property to be used continuously during the Term, so as to constitute a "project" within the meaning of the Act as in effect on the date of issuance of the Bonds. Temporary cessation of operations, or cessations of operations during holiday periods, for maintenance or retooling, for reasonable periods for the repair or replacement of facilities damaged or destroyed, resulting from labor disputes, strikes or because of short-term slack demand, riots or acts of God or the public enemy, shortages of materials or supplies or for any other reason beyond the reasonable control of the Company, or under similar circumstances will not constitute a failure by the Company to comply with this Section 4.13. If the Company terminates this Agreement or the Project ceases operations other than for a temporary cessation as described above prior to the thirtieth (30<sup>th</sup>) anniversary of the Closing Date, the Company will pay to the Issuer (for the account

of all taxing entities within whose jurisdiction the Project is or is to be located), within ninety (90) days of such cessation or non-completion of the Project, an amount equal to (i) the amount of ad valorem taxes on real and personal property that the Company did not pay, but would have been required to pay, if the Bonds had not been issued by the Issuer and the Project Property had been subject to ad valorem taxation, calculated using the mill levy rates and property tax valuations imposed in each applicable tax year, plus (ii) the amount of gross receipts tax that was not paid, but would have been payable by vendors of Project Property if the Bonds had not been issued and receipts from sales of Project Property had not been deducted from gross receipts of the vendors under NMSA 1978, Section 7-9-54 (2023), plus (iii) the amount of compensating tax that was not paid, but would have been payable by the Company pursuant to NMSA 1978, Section 7-9-14 (2023) with respect to Project Property if the Bonds had not been issued. Any payments required to be made under this Section 4.13 shall be reduced by any PILOT paid under this Agreement. The provisions of this Section 4.13 will survive the termination of this Agreement.

**Section 4.14. Existence.** Unless its successor or the transferee of its assets, as the case may be, assumes in writing all of the obligations of the Company under the Bond Documents, the Company will maintain its existence as a legal entity and will not dispose of all or substantially all of its assets, other than through execution of this Agreement. The Company shall have the right to change its organizational structure so long as such a change does not result in the Project failing to constitute a “project” within the meaning of the Act as in effect on the date of issuance of the Bonds, provided such restructured organization assumes in writing or is liable for, by operation of law, all of the obligations of the Company under the Bond Documents. Original executed copies of such assumption will be delivered to each of the other parties on or before the effective date of such succession or transfer. To the extent necessary under State law, the Company and its successors or transferees, will become and remain authorized to transact business in the State and, if applicable, in good standing in the State.

**Section 4.15. Subleases; Granting and Release of Easements; Amending or Modifying Subleases and Easements.** The Company may, at any time or times, cause to be granted subleases, easements, licenses, rights-of-way (temporary or perpetual and including the dedication of public highways) subject to the Indenture and this Agreement, or the Company may cause to be amended, modified or released existing subleases, easements, licenses, rights-of-way and other rights or privileges in the nature of easements, held with respect to any property included in the Project Property with or without consideration, and the Issuer agrees that it will, at the expense of the Company, execute and deliver any instrument necessary or appropriate to confirm and grant, amend, modify or release any such sublease, easement, license, right-of-way or other right or privilege upon receipt of: (i) a copy of the instrument of grant, amendment, modification or release, and (ii) a written application of the Company signed by an authorized representative of the Company requesting such instrument and stating (1) that such grant, amendment, modification or release is not detrimental to the proper conduct of the business of the Company, and (2) that such grant, amendment, modification or release will not impair the effective use or materially interfere with the operation of the Project Property; will not materially diminish or impair the security intended to be given by or under this Agreement or the Indenture and will not materially diminish or impair the obligations of the Company or the rights of the Issuer under this Agreement or the Indenture.

**Section 4.16. Insurance.** The Company will keep the Project Property continuously insured against such risks and in such amounts, with such deductible provisions, as are customary in connection with the operation of facilities of the type, location and size comparable to the Facility, as reasonably determined by the Company. Each policy of such insurance will show the Company as loss payee and the Issuer as an additional insured under such policies as the respective interests of such parties may appear. Such insurance may, to the extent permitted under applicable law, be provided by blanket policies maintained by the Company, by a captive insurance company controlled by the Company or through self-insurance. Such insurance will include extended coverage insurance and general liability insurance against liability for (i) claims for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Project Property, and (ii) liability with respect to the Project Property under the workers' compensation laws of the State (unless the Company has complied with the requirements of the law of the State for self-insurance).

## **ARTICLE V LEASE; POSSESSION; RENT**

### **Section 5.1. Lease of the Project Property; Rights Upon Termination.**

(a) In consideration of the payment of Rent and for other good and valuable consideration, the Issuer leases the Project Property to the Company for the Term, subject to the terms and conditions of this Agreement.

(b) Except as provided in Sections 4.13 and 11.17, upon the termination of this Agreement, all right, title and interest of the Issuer and the Purchaser under this Agreement shall cease, terminate and become void, the Bonds shall cease to be entitled to any benefit under this Agreement, and all covenants, agreements and obligations of the Company to the Purchaser, the Issuer, and with respect to the School Districts, the School PILOT, shall thereupon cease, terminate and become void.

**Section 5.2. Quiet Enjoyment.** So long as no Event of Default has occurred and is continuing, the Issuer will not take any action, other than pursuant to Section 4.12 or Article VIII, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project Property during the Term (except as necessary with respect to Eminent Domain or condemnation for public projects and purposes) and will, at the request of the Company and at the Company's expense, including all expenses incident to any legal action, to the extent that the Issuer may lawfully do so, join in any legal action in which the Company asserts its right to such possession and enjoyment.

### **Section 5.3. Basic Rent and Additional Payments.**

(a) The Company will pay to the Purchaser for the account of the Issuer such amounts at such times as are required to make all payments of principal of, interest on and redemption price of the Bonds in accordance with the terms of the Bonds and the Indenture as and when due (the "Basic Rent"), and the Company shall take all such actions relating to the withholding and reporting of interest as are required by the Internal Revenue Code of 1986, as amended. A copy



of the anticipated payment schedule for the Bonds is attached hereto as Schedule 5.3(a). The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to, monies advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of making bond advances under the Indenture.

(b) The Company will make the following payments (the “Additional Payments”) to or on behalf of the Issuer: all actual costs, expenses and taxes (including, but not limited to, costs attributable to work performed by in-house staff and the fees of its outside advisors including Bond Counsel and its financial advisor) paid or incurred by the Issuer in connection with (i) the discussion, review, negotiation, preparation, approval, execution and delivery of the Bonds, the Bond Documents, and the other documents and instruments related hereto and thereto through the Closing Date, all of which amounts shall be paid in full on or before the Closing Date, (ii) any amendments or modifications to any of the foregoing documents, instruments or agreements and the negotiation, preparation, approval, execution and delivery of any and all documents necessary to effect such amendments or modifications, (iii) the enforcement by the Issuer during or after the Term of any of the rights or remedies of the Issuer under any of the foregoing documents, instruments or agreements including without limitation, costs and expenses of collection, whether or not suit is filed, (iv) the servicing and administration of the Bonds during the Term or thereafter, including the preparation of disclosures under GASB 77 and GASB 91, and (v) any requested subordination of the Issuer’s interest in the Project Property to a Lender.

**Section 5.4. Obligations Unconditional; Rights of Setoff.**

(a) The obligation of the Company to pay the PILOT payments and Rent, and to perform its other obligations under this Agreement is absolute and unconditional and, except as otherwise provided in 5.4(b) below, will not be subject to diminution by setoff, counterclaim, abatement or otherwise, whether as a result of Eminent Domain with respect to, damage to or destruction of or removal of all or any portion of the Project Property or any other event or condition. In the event the Issuer fails to perform its obligations under this Agreement, the Company may, subject to the limitations imposed by Section 11.3, institute such action against the Issuer as the Company may deem necessary to compel performance of those obligations of the Issuer. The Company may also, at its own cost and expense and in its own name or, if necessary, in the name of the Issuer prosecute or defend any action or proceeding or take any other action involving third parties which the Company deems reasonably necessary in order to secure or protect its title to or its right of possession, occupancy and use of the Project Site and the Project Property. In such event, if no Event of Default has occurred and is continuing, the Issuer will cooperate with the Company, so long as it is not the adverse party, upon receipt of indemnity satisfactory to the Issuer against any out-of-pocket cost, expense (including reasonable counsel fees and expenses) or liability the Issuer may incur or suffer as a result of or in connection with such cooperation.

(b) Notwithstanding the above paragraph, it is the intention of this Agreement that the Company shall make Basic Rent payments to the Purchaser for the account of the Issuer, in such amounts and at such times as are required to make payments of principal of, interest on and redemption price of the Bonds in accordance with the terms of the Bond Documents as and when due, and the parties acknowledge that all such Basic Rent payments may be offset against any

monies due and payable to the Company from the Purchaser in connection with any funds advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of any Advances to the Acquisition Fund (as defined in the Indenture) as provided for under Section 702 of the Indenture. The Purchaser will look only to the Company for payment of the Bonds and upon the security granted in the Indenture for the Company's obligations under this Agreement. As described in Section 7.1, the Issuer will assign and pledge to the Purchaser certain of its rights, title and interests in and to this Agreement including the right to receive payments of Basic Rent hereunder.

## ARTICLE VI SPECIAL COVENANTS

**Section 6.1. Recording and Filing; Further Assurances.** The Company will, at the expense of the Company, take all actions that at the time are and from time to time may be reasonably necessary to perfect, preserve, protect and secure the interests of the Issuer and the Purchaser in and to the Rent and in the Project Property, including, without limitation, the recordation of this Agreement and the Indenture, the filing of financing statements and continuation statements and the execution, acknowledgment, delivery, filing and recordation of such other instruments as may reasonably be required in carrying out the intention of or facilitating the performance of this Agreement. The Issuer will cooperate with the Company in all such matters.

**Section 6.2. Claims; Liens.** The Company will pay and discharge and will indemnify and hold harmless the Issuer from (a) any lien or charge upon payments by the Company to, or for the account of, the Issuer under this Agreement (other than the Indenture) and (b) any taxes, assessments, impositions and other charges in respect of the Project Property. If any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the Issuer will give prompt notice to the Company of any such lien, taxes, assessments, impositions or other charges of which the Issuer has actual notice, and the Company will have the sole right and duty to assume the defense of the same and will have the power to litigate, compromise or settle the same.

**Section 6.3. Release and Indemnification.**

(a) Except as provided in this Section 6.3, the Company releases the Issuer, its Commissioners, officials, employees and agents (each an "Indemnitee") from, and will indemnify and hold harmless each Indemnitee from and against any and all claims, damages, demands, expenses, liabilities and losses of every kind, character and nature (the "Losses") imposed upon, incurred or asserted against, any Indemnitee on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the installation, maintenance, operation and use of the Project Property; (ii) the inaccuracy of any representation by the Company (regardless of whether the Company was aware of such inaccuracy at the time the representation was made) or any breach or default on the part of the Company in the performance of any representation, covenant or agreement of the Company under this Agreement, or any related document, or arising from any acts or failure to act by the Company, or any of its agents, contractors, servants, employees or licensees; (iii) the Company's

failure to comply with any requirements of this Agreement; (iv) suits, legal or administrative proceedings, demands, losses, liabilities, damages, claims, causes of action, costs and expenses resulting from or in any way connected with the presence, release or disposal in or under the Project Site of, any hazardous substances (as defined in CERCLA), hazardous wastes (as defined in RCRA), oils, radioactive materials, asbestos in any form or condition, any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any Applicable Environmental Law; (v) any action by the Company in connection with the authorization, issuance and sale of the Bonds; (vi) any liability, whether under federal or state securities laws or otherwise, that may arise as a result of inaccurate information supplied by the Company in connection with the issuance of the Bonds or any subsequent sale of the Bonds; (vii) any other loss, claim, damage, penalty, liability, disbursement, litigation expenses and attorneys' fees or court costs arising out of or in any way relating to the execution of performance of this Agreement, actions taken under the Indenture, the ownership or leasing of the Project Property or any other cause whatsoever pertaining to the Project Property; and (viii) any claim, action or proceeding brought with respect to the matters set forth in clauses (i) through (viii). The Issuer will not be liable to the Company, and the Company releases and discharges the Issuer from, any liability for any and all losses, costs, expenses (including attorneys' fees), damages, judgments, claims and causes of action paid, incurred or sustained by the Company as a result of or relating to any action, or failure or refusal to act on the part of the Purchaser or the Depositary with respect to the Bonds, the Bond Documents or documents and the transactions contemplated thereby, including without limitation the exercise by the Purchaser of any of its rights thereunder. This Section 6.3 is not intended in any way to detract from provisions of the Bond Documents to the effect that the Issuer is not to incur any pecuniary liability with respect to the transactions contemplated by the Bond Documents.

(b) Notwithstanding the fact that it is the intention of the parties that the Issuer will not incur pecuniary liability by reason of this Agreement or the undertakings of the Issuer under this Agreement, by reason of the issuance of the Bonds, the execution of the Bond Documents, the performance of any act required of it by the Bond Documents, the performance of any act related to the Bond Documents or the Bonds requested of it by the Company or its position as owner or lessor of the Project Property, nevertheless if the Issuer incurs any such pecuniary liability or the same is claimed or sought, then in such event the Company will indemnify and hold harmless the Issuer against all claims by or on behalf of any person arising out of the same and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from the Issuer, the Company will defend the Issuer in any such action or proceeding.

(c) In case a claim is made or any action or proceeding is brought against an Indemnitee based on matters described in this Section 6.3 and for which indemnity is sought against the Company pursuant to this Section 6.3, the Indemnitee shall promptly notify the Company in writing, and the Company, upon receipt of that notice, shall promptly assume or cause the assumption of the defense thereof, including the employment of counsel chosen by the Company and approved in writing by the Issuer (provided, that such approval by the Issuer shall not be unreasonably withheld or delayed), the payment of all expenses and the right to negotiate and consent to settlement. The failure of an Indemnitee to provide timely notice will not relieve the Company from any of its obligations under this Section 6.3 unless that failure prejudices the

defense of the claim or action by the Company, in which case the liability of the Company under this Section 6.3 shall be reduced only by an amount equal to the amount of the loss sustained by the Company solely as a result of such failure to notify. If Indemnitee is advised in a written opinion of counsel that there may be legal defenses available to Indemnitee which are adverse to or in conflict with those available to the Company, or that the defenses of Indemnitee should be handled by separate counsel, the Company shall not have the right to assume or cause the assumption of the defense of Indemnitee. If the Company fails to assume or cause the assumption of the defense of such action or to retain counsel reasonably satisfactory to the Issuer within a reasonable time after notice of the commencement of such action, the fees and expenses of counsel retained by Indemnitee shall be paid by the Company. Notwithstanding, and in addition to any of the foregoing, Indemnitee shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid solely by such Indemnitee unless the employment of such counsel has been specifically authorized in writing by the Company, or if representation by the counsel retained by the Company would be inappropriate due to actual or potential differing interests between such Indemnitee and any other party represented by such counsel in such proceeding. The Company shall not be liable for any such claim or in any such action (i) with respect to any settlement without the prior written consent of the Company, or (ii) with respect to the gross negligence or willful misconduct of any of the Indemnitee.

(d) The Company will have no obligation to release and/or indemnify any Indemnitee (i) with respect to any settlement entered into by such Indemnitee without the prior consent of the Company (which consent will not be unreasonably withheld or delayed), or (ii) for Losses to the extent that such Losses are caused by the negligence or willful misconduct of any of the Indemnitees.

(e) The provisions of this Section 6.3 will survive the Payment of the Bonds and the termination of this Agreement.

**Section 6.4. Payments in Lieu of Taxes; Combined PILOT; County PILOT; School PILOT.**

(a) During the Term, the Company shall make annual payments in lieu of taxes to the Issuer in an amount equal to \$3,650 per megawatt of injection capability of the Combined Project (the “PILOT”), but in no event will the Combined PILOT be less than \$292,000, which amount represents the PILOT that would be due on a project with an injection capability of 80 megawatts.

(b) The Company shall pay the PILOT to the Issuer on the first anniversary of the Effective Date and, thereafter, on each succeeding anniversary, until July 10, 2054. The County PILOT shall be equal to 70.7273% of the PILOT and the School PILOT shall be equal to 29.2727% of the PILOT.

(c) The Issuer will allocate the School PILOT, to the School Districts in accordance with Exhibit C attached hereto and incorporated herein by reference. The School PILOT and the allocation described in Exhibit C, have been determined in accordance with the requirements of NMSA 1978, Section 4-59-4(A)(2) (2023). The School PILOT is an amount greater than the

amount of ad valorem property taxes due to the School Districts in the tax year immediately preceding the date of issuance of the Bonds from the Property if the Project were not constructed, and shall be distributed to the School Districts in accordance with that statute.

(d) The provisions of this Section 6.4 shall survive the termination of this Agreement.

**Section 6.5. GASB 77 and GASB 91 Information and Injection Capability Reporting.** The Company shall provide, promptly upon the Issuer's request, annually or more frequently if the Issuer so requests, such information concerning (i) expenditures of proceeds of the Bonds, (ii) the estimated value of the Project Property, (iii) estimates of the amounts and types of tax avoided by virtue of the issuance of all industrial revenue bonds by the Issuer for the benefit of the Company and any Affiliates of the Company, and (iv) all other information reasonably requested by the Issuer for the purpose of the Issuer's annual disclosure of tax expenditures under GASB 77 and other information required under GASB 91. The Company shall provide written notice of the injection capability (in megawatts) of the Project to the Issuer and the School Districts on the first anniversary of the Effective Date of this Agreement and, thereafter, on each succeeding anniversary, so long as title to the Project Property is held in the name of the Issuer.

**Section 6.6. Non-Use of County Roads.** The Company shall not use any County Road in connection with the acquisition, installation, or operation of the Project or the Project Property until such time as the Company and the Issuer enter into an agreement establishing what uses of County Roads by the Company are permitted and what responsibility for maintenance each of the parties thereto will undertake.

## ARTICLE VII ASSIGNMENT, LEASING AND SELLING

**Section 7.1. Assignment of Rights by the Issuer.** Concurrently with issuance of the Bonds, the Issuer will assign to the Purchaser certain of the Issuer's rights, title and interests in and to this Agreement, pursuant to the Indenture, as security for payment of the principal of, interest on and redemption price of the Bonds. Thereafter, the Purchaser will be vested with, and authorized to exercise, such rights of the Issuer and the Purchaser under this Agreement. The Company consents to such assignment.

**Section 7.2. No Other Transfer by Issuer.** Except for the assignment described in Section 7.1 and Article X hereof or transfer to the Company in accordance with Section 4.12 or 8.3, the Issuer will not sell, assign, transfer or convey its rights, title or interests in this Agreement or the Project Property, or its obligations under this Agreement. Except for tax liens created or permitted by the Company, the Issuer will not cause or create any liens on the Project Property or the Project Site and will cooperate with the Company to defend the Project Property, the Project Site and the Company from and against any claims of lien.

**Section 7.3. Assignment, Lease, Mortgage and Sale by the Company.** The rights and interests of the Company in, to and under this Agreement may be assigned, and the rights and interests of the Company in and to the Project Property may be assigned, subleased, mortgaged or

sold as a whole or in part by the Company, without the consent of the Issuer, provided that under any such assignment or sale the Company remains liable for making payments of Rent and for the performance of its other obligations under this Agreement except where (i) the assignee or purchaser of all of the Company's interest in the Project Property assumes in writing the obligations of the Company under this Agreement, (ii) the financial standing of the assignee or purchaser immediately following such assignment or sale is the same or better than that of the Company immediately preceding such assignment or sale and (iii) the Issuer consents. For purposes of this Agreement, "financial standing" shall mean (a) the ownership or other beneficial possession of title to, all of the Project Property and all material rights and assets with respect to the Project, and (b) no material liabilities other than liabilities arising from, or in connection with, the Project. Any mortgagee or assignee that does not directly hold an interest in the Project Property or whose interest is held solely for security purposes shall have no obligation or liability under this Agreement prior to the time the mortgagee or assignee directly holds an interest in this Agreement or succeeds to absolute title to the Company's interest in the Project Property. A mortgagee or assignee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such interest or absolute title.

**Section 7.4 Collateral Assignment.** The Company shall be permitted to assign this Agreement to its Lenders as collateral for any financing or refinancing of the Project; provided, Company shall be responsible for Issuer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, including reasonable attorneys' fees. Issuer shall, upon request by Company and, at Company's sole expense, cooperate reasonably to execute, or arrange for the delivery within thirty (30) days of such request or such longer time as is reasonable under the circumstances, those normal, reasonable and customary consents, certificates, opinions and other documents and provide such other normal and customary representations or warranties (all in a form reasonably acceptable to Issuer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof), as may be necessary to assist Company in consummating any financing or refinancing of the Project Property or any part thereof.

## ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

**Section 8.1. Events of Default Defined.** Each of the following events is an "Event of Default":

(a) Failure by the Company to make any Rent payment, Additional Payments, or PILOT payments when due which continues unremedied for a period of thirty (30) days after the provision by the Issuer or the Purchaser of written notice of non-payment.

(b) Any representation of the Company in any of the Bond Documents or in any document or agreement delivered to any of the other parties in connection with the transactions contemplated by the Bond Documents proves to have been incorrect in any material respect when made and remains incorrect for a period of thirty (30) days after written notice specifying such error and requesting that it be remedied is given by the Issuer unless such error cannot be remedied

within thirty (30) days and the Company has instituted corrective action within thirty (30) days after such notice and diligently pursues such action until such failure is remedied.

(c) A decree or order for relief by a court of competent jurisdiction is entered in an involuntary case under any federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days, or the commencement by the Company of a voluntary case under such law, or the consent by the Company either to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company or for any substantial part of its property, or the making by it of any assignment for the benefit of creditors, or the taking of action by the Company to authorize or effect any of the foregoing. Provided, however, neither the bankruptcy nor the insolvency of the Company shall be grounds for default as long as all Basic Rent payments, PILOT payments and Additional Payments, and all other monetary charges payable by the Company under this Agreement are paid in accordance with this Agreement.

(d) Except as provided in Section 8.1(a), failure by the Company to perform any of its material obligations under this Agreement for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Company by the Issuer or the Purchaser, unless such failure is of a type which cannot reasonably be remedied within thirty (30) days and the Company has instituted corrective action within thirty (30) days after such notice and diligently pursues such action until such failure is remedied.

**Section 8.2. Purchaser Remedies.** The Issuer shall not be entitled to exercise any default remedies against the Company or the Project Property pursuant to this Agreement without the prior written consent of the Purchaser, except as (and then only to the extent) provided in Section 8.3 of this Agreement. If an Event of Default occurs and is continuing, the Purchaser (or its assignee), as the assignee of the Issuer under the Indenture and on behalf of the Issuer, may, but is not required to, take any one or more of the following remedial steps:

(a) By written notice to the Company declare all amounts of Basic Rent payable for the remainder of the Term as are required to provide for the Payment of the Bonds to be immediately due and payable, whereupon the same will be immediately due and payable;

(b) Take whatever action at law or in equity may appear necessary or desirable to collect the Rent then due and thereafter to become due or to enforce the performance and observance of any obligation of the Company under this Agreement or the Indenture;

(c) Exercise any remedies provided for in the Indenture; or

(d) Terminate this Agreement; provided, however, that upon any such termination, all amounts owed to the Issuer hereunder shall be paid, and the Issuer shall immediately reconvey the Project Property to the Company in accordance with Article X.

As the assignee of the Issuer, subject to Section 8.3, the Purchaser (or its assignee) has the sole right and responsibility for the exercise of any remedies if an Event of Default occurs and is continuing.

**Section 8.3. Issuer Remedies.** If:

(a) the Company fails to comply with its obligations set forth in Sections 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 5.3(b), 6.2, 6.3, 6.4, 6.5 or 8.5, and such failure continues for sixty (60) days after the Issuer gives the Company written notice of such failure; or

(b) the Company fails to comply with its obligations under Section 5.3(b), such failure continues for thirty (30) days after the Issuer or Purchaser or its assignee gives the Company written notice of such failure, and the Purchaser or its assignee exercises any of the remedies provided in Section 8.2 with respect to such failure; or

(c) any representation of the Company in any of the Bond Documents or any document or agreement delivered to any of the other parties in connection with the transactions contemplated by the Bond Documents proves to have been incorrect in any material respect when made;

then, subject to Section 8.6 hereof, the Issuer may, in addition to exercising any other remedy available at law or in equity, immediately terminate this Agreement and reconvey the Project Property to the Company; provided, however, that if any conditions described in Subsections 8.3(a), (b) or (c) cannot be cured within the time allotted for cure, if the Company initiates and proceeds with due diligence to effect a cure, a default will not be deemed to have occurred as long as the Company cures the default within a reasonable period.

**Section 8.4. Notice of Default.** The Company will promptly give notice of the occurrence of any Event of Default to the Issuer, the Purchaser and the Depository.

**Section 8.5. Agreement to Pay Attorneys' Fees and Expenses.** If an Event of Default, or an event which with the giving of notice or the passage of time, or both, would constitute an Event of Default, occurs, and the Issuer incurs expenses, including reasonable attorneys' fees, in connection with the enforcement or administration of this Agreement, the Company will reimburse the Issuer for the reasonable expenses so incurred, upon request. Such amounts shall constitute Additional Payments.

**Section 8.6. Right to Cure Defaults.**

(a) To prevent termination of this Agreement, any mortgagee or assignee of the Company that holds an interest in the Project Property as security shall have a right, but not the obligation, at any time to perform any act necessary to cure any default and to prevent the termination of this Agreement. If any default by the Company under this Agreement cannot be cured without obtaining possession of all or part of the Project Property, then any such default shall be deemed remedied if a mortgagee or assignee (i) in the applicable cure period provided in Section 8.1 or within sixty (60) days thereafter begins appropriate judicial or non-judicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and



(iii) after gaining possession of all or part of the Project Property diligently proceeds to cure and perform all other obligations as and when the same are due in accordance with the terms of this Agreement. If a mortgagee or assignee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

(b) During any period of possession of the Project Property by a mortgagee (or a receiver requested by a mortgagee) and/or while any foreclosure proceedings instituted by a mortgagee are pending, the mortgagee shall pay or cause to be paid the Rent and all other monetary charges payable by the Company under this Agreement which accrue during the period of such possession.

## **ARTICLE IX PREPAYMENTS**

The Company may at any time without penalty (including after the occurrence and during the continuance of an Event of Default) and for any reason cause all or any portion of the Bonds to be redeemed in accordance with the provisions of the Indenture by giving notice of such redemption to the Issuer, the Purchaser and, if there are monies on deposit in the Acquisition Fund (as defined in the Indenture), to the Depositary not less than forty-five (45) days before the redemption date, or such shorter period to which the Issuer, the Purchaser, and the Company may agree. Such notice will specify the redemption date and the principal amount of the Bonds to be redeemed. On the redemption date the Company will prepay the Rent in an amount equal to such principal amount plus accrued interest on such principal amount to the redemption date by payment of such amounts to the Purchaser, and will pay all Additional Payments, plus interest, if any, including the PILOT payments owed to the Issuer as of such date. The parties acknowledge that the Company may prepay, pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by the Company to the Purchaser in anticipation of making Bond advances under the Indenture.

## **ARTICLE X PURCHASE OF PROJECT PROPERTY**

The Company will purchase and the Issuer will sell the Project Property for \$1.00 at the expiration or sooner termination of the Term. The Company will give written notice to the Issuer and to the Purchaser, if the Bonds are then unpaid or provision for their payment has not been made, and will specify therein the date of termination and closing such purchase which date shall be the same date and which date will be not less than fifteen (15) nor more than ninety (90) days from the date such notice is mailed. At the closing of such purchase, the Issuer will, upon receipt of the purchase price, deliver to the Company or its nominee appropriate documents, including, but not limited to, a quitclaim deed, assignment of easements and other real property rights and a bill of sale, as applicable, prepared by the Company at the Company's expense, conveying to the Company without representation or warranty the Issuer's interest in the Project Property, as it exists at the time of such purchase, subject only to: (i) those liens and encumbrances, if any, to

which the Project Property was subject when conveyed to the Issuer; (ii) those liens and encumbrances created by the Company and or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to perform any of its obligations under this Agreement; and (iv) any other lien arising as a matter of law. The Company may exercise its rights under this Article X, whether or not a Default or an Event of Default has occurred and is continuing, so long as all Additional Payments and PILOT payments due to the Issuer and the School Districts are paid on or before the date of closing of such purchase. If the Company fails to take all necessary action to have the Project Property assessed for tax purposes in the name of the Company at the expiration of the Term, the Issuer may execute, deliver and cause to be recorded, at the expense of the Company, a bill of sale with respect to the Project Property and other appropriate documents reflecting the termination of this Agreement. If at the time of closing the Indenture has not been satisfied in full and released of record, a release by the Purchaser of the Indenture will also be delivered to the Company (or its designee). The right to prepay granted to the Company in this Agreement is and will remain prior and superior to the Indenture.

## **ARTICLE XI MISCELLANEOUS**

**Section 11.1. Remedies.** No right or remedy conferred on any party in this Agreement is intended to be exclusive of any other right or remedy conferred on such party in this Agreement. Except as provided in Section 11.3, each such right or remedy is in addition to every other right or remedy provided in any of the Bond Documents or by law; provided, that the remedies of Purchaser and/or Issuer in respect of an Event of Default or other breach of any Bond Document by the Company shall be limited in all cases to those expressly provided in Article VIII hereof. No delay or omission of any party to exercise any such right or remedy will impair any such right or remedy or be construed to be a waiver. Every such right or remedy may be exercised from time to time and as often as the relevant party may deem expedient. No waiver by any party of any right or remedy with respect to any Default or Event of Default will extend to or affect any other existing or subsequent Default or Event of Default.

**Section 11.2. Beneficiaries.** Nothing in this Agreement expressed or implied is intended or is to be construed to confer upon any natural person other than the parties and their successors and assigns (and, in the case of Section 6.3 of this Agreement, the Indemnitees) any right, remedy or claim, legal or equitable.

**Section 11.3. Limitation of Issuer's Liability.** No agreements or provisions contained in the Bond Documents nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of proceeds of the Bonds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer, its officials, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or obligate the Issuer financially in any way, except with respect to the revenues available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds, and their application as provided under the Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in this Agreement or in any document executed by the Issuer in

connection with the Bonds will subject the Issuer, its officials, employees, agents and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the revenues available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds. Nothing in this Agreement will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement in this Agreement or in the Indenture; provided, however, that no monetary relief will be recoverable from the Issuer except as may be payable from the funds available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds.

Notwithstanding any other provisions of this Agreement, none of the provisions of this Agreement shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder unless it shall have first been adequately indemnified to its satisfaction against the cost, expense and liability which may be incurred thereby.

**Section 11.4. No Violation of Public Policies Regarding Indemnity.** To the extent, if at all, a court of competent jurisdiction determines that NMSA 1978, Section 56-7-1 (2005), applies to any indemnification provisions in this Agreement, including certain types of insurance coverage as set forth in NMSA 1978, Section 56-7-1 (2005), such provisions shall not apply to or extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee or additional insured, as the case may be, its officers, employees or agents and shall further be limited, if required, by the provisions of NMSA 1978, Section 56-7-2 (2003).

**Section 11.5. Notices.** Any notice, demand, direction, request, consent, approval, report or other instrument authorized or required by this Agreement or the Bond Ordinance to be executed, given or filed will be in writing and will be deemed to have been sufficiently given or filed for all purposes of this Agreement when delivered by hand delivery or by overnight courier or on the third business day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer: Quay County, New Mexico  
Attn: County Manager  
300 South Third Street  
P.O. Box 1246  
Tucumcari, NM 88401  
Telephone: (575) 461-2112  
Fax: (575) 461-6208

with a copy to: Rodey, Dickason, Sloan, Akin & Robb, P.A.  
119 E. Marcy Street, Suite 200  
P.O. Box 1357  
Santa Fe, NM 87501 (87504)

Attn: Luis G. Carrasco, Esq.  
Tel: (505) 954-3905  
E-mail: [LCarrasco@rodey.com](mailto:LCarrasco@rodey.com)

If to the Purchaser: Caprock Wind Investments, LLC  
6688 North Central Expressway, Suite 500  
Dallas, TX 75206

If to the Company: Caprock Wind, LLC  
6688 North Central Expressway, Suite 500  
Dallas, TX 75206  
Attn: Asset Management  
E-mail: [AssetMgmt@leewardenergy.com](mailto:AssetMgmt@leewardenergy.com)

with a copy to: Modrall, Sperling, Roehl, Harris & Sisk, P.A.  
500 Fourth Street NW, Suite 1000  
Albuquerque, NM 87102  
Attn: Peter Franklin, Esq.  
Tel: (505) 984-2856  
E-mail: [pfranklin@modrall.com](mailto:pfranklin@modrall.com)

Any party may, by notice to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent.

**Section 11.6. Severability.** In case any one or more of the provisions of this Agreement is for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of this Agreement, but this Agreement will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the Issuer or the Company contained in this Agreement is for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of the Issuer or the Company to the full extent permitted by law.

**Section 11.7. Successors.** Wherever the Issuer is referred to in this Agreement, it will be deemed to include its successors and all covenants and agreements in this Agreement will bind and inure to the benefit of the Issuer's successors. Wherever the Company is referred to in this Agreement, it will be deemed to include its successors in interest to the Project Property and all covenants and agreements in this Agreement will bind and inure to the benefit of such successors.

**Section 11.8. Title, Headings.** The title and headings of the articles, sections and subdivisions of this Agreement have been used for convenience only and do not modify or restrict any of the terms or provisions of this Agreement.

**Section 11.9. Execution in Counterparts.** This Agreement may be executed in multiple counterparts, all of which taken together will constitute one instrument. Delivery of a copy of this Agreement bearing an original signature by facsimile transmission, by electronic mail

in “pdf” form or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means, shall have the same effect as physical delivery of the paper document bearing the original signature. “Originally signed” or “original signature” means or refers to a signature that has not been mechanically or electronically reproduced. Pursuant to the Uniform Electronic Transactions Act, NMSA 1978, Sections 14-16-1 to -21 (2001, as amended through 2013), the Issuer and the Company hereby agree and consent to the use of electronic signatures and electronic records in connection with the issuance of the Bonds; provided, however, that such consent and agreement only permits the use of, but does not require, electronic signatures or electronic records, including on documents delivered in counterparts.

**Section 11.10. Applicable Law.** The validity, construction and effect of this Agreement will be governed by the law of the State of New Mexico applicable to agreements made and to be performed in the State of New Mexico.

**Section 11.11. Obligations of Issuer Not Obligations of Officials Individually.** No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bonds will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

**Section 11.12. Payments Due on Days That Are Not Business Days.** If the date for any payment due hereunder is not a Business Day, as defined in the Indenture, then such payment will be made on the next Business Day and no interest on such payment will accrue for such period.

**Section 11.13. Federal Income Tax Treatment of Lease.** The Issuer and the Company acknowledge that this Agreement constitutes a financing for federal income tax purposes and not a lease of the Project Property, to the extent permitted by law. The Issuer and the Company further acknowledge that the Company shall, to the extent permitted by law, be entitled to all federal income tax attributes attributable to ownership of the Project Property, including the right to claim depreciation or cost recovery deductions and the right to claim any federal tax credits (or federal grants in lieu thereof) arising from ownership of the Project Property. Each of the Issuer and the Company agree not to file tax returns inconsistent with this Section 11.13.

**Section 11.14. Amendments.** This Agreement may be amended only by an instrument executed by the Issuer and the Company and consented to by the Purchaser.

**Section 11.15. Further Assurances and Corrective Instruments.** The Issuer and the Company agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments to this Agreement and such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of this Agreement.

**Section 11.16. Recordation.** The Company may cause this Agreement, or a memorandum of this Agreement, in form and substance satisfactory to the Issuer, to be kept,

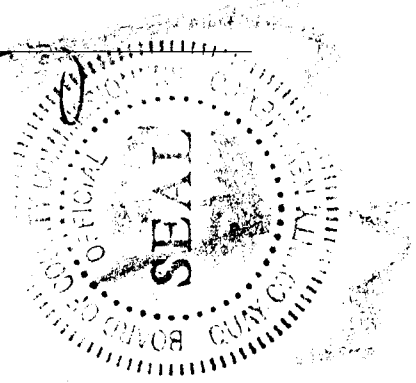
recorded and filed in such manner and in such places as may be required by law to fully evidence, preserve and protect the leasehold estate of the Company.

**Section 11.17. Survivals.** The provisions of Sections 4.5, 4.6, 4.8, 4.12, 4.13, 5.3(b), 6.2, 6.3, 6.4, 8.3, 8.5 and Article XI shall survive the termination of this Agreement.

*[Signature pages follow]*

BOARD OF COUNTY COMMISSIONERS,  
QUAY COUNTY, NEW MEXICO

By: *Robert Lopez*  
Robert Lopez, Chair



(SEAL)

ATTEST:

By: *Ellen White*  
Ellen White, County Clerk

STATE OF NEW MEXICO            )  
                                                  )  
COUNTY OF QUAY                )

This instrument was acknowledged before me on this 8 day of July, 2024, by Robert Lopez, as Chair of the Board of County Commissioners, Quay County, New Mexico

(NOTARY SEAL)

*Ellen White*  
Notary Public

My Commission Expires: \_\_\_\_\_

State of New Mexico  
Notary Public  
ELLEN L. WHITE  
Commission#1006761  
My Comm. Exp.3-24-2027

CAPROCK WIND, LLC,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

)

COUNTY OF \_\_\_\_\_ )

)

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, as \_\_\_\_\_ of Caprock Wind, LLC, a Delaware limited liability company.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



**EXHIBIT A**

**Project Property and Project Site**

1. PROJECT PROPERTY: New wind energy generation equipment replacing functionally and economically obsolete electricity generating equipment now installed in the existing wind farm at the Project Site for the purpose of generating electricity from wind energy.
2. PROJECT SITE:  
[see attached legal description(s)]
3. EQUIPMENT
4. FACILITY
5. IMPROVEMENTS

## **EXHIBIT B**

### **Project Decommissioning Obligations for Project Site**

Capitalized terms not otherwise defined in this Exhibit B shall have the meanings defined in that certain Lease Agreement Series 2024A (the “2024A Lease”) dated as of July 10, 2024, between Quay County, New Mexico (the “County”) and Caprock Wind, LLC (the “Company”), unless the context clearly requires otherwise.

**Removal of Wind Project Improvements.** Within twelve (12) months after the Project ceases operations or the Company abandons the Project, the Company shall remove all Project Property from the Project Site and take appropriate measures to restore the Project Site substantially to its condition on the Effective Date of such Lease. Company’s removal and restoration efforts shall be performed in accordance with the following standards:

- (a) Wind Turbines (including towers and pad-mount transformers): Shall be cleared, cleaned and removed from the Project Site. Any liquids, greases, etc. contained therein shall also be removed safely from the Project Site in accordance with then-existing laws and regulations;
  
- (b) Tower Foundations and Pad Mount Transformer Foundations: For all foundations installed in the ground, the foundations shall be cleared, cleaned and removed from the ground at least four (4) feet below the grade of the land affected thereby. Company shall ensure that any holes or cavities created in the ground as a result of such removal are filled with topsoil of the same or similar type found at the Project Site;
  
- (c) Any Overhead Transmission, Power and/or Communication Lines (if any) owned by Company and no longer in use: Shall be cleared, cleaned and removed from the Project Site;
  
- (d) Substation(s): Shall be cleared, cleaned and removed from the Project Site and any liquids, greases, etc. contained in the substation(s) shall be removed safely from the Project Site in accordance with then-existing laws and regulations;

- (e) Buried Cables (power and/or communication): For all buried cables of whatever type (power, fiber-optic, communication, etc.) installed in the ground, such cables shall be cleared, cleaned at least three (3) feet below the grade of the land affected thereby. Company shall ensure that any holes or cavities created in the ground as a result of such removal are filled with topsoil of the same or similar type found at the Project Site;
  
- (f) Operation and Maintenance Buildings: Shall be cleared, cleaned and removed from Project Site. The owner of the Project Site may request that Company leave and assign such operation and maintenance buildings to the Project Site owner.
  
- (g) Restoration of Surface. To the extent reasonably practicable, the Project Site will be returned to the condition it was in on the Effective Date of the Lease, using scarification, V-rip and disc methods, as appropriate. Company shall ensure that any holes or cavities created in the ground are filled with topsoil of the same or similar type found at the Project Site and to the extent reasonably practicable, the surface is returned to the same condition as before Company dug the holes or cavities.

**EXHIBIT C**

**School PILOT Allocation**

The School PILOT described in that certain Lease Agreement (the “Lease”) dated as of July 10, 2024, between Quay County, New Mexico and Caprock Wind, LLC will be allocated among the School Districts (as defined in the Lease) as follows:

Grady Municipal School District	____%
House Municipal School District	____%
Logan Municipal School District	____%
Melrose Municipal School District	____%
San Jon Municipal School District	____%
Tucumcari Public School District	____%

**SCHEDULE 5.3(a)**

PAYMENT SCHEDULE  
 QUAY COUNTY, NEW MEXICO  
 TAXABLE INDUSTRIAL REVENUE BONDS  
 (CAPROCK WIND REPOWER PROJECT)  
 SERIES 2024A  
 \$35,000,000

<b>Year</b>	<b>Total Debt Service</b>	<b>Principal</b>	<b>Interest</b>
2025	\$1,750,000	-0-	\$1,750,000
2026	1,750,000	-0-	1,750,000
2027	1,750,000	-0-	1,750,000
2028	1,750,000	-0-	1,750,000
2029	1,750,000	-0-	1,750,000
2030	1,750,000	-0-	1,750,000
2031	1,750,000	-0-	1,750,000
2032	1,750,000	-0-	1,750,000
2033	1,750,000	-0-	1,750,000
2034	9,250,000	-0-	1,750,000
2035	1,750,000	-0-	1,750,000
2036	1,750,000	-0-	1,750,000
2037	1,750,000	-0-	1,750,000
2038	1,750,000	-0-	1,750,000
2039	1,750,000	-0-	1,750,000
2040	1,750,000	-0-	1,750,000
2041	1,750,000	-0-	1,750,000
2042	1,750,000	-0-	1,750,000
2043	1,750,000	-0-	1,750,000
2044	1,750,000	-0-	1,750,000
2045	1,750,000	-0-	1,750,000
2046	1,750,000	-0-	1,750,000
2047	1,750,000	-0-	1,750,000
2048	1,750,000	-0-	1,750,000
2049	1,750,000	-0-	1,750,000
2050	1,750,000	-0-	1,750,000
2051	1,750,000	-0-	1,750,000
2052	1,750,000	-0-	1,750,000
2053	1,750,000	-0-	1,750,000
2054	36,750,000	\$35,000,000	1,750,000

Schedule 5.3(a)

Schedule 5.3(a)

QUAY COUNTY, NEW MEXICO,  
as Issuer

CAPROCK WIND INVESTMENTS, LLC,  
as Purchaser

CAPROCK WIND, LLC  
as Company

and

BOKF, NA,  
as Depositary

INDENTURE

Dated as of July 10, 2024

Securing

\$35,000,000  
Quay County, New Mexico  
Taxable Industrial Revenue Bonds  
(Caprock Wind Repower Project)  
Series 2024A

This instrument constitutes a security agreement with respect to certain personal property, including certain after-acquired property as set forth herein, under the laws of the State of New Mexico.

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QUAY COUNTY, NEW MEXICO, a political subdivision existing under the laws of the State of New Mexico (together with its successors and assigns, the “Issuer”), CAPROCK WIND INVESTMENTS, LLC, a Delaware limited liability company (together with its successors and assigns, and transferees of the Bonds, the “Purchaser”), CAPROCK WIND, LLC, a Delaware limited liability company (the “Company”) and BOKF, NA (together with its successors and assigns, the “Depository”), agree:

## ARTICLE I - RECITALS

**Section 101. The Act.** Pursuant to the County Industrial Revenue Bond Act, NMSA 1978, Sections 4-59-1 to -16 (1975, as amended through 2023) (the “Act”), the Issuer is authorized to acquire, own, lease, or sell certain “projects” (as defined in the Act) for the purpose of promoting industry and trade, and to issue industrial revenue bonds to finance such projects and certain related costs. Such bonds are payable by the Issuer solely out of revenue derived from leasing of such projects. Such bonds may be further secured by, among other things, a pledge of the Issuer’s lease of such project and a mortgage and lien upon the properties acquired, constructed and equipped as part of the “Project” (as defined in the lease agreement described in Section 104). Under the Act, a project may include land, buildings, machinery, equipment and other property deemed necessary in connection with such project.

**Section 102. Government Proceeding.** The Company has presented to the Board of County Commissioners of Quay County, New Mexico a proposal relating to the issuance of taxable industrial revenue bonds to finance the acquisition, construction, equipping, and installation of electrical generating equipment used to generate electricity from wind energy for the purpose of replacing functionally and economically obsolete electrical generating equipment now installed in the existing wind farm located at the Project Site (as defined below) with new equipment (collectively, the “Project” as further defined below). The Issuer, by County Ordinance No. 57 adopted on May 28, 2024 (the “Ordinance”), authorized, among other matters, (i) the issuance of its Quay County, New Mexico, Taxable Industrial Revenue Bonds (Caprock Wind Repower Project), Series 2024A (the “Bonds”), in the principal amount not to exceed \$35,000,000 with the Bonds being substantially in the form of Exhibit A, and (ii) the execution and delivery of this Indenture.

**Section 103. Indenture; Lien; Collateral Pledge.** The Bonds are to be issued under this Indenture (together with any and all amendments and supplements, this “Indenture”), which constitutes a collateral pledge of the Agreement (as defined below) in favor of the Purchaser.

**Section 104. The Agreement.** The Issuer has entered into a lease agreement (together with any and all amendments and supplements, the “Agreement”), dated as of the date of this Indenture, with the Company under which the Issuer has leased the Project Property (as defined in the Agreement) to the Company, and the Company has agreed to make rental payments in amounts sufficient to pay the principal of, interest on and redemption price of the Bonds. For the purpose of providing security for the payment of the principal of, interest on and redemption price of the Bonds, the Issuer wishes to assign to the Purchaser certain of its interests in the Agreement but reserving its rights under the Agreement to certain payments, reimbursement for certain costs and expenses, and to give consents and to be indemnified.

**Section 105. Conditions Precedent Performed.** The Issuer is not aware of any act, condition or thing required on the part of the Issuer by the Constitution and laws of the State of New Mexico to happen, exist or be performed precedent to and in the execution and delivery of this Indenture, the Agreement and the issuance of the Bonds, except such as do exist and have happened and been performed.

## **ARTICLE II - DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION**

**Section 201. Meanings of Words and Terms.** All capitalized words and terms defined in the Agreement have the same meanings when used in this Indenture if not also defined in this Indenture. Defined terms in all Bond Documents have consistent meanings unless otherwise expressed. In addition:

“Acquisition Fund” has the meaning assigned in Section 701.

“Act” has the meaning assigned in Section 101.

“Advance” has the meaning assigned in Section 702.

“Agreement” has the meaning assigned in Section 104.

“Authorized Company Representative” means any one of the persons at the time designated to act on behalf of the Company in a certificate furnished to the Issuer and the Depository containing the specimen signatures of such persons and signed on behalf of the Company by an officer of the Company.

“Bond Documents” means this Indenture, the Agreement and the Bond Purchase Agreement.

“Bond Fund” has the meaning assigned in Section 602.

“Bond Purchase Agreement” means the Bond Purchase Agreement dated the date of the execution and delivery of this Indenture among the Purchaser, the Issuer and the Company.

“Bonds” have the meaning assigned in Section 102.

“Business Day” means any day that is not a Saturday or Sunday or a day on which banking institutions in the State or in the County of payment are authorized or required to close.

“Certificate of Qualified Investor” means the certificate attached hereto as Exhibit D.

“Company” has the meaning assigned in the first paragraph of this Indenture.

“Completion Certificate” means a certificate by the Company certifying that the Project is complete and all costs have been paid for or provisions have been made for their payment, in the form attached hereto as Exhibit C.

“Depository” has the meaning assigned in the first paragraph of this Indenture.

“Event of Default” has the meaning assigned in Section 901.

“Final Maturity Date” means the thirtieth anniversary of the date of this Indenture.

“Indenture” has the meaning assigned in Section 103.

“Issue Date” means the date of issuance and delivery of the Bond to the Purchaser.

“Issuer” has the meaning assigned in the first paragraph of this Indenture.

“Lender” or “Lenders” has the meaning assigned thereto in the Agreement.

“Ordinance” has the meaning assigned in Section 102.

“Parties” means the Company, the Issuer, the Purchaser and the Depository.

“Party” means any one of the Parties.

“Payment Date” means the thirtieth anniversary of the date of this Indenture.

“Payment of the Bonds” means payment in full of the principal of, interest on and redemption price of the Bonds in accordance with their terms and the provisions of this Indenture and payment of all fees and expenses of the Issuer, the Purchaser and the Depository payable by the Company under this Indenture, the Agreement or the Bond Purchase Agreement.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision.

“Project” has the meaning assigned thereto in the Agreement.

“Project Property” has the meaning assigned thereto in the Agreement.

“Project Site” has the meaning assigned thereto in the Agreement and is further described in Exhibit A thereto.

“Record Date” means each July 10 while the Bonds are outstanding.

“Related Costs” means expenditures incurred or to be incurred by the Company with respect to the Project, including, without limitation, the acquisition, installation, construction, equipping and commissioning of the Project Property.

“State” means the State of New Mexico.

**Section 202. Rules of Construction.**

(a) The captions and headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

(b) All references in this Indenture to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Indenture unless some other reference is established.

(c) Any inconsistency between the provisions of the Agreement and the provisions of this Indenture will be resolved in favor of the provisions of the Agreement.

**Section 203. Bonds Not General Obligations of Issuer.** Neither the faith and credit nor the taxing power of the State or of any of its political subdivisions, including the Issuer, is pledged to the payment of the principal of, interest on or redemption price of the Bonds. The Bonds will be payable by the Issuer solely out of the Basic Rent, proceeds and receipts and other security pledged hereby. The principal of, interest on and redemption price of the Bonds will never constitute a debt or indebtedness or general obligation of the Issuer within the meaning of any State constitutional provision or statutory limitation. The Bonds will never constitute or give rise to a pecuniary liability of the Issuer or be a charge against its general credit or a charge against the general credit or the taxing powers of the State or any political subdivision thereof.

**ARTICLE III - GRANT**

**Section 301. Assignment and Pledge.** In consideration of the purchase of the Bonds by the Purchaser, and in order to secure the payment of the principal of (including, without limitation, all sums advanced by the Purchaser, with interest thereon, in accordance with the terms of this Indenture and the other Bond Documents (all references in this Indenture to the payment of principal of the Bonds shall include such sums)), interest on and redemption price of the Bonds, and in order to secure the performance by the Issuer of its obligations under this Indenture and the Bonds, the Issuer assigns and pledges to the Purchaser and grants a mortgage and a security interest to the Purchaser in: (i) all the Issuer’s right, title and interest in and to the Agreement and any other easement, lease, sublease, license, concession or other grant of a possessory or use interest in the Project Property to the extent the Issuer has any interest therein but reserving its rights under the Agreement to payments under Sections 4.5, 5.3(b), 6.2, 6.3 and 6.4 of the Agreement, its rights to enforce Sections 4.4, 4.5, 4.6, 4.8, 4.11, 4.12, 4.13, 5.3(b), 6.2, 6.3, 6.4, 6.5, 6.6, 8.3 and 8.5 of the Agreement, to reimbursement for certain costs and expenses, to receive notices, to give consents and to be indemnified; (ii) the moneys and investments in the Acquisition Fund and the Bond Fund and all reserves payable to the Issuer pursuant to the Agreement or this Indenture (including, without limitation, insurance and eminent domain proceeds) with respect to the Project

Property; (iii) all lease rentals, revenues, profits, and receipts receivable by or on behalf of the Issuer from the Project Property; and (iv) the Project Property.

**Section 302. Release.** If (i) the principal of and interest on the Bonds are paid by the Issuer in full to the Bond Fund, as provided for herein, (ii) the Purchaser has received all sums due it under the Bond Documents, and (iii) the Issuer keeps, performs and observes all agreements, covenants and provisions under this Indenture, then all obligations of the Issuer as to the Bonds under this Indenture will terminate, and the Purchaser will cancel and discharge the lien of this Indenture and execute and deliver to the Issuer and the Company such instruments in writing as may be required to evidence such discharge. The Clerk of the Issuer is authorized to accept a certificate of the Purchaser stating that all principal and interest due on the Bonds has been paid as evidence of the satisfaction of this Indenture.

#### **ARTICLE IV - AUTHORIZATION, FORM, EXECUTION AND DELIVERY OF BONDS**

**Section 401. Authorization; Authorized Amount of the Bond.** The Bonds are hereby authorized to be issued under this Indenture and secured by this Indenture. The Bonds will be issued as one or more series of fully registered bonds without coupons, in the maximum principal amount not to exceed \$35,000,000. The Bonds will be numbered consecutively beginning with R-1. The Bonds may not be issued under this Indenture except in accordance with this Article.

**Section 402. Form of Bond.** The Bonds will be in substantially the form of Exhibit A. The Bonds will be dated the date of the execution and delivery of this Indenture and will bear interest on Advances made pursuant to Section 702 at the rate of Five and No/100 percent (5.000%). All interest on the Bonds will be calculated from the date of advance for all periods on the basis of a 360-day year of twelve thirty-day months. Accrued interest shall be payable annually on each July 10, beginning July 10, 2025, with the outstanding principal amount of the Bonds plus all unpaid interest thereon due and payable in full on the Final Maturity Date. Principal and interest, as applicable, will be payable by the Issuer from the Basic Rent received from the Company to the owner of the Bonds on the immediately preceding Record Date upon presentation of the Bonds for cancellation at the offices of the Issuer. All payments will be made in lawful money of the United States.

**Section 403. Execution and Delivery; Payment.** The Bonds will be signed by the Chairperson of the Board of County Commissioners of the Issuer or other officer designated by the Board to sign the Bonds, and delivered to the Purchaser on the date of the execution and delivery of this Indenture. Subject to the terms and conditions of the Bond Purchase Agreement, the Purchaser will purchase the Bonds and will pay the purchase price of the Bonds to the Issuer as set forth in Section 701.

**Section 404. Registration and Transfer of the Bonds.** The Company, on behalf of the Issuer, will cause to be kept at its office a book for the registration and transfer of the Bonds. The registration book will be open to inspection by the Issuer upon advance notice during the Company's normal business hours.

The Bonds, together with the obligation to fund advances thereunder, may be transferred by the Purchaser in whole, but not in part, in person or by duly authorized attorney, in the registration book upon (i) surrender of the Bonds, (ii) delivery of a written transfer instrument, and (iii) compliance with Securities Act of 1933, as amended (the “Federal Securities Act”), and applicable state securities laws as established to the satisfaction of the Issuer, and delivery to the Issuer and the Company of (A) an opinion, in form and substance satisfactory to the Issuer, from legal counsel experienced in securities laws matters, which counsel must be satisfactory to the Issuer, to the effect the transfer complies with the Federal Securities Act and applicable state securities laws and (B) written representations from the transferee, in form and substance satisfactory to the Issuer (including, but not limited to the form of Certificate of Qualified Investor), necessary to establish such compliance all as further set forth in the Bond form attached as Exhibit A. Such Issuer approval shall be in writing. The Issuer agrees that it will cooperate in delivering a new Bond, registered in the name of the transferee. The person requesting the transfer will pay any tax or fee or other charge imposed on the transfer and will pay the Issuer’s expenses in connection therewith. The Issuer may deem and treat the person in whose name the Bond is registered as the absolute owner thereof for the purpose of receiving payment and for all other purposes, and all such payments made to any such registered owner or upon its written order will be valid and effectual to satisfy and discharge the liability upon the Bond, to the extent of the sum or sums paid; and the Issuer will not be affected by any notice to the contrary.

The Issuer acknowledges that the Purchaser may assign its rights to receive payments of principal, interest and any amounts due under the Bonds to any party without the consent of the Issuer.

**Section 405. Lost, Stolen, Destroyed and Mutilated Bond.** If the Issuer receives satisfactory evidence that any Bonds have been lost, stolen, destroyed or mutilated and receives satisfactory indemnity, and the mutilated Bonds are surrendered and cancelled, then the Issuer will execute and deliver new Bonds. The applicant for new Bonds will pay any charges and expenses in connection with the issuance of the new Bonds. New Bonds issued under this Section 405 will be an original contractual obligation of the Issuer and will be entitled to all of the benefits of this Indenture. The provisions of this Section 405 with respect to the replacement of the lost, stolen, destroyed or mutilated bonds are exclusive.

**Section 406. Cancellation and Destruction of the Bonds by Issuer.** If the Bonds are delivered to the Issuer for cancellation, the Bonds will be cancelled immediately and destroyed by the Issuer.

**Section 407. Application of Payments for Bonds.** All payments received on behalf of the Issuer under the Agreement with respect to the Bonds will be applied first to accrued interest on the Bonds on the next date for the payment of such interest and, second, to the unpaid principal of the Bonds. If such payments exceed accrued interest on and the unpaid principal of the Bonds, and any other amounts owed, the excess will be paid to the Company. The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of making Bond advances under this Indenture.



## ARTICLE V - REDEMPTION

**Section 501. Redemption.** If the Company gives notice to the Issuer, the Depository and the Purchaser pursuant to Article IX of the Agreement that the Company has elected to cause redemption of the Bonds in full or in part and the Company pays the redemption price, all or such portion of the Bonds will be deemed redeemed by the Issuer on the date indicated in such notice at a redemption price equal to the principal amount to be redeemed plus accrued interest on such principal amount to the redemption date. If the Company redeems the Bonds in full before the Completion Date, any monies held in the Acquisition Fund shall be returned to the Company.

## ARTICLE VI - BOND REVENUES AND FUNDS

**Section 601. Source of Payment of the Bonds.** The Bonds and all payments by the Issuer under this Indenture are not general obligations of the Issuer, and shall never constitute indebtedness of the Issuer, but are the limited, special obligations of the Issuer payable solely from revenues and receipts derived from the leasing of the Project Property under the Agreement and other security pledged to payment of the Bonds under this Indenture. The Project Property has been leased under the Agreement and the Basic Rent is to be remitted by the Company directly to the Purchaser on or before each Payment Date, subject to the rights of offset set forth in Section 5.4(b) of the Agreement. The portion of the Basic Rent necessary to pay amounts owing on the Bonds is to be deposited in the Bond Fund (except for any payments which are satisfied pursuant to the exercise of the right of offset as set forth in Section 5.4(b) of the Agreement). The Basic Rent is sufficient in amount to insure the prompt payment of the principal and accrued interest on the Bonds and the entire amount of the Basic Rent is pledged to the payment of principal and accrued interest on the Bonds.

**Section 602. Creation of the Bond Fund, Payments.** A fund shall be created for the benefit of Issuer by the Company and designated “Caprock Wind Repower Project Series 2024A Bond Fund” (the “Bond Fund”). There will be deposited into the Bond Fund, as and when received (i) the Basic Rent (except to the extent offset pursuant to Section 5.4(b) of the Agreement), and (ii) all other moneys required to be deposited into the Bond Fund pursuant to this Indenture and the Agreement. The interest and other income received on investments of the Bond Fund moneys as provided in Section 708 will be retained in the Bond Fund. The Company covenants that so long as the Bonds are outstanding, it will deposit or cause to be deposited solely from the sources stated in Section 601, into the Bond Fund for Issuer’s account, sufficient sums from revenues and receipts from the Project Property promptly to meet and pay the installments of interest, or of principal and interest, as applicable, on the Bonds (except to the extent that any payments of principal, interest or redemption price are to be made pursuant to the right of offset set forth in Section 5.4(b) of the Agreement). The Parties acknowledge that NMSA 1978, Section 4-59-3 (2002) provides that it is not intended that any county itself be authorized to operate any manufacturing, industrial or commercial enterprise under the Act and, accordingly, the Issuer will not operate any such enterprise with the Project Property.

**Section 603. Use and Custody of the Bond Fund.** The moneys in the Bond Fund will be used solely for payment of principal of and interest on the Bonds, except as provided in Sections

604 and 905. The Bond Fund will be in the custody of the Company, and the Company will withdraw sufficient funds from the Bond Fund to pay the installments of principal and interest on the Bonds as due (except to the extent that any payments of principal, interest or redemption price are to be made pursuant to the right of offset set forth in Section 5.4(b) of the Agreement).

**Section 604. Repayment to the Company from the Bond Fund.** Any amounts remaining in the Bond Fund after actual payment in full of the Bonds, the fees, charges and expenses of the Issuer and the Purchaser, administrative expenses and other amounts required to be paid by the Company under the Agreement will be paid to the Company upon expiration of the Agreement.

**Section 605. Investments.** Moneys on deposit in the Bond Fund may be invested and reinvested by the Company. Such investments will be deemed at all times to be a part of the Bond Fund. Any interest received on any such investment and any profit realized from such investment will be credited to the Bond Fund. Any loss resulting from any such investment will be charged to the Bond Fund. The Company will use all reasonable efforts to sell at the best price obtainable or present for redemption any such investment, when necessary, in order to provide cash to meet any payment or transfer from the Bond Fund.

**Section 606. Non-presentment of the Bonds.** If the Bonds are not presented for payment when the final payment of principal and interest is due, and if there are funds sufficient to make such final payment deposited with the Company, all liability of the Issuer for payment of the Bonds will cease. Interest shall not accrue after the Final Maturity Date. The Purchaser will be restricted to such funds for any claim against the Issuer relating to the Bonds.

**Section 607. No Liability.** The Issuer will not be liable or responsible for any misapplication of funds, loss, liability or expense (or failure to realize profits) with respect to the Bond Fund and Company shall indemnify and hold the Issuer harmless from and against all claims, liabilities or whatsoever nature arising from or relating to the Bond Fund or Company's management of the Bond Fund.

## ARTICLE VII - ACQUISITION FUND

**Section 701. Creation of the Acquisition Fund; Deposits.** A fund is hereby created with the Depository and designated "Caprock Wind Repower Project Series 2024A Acquisition Fund" (the "Acquisition Fund"). Subject to the terms of the Bond Purchase Agreement, the Purchaser will purchase the Bonds on the date of execution and delivery of the Indenture and will pay the purchase price of the Bonds through the Advances described in Section 702. The proceeds of the sale of the Bonds, the interest and other income received on investments of the Acquisition Fund moneys as provided in Section 708 will be retained in the Acquisition Fund. The moneys in the Acquisition Fund will be held by the Depository and will be applied to the payment of Related Costs and, pending such application, will be subject to a lien in favor of the Purchaser or its assignee to secure payment of principal and accrued interest on the Bonds. The Acquisition Fund will be in the custody of the Depository, and the Depository is authorized and directed to wire from or issue checks on the Acquisition Fund for the payment of Related Costs pursuant to Section 702.

**Section 702. Disbursements.** The Company may request Advances from time to time to finance the Project (each, an “Advance”) by delivery of a Requisition Notice to the Purchaser and the Depositary in the form attached hereto as Exhibit B (the “Requisition Notice”). On or before the fifth business day following receipt of the Requisition Notice from the Company requesting an Advance, so long as no Event of Default has occurred and is continuing, the Purchaser will pay or cause to be paid the amount of the Advance requested in such Requisition Notice to the Depositary for deposit in the Acquisition Fund, provided, however, that the aggregate amount of such Advances shall not exceed \$35,000,000 for the Bonds. The Depositary will make payments of Related Costs from the Acquisition Fund not later than the business day following the date of receipt of payment of the amount of the Advance from Purchaser, provided that immediately available funds are on deposit therein. The Requisition Notice signed by an Authorized Company Representative shall state to whom the payment is to be made, the general purpose for which the obligation to be paid was incurred, and that:

(a) obligations in the stated amounts were incurred for Related Costs and are due and payable (or, if the Company is indicated as the payee, were duly paid by the Company) and that each item is a proper charge against the Acquisition Fund and has not been the subject of a previous withdrawal from the Acquisition Fund; and

(b) to the best knowledge of such Authorized Company Representative there has not been filed with or served upon the Issuer or the Company notice of any lien, right or attachment upon, or claim, other than such lien, right, attachment or claim as are filed or made in the ordinary course of constructing and operating the Project, affecting the right of any such payees to receive payment of, the respective amounts stated in such requisition which has not been released or will not be released simultaneously with the payment of such obligation; and

(c) with respect to any item for payment for labor or to contractors, builders or materialmen, (i) the obligations stated have been properly incurred, (ii) such work was actually performed or such materials or supplies were actually furnished or installed in or about the Project, and (iii) either such materials or supplies are not subject to any lien or security interest or any such lien or security interest will be released or discharged upon payment of the requisition.

**Section 703. Records.** The Depositary will keep and maintain all Requisition Notices and adequate records pertaining to the Acquisition Fund, and payments made therefrom, which will be open to inspection by the Issuer, the Purchaser, the Company, or their agents, upon advance notice, during normal business hours.

**Section 704. Depositary May Rely on Requisitions.** All writings, requisitions and certificates received by the Depositary as conditions of payment from the Acquisition Fund, and which are proper and complete on their face, may be conclusively relied upon by the Depositary and will be retained by the Depositary, subject at all reasonable times, upon advance notice, to examination by the other Parties and their respective agents and representatives.

**Section 705. Status Reports.** At least annually, the Depositary will make a written report covering all receipts and moneys then on deposit in the Acquisition Fund, and will report any investments of such moneys and all transfers and disbursements of such moneys as of and for

the preceding year. The reports will be prepared in conformity with the provisions of this Indenture, and copies of each report will be filed with the Purchaser, the Company, and, if requested by the Issuer, with the Issuer, not later than the fifteenth day of the month following the year covered by the report.

**Section 706. Completion Date.** Upon receipt of a certificate substantially in the form of Exhibit C signed by an Authorized Company Representative establishing the Construction Completion Date, as established in Section 4.4 of the Agreement, the Depositary will set aside in the Acquisition Fund the moneys necessary for the payment of the Related Costs incurred by the Company but not then due or payable as set forth in such certificate, and then will transfer any other moneys remaining in the Acquisition Fund to the Company or its assignee.

**Section 707. Payment on Acceleration.** If the Purchaser declares the unpaid principal of and accrued interest on the Bonds to be immediately due and payable pursuant to Section 902(a), the Depositary will promptly, upon receipt of notice of such declaration from the Purchaser or its assignee, return all moneys then held for the credit of the Acquisition Fund in accordance with Section 905 to the Purchaser or its assignee for application to the unpaid principal of and accrued interest on the Bonds.

**Section 708. Investments.** Moneys on deposit in the Acquisition Fund may be invested and reinvested by the Depositary, at the written direction of an Authorized Company Representative. Such investments will be deemed at all times to be a part of the Acquisition Fund. Any interest received on any such investment and any profit realized from such investment will be credited to the Acquisition Fund. Any loss resulting from any such investment will be charged to the Acquisition Fund. The Depositary will use all reasonable efforts to sell at the best price obtainable or present for redemption any such investment, when necessary, in order to provide cash to meet any payment or transfer from the Acquisition Fund. Neither the Depositary nor the Issuer will be responsible for any loss, liability or expense (or failure to realize profits) resulting from any such investment. The Depositary may make any such investment through its own or its affiliated bond or investment department, unless otherwise directed in writing by an Authorized Company Representative.

**Section 709. No Liability.** Issuer will not be liable or responsible for any misapplication of funds, loss, liability or expense (or failure to realize profits) with respect to the Acquisition Fund and the Company shall indemnify and hold Issuer harmless from and against all claims and liabilities of whatsoever nature arising from or relating to the Acquisition Fund or the Company's management of the Acquisition Fund.

## ARTICLE VIII - PARTICULAR COVENANTS AND PROVISIONS

**Section 801. Extent of Covenants; Disclaimer of Liability.** It is expressly made a condition of this Indenture that any covenants, stipulations, obligations, representations or agreements herein contained or contained in the Bonds or this Indenture do not and will never give rise to a personal or pecuniary liability of any present or future officer, employee or agent of the Issuer, or be a charge against the general credit or taxing powers of the Issuer, and in the event of a breach of such covenant; stipulation, obligation, representation or agreement, no personal or

pecuniary liability of any present or future officer, employee or agent of the Issuer, or charge payable by the Issuer directly or indirectly from the revenues of the Issuer, other than the Basic Rent, will arise therefrom. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR OF ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE ISSUER, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, INTEREST ON OR REDEMPTION PRICE OF THE BONDS. THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE OF THE BONDS WILL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OR GENERAL OBLIGATION OF THE ISSUER WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR LAWS OF THE STATE. THE BONDS OR THIS INDENTURE WILL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE STATE, ANY OF ITS POLITICAL SUBDIVISIONS OR OF THE ISSUER OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS. NONE OF THE PROVISIONS OF THIS INDENTURE SHALL REQUIRE THE ISSUER TO EXPEND OR RISK ITS OWN FUNDS OR TO OTHERWISE INCUR FINANCIAL LIABILITY IN THE PERFORMANCE OF ANY OF ITS DUTIES OR IN THE EXERCISE OF ANY OF ITS RIGHTS OR POWERS HEREUNDER.

**Section 802. Performance; Authority.** The Issuer covenants that it will faithfully perform all covenants and provisions contained in this Indenture and in the Bonds. The Issuer represents that it is duly authorized under the Constitution and laws of the State of New Mexico, including the Act, to issue the Bonds, to execute and deliver this Indenture, to grant a security interest in the property described in this Indenture, to pledge the rentals and other revenues described in this Indenture and that it has, to its knowledge, taken all actions required on its part for the issuance of the Bonds, and for the execution and delivery of this Indenture and the Agreement.

**Section 803. Office or Agency.** The Issuer will maintain an office or agency in Quay County, New Mexico, while the Bonds are outstanding and where demands with respect to this Indenture or the Bonds may be made. The office of the County Clerk of the Issuer will be such agency until further notice.

**Section 804. Obligations Under the Agreement.** The Issuer: (i) will perform all of its obligations under the Agreement; (ii) will not execute or agree to any change, amendment or modification of or supplement to the Agreement except in accordance with the provisions thereof and Section 1101 of this Indenture; and (iii) will not agree to any abatement, reduction or diminution of the Basic Rent without the written approval of the Purchaser. The parties acknowledge that the Issuer has no obligation to enforce the Agreement but any actions taken by the Issuer to enforce the Agreement shall be at the expense of the Company.

**Section 805. Use and Possession by the Company.** So long as not otherwise provided in this Indenture or the Agreement, the Company will be permitted to possess, use and enjoy the Project Property so as to carry out its obligations under the Agreement.

**Section 806. Instruments of Further Assurance.** The Issuer will, at the expense of the Company or the Purchaser, execute, acknowledge, deliver and perform such supplemental indentures or such further acts, instruments, documents and transfers as the Depository or the

Purchaser may reasonably require for better assuring, transferring, mortgaging and pledging unto the Depository or the Purchaser all the property and revenues and receipts pledged to the payment of the Bonds under this Indenture.

**Section 807. Recording of Agreement and Other Documents.** The Company will cause the Agreement, and all supplements to the Agreement, as well as all security instruments, financing statements, continuation statements and any other instruments as may be required, to be recorded or filed in such manner and places as required to fully preserve and protect the security of the Purchaser and the rights of the Depository, including recording in the real estate records of Quay County, New Mexico. The Depository will have no responsibility to make any such filings except for filings as the Company may from time-to-time request, and the Issuer will have no responsibility to make any such filings.

## ARTICLE IX - EVENTS OF DEFAULT AND REMEDIES

**Section 901. Events of Default.** Each of the following events is an “Event of Default:”

(a) Failure to pay any installment of principal or interest due under the Bonds when due and such failure continues unremedied for a period of thirty (30) days after the provision by the Issuer or the Purchaser of written notice of non-payment;

(b) An Event of Default under the Agreement or any other Bond Document (other than this Indenture) occurs and is continuing;

(c) The Issuer, the Company or the Depository fails to perform any covenant contained in this Indenture or the Bond Documents, other than as specified in subsections (a) and (b) above, and such failure is not cured within thirty (30) days after receipt by the Company of the written notice of such failure unless the Purchaser shall agree in writing to the extension of such time prior to its expiration.

(d) Any bankruptcy, insolvency, reorganization, etc. of the Issuer, the Company or the Depository.

**Section 902. Remedies on Events of Default.** Upon the occurrence of an Event of Default, the Purchaser will have the following rights and remedies:

(a) Acceleration. The Purchaser or its assignee may, by written notice given to the other Parties, declare the principal amount of the Bonds outstanding to be immediately due and payable and principal and interest thereon will become immediately due and payable; provided, however, that the Purchaser or its assignee, by written notice to the other Parties, may annul such declaration and destroy its effects and waive any such default: (i) if all covenants, conditions and agreements with respect to which such default shall have been made shall be fully performed, (ii) all arrears shall have been paid on any installment of interest and principal which has been theretofore due, plus (to the extent permitted by law) interest thereon from the due dates, and (iii) all reasonable charges and expenses of the Issuer, the Purchaser, the Depository and their agents

and counsel shall have been paid or provided for. Any such declaration that the Bonds are due and payable will be deemed to be a redemption of the Bonds;

(b) **Suit for Judgment on the Bonds.** The Purchaser will be entitled to sue either for the specific enforcement of any covenant or agreement contained herein, or in any of the Bond Documents, or in and of the execution of any power herein granted and/or for and recover judgment, either before or after or during the pendency of any proceedings for the enforcement of the lien of this Indenture or for the enforcement of any of its rights, but any such judgment against the Issuer will be enforceable only against the funds and accounts related to and held under this Indenture for the Bonds. There will not be authorized any deficiency judgment against the Issuer. No recovery of any judgment by the Purchaser will in any manner or to any extent affect the lien of this Indenture or any rights, powers or remedies of the Purchaser hereunder, but such lien, rights, powers and remedies of the Purchaser will continue unimpaired; and

(c) **Enforcement of Rights under Agreement.** The Purchaser or its assignee may, as assignee of specified interests of the Issuer in the Agreement, enforce any remedy available to the Issuer under the Agreement (except the remedies of the Issuer pursuant to Section 8.3 of the Agreement) and under any other lease, sublease, license or other grant of a possessory or use interest in the Project Property.

No right or remedy confirmed on any Party hereunder is intended to be exclusive of any other right or remedy confirmed on such Party hereunder, but each and every such right or remedy will be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute; provided, that the remedy of Purchaser in respect of an Event of Default or other breach hereunder or any other Bond Document shall be limited in all cases to those expressly provided in Section 902.

**Section 903. Rights and Remedies of Purchaser.** The Purchaser will not have the right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust related thereto or for the appointment of a receiver or any other remedy hereunder, unless an Event of Default has occurred and is continuing of which the Company has been notified, it being understood and intended that the Purchaser will not have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its actions or to enforce any right hereunder except in the manner herein provided. Nothing in this Indenture will, however, affect or impair the right of the Purchaser to enforce the payment of the principal of and interest on the Bonds, when due or at and after the maturity thereof, or the obligation of the Issuer to pay the principal and interest on the Bonds at the time and place and from the revenues provided in this Indenture or in the Bonds.

**Section 904. Issuer and Depositary Not Responsible.** Neither the Issuer nor the Depositary has any responsibility or right to act on behalf of the Purchaser with respect to any Event of Default. All rights and remedies arising from or related to any Event of Default are solely the rights and remedies of the Purchaser; provided that, upon request and at the expense of the Purchaser, the Issuer will cooperate with the Purchaser in the lawful enforcement of such rights and remedies upon receipt of indemnity satisfactory to the Issuer in the Issuer's sole discretion against any out-of-pocket costs and expenses incurred by the Issuer in its sole discretion (including

any counsel fees and expenses) or liability the Issuer may incur or suffer as a result of or in connection with such cooperation.

**Section 905. Application of Moneys.** All moneys received by the Purchaser pursuant to any right given or action taken under the provisions of this Article will, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys, be applied (i) first to pay the fees and expenses of the Issuer and the Depositary; (ii) then to pay sums advanced by the Purchaser (other than Advances) pursuant to the Bond Documents, with interest thereon; (iii) then to the payment of charges due the Purchaser pursuant to the Bond Documents, and (iv) then to the payment of interest and principal and premium, if any, due and unpaid on the Bonds. Whenever moneys are to be applied pursuant to the provisions of this Section 905, such moneys will be applied at such times, and from time to time, as the Purchaser will determine.

Whenever the Bonds and interest thereon have been paid under the provisions of this Section 905 and all expenses and charges of the Purchaser, the Issuer and the Depositary (and their respective counsel and agents) have been paid, any balance remaining will be paid to the Company.

**Section 906. Purchaser to File Proofs of Claim.** In the case of any insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceedings affecting the Project Property or the Company, the Purchaser and the Issuer will, to the extent permitted by law, be entitled to file such proofs of claims and other documents as may be necessary or advisable in order to have claims of the Purchaser or the Issuer, respectively, allowed in such proceedings for the entire amount due and payable by the Issuer, or by the Company, as the case may be, under the Indenture or the Agreement, at the date of the institution of such proceedings and for any additional amounts which may become due and payable after such date.

**Section 907. Delay or Omission; No Waiver.** No delay or omission of the Purchaser to exercise any right or power accruing upon any Event of Default will exhaust or impair any such right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence therein; and every power and remedy given by this Indenture to the Purchaser may be exercised from time to time and as often as may be deemed expedient by the Purchaser.

**Section 908. No Waiver of One Default to Affect Another.** No waiver of any Event of Default by the Purchaser will extend to or affect any subsequent or any other then existing Event of Default or shall impair any rights or remedies consequent thereon.

**Section 909. Discontinuance of Proceedings on Default; Position of Parties Restored.** In case the Purchaser shall have proceeded to enforce any right under this Indenture by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Purchaser, then and in every such case the Issuer and Purchaser will be restored to their former positions and rights under this Indenture with respect to the Project Property and all rights, remedies, and powers of the Purchaser will continue as if no such proceedings had been taken.

**Section 910. Waivers of Events of Default.** The Purchaser may, in its discretion, waive any Event of Default and its consequences and rescind any declaration of maturity of principal of



and interest on the Bonds. In case of any such waiver or rescission, or in case any proceeding taken by the Purchaser on account of any such Event of Default shall have been discontinued or abandoned or determined adversely to the Purchaser, then in every such case the Issuer and the Purchaser shall be restored to their former respective positions and rights hereunder, and the Event of Default which was waived will be considered to be cured, but no waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

**Section 911. Lender Right to Cure Defaults.** If an Event of Default has occurred and is continuing under this Indenture of which the Company has been notified, any mortgagee or assignee of the Company that holds an interest in the Project Property as security, including but not limited to a Lender, shall at any time have the right, but not the obligation, to perform any act necessary to cure any such Event of Default and to prevent the release and discharge of this Indenture. Such right to cure must be performed no later than sixty (60) days following the applicable cure period provided in Section 901.

## ARTICLE X - THE DEPOSITARY

**Section 1001. Acceptance of Duties.** The Depositary accepts the duties imposed on it by this Indenture, but only on the following express terms and conditions:

(a) The Depositary undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations will be read into this Indenture against the Depositary.

(b) In the absence of negligence or willful misconduct on its part, the Depositary may conclusively rely on certificates or notices furnished to the Depositary and conforming to the requirements of this Indenture or the Agreement, as the case may be; but if any such certificates or notices are specifically required to be furnished to the Depositary under this Indenture or the Agreement, the Depositary will examine the same to determine whether they conform to the requirements of this Indenture or the Agreement, as the case may be.

(c) The Company hereby indemnifies and holds harmless the Depositary from and against any and all loss, liability, cost, damage and expense, including, without limitation, reasonable counsel fees, which the Depositary may suffer or incur by reason of any action, claim or proceeding brought against the Depositary arising out of or relating in any way to this Indenture or any transaction to which the Indenture relates unless such action, claim or proceeding is the result of the negligence or willful misconduct of the Depositary. The indemnification shall survive the resignation, removal and termination of the Depositary. No provision of this Indenture will be construed to relieve the Depositary from liability for its own negligence or willful misconduct.

(d) The Depositary may consult with counsel and other professionals and the advice of such counsel and other professionals shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Depositary hereunder in good faith and in reliance thereon.

(e) The Depositary shall be under no obligation to take any action or exercise any right or power under the Indenture unless the Company shall first have provided to the Depositary, its directors, officers, agents and employees, security or indemnity satisfactory to the Depositary against the costs (including without limitation reasonable fees of attorneys), expenses and liabilities that might be incurred by the Depositary in connection herewith.

**Section 1002. Compensation.** The Company will pay directly to the Depositary its reasonable fees and charges and all of its reasonable expenses (including reasonable counsel fees and expenses).

**Section 1003. Qualification.** The Depositary must be an association or a corporation organized and doing business under the laws of the United States of America or of any state and be subject to supervision or examination by federal or state banking authorities. If at any time the Depositary ceases to be eligible in accordance with the provisions of this Section 1003, it will resign immediately in the manner and with the effect specified in Section 1004.

**Section 1004. Resignation and Removal.**

(a) No resignation or removal of the Depositary and no appointment of a successor Depositary will become effective until the acceptance of appointment by the successor Depositary under Section 1005.

(b) The Depositary may resign at any time upon ten (10) business days' written notice to the other Parties. If an instrument of acceptance by a successor Depositary has not been delivered to the retiring Depositary within thirty (30) days after the giving of such notice of resignation, the retiring Depositary may petition any court of competent jurisdiction for the appointment of a successor Depositary.

(c) The Depositary may be removed at any time by the Company upon ten (10) business days' written notice to the other Parties.

(d) The Depositary will be automatically removed on the occurrence of the Completion Date of the Project and the application of all moneys on deposit in the Acquisition Fund as provided in Section 706. No successor Depositary will thereafter be appointed and each reference to the Depositary in this Indenture and the Agreement will thereafter be ineffective.

(e) If the Depositary resigns or is removed (except as provided in subsection (d) of this Section 1004), the Company will promptly appoint a successor Depositary and give written notice of such appointment to the Issuer, the Purchaser and the retiring or removed Depositary.

**Section 1005. Successor Depositary.**

(a) Every successor Depositary appointed under this Indenture will execute, acknowledge and deliver to its predecessor and the other Parties an instrument accepting such appointment, and thereupon such successor Depositary, without any further act, will become fully

vested with all the rights, and be subject to all the obligations, of its predecessor; but such predecessor will, nevertheless, on the request of its successor, the Issuer, the Company or the Purchaser execute and deliver an instrument transferring to such successor Depository all the rights of such predecessor under this Indenture. Every predecessor will deliver all property, including all records relating hereto, and moneys held by it under this Indenture to its successor. The Issuer and the Purchaser will execute, acknowledge and deliver any instrument, satisfactory to each of them, required by any successor Depository to more fully and certainly vest in such Depository the rights vested in the predecessor Depository by this Indenture.

(b) Notwithstanding any of the foregoing provisions of this Article, any Person qualified to act as Depository under this Indenture with or into which the Person acting as Depository may be merged or consolidated, or to which the assets and business of such Person may be sold, will automatically become the successor Depository.

## ARTICLE XI - SUPPLEMENTS AND AMENDMENTS TO INDENTURE

**Section 1101. Other Supplemental Indentures.** This Indenture may be supplemented or amended only by one or more instruments executed by the Issuer, the Purchaser and the Depository.

**Section 1102. Consent of the Company.** Any supplemental indenture affecting the rights of the Company will not be effective unless and until the Company shall have consented in writing to the execution and delivery of such supplemental indenture.

## ARTICLE XII - MISCELLANEOUS PROVISIONS

**Section 1201. Notices.** Any notice, demand, direction, request, consent, report or other instrument authorized or required by any of the Bond Documents to be executed, given or filed (excluding Uniform Commercial Code filings, recordings and other governmental filings) will be in writing and will be deemed to have been sufficiently given or filed for all purposes of the Bond Documents when delivered by hand delivery or overnight courier mail or other electronic means, or on the third Business Day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer:

Quay County, New Mexico  
Attn: County Clerk  
300 South Third Street  
P.O. Box 1246  
Tucumcari, NM 88401  
Telephone: (575) 461-0510  
Fax: (575) 461-0513

with a copy to:

Rodey, Dickason, Sloan, Akin & Robb, P.A.  
119 E. Marcy Street, Suite 200  
P.O. Box 1357  
Santa Fe, NM 87501 (87504)

Attn: Luis G. Carrasco, Esq.  
Tel: (505) 954-3905  
E-mail: [LCarrasco@rodev.com](mailto:LCarrasco@rodev.com)

If to the Purchaser: Caprock Wind Investments, LLC  
6688 North Central Expressway, Suite 500  
Dallas, TX 75206

If to the Company: Caprock Wind, LLC  
6688 North Central Expressway, Suite 500  
Dallas, TX 75206  
Attn: Asset Management  
E-mail: [AssetMgmt@leewardenergy.com](mailto:AssetMgmt@leewardenergy.com)

with a copy to: Modrall, Sperling, Roehl, Harris & Sisk, P.A.  
500 Fourth Street NW, Suite 1000  
Albuquerque, NM 87102  
Attn: Peter Franklin, Esq.  
Tel: (505) 984-2856  
E-mail: [pfranklin@modrall.com](mailto:pfranklin@modrall.com)

If to the Depository: BOKF, NA  
100 Sun Avenue NE, Suite 500  
Albuquerque, NM 87102  
Attention: Corporate Trust  
Tel: (505) 222-8447

Any Party may, by notice to each of the other Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent. Receipt by the Issuer, the Company and the Depository of a notice from a transferee of the Bonds will constitute notice of such a different address for the Purchaser.

**Section 1202. Remedies.** No right or remedy conferred on any Party in any of the Bond Documents is intended to be exclusive of any other right or remedy conferred on such Party in any of the Bond Documents. Each such right or remedy is in addition to every other right or remedy provided in any of the Bond Documents, or any other applicable agreement or contract; provided, that the remedy of the Issuer or the Purchaser in respect of an Event of Default or other breach hereunder or any other Bond Document shall be limited in all cases to those expressly provided in Section 902 hereunder or Article VIII of the Agreement, as the case may be. No delay or omission of any Party to exercise any such right or remedy will impair any such right or remedy or be construed to be a waiver. Every such right or remedy may be exercised from time to time and as often as the relevant Party may deem expedient. No waiver by any Party of any right or remedy with respect to any default or Event of Default will extend to or affect any other existing or subsequent default or Event of Default.

**Section 1203. Beneficiaries.** Nothing in any of the Bond Documents expressed or implied is intended or is to be construed to confer upon any Person other than the Parties any right, remedy or claim, legal or equitable.

**Section 1204. Severability.** In case any one or more of the provisions of any of the Bond Documents or of the Bonds are for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of any of the Bond Documents or of the Bonds, but the Bond Documents and the Bonds will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the any Party contained in any of the Bond Documents or the Bonds is for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of such Party to the full extent permitted by law.

**Section 1205. Obligations of Issuer Not Obligations of Officials Individually.** No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bonds will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

**Section 1206. Payments Due on Days That Are Not Business Days.** If the date for any payment called for under any of the Bond Documents or the Bonds is not a Business Day, then such payment will be made on the next Business Day and no interest on such payment will accrue for the period after the scheduled date for such payment.

**Section 1207. Limitation of Issuer's Liability.** No agreements or provisions contained in any Bond Document nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of Bond proceeds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer, its officers, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or obligate the Issuer financially in any way, except with respect to the Basic Rent, and its application as provided under this Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in any Bond Document or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officers and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the Basic Rent. Without limiting the requirement to perform its duties or exercise its rights and powers under the Bond Documents upon receipt of appropriate indemnity or payment, none of the provisions of any Bond Document will require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under any Bond Document.

**Section 1208. Successors.** Wherever a Party is referred to in this Indenture, it shall be deemed to include its successors, and all covenants and agreements in this Indenture will bind and inure to the benefit of the such Party's successors.

**Section 1209. Title, Headings.** The title and headings of the articles, sections and subdivisions of this Indenture have been used for convenience only and will not modify or restrict any of the terms or provisions of this Indenture.

**Section 1210. Consents and Approvals.** In any action requiring the consent or approval of a party to this Indenture, such consent or approval will not be unreasonably withheld.

**Section 1211. Execution in Counterparts.** Each of the Bond Documents may be executed in multiple counterparts, all of which taken together will constitute one instrument. Any Party may execute any of the Bond Documents by executing any such counterpart of such Bond Document.

**Section 1212. Applicable Law.** The validity, construction and effect of each of the Bond Documents will be governed by and construed in accordance with the laws of the State applicable to agreements made and to be performed in the State of New Mexico.

*[Signature pages follow]*



CAPROCK WIND, LLC,  
as Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

)

COUNTY OF \_\_\_\_\_ )

)

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, as \_\_\_\_\_ of Caprock Wind, LLC, a Delaware limited liability company.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

*(Company Signature Page to Indenture)*



CAPROCK WIND INVESTMENTS, LLC  
as Purchaser

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by \_\_\_\_\_, as \_\_\_\_\_ of Caprock Wind Investments, LLC, a  
Delaware limited liability company.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

*(Purchaser Signature Page to Indenture)*

BOKF, NA,  
as Depositary

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEW MEXICO )

)

COUNTY OF BERNALILLO )

)

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by \_\_\_\_\_, as \_\_\_\_\_ of BOKF, NA, as Depositary.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

*(Depositary Signature Page to Indenture)*

**EXHIBIT A**  
**FORM OF BOND**

**THIS BOND IS TRANSFERABLE ONLY UPON COMPLIANCE  
WITH THE RESTRICTIVE TERMS PROVIDED BELOW**

No. R-1

Up to \$35,000,000

United States of America  
State of New Mexico

Quay County, New Mexico  
Taxable Industrial Revenue Bonds  
(Caprock Wind Repower Project)  
Series 2024A

REGISTERED OWNER: \_\_\_\_\_

<u>FINAL MATURITY DATE</u>	<u>INTEREST RATE</u>	<u>ISSUE DATE</u>
_____, 20__	5.00%	July 10, 2024

Quay County, a political subdivision of the State of New Mexico existing under the Constitution and laws of the State of New Mexico (the “Issuer”), for value received, promises to pay, solely from the sources described below, to Caprock Wind Investments, LLC (together with its successors and assigns, and transferees as permitted below, the “Purchaser”) Thirty-Five Million Dollars (\$35,000,000) (subject to prior optional redemption as described below) or so much of such amount as has been advanced by the Purchaser and is outstanding and to pay, solely from such sources, to the Purchaser, interest on principal amounts advanced with respect to this Bond from the dates of such Advances at the Interest Rate specified above (computed on the basis of a 360-day year consisting of twelve 30-day months) until payment of such principal amount. Interest at the rate of Five and No/100 Percent (5.00%) of the principal amount of the Bonds outstanding shall be payable annually on each July 10, beginning July 10, 2025, with the outstanding principal amount of the Bonds plus all interest thereon due and payable in full on the Final Maturity Date.

This Bond is issued under and pursuant to the Constitution and laws of the State of New Mexico, particularly NMSA 1978, Sections 4-59-1 to -16 (1975, as amended through 2023), as amended, and under and pursuant to Ordinance No. 57 duly adopted by the Issuer on May 28, 2024.

The principal of, interest on and redemption price of this Bond are payable solely from Basic Rent derived by the Issuer from the Lease Agreement dated as of July 10, 2024 (the “Agreement”) between the Issuer and Caprock Wind, LLC (the “Company”), which has been

pledged and assigned by the Issuer to the Purchaser under the Indenture, dated as of July 10, 2024 (together with any amendments and supplements, the “Indenture”) among the Issuer, the Purchaser, the Company and BOKF, NA (the “Depository”).

Reference is made to the Indenture and the Agreement for the provisions, among others, with respect to the custody and application of the proceeds of the sale of this Bond, the collection and disposition of income and other revenues, a description of the account charged with and pledged to the payment of the principal of, interest on and redemption price of this Bond, the nature and extent of the security, the terms and conditions under which this Bond is issued and amounts are to be advanced with respect to this Bond by the Purchaser, and the rights, duties and obligations of the Issuer, the Company, the Purchaser and the Depository.

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW MEXICO OR OF ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE ISSUER, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, INTEREST ON OR REDEMPTION PRICE OF THIS BOND. THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE OF THIS BOND WILL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR LAWS OF THE STATE OF NEW MEXICO. THIS BOND WILL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE STATE OF NEW MEXICO, ANY OF ITS POLITICAL SUBDIVISIONS OR OF THE ISSUER OR A CHARGE AGAINST THEIR GENERAL CREDIT OR TAXING POWERS.

This Bond may be called for redemption as provided in the Indenture, at the option of the Company as a whole or in part on any date selected by the Company, at a redemption price equal to the principal amount to be redeemed plus interest accrued on such principal amount to the redemption date.

If an Event of Default (as defined in the Indenture) occurs, the Purchaser may cause the then unpaid principal amount of this Bond and all accrued interest to be immediately due and payable as provided in the Indenture. Neither the Issuer nor the Depository has any right or responsibility to act on behalf of the Purchaser with respect to any Event of Default.

THIS BOND MAY BE TRANSFERRED IN WHOLE BUT NOT IN PART. SUBJECT TO THE LAST PARAGRAPH OF SECTION 404 OF THE INDENTURE AND NOTWITHSTANDING ANY PROVISION OF THIS BOND TO THE CONTRARY, NEITHER THIS BOND NOR ANY INTEREST IN THIS BOND MAY BE, DIRECTLY OR INDIRECTLY, OFFERED, SOLD, HYPOTHECATED, ENCUMBERED OR OTHERWISE TRANSFERRED OR DISPOSED OF (INDIVIDUALLY AND COLLECTIVELY, A “TRANSFER”) EXCEPT IN COMPLIANCE WITH SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), AND APPLICABLE STATE SECURITIES LAWS AS ESTABLISHED TO THE SATISFACTION OF THE ISSUER, AND ANY SUCH PURPORTED TRANSFER OF THIS BOND WILL NOT BE EFFECTIVE UNLESS THE TRANSFEROR PROVIDES TO THE ISSUER, THE DEPOSITARY AND THE COMPANY (A) AN OPINION, IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, FROM LEGAL COUNSEL EXPERIENCED IN SECURITIES LAWS MATTERS, WHICH COUNSEL MUST BE SATISFACTORY TO THE

ISSUER, TO THE EFFECT THE TRANSFER COMPLIES WITH THE ACT AND APPLICABLE STATE SECURITIES LAWS AND (B) WRITTEN REPRESENTATIONS FROM THE TRANSFEREE, IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, NECESSARY TO ESTABLISH SUCH COMPLIANCE.

All acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this Bond and the execution of the Indenture have happened, exist and have been performed as so required.

The validity, construction and performance of this Bond are governed by the law of New Mexico applicable to agreements made and to be performed in New Mexico.

QUAY COUNTY, NEW MEXICO

By: \_\_\_\_\_  
Chair, Board of County Commissioners

(SEAL)

ATTEST:

By: \_\_\_\_\_  
County Clerk

**SCHEDULE OF ADVANCES AND PAYMENTS**

<u>Date</u>	<u>Amount Of Advance</u>	<u>Amount of Principal Payment or Redemption</u>	<u>Resulting Principal Amount</u>	<u>Notation Made By</u>
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**EXHIBIT B**

**REQUISITION AND CERTIFICATE NO.**

To: CAPROCK WIND INVESTMENTS, LLC, as Purchaser  
BOKF, NA, as Depositary

The undersigned, pursuant to the Indenture dated as of July 10, 2024 (the "Indenture"), among Quay County, New Mexico (the "Issuer"), Caprock Wind Investments, LLC (the "Purchaser"), Caprock Wind, LLC (the "Company") and BOKF, NA (the "Depositary"), requests on behalf of the Company, the disbursement of \$ \_\_\_\_\_ from the Acquisition Fund (as defined in the Indenture) to pay the following costs and expenses (or to reimburse the Company for payment of such costs and expenses) related to the Project (as defined in the Indenture) or to the issuance of the Bond (as defined in the Indenture):

Amount	General Classification Of Expenditure	Payee
\$		

Amount of this requisition: \$ \_\_\_\_\_

The undersigned certifies that:

(1) obligations in the stated amounts were incurred for Related Costs (as defined in the Indenture) and are due and payable (or, if the Company is indicated as the Payee, were duly paid by the Company) and that each item is a proper charge against the Acquisition Fund and has not been the subject of a previous withdrawal from the Acquisition Fund;

(2) to the best knowledge of the undersigned there has not been filed with or served upon the Issuer or the Company notice of any lien, right or attachment upon, or claim affecting the right of any such payee to receive payment of, the respective amounts stated in such requisition which has not been released or will not be released simultaneously with the payment of such obligation; and

(3) with respect to any item for payment for labor or to contractors, builders or materialmen, (i) the obligations stated have been properly incurred, (ii) such work was actually performed or such materials or supplies were actually furnished or installed in or about the Project, and (iii) either such materials or supplies are not subject to any lien or security interest or any such lien or security interest will be released or discharged upon payment of this requisition.

DATED: \_\_\_\_\_

CAPROCK WIND, LLC

\_\_\_\_\_  
Authorized Company Representative

Acknowledged:  
BOKF, NA

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_



**EXHIBIT C**

**COMPLETION CERTIFICATE**

The undersigned Authorized Company Representative, pursuant to Section 706 of the Indenture, dated as of July 10, 2024 (the “Indenture”), among Quay County, New Mexico, Caprock Wind Investments, LLC, as Purchaser, Caprock Wind, LLC (the “Company”) and BOKF, NA, as Depositary, states that, except for specified amounts remaining in the Acquisition Fund for any specified Related Costs as described in Appendix A hereto incurred by the Company, but not now due and payable, the Project is complete and all costs of labor, services, materials and supplies in connection with the Project Property have been paid for or provisions have been made for their payment. After the transfer of remaining moneys in the Acquisition Fund to the Company pursuant to Section 706 of the Indenture, the Company will have sole responsibility for the payment of any Related Cost in excess of the amount specified to be retained in the Acquisition Fund.

Moneys set aside for payment of pending expenses equal \$ \_\_\_\_\_ and total disbursements equal \$ \_\_\_\_\_.

DATED: \_\_\_\_\_

CAPROCK WIND, LLC

\_\_\_\_\_  
Authorized Company Representative

## EXHIBIT D

### CERTIFICATE OF QUALIFIED INVESTOR

Quay County, New Mexico

BOKF, NA, as Depositary

Caprock Wind, LLC

Re: Quay County, New Mexico Taxable Industrial Revenue Bonds (Caprock Wind Repower Project), Series 2024A.

Please be advised that the undersigned is purchasing the captioned Bonds (hereinafter referred to as the “Bonds”). Such purchase is for the account of the undersigned, for the purpose of investment and not with a present intent for distribution or resale. In the event that the undersigned transfers such Bonds, the undersigned shall comply with all provisions of the Indenture dated as of July 10, 2024 (as amended from time to time, the “Indenture”), among Quay County, New Mexico (the “Issuer”), Caprock Wind Investments, LLC, as Purchaser, Caprock Wind, LLC (the “Company”) and BOKF, NA, as Depositary (the “Depositary”), as described in the Bonds. The undersigned assumes all responsibility for complying with any applicable federal and state securities laws in such regard and must present to the Depositary, the Issuer and the Company a Certificate of Qualified Investor executed by the proposed transferee, among other things as may be required by the agreements authorizing the Bonds, before such transfer will be effective.

The undersigned acknowledges that it is one of the following:

1. a bank as defined in Section 3(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), or savings and loan association or other institution as defined in Section 3(a)(S)(A) of the Securities Act, whether acting in its individual or fiduciary capacity; broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”); insurance company as defined in Section 2(13) of the Securities Act; insurance company as registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act; Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; plan established and maintained by a state, its political subdivision, or any agency or instrumentality of a state or its political subdivision, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

2. a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;

3. an organization described in Section 501(c)(3) of the Internal Revenue Code with total assets in excess of \$5,000,000;

4. a natural person whose individual net worth, or joint net worth with that person's spouse, at the time of this purchase exceeds \$1,000,000, excluding the value of the primary residence of such person;

5. a natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with the person's spouse in excess of \$300,000 in each of those years and who reasonably expects reaching the same income level the current year; or

6. one or more of the following, as indicated, that it is acting for its own account or the accounts of other Qualified Institutional Buyers and that it in the aggregate owns and/or invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the Company:

(a) an insurance company, as defined in Section 2(13) of the Securities Act;

(b) an investment company registered under the Investment Company Act of 1940, as amended, or any business development company as defined in Section 2(a)(48) of that Act;

(c) a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958;

(d) a plan established and maintained by a state, its political subdivision or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees;

(e) an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974;

(f) a trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in Paragraph (d) or (e) above, and not a trust fund that includes as participants individual retirement accounts or H.R. 10 plans;

(g) a business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (the "Investment Advisers Act");

(h) an organization described in Section 501(c)(3) of the Internal Revenue Code, a corporation (other than a bank as defined in Section 3(a)(2) of the Securities Act or a savings and loan association or other institution referenced in Section 3(a)(5)(A) of the Securities Act or a foreign bank or savings and loan association or equivalent institution), partnership or similar business trust; or

(i) an investment adviser registered under the Investment Advisers Act;

7. a dealer registered pursuant to Section 15 of the Exchange Act, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$10 million of securities of issuers that are not affiliated with the dealer, provided that securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as a participant in a public offering shall not be deemed to be owned by such dealer; or

8. a dealer registered pursuant to Section 15 of the Exchange Act acting in a riskless principal transaction on behalf of a qualified institutional buyer; or

9. an investment company registered under the Investment Company Act, acting for its own account or for the accounts of other qualified institutional buyers, that is part of a family of investment companies which own in the aggregate at least \$100 million in securities of issuers, other than issuers that are affiliated with the investment company or are part of such family of investment companies. "Family of investment companies" means any two or more investment companies registered under the Investment Company Act, except for a unit investment trust whose assets consist solely of shares of one or more registered investment companies, that have the same investment adviser (or, in the case of unit investment trusts, the same depositor), provided that, for purposes of this section:

(a) each series of a series company (as defined in Rule 18f-2 under the Investment Company Act) shall be deemed to be a separate investment company; and

(b) investment companies shall be deemed to have the same adviser (or depositor) if their advisers (or depositors) are majority-owned subsidiaries of the same parent, or if one investment company's adviser (or depositor) is a majority-owned subsidiary of the other investment company's adviser (or depositor);

10. an entity, all of the equity owners of which are qualified institutional buyers, acting for its own account or the accounts of other qualified institutional buyers; or

11. a bank as defined in Section 3(a)(2) of the Securities Act, any savings and loan association or other institution as referenced in Section 3(a)(5)(A) of the Securities Act, or any foreign bank or savings and loan association or equivalent institution, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with it and that has an audited net worth of at least \$25 million as demonstrated in its latest annual financial statements, as of a date not more than 16 months preceding the date of sale in the case of a U.S. bank or savings and loan association, and not more than 18 months preceding such date of sale for a foreign bank or savings and loan association or equivalent institution; or

12. any entity that is acquiring the Bond for the purpose of facilitating investment therein by “qualified institutional buyers” as defined under Rule 144A promulgated under the Securities Act; or

13. The parent, affiliate or subsidiary of Caprock Wind, LLC.

The undersigned further acknowledges that (i) interest on the Bonds is not exempt from gross income for federal income tax purposes, and (ii) an opportunity was available to obtain and that the undersigned has obtained all materials which were regarded as necessary to evaluate the merits and risks of investment in the Bonds and after such evaluation, the undersigned understands and knows that investment in the Bonds involves certain risks, including, but not limited to, those related to limited security and source for payment of the Bonds and the probable lack of any secondary market for the Bonds.

The undersigned acknowledges, warrants and represents that the undersigned is experienced in transactions such as those relating to the Bonds and that the undersigned is knowledgeable and fully capable of independently evaluating the risks involved in investing in the Bonds. The undersigned further acknowledges that neither the Issuer nor any of its officials, counsel, agents or consultants is responsible for any information contained in or omitted from the materials furnished, whether directly or by any other means, relating to the Bonds and acknowledges that the undersigned will not look and has not looked to any of them to obtain such information on its behalf.

CAPROCK WIND INVESTMENTS, LLC,  
a Delaware limited liability company

By: CAPROCK WIND, LLC,  
a Delaware limited liability company  
its sole member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Notices and  
Payment of principal and interest:

Attn:

CAPROCK WIND INVESTMENTS, LLC,

QUAY COUNTY, NEW MEXICO

and

CAPROCK WIND, LLC

BOND PURCHASE AGREEMENT

Dated July 10, 2024

\$35,000,000  
Quay County, New Mexico  
Taxable Industrial Revenue Bonds  
(Caprock Wind Repower Project)  
Series 2024A

## **BOND PURCHASE AGREEMENT**

**CAPROCK WIND INVESTMENTS, LLC** (the “Purchaser”), **QUAY COUNTY, NEW MEXICO** (the “Issuer”), and **CAPROCK WIND, LLC** (the “Company”), agree:

**Section 1. Recitals.** The Issuer, the Purchaser, the Company and BOKF, N.A., as depository (the “Depository”) have entered into an Indenture dated as of July 10, 2024 (the “Indenture”). Pursuant to the Indenture, the Issuer will issue its Taxable Industrial Revenue Bonds (Caprock Wind Repower Project), Series 2024A in the maximum principal amount of \$35,000,000 (the “Bonds”). Capitalized terms used in this Bond Purchase Agreement (this “Agreement”) but not defined herein shall have the meanings assigned to such terms in the Indenture.

**Section 2. Purchase and Delivery.** On the basis of the representations and covenants contained in this Agreement and subject to the terms and conditions contained in this Agreement, the Purchaser will purchase the Bonds from the Issuer and the Issuer will sell the Bonds to the Purchaser. As consideration for the sale of the Bonds, the Purchaser will make advances on the Bonds at the times and under the conditions specified in Section 702 of the Indenture. The Issuer will deliver the Bonds to the Purchaser as provided in Section 403 of the Indenture, or at such other time as is mutually agreeable to the Purchaser and the Issuer (the “Closing Date”).

**Section 3. Issuer Representations.** The Issuer represents that, as of the date of this Agreement:

(a) Each of the representations of the Issuer in the Lease Agreement, dated as of July 10, 2024 (the “Lease” and, together with the Indenture and this Agreement, the “Bond Documents”), between the Issuer and the Company, and the Indenture is true and correct as if made on and as of the date of this Agreement, which is July 10, 2024.

(b) Pursuant to Ordinance No. 57 duly adopted by the Board of County Commissioners of Quay County on May 28, 2024 (the “Bond Ordinance”), the Issuer duly authorized and approved (i) the execution and delivery by the Issuer of the Bond Documents and the performance by the Issuer of its obligations under the Bond Documents, and (ii) the issuance, execution and delivery of the Bonds. The Bond Ordinance has not been amended, modified or repealed.

**Section 4. Company Representations.** The Company represents that as of the date hereof:

(a) Each of the representations of the Company in the Lease is true and correct as if made on and as of the date of this Agreement.

(b) This Agreement and the Lease constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally and general principles of equity.

(c) The Company is a Delaware limited liability company, duly organized, validly existing and in good standing under the law of the State of Delaware and is a duly registered foreign limited liability company authorized to do business in the State of New Mexico and has full legal capacity, right, power and authority to own the Company's properties and conduct the Company's business. The Company has full legal capacity, right, power and authority to execute and deliver this Agreement and the Lease, to provide for the operation and management of the Project Property, and to take any and all such action as may be required on its part to carry out, give effect to and consummate the transactions contemplated by this Agreement and the Lease.

(d) Neither the execution and delivery of this Agreement and the Lease, nor the consummation of the transactions contemplated therein or the compliance with the provisions thereof, will conflict with, or constitute on the part of the Company a material violation of, or a material breach of or material default under any indenture, mortgage, commitment, note or other agreement or instrument to which the Company is a party or by which the Company is bound, or any material order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its activities or properties. All consents, approvals, authorizations and orders of governmental or regulatory authorities (except as required under state securities laws) which are required for the Company's execution and delivery of, consummation of the transactions contemplated by, and compliance with the provisions of this Agreement and the Lease have been obtained.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the best of the knowledge of the Company, threatened, against or affecting the Company, or the actions taken or contemplated to be taken by the Company, nor, to the best of the knowledge of the Company, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the business or financial condition of the Company, or the transactions contemplated by, or the validity or enforceability of, this Agreement or the Lease.

(f) No event has occurred and no condition exists which, upon issuance of the Bonds, would constitute (or with the giving of notice or lapse of time, or both, would constitute) an Event of Default under the Lease.

(g) The Company is not in violation of any provisions of, or in default under any statute, indenture, mortgage, commitment, note or other agreement or instrument to which it is a party or by which it is bound, or any order, rule, regulation or decision of any court or governmental agency or body having jurisdiction over it or any of its activities or properties, which violation would materially and adversely affect its business or financial condition.

**Section 5. Purchaser Representations.** The Purchaser represents and acknowledges that, as of the date of this Agreement:

(a) The Purchaser is purchasing the Bonds for its own account for investment and with no present intention of distributing or reselling the Bonds or any interest in the Bonds but without prejudice, however, to its right at all times to sell or otherwise dispose of all but not part



of the Bonds in compliance with the Securities Act of 1933, as amended, the regulations promulgated thereunder, applicable state securities laws and regulations and the terms of the Bonds, upon receipt of appropriate investor representations, an opinion of counsel experienced in securities law matters and satisfactory to the Issuer and in accordance with the applicable terms of the Indenture.

(b) The Purchaser understands that the Bonds are a special limited, and not general, obligation of the Issuer, are payable solely from the Basic Rent received under the Lease and from the security therefor as described in the Indenture but from no other sources. The Purchaser understands that the Bonds are not secured by any obligation or pledge of any monies received or to be received from taxation or from the State or any political subdivision, taxing district, or municipality thereof (including, without limitation, the Issuer), and that the Bonds will never represent or constitute a general obligation, debt or bonded indebtedness of the Issuer, the State, any political subdivision or municipality thereof, and that no right will exist to have taxes levied by the Issuer, the State, any political subdivision or municipality thereof, for the payment of principal of, premium, if any, and interest on the Bonds. The Purchaser understands that payment of the Bonds depends upon the general credit of the Company, and upon the security granted in the Indenture for the Company's obligations under the Lease.

(c) The Purchaser is an affiliate of the Company and has been afforded the opportunity to discuss the business, assets and financial position of the Company with the officers, employees and auditors of the Company; and has received such information concerning the Company and its business, assets and financial position, and the Project (as defined in the Lease) as it deems necessary in making its decision to purchase the Bonds.

(d) The Purchaser is duly and legally authorized to purchase the Bonds, has such knowledge and experience in financial and business matters (including the ownership of municipal conduit obligations) as are required for, and is capable of, evaluating the merits and risks of its purchase of the Bonds, is aware of the intended use of proceeds of the Bonds, and understands that interest on the Bonds is not excludable from gross income for federal income tax purposes.

(e) The Purchaser understands that neither the Issuer nor any of its officials, counsel, consultants or agents has undertaken to furnish any information with respect to the Company or to ascertain the accuracy of any information furnished to the Purchaser with respect to the Company, and the Purchaser has not requested or received any representations from the Issuer with respect to any such information, its accuracy or completeness. The Purchaser waives any requirement of due diligence in investigation or inquiry on the part of the Issuer, its officials, counsel, agents and consultants and all claims, actions or causes of action which the Purchaser may have from and after the date hereof against the Issuer, its officials, counsel, agents and consultants growing out of any such action which any of the foregoing took, or could have taken, in connection with the authorization, execution, delivery, and sale of the Bonds to the Purchaser or in connection with any statement or representation by the Company which induced the Purchaser to purchase the Bonds.

(f) The Purchaser has received and reviewed copies of the Bond Documents and the Bond Ordinance.

(g) This Agreement constitutes the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

(h) The Purchaser has been informed by the Company and agrees that the Indenture has not been qualified under the Trust Indenture Act of 1939, and that the Bonds (i) are not being registered or otherwise qualified for sale under (a) the Securities Act of 1933, as amended, or (b) the "Blue Sky" laws and regulations of any state, (ii) will not be listed on any stock or other securities exchange, (iii) will not carry a rating from any rating service and (iv) will not be readily marketable. The Purchaser has been informed by the Company and agrees that a legend will be placed on the Bonds certificate or any other documents evidencing ownership of the Bonds to the effect that it has not been registered under the Securities Act of 1933, as amended, or the applicable state "Blue Sky" laws and that it may only be transferred in compliance with the Indenture and applicable securities laws.

(i) The execution, delivery and performance of this Agreement by the Purchaser will not constitute a default under any other agreement by which the Purchaser is bound.

(j) The Purchaser acknowledges that its purchase of the Bonds constitutes a transaction in a bond secured by the Indenture which is, among other things, a personal property security agreement, pursuant to which the Bonds are offered and sold as a unit.

**Section 6. Indemnification.**

(a) The Company and the Purchaser will, jointly and severally, indemnify, defend and hold harmless the Depository, as defined in the Indenture, each agent and employee of the Depository, the Issuer, each County Commission member, official, agent or employee of the Issuer and each person, if any, who has the power, directly or indirectly, to direct or cause the direction of the management and policies of the Issuer (each an "Indemnified Party" and, collectively, the "Indemnified Parties") from and against any and all losses, claims, damages, liabilities, joint or several, or expenses related thereto arising out of or in connection with or caused by any offering, sale or resale of the Bonds in violation of any federal or state securities laws or by an untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact made to any person or caused by an omission or alleged omission of any material fact in connection with the Bonds or the sale, resale or delivery thereof.

(b) In case a claim is made or any action is brought against one or more of the Indemnified Parties based upon the matters described in the preceding paragraph and in respect of which indemnity is sought against the Company or the Purchaser pursuant to the preceding paragraph, the Indemnified Party or Parties seeking indemnity shall promptly notify the Company and the Purchaser, in writing, and the Company or the Purchaser shall promptly assume or cause the assumption of the defense thereof, including the employment of counsel chosen by the

Company or the Purchaser and approved in writing by the Issuer (provided, that such approval by the Issuer shall not be unreasonably withheld), the payment of all expenses (including reasonable counsel fees and expenses) and the right to negotiate and consent to settlement. If the Company and the Purchaser fail to assume or cause the assumption of the defense of such action or to retain counsel reasonably satisfactory to the Issuer within a reasonable time after notice of the commencement of such action, the reasonable fees and expenses of counsel retained by the Indemnified Party shall be paid by the Company or the Purchaser. If any Indemnified Party is advised in a written opinion of counsel that the defenses of such Indemnified Party should be handled by separate counsel, the Company or the Purchaser shall not have the right to assume or cause the assumption of the defense of such Indemnified Party, but the Company and/or the Purchaser shall be responsible for the fees and expenses of such separate counsel (the "Separate Counsel") retained by such Indemnified Party. Notwithstanding, and in addition to, any of the foregoing, any one or more of the Indemnified Parties shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnified Party or Indemnified Parties unless the employment of such counsel has been specifically authorized in writing by the Company and the Purchaser. Neither the Company nor the Purchaser shall be liable for any settlement of any such action effected without the written consent of the Company or the Purchaser, but if settled with the written consent of the Company and the Purchaser or if there is a final judgment for the plaintiff in any such action with or without consent, the Company and the Purchaser will indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.

(c) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in this Section 6 is for any reason held to be unavailable to the Indemnified Parties in accordance with its terms, the Purchaser and the Company shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by this Section 6 incurred by the Indemnified Parties in such proportions as determined by a court having jurisdiction of the matter.

(d) The covenants and agreements of the Purchaser and the Company under this Section 6 are joint and several.

**Section 7. Conditions.** The obligation of the Purchaser to purchase the Bonds and the obligation of the Issuer to sell the Bonds are subject to satisfaction of the following conditions precedent:

(a) The representations of the Issuer, the Purchaser and the Company in this Agreement will be true and correct on and as of the date the Bonds are issued (the "Closing Date") as if made on and as of the Closing Date.

(b) As of the Closing Date, no Default (as defined in the Indenture) or Event of Default (as defined in the Lease) will have occurred and be continuing, and no event will have occurred and be continuing which, with the lapse of time or the giving of notice or both, would constitute a Default or Event of Default.

(c) On or before the Closing Date, all actions required to be taken as of the Closing Date in connection with the Bonds, the Bond Ordinance and the Bond Documents by the Issuer, the Purchaser and the Company will have been taken, and the Issuer, the Purchaser and the Company will each have performed and complied with all agreements, covenants and conditions required to be performed or complied with by the Bond Ordinance and the Bond Documents.

(d) The Indenture will have been duly executed and delivered by the Issuer, the Purchaser and the Depository. The Lease will have been duly executed by the Issuer and the Company. Each of the Bond Documents, the Bond Ordinance and all other official action of the Issuer relating to the Bonds, the Project (as defined in the Lease) and the Bond Documents will be in full force and effect on the Closing Date and will not have been amended, modified or supplemented on or before the Closing Date.

(e) The Issuer, the Company and the Purchaser will have received the following, each dated the Closing Date:

(i) the approving opinion of Rodey, Dickason, Sloan, Akin & Robb, P.A., Bond Counsel, substantially in the form of Exhibit A;

(ii) the opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A., counsel to the Company, substantially in the form of Exhibit B;

(iii) the opinion of the Attorney for the Issuer, substantially in the form set forth in Exhibit C;

(iv) the opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A., counsel to the Purchaser, substantially in the form set forth in Exhibit D;

(v) a certificate of and with reference to the Issuer and signed by a duly authorized officer of the Issuer to the effect set forth in subsections (a) and (c) of this Section 7 with respect to the Issuer;

(vi) a certificate of and with reference to the Company signed by a duly authorized officer of the Company to the effect set forth in subsections (a), (b) and (c) of this Section 7;

(vii) a certificate of and with reference to the Purchaser signed by a duly authorized officer of the Purchaser to the effect set forth in (a) and (c) of this Section 7;

(viii) a certificate of the Depository signed by a duly authorized officer of the Depository to the effect that (a) he or she is an authorized officer of the Depository; (b) the Indenture has been duly executed and delivered by the Depository; (c) the Depository has all necessary corporate powers required to execute, deliver and perform its obligations under the Indenture; and (d) to the best of his or her knowledge, the execution and delivery by the Depository of the Indenture and the performance by the Depository of its obligations under the Indenture will not conflict with or constitute a breach of or default under any law, administrative regulation,



Dallas, TX 75206

If to the Company:

Caprock Wind LLC  
6688 N. Central Expressway, Suite 500  
Dallas, Texas  
Attn: Asset Management  
E-mail: [AssetMgmt@leewardenergy.com](mailto:AssetMgmt@leewardenergy.com)

With a copy to:

Caprock Wind LLC  
6688 N. Central Expressway, Suite 500  
Dallas, Texas  
Attn: Legal Department  
E-mail: [Legal@leewardenergy.com](mailto:Legal@leewardenergy.com)

Any Party may, by notice to each of the other Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent.

**Section 10. Remedies.** No right or remedy conferred on any party in this Agreement is intended to be exclusive of any other right or remedy. No delay or omission of any party to exercise any such right or remedy may be exercised from time to time and as often as the relevant party may deem expedient. No waiver by any party of any right or remedy with respect to any Default or Event of Default will extend to or affect any other existing or subsequent Default or Event of Default.

**Section 11. Severability.** In case any one or more of the provisions of this Agreement or of the Bonds are for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of any of this Agreement or of the Bonds, but this Agreement and the Bonds will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the Issuer contained in this Agreement or the Bonds are for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of the Issuer to the full extent permitted by law.

**Section 12. Obligations of Issuer Not Obligations of Officials Individually.** No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bond will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

**Section 13. Limitation of Issuer's Liability.** No agreements or provisions contained in this Agreement nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed,

directly or indirectly, out of the Bond proceeds or the issuance, sale and delivery of the Bond will give rise to any pecuniary liability of the Issuer, its officials, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or will obligate the Issuer financially in any way, except with respect to the Basic Rent available under the Lease and the Indenture provided by the Company and pledged to the payment of the Bonds, and their application as provided under the Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in this Agreement or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officials, employees, agents and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the funds available under the Lease or the Indenture provided by the Company and pledged to the payment of the Bonds. None of the provisions of the Bond Documents will require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under the Bond Documents. Nothing in this Agreement will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement in any of the Bond Documents; provided, that no costs, expenses or other monetary relief will be recoverable from the Issuer except as may be payable from the funds available under the Lease or the Indenture provided by the Company and pledged to the payment of the Bonds.

**Section 14. Title, Headings.** The title and headings of the articles and sections of this Purchase Agreement have been used for convenience only and do not modify or restrict any of the terms or provisions hereof.

**Section 15. Execution in Counterparts.** This Agreement may be executed in counterparts, all of which taken together will constitute one instrument.

**Section 16. Applicable Law.** The validity, construction and effect of this Agreement will be governed by the law of the State of New Mexico.

**Section 17. Expenses.** All costs and expenses relating to the preparation, issuance, delivery and sale of the Bonds and the preparation, execution and delivery of the Bond Ordinance, the Bond Documents and all other agreements, documents and instruments related to the transactions contemplated by the Bond Documents, including the fees and expenses of Issuer's outside review counsel, are to be paid by the Company.

**Section 18. Performance of the Parties.** The respective obligations of the parties hereunder are subject to the performance by each other party hereto of its own obligations hereunder.

*[Signature pages follow]*

DATED: JULY 10, 2024

CAPROCK WIND INVESTMENTS, LLC,  
as Purchaser

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CAPROCK WIND, LLC  
as Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

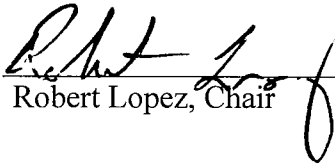
Title: \_\_\_\_\_

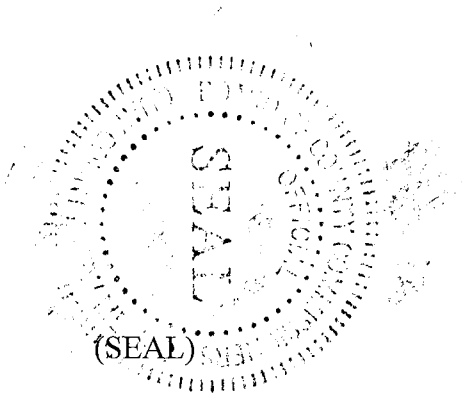
*(Purchaser and Company Signature Page to Bond Purchase Agreement, Series 2024A)*



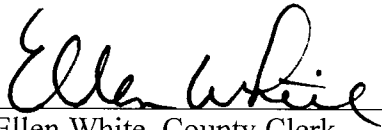
DATED AS OF JULY 10, 2024.

BOARD OF COUNTY COMMISSIONERS  
QUAY COUNTY, NEW MEXICO

By:   
Robert Lopez, Chair



ATTEST:

By:   
Ellen White, County Clerk

*(Issuer Signature Page to Bond Purchase Agreement, Series2024A)*

**Exhibit A**

Form of Opinion of Bond Counsel

*[Subject to Review and Approval of Opinions Committee]*

July 10, 2024

Quay County, New Mexico  
Tucumcari, New Mexico

Caprock Wind Investments, LLC  
Dallas, Texas

Caprock Wind, LLC  
Dallas, Texas

BOKF, N.A.  
Albuquerque, New Mexico

Re: \$35,000,000 Quay County, New Mexico Taxable Industrial Revenue Bonds (Caprock Wind Repower Project), Series 2024A.

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance and sale by Quay County, New Mexico (the “Issuer”) of its Taxable Industrial Revenue Bonds (Caprock Wind Repower Project), Series 2024A, in the maximum principal amount of \$35,000,000 (the “Bonds”).

The Bonds will bear interest on the outstanding principal amount at a per annum rate equal to five percent (5.00%). Interest on the Bonds is payable each July 10, beginning July 10, 2025, with the outstanding principal amount of the Bonds plus all interest thereon due and payable in full at their final maturity.

The Bonds are subject to redemption prior to maturity as described in the Indenture dated as of July 10, 2024 (the “Indenture”) among the Issuer, Caprock Wind Investments, LLC (the “Purchaser”), Caprock Wind, LLC (the “Company”) and BOKF, N.A. (the “Depositary”).

The principal of, interest on and redemption price of the Bonds are not general obligations of the Issuer but special obligations payable solely from the revenues pledged under the Indenture. Neither the faith and credit nor the taxing power of the State of New Mexico or of any of its political subdivisions or municipalities, including the Issuer, is pledged to the payment of the principal of, interest on or redemption price of the Bonds. The principal of, interest on and redemption price of the Bonds will never constitute a debt or indebtedness of the Issuer within the

meaning of any provision or limitation of the constitution or laws of the State of New Mexico. The Bonds will never constitute nor give rise to a pecuniary liability of the State of New Mexico, any of its political subdivisions or of the Issuer or a charge against their general credit or taxing powers.

In connection with the issuance of the Bonds, we have examined (a) a certified copy of an ordinance passed by the Quay County Commission on May 28, 2024 authorizing the issuance of the Bonds, pursuant to and under the provisions of NMSA 1978, Sections 4-59-1 to-16 (1975, as amended through 2023) (the “Act”); (b) the executed Bonds; (c) executed counterparts of the Indenture, the Lease Agreement dated as of July 10, 2024 (the “Agreement”) between the Issuer and the Company and the Bond Purchase Agreement dated the date hereof (the “Bond Purchase Agreement” and, together with the Indenture and the Agreement, the “Bond Documents”) among the Purchaser, the Issuer and the Company; and (d) such other opinions, documents, certificates and letters as we deemed relevant in rendering this opinion.

Based on such examination, in our opinion:

1. The Issuer is a political subdivision of the State of New Mexico and has the power and authority, under the constitution and laws of the State of New Mexico, including the Act, to execute and deliver the Bond Documents, and to authorize, execute, issue and deliver the Bonds.
2. The terms and provisions of the Bonds and the Bond Documents comply in all respects with the requirements of the Act.
3. The Bonds have been validly authorized, executed and issued in accordance with the law of New Mexico and represent the valid and binding special obligation of the Issuer.
4. The Bond Documents have been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties to the Bond Documents, constitute legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally and general principles of equity.
5. Neither the offer nor sale of the Bonds to the Purchaser pursuant to the Bond Documents is required to be registered under any federal or New Mexico securities law. The Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.
6. The issuance and sale of the Bonds to the Purchaser is not subject to Rule 15c2-12 of the Securities and Exchange Commission.

Our opinion in paragraph 4 above, insofar as it relates to the enforceability of the Indenture, is subject to the following qualifications:

- (i) New Mexico law may require that notice of acceleration be given to the Company before foreclosure of the Indenture. *Comer v. Hargrave*, 1979-NMSC-059, 93 N.M. 170, 598 P.2d 213.
- (ii) We express no opinion as to title to or the priority of any lien on or security interest in any real or personal property.
- (iii) NMSA 1978, Section 42A-1-24(C) (2001) provides that a court which has heard and adjudicated a condemnation proceeding has the power over the condemnee's compensation to "make orders as the court deems necessary with respect to encumbrances, liens, rents, insurance and other just and equitable charges."

The foregoing opinions represent our legal judgment based upon a review of existing legal authorities that we deem relevant to render such opinions and are not a guarantee of a result.

Very truly yours,

**Exhibit B**

Form of Opinion of Counsel to the Company

July 10, 2024

Quay County, New Mexico  
Tucumcari, New Mexico

Caprock Wind Investments, LLC  
Dallas, Texas

BOKF, N.A.  
Albuquerque, New Mexico

Ladies and Gentlemen:

We have represented Caprock Wind, LLC (the “Company”) in connection with (i) the Lease Agreement dated as of July 10, 2024 (the “Agreement”) between Quay County, New Mexico (the “Issuer”) and the Company, (ii) the Bond Purchase Agreement (the “Bond Purchase Agreement”) dated the date hereof, between Caprock Wind Investments, LLC (the Purchaser”), the Issuer and the Company, pursuant to which the Purchaser has agreed to purchase the Issuer’s Taxable Industrial Revenue Bonds (Caprock Wind Repower Project), Series 2024A, in the maximum principal amount of \$35,000,000 to be issued under the Indenture dated as of July 10, 2024 (the “Indenture”) among the Issuer, the Purchaser, the Company and the Depository, and (iii) the Indenture. We have reviewed executed copies of the Bond Documents (as defined below), and certificates of officers of the Company and public officials and we have made such other investigations of law and fact as we have deemed necessary. The Agreement, the Indenture and the Bond Purchase Agreement are referred to herein as the Bond Documents.

Based upon the foregoing, in our opinion:

1. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware, is duly registered as a foreign limited liability company under the laws of New Mexico and has duly authorized the execution, delivery and performance of the Agreement, the Indenture and the Bond Purchase Agreement.

2. The execution, delivery and performance by the Company of the Agreement, the Indenture and the Bond Purchase Agreement will not conflict with, contravene, violate or constitute a breach of or default under the articles of organization or operating agreement of the Company or any law, rule, regulation, ordinance, or, to our knowledge, based on a certificate of an officer of the Company, any order, consent, decree, agreement or instrument to which the Company is a party or by which it or its properties, including the Project Property as defined in the Lease, is bound.

3. All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Company of the Agreement, the Indenture and the Bond Purchase Agreement have been obtained and are in full force and effect.

4. There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to our knowledge, threatened against the Company, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bond or the execution and delivery of any of the Bond Documents, (ii) in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents, or (iii) questions the authority of the Company to own or operate any of the Project Property, as defined in the Lease.

5. The Agreement, the Indenture and the Bond Purchase Agreement have been duly authorized, executed and delivered and constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

The opinions expressed in this opinion letter are limited to the federal laws of the United States, the laws of the State of New Mexico, and the Limited Liability Company Act of the State of Delaware.

Very truly yours,

**Exhibit C**

Form of Opinion of Counsel to the Issuer

July 10, 2024

Quay County, New Mexico  
300 South Third Street  
P.O. Box 1246  
Tucumcari, NM 88401

Caprock Wind Investments, LLC  
6688 North Central Expressway  
Dallas, TX 75206

Caprock Wind, LLC  
6688 North Central Expressway  
Suite 500  
Dallas, TX 75206

\$35,000,000  
Quay County, New Mexico  
Taxable Industrial Revenue Bonds  
(Caprock Wind Repower Project)  
Series 2024A

Ladies and Gentlemen:

This opinion is being delivered in connection with the issuance by Quay County, New Mexico (the “County” or “Issuer”) of its \$35,000,000 Taxable Industrial Revenue Bonds (Caprock Wind Repower Project), Series 2024A (the “Bonds”). The Bonds have been issued and delivered pursuant to an in accordance with the provisions of Ordinance No. 57 adopted on May 28, 2024 (the “Bond Legislation”).

Terms which are not defined in this opinion have the same meanings as set forth in the Bond Legislation unless the context requires otherwise.

It is the opinion of the undersigned that, as of the date hereof:

1. The Issuer is a duly organized and validly existing political subdivision of the State of New Mexico (the “State”) under the Constitution and laws of the State.
2. County Ordinance No. 57 (the “Bond Ordinance”) was duly adopted by the Quay County Board of County Commissioners (the “Commission”) on May 28, 2024, in accordance with all applicable laws and has not been repealed or rescinded.
3. Without opining as to the legality, validity or enforceability of the Bonds, the Indenture, the Lease Agreement and the Bond Purchase Agreement (all as defined in the Bond Ordinance), the adoption of the Bond Ordinance by the Commission will not violate any provision of the Constitution or laws of the State.

4. To my knowledge, no litigation is now pending or threatened against the Issuer which seeks to or does restrain or enjoin the issuance or delivery of the Bonds, or in any manner questions the authority or proceedings for the issuance of the Bonds.

Very truly yours,

---

Quay County Attorney



**Exhibit D**

Form of Opinion of Counsel to the Purchaser

July 10, 2024

County Board of Commissioners  
Quay County, New Mexico  
Tucumcari, New Mexico

Caprock Wind, LLC  
6688 N. Central Expressway, Suite 500  
Dallas, Texas 75206

BOKF, N.A.  
Albuquerque, New Mexico

Ladies and Gentlemen:

We have acted as counsel to Caprock Wind Investments, LLC (the “Purchaser”) in connection with the Indenture dated as of July 10, 2024 (the “Indenture”) among BOKF, N.A., as depositary (the “Depositary”), Quay County, New Mexico (the “Issuer”), Caprock Wind, LLC (the “Company”) and the Purchaser, and the Bond Purchase Agreement (the “Bond Purchase Agreement”) dated the date hereof among the Purchaser, the Issuer and the Company, pursuant to which the Purchaser has agreed to purchase the Issuer’s Taxable Industrial Revenue Bonds (Caprock Wind Repower Project), Series 2024A, in the maximum principal amount of \$35,000,000 to be issued under the Indenture. The Indenture, the Bond Purchase Agreement, and the Lease Agreement dated as of July 10, 2024 between the Company and the Issuer are referred to herein as the “Bond Documents.” In connection with this transaction, we have examined executed copies of the Bond Documents, certificates of officers of the Purchaser and certificates of public officials and have made such other investigations of law and fact as we have deemed necessary.

Based upon the foregoing, in our opinion:

1. The Purchaser is a limited liability company duly organized and validly existing and in good standing under the laws of the State of New Mexico.
2. The execution, delivery and performance by the Purchaser of the Indenture and the Bond Purchase Agreement will not conflict with, contravene, violate or constitute a breach of or default under the Articles of Incorporation or the bylaws of the Purchaser or any law, rule, regulation, ordinance, or, to our knowledge, based on a certificate of an officer of the Purchaser, any order, consent, decree, agreement or instrument to which the Purchaser is a party or by which it or its property is bound.

3. All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Purchaser of the Indenture and the Bond Purchase Agreement have been obtained and are in full force and effect.

4. There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to our knowledge, threatened against the Purchaser, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents, or (ii) in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents.

5. The Indenture and the Bond Purchase Agreement constitute legal, valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

This opinion has been delivered at your request for the purposes in connection with the Bond Documents. Without our prior written consent, this opinion is not to be utilized or quoted for any other purpose and no one other than you is entitled to rely thereon. The opinions expressed in this opinion letter are limited to the federal laws of the United States, the laws of the State of New Mexico.

Very truly yours,

QUAY COUNTY, NEW MEXICO

and

CAPROCK WIND, LLC

LEASE AGREEMENT

Dated as of July 10, 2024

Up to \$105,000,000  
Quay County, New Mexico  
Taxable Industrial Revenue Bonds  
(Caprock Wind Phase II)  
Series 2024B



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**SCHEDULE 5.3(A) .....**

QUAY COUNTY, NEW MEXICO, a political subdivision of the State of New Mexico (together with its successors and assigns, the “Issuer” or “County”), as lessor, and CAPROCK WIND, LLC, a Delaware limited liability company (together with its successors and assigns, the “Company”), as lessee, agree:

**ARTICLE I  
RECITALS**

Capitalized terms not otherwise defined herein shall have the meanings defined in Section 2.1 hereof, unless the context clearly requires otherwise.

A. The Company has requested that the Issuer issue its Taxable Industrial Revenue Bonds (Caprock Wind Phase II), Series 2024B, in the maximum principal amount of \$105,000,000 (the “Bonds”). The proceeds of the Bonds will be used to finance the acquisition, construction, equipping, and installation of wind energy generation facilities and associated electrical generating equipment and real property used to generate electricity from wind energy, which shall be located at a site within the County and outside the corporate limits of any municipality, and constructed in one or more phases for the purpose of generating electricity from a second project site in proximity to the Company’s existing wind farm located in the County (collectively, the “Project” as further defined below).

B. The Issuer is authorized under the County Industrial Revenue Bond Act, NMSA 1978, Sections 4-59-1 to -16 (1975, as amended through 2023) (the “Act”) to acquire certain projects and issue its industrial revenue bonds in payment therefor and has determined that it is desirable to acquire the Project Property (as defined below) for purposes of the Project (as defined below) pursuant to Ordinance No. 57 adopted by the Board of County Commissioners of Quay County (the “Board”) on May 28, 2024 (the “Bond Ordinance”) and has in the Bond Ordinance authorized the issuance of the Bonds.

C. The Bonds are to be issued under an Indenture dated as of July 10, 2024 (together with any and all amendments and supplements, the “Indenture”) among the Issuer, the Company, Caprock Wind Investments, LLC as purchaser of the Bonds (together with its successors and assignees, and transferees of the Bonds the “Purchaser”), and BOKF, NA as Depositary (the “Depositary”).

D. The Bonds will be a special limited obligation of the Issuer payable solely from Basic Rent (as defined below) paid by the Company to the Issuer. The Bonds will not constitute a debt or indebtedness of the Issuer and shall not constitute or give rise to any pecuniary liability of the Issuer or a charge against its general credit or taxing power. The Purchaser or owners of the Bonds will have no right to have taxes levied by the Issuer or to require the Issuer to use any revenues for the payment of the Bonds, except for Basic Rent (as defined below).

E. The proceeds of the Bonds will be used to finance the Project (as defined below), the costs of acquiring, constructing, equipping, and installing the Project Property (as defined below) and to pay certain costs associated with the issuance and the sale of the Bonds.

F. The Project Property (as defined below) will be leased to the Company under this Lease Agreement (together with all amendments and supplements, this “Agreement”).

G. As of the Effective Date (as defined below), the Company has conveyed the Project Site (as defined below and described in Exhibit A) to the Issuer pursuant to a sublease agreement and assignments of such interests.

H. The Company will make annual payments in lieu of taxes (the “PILOT,” as such term is further defined below) equal to \$3,650 per megawatt of injection capability of the Combined Project as described in Section 6.4, but in no event will the Combined PILOT (as defined below) be less than \$292,000, which amount represents the PILOT that would be due for a project with an injection capability of 80 megawatts, for each year in which the Bonds are outstanding, in accordance with the Act.

I. The Company anticipates that the Combined Project (as defined below) will have at least 80 megawatts of injection capability.

J. The PILOT will be allocated by the Issuer to the School Districts (as defined below) as required by NMSA 1978 Section 4-59-4(A)(2) (2023) (or pursuant to the requirements of the Act relating to the distribution of the PILOTs in effect at the time of issuance of the Bonds), annually beginning on the anniversary of the Effective Date of this Agreement (as defined below) and ending on July 10, 2054.

K. The Bonds are to be purchased under a Bond Purchase Agreement dated as of July 10, 2024 (together with any and all amendments and supplements, the “Bond Purchase Agreement”) among the Issuer, the Purchaser and the Company.

L. The Bonds will be secured by the Indenture which constitutes, among other things, a collateral pledge of this Agreement.

In consideration of the premises and the mutual representations and agreements hereinafter contained, the Issuer and the Company agree as follows (provided that any obligation of the Issuer created by or arising out of this Agreement will never constitute a general debt of the Issuer or give rise to any pecuniary liability of the Issuer, but will be payable solely out of Basic Rent (as defined below)).

## ARTICLE II DEFINITIONS AND RULES OF CONSTRUCTION

**Section 2.1. Definitions.** All words and terms defined in the Indenture have the same meanings when used in this Agreement. In addition:

“2024A Bonds” means the Quay County, New Mexico Taxable Industrial Revenue Bonds (Caprock Wind Repower Project), Series 2024A, which are being issued concurrently with the Bonds.

“2024A PILOT” means an amount equal to \$3,650 per megawatt of injection capability of the 2024A Project.

“2024A Project” means the repowering project to be financed with proceeds of the 2024A Bonds.

“Additional Payments” has the meaning assigned in Section 5.3(b).

“Affiliate” means an entity the control or ownership of which is held in common with the control or ownership of another entity.

“Affiliated Entities” means Affiliates that are under common control or ownership.

“Applicable Environmental Law” means any applicable law, statute, ordinance, regulation, order or rule relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or materials or pertaining to health or the environment, including, without limitation, CERCLA and RCRA, as each is amended and in effect from time to time.

“Basic Rent” has the meaning assigned in Section 5.3(a).

“Bond Counsel” means Rodey, Dickason, Sloan, Akin & Robb, P.A., Albuquerque, New Mexico.

“Bond Documents” means collectively (i) this Agreement, (ii) the Indenture, and (iii) the Bond Purchase Agreement.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

“Closing Date” means the date of execution and delivery of the Bonds.

“Combined PILOT” means, collectively, the PILOT and the 2024A PILOT, which in no event will be less than \$292,000 on an annual basis.

“Combined Project” means the Project and the 2024A Project.

“Completion Date” has the meaning assigned in Section 4.4.

“County PILOT” means the amount specified in Section 6.4(b) of this Agreement that is allocated to the County for expenditure as it may so determine.

“County Road” means any road or highway that is maintained by the County, or for which there is an expectation that the County maintain such road or highway.

“Effective Date” means July 10, 2024.



“Eminent Domain” means the taking of title to, or the temporary use of all or any part of the Project Property pursuant to eminent domain or condemnation proceedings, or by any settlement or compromise of such proceedings, or any voluntary conveyance of all or any part of the Project Property during the pendency of, or as a result of a threat of, such proceedings.

“Equipment” means that equipment and other personal property as described in Exhibit A attached hereto.

“Event of Default” has the meaning assigned in Section 8.1.

“Facility” means the wind energy generating facility identified on Exhibit A attached hereto and located in Quay County, New Mexico, and its related supporting equipment and all improvements thereon for the generation and transmission of electricity.

“Improvements” means all improvements as to the Project Site, including but not limited to, any buildings or other structures, the Equipment and all other equipment and personal property of any kind acquired with the proceeds of the Bonds prior to the Completion Date which is subject to depreciation for federal income tax purposes and is installed or located at the Project Site and used as part of the Project described in Exhibit A attached hereto.

“Indemnitee” has the meaning assigned in Article VI of this Agreement.

“Lender” or “Lenders” means any and all persons or successors in interest thereof (a) lending money or extending credit related to the Project (including any financing lease, monetization of tax benefits, back leverage financing or credit derivative arrangement) to the Company or to an Affiliate of the Company including: (i) for the acquisition, construction, permanent or interim financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and related rights from the Company, and/or (b) participating (directly or indirectly) as an equity investor in the Project primarily in connection with the utilization of applicable federal tax credits or tax depreciation benefits associated with holding an ownership interest in the Project, or (c) participating as a lessor under a lease finance arrangement relating to the Project (which such arrangement shall not be deemed to include this Agreement, and which person or persons shall not include Company or any of its Affiliates).

“Payment of the Bonds” means payment in full of the principal, interest on and redemption price of the Bonds in accordance with their terms and the provisions of the Indenture, and payment of all fees and expenses of the Issuer, the Purchaser and the Depositary payable by the Company and/or an Affiliate Entity under the Indenture, the Agreement or the Bond Purchase Agreement.

“PILOT” means the payments in lieu of taxes the Company will pay to the Issuer (as described in Section 6.4 below) in an amount equal to \$3,650 per megawatt of injection capability of the Combined Project.

“Proceeds,” when used with respect to any insurance proceeds or any award resulting from, or other amount received in connection with, Eminent Domain, means the gross proceeds from the insurance or such award or other amount.

“Project” means the acquisition, construction, equipping and installation of certain wind energy generation facilities and associated equipment used to generate electricity from wind energy, located within Quay County but outside the boundaries of any incorporated municipality, being developed and to be operated by the Company on the Project Site for the purpose of generating electricity from wind energy, including without limitation, all associated Improvements and Equipment.

“Project Property” means (i) any rights of the Company in, or related to, the Project Site, now owned or hereafter acquired under easements, agreements or leases and assigned or subleased by the Company to the Issuer; and (ii) the Improvements.

“Project Site” means the real property located within the County but outside the boundaries of any incorporated municipality upon which the Project is to be located described in Exhibit A attached hereto as may be amended or supplemented from time to time pursuant to Section 4.2 of this Agreement.

“RCRA” means the Resource Conservation and Recovery Act of 1976.

“Related Costs” means expenditures incurred or to be incurred by the Company with respect to the Project, including, without limitation, the acquisition, construction, equipping and installation of the Project Property.

“Rent” means Basic Rent and any Additional Payments under this Agreement.

“School Districts” means, collectively, the Grady Municipal School District, the House Municipal School District, the Logan Municipal School District, the Melrose Municipal School District, the San Jon Municipal School District and the Tucumcari Public School District.

“School PILOT” means the amount specified in Section 6.4(b) of this Agreement and determined in accordance with the provisions of NMSA 1978, Section 4-59-4(A)(2) (2023), which amount shall be allocated among the School Districts and distributed by the Issuer to the School Districts pursuant to the provisions of NMSA 1978, Section 4-59-4(A)(2) (2023).

“State” means the state of New Mexico.

“Term” means the period commencing on the Effective Date and extending to the earlier of: (i) the date of Payment of the Bonds; (ii) the date of termination of this Agreement pursuant to Section 8.2 (d); or (iii) July 10, 2054.

“TRD” means the New Mexico Taxation and Revenue Department.

**Section 2.2. Rules of Construction.**

(a) The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(b) All references in this Agreement to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Agreement unless some other reference is established.

(c) Any inconsistency between the provisions of this Agreement and the provisions of the Indenture will be resolved in favor of the provisions of this Agreement.

**ARTICLE III  
REPRESENTATIONS**

**Section 3.1. Issuer Representations.** The Issuer represents that, as of the date of delivery of this Agreement:

(a) The Issuer is a political subdivision, organized and existing under the laws of the State.

(b) The Issuer has duly authorized by an ordinance of the governing body of the Issuer, adopted at a meeting duly called and held, by the affirmative vote of not less than a majority of its members, the execution, delivery and performance of the Bond Documents, the Bonds and the issuance of the Bonds, all for the purpose of financing the Project including the acquisition, construction and installation of the Project Property and paying certain costs related to the issuance of the Bonds.

(c) To the knowledge of the Issuer, the execution, delivery and performance by the Issuer of the Bond Documents will not conflict with or create a material breach of or material default under the Act or any other law, rule, regulation or ordinance applicable to the Issuer or any agreement or instrument to which the Issuer is a party or by which it is bound, and there is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body, pending or threatened against the Issuer, which seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents or in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents.

(d) To the knowledge of the Issuer, this Agreement and the Indenture constitute legal, valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity and other applicable laws.

**Section 3.2. Company Representations.** The Company represents that, as of the date of delivery of this Agreement:

(a) The Company is a limited liability company duly organized and validly existing under the laws of Delaware, is in good standing under the laws of Delaware, is authorized to do business in New Mexico, and has duly authorized the execution, delivery and performance of this Agreement, the Indenture and the Bond Purchase Agreement.

(b) The Company has full legal right, power and authority to carry out and consummate the transactions contemplated by this Agreement, the Indenture and the Bond Purchase Agreement.

(c) The execution, delivery and performance by the Company of this Agreement, the Indenture and the Bond Purchase Agreement and the application by the Company of the proceeds of the issuance and sale of the Bonds as provided in the Bond Documents do not and will not conflict with, contravene, violate or constitute a breach of or default under the articles of organization or operating agreement of the Company or any material agreement to which the Company is a party or by which the Company or its properties or the Project Property is bound or any law, rule, regulation, ordinance, order, consent, or decree, applicable to the Company, its properties or the Project Property if such conflict, contravention, violation, breach or default could materially affect the ability of the Company to perform its obligations under the Bond Documents.

(d) This Agreement, the Indenture and the Bond Purchase Agreement constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity.

(e) No Event of Default, or event or condition which, with notice or lapse of time or both, would constitute an Event of Default, with respect to the Company has occurred and is continuing. The Company has not received any written notice of any currently existing material violation of any zoning, land use, environmental or other similar law or regulation applicable to the Project Property, the Project Site or the Project.

(f) There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to the knowledge of the Company, threatened against the Company, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents, (ii) questions the validity or enforceability of the Bonds or any of the Bond Documents, (iii) questions the authority of the Company to own or operate any of the Project Property, or (iv) if adversely determined, would have a material adverse effect on the Project Property or the Company's ability to perform its obligations under the Bond Documents.

(g) All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Company of this Agreement, the Indenture and the Bond Purchase Agreement have been obtained and are in full force and effect.

(h) The Company acknowledges that the Issuer has made no warranty or representation, express or implied, that the amount in the Acquisition Fund, as defined in Section 701 of the Indenture, will be sufficient to pay the Related Costs or that the Project Property will be suitable for the Company's needs.

(i) The Company will not use or operate the Project, or permit the Project to be used or operated, in any way which would adversely affect the qualification of the Project as a "project" under the Act.

(j) The acquisition, construction and installation of the Project Property by the Company or its agents and assigns and the operation thereof will comply in all material respects with applicable zoning, planning, building, environmental and other regulations of the governmental authorities having jurisdiction over the Facility, and all permits, licenses, consents and permissions necessary for the Facility have been or will be obtained in due course.

(k) The Project Property is located in Quay County and is or will be an electric generation facility which does not require both location approval and a certificate of convenience and necessity prior to construction or operation of the facility pursuant to the New Mexico Public Utility Act, NMSA 1978, Sections 62-3-1 to -5 (1967, as amended through 2019).

(l) No representation made by the Company in this Agreement and no statement made by the Company in any written information, material or report furnished to the Issuer or the Purchaser in connection with the transactions contemplated by this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the representation or statement, in light of the circumstances under which it is made, not misleading.

(m) The representations of the Company in this Section 3.2 and in any other instrument delivered by the Company in connection with the transactions contemplated by the Bond Documents will survive the execution and delivery of this Agreement, and the issuance, sale and delivery of the Bonds as representations of facts existing as of the date of execution and delivery of the Bond Documents or other instrument containing such representation.

(n) The Company has arranged for all of the Company's right, title and interest in and to the Project Property to be transferred to the Issuer.

(o) The Company does not intend to utilize any County Road for the construction, installation, or operation of the Project or Project Property.

The representations of the Company in this Section 3.2 and in any certificate or other instrument delivered by the Company pursuant to any of the Bond Documents or in connection with the transactions contemplated by the Bond Documents will survive the execution and delivery of this Agreement and the issuance, sale and delivery of the Bonds.

**ARTICLE IV  
THE PROJECT AND THE COMPANY**

**Section 4.1. Construction, Acquisition, Equipping and Completion.** The Company will use reasonable commercial efforts to acquire, construct, install and equip the Project and will undertake to complete the Project as promptly as practicable, as agent for the Issuer under the Act and applicable TRD regulations. To the extent necessary, after all proceeds of the issuance of the Bonds have been exhausted, the Company will finance the completion of the Project with other funds. The Project Property will at all times during the Term be located within Quay County, New Mexico. The Issuer makes no warranty that the proceeds of the issuance and sale of the Bonds will be sufficient to pay all the Related Costs. The Company will obtain at the necessary time all licenses and permits required for the occupancy and operation of the Project Property and the Project.

**Section 4.2. Plans and Specifications; Changes.** The Company may make changes, supplements, amendments and additions, omissions or substitutions for components of the Project Property without the approval of the Issuer or the Purchaser. If the Company elects to make any such change, supplement, amendment, addition, omission or substitution which would make the description of the Project Property contained in Exhibit A materially inaccurate, the Company will revise the description of the Project Property set forth in Exhibit A accordingly and will deliver a copy of such revised Exhibit A, certified by an Authorized Company Representative, to the Issuer and the Purchaser, and may record an addendum or amendment to this Agreement executed by an Authorized Officer of the Company and the Board's chairperson or the County Manager. The Issuer and Company will take such further actions as necessary to effect such change including executing, delivering, and recording a bill of sale, assignment and any amendments to the Bond Documents. Notwithstanding the foregoing, the Company will not make any changes, supplements, amendments, additions, omissions, or substitutions or otherwise change or operate the Project Property or permit the Project Property, the Project or the Facility to be operated so as to cause the Project Property and the Project not to be a "project" within the meaning of the Act as in effect on the date of issuance of the Bonds, and the Company will not take or omit to take any action which will result in the proceeds of the Bonds being applied in violation of the Bond Documents.

**Section 4.3. No Warranty of Condition or Suitability by Issuer.** THE COMPONENTS OF THE PROJECT PROPERTY HAVE BEEN DESIGNATED AND SELECTED BY THE COMPANY. THE ISSUER HAS NOT MADE AN INSPECTION OF ANY PORTION OF THE PROJECT PROPERTY. THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO ANY PORTION OF THE PROJECT PROPERTY OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY OF THE SAME, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP IN THE SAME. ALL RISKS INCIDENT TO THE PROJECT PROPERTY ARE TO BE BORNE BY THE COMPANY. THE ISSUER WILL HAVE NO LIABILITY WITH REGARD TO OR ARISING OUT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN ANY PORTION OF THE PROJECT PROPERTY, WHETHER PATENT OR LATENT. THE PROVISIONS OF THIS SECTION 4.3 HAVE BEEN

NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PORTION OF THE PROJECT PROPERTY, WHETHER ARISING UNDER THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT.

**Section 4.4. Completion Date.** The Company will complete the Project as promptly as practicable and, in any event, within three (3) years of the Effective Date of this Agreement. On the date the Project is complete and a certificate of occupancy has been obtained for the Facility (if such certificate is required to be obtained) (the “Completion Date”), the Company will deliver to the Issuer and the Depositary a certificate signed by an Authorized Company Representative stating that, except for specified amounts remaining in the Acquisition Fund for any specified Related Costs incurred by the Company but not then due and payable, the Project is complete and all costs of labor, services, materials and supplies in connection with the Project have been paid for or provisions have been made for their payment. After the transfer of remaining moneys in the Acquisition Fund to the Company pursuant to Section 706 of the Indenture, the Company will have sole responsibility for the payment of any Related Costs in excess of the amount specified to be retained in the Acquisition Fund. Upon completion, the Project Property will comply in all material respects with all building codes, and other laws, ordinances, rules and regulations applicable to the Project Property or the Facility.

**Section 4.5. Gross Receipts and Compensating Tax.** The Company will act as agent for the County with respect to the Project and in its acquisition of the Project Property. To the extent required by law, if at all, the Company, either on its own behalf or as agent for the Issuer pursuant to Section 4.1 and this Section 4.5, will file returns for reporting and paying compensating tax which may become due because of the Project and promptly will pay, as a Related Cost, any gross receipts or compensating tax which may become due from the Issuer under any such returns. To the extent consistent with or required by State law, the Issuer will cooperate with the Company in the obtaining of Non-Taxable Transaction Certificates (“NTTCs”) from the TRD for delivery to suppliers with respect to the Project Property as may be applicable under the New Mexico Gross Receipts and Compensating Tax Act. The Company will pay any gross receipts or compensating tax plus applicable penalty and interest which is found by the TRD to be due from the Company or the Issuer because of the purchase or use of the Project Property or any component of the Project Property by the Company or the Issuer. The Company may request any rulings from the TRD which the Company determines might be necessary or desirable to clarify the New Mexico gross receipts and compensating tax results of transactions related to the Project and may dispute, in any manner authorized by the New Mexico Tax Administration Act, any gross receipts or compensating tax liability imposed on the Company or the Issuer because of the Project. The Issuer will join in any reasonable modifications to this Agreement which are necessary or desirable to obtain NTTCs or otherwise reduce the gross receipts and compensating tax imposed on the Company or the Issuer as a result of or in connection with the acquisition, assembly and installation of the Improvements, the Project Property, or the Company’s operations at the Project Site, and will otherwise cooperate with the Company to address any reasonable request of the Company regarding issues raised by TRD with respect to NTTCs. The Company will pay such gross receipts taxes and compensating taxes as may be required by law for all purchases of property other than

Project, for all purchases after the Completion Date and for any purchases in amounts greater than the proceeds of the Bonds.

**Section 4.6. Compliance With Law.**

(a) The Company will obtain or cause to be obtained all necessary permits and approvals, for the occupancy, operation and maintenance of the Project Property and will comply in all material respects with all Applicable Environmental Laws and all lawful requirements of any governmental body, agency or department regarding the use, condition or operation of the Project Property and the Project. The Company may in good faith contest the validity or the applicability of any such requirement. During the period of such contest and any related appeal, this Section 4.6 will be deemed satisfied with respect to the requirement so contested.

(b) To the extent that the use which the Company makes of the Project Property or the Project results in the manufacturing, treatment, refining, transportation, generation, storage, disposal or other release or presence of any hazardous substance or solid waste on or to the Project Site, such use will be in accordance with law, including any applicable regulations. For purposes of this paragraph, the terms “hazardous substance” and “release” will have the meanings specified in CERCLA, and the term “disposal” (or “disposed”) will have the meaning specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning will apply subsequent to the effective date of such amendment, and provided, further, to the extent that the laws of the State establish a meaning for “hazardous substance,” “release,” or “disposal” which is broader than that specified in either CERCLA or RCRA, such broader meaning will apply; provided, further, that the term “hazardous substance” will also include those listed in the U.S. Department of Transportation Table (49 C.F.R. 172.101) and amendments thereto from time to time.

(c) The Company agrees to promptly notify the Purchaser and the Issuer of any material violation of any Applicable Environmental Laws of which the Company becomes aware.

(d) The Company shall, at the Company’s sole cost and expense, remove or take remedial action as and to the extent required by Applicable Environmental Laws with regard to any hazardous substance brought onto the Project Site or released from the Project Site by the Company or its employees, agents or contractors. If the Company fails to timely take any action required under this Section 4.6 after notice from the applicable governmental entity having jurisdiction under Applicable Environmental Laws, the Issuer may, but shall have no obligation to, perform or arrange for the performance of such action and the Company shall, promptly upon demand therefore, reimburse the Issuer for all reasonable and customary costs actually incurred by the Issuer in connection with the completion of such performance. The Company shall indemnify, defend, protect and hold the Issuer and the Issuer’s commissioners, officers, employees and agents free and harmless from any liability (including, without limitation, costs, reasonable attorneys and consulting fees, investigation and laboratory fees and litigation expenses) arising out of (a) a release of any hazardous substance in, on or under the Project Site or (b) the violation by the Company or its employees, agents or contractors of any Applicable Environmental Laws at the Project Site. The indemnity obligations stated in this Section 4.6 (i) are in addition to the other



indemnity obligations of Company hereunder, and shall survive the termination of this Agreement, but (ii) shall specifically exclude any liabilities or amounts arising out of or related to the gross negligence or misconduct of the Issuer or the Issuer's trustees, employees and agents.

**Section 4.7. Taxes and Utility Charges.** The Company will pay or cause to be paid, as and when due, (i) all taxes, assessments, and governmental and other charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project Property, (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project Property and (iii) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by any lien on the Project Property. The Company may, in good faith, contest the amount or validity of any such levy, tax, assessment or other charge by appropriate legal proceedings. During the period of such contest and any related appeal, this Section 4.7 will be deemed satisfied with respect to any such levy, tax, assessment or other charge so contested.

**Section 4.8. Maintenance.** The Issuer will not be under any obligation to, and will not, operate, maintain or repair the Project Property. The Company will, at its own expense, keep the Project Property in safe repair and in such operating condition as is needed for its operations. The Company will not be under any obligation to renew, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable, inappropriate or unnecessary equipment. Notwithstanding the foregoing, the Company will comply with its decommissioning obligations contained in Exhibit B attached hereto and incorporated herein by reference.

**Section 4.9. Replacement and Removal of Project Property.** The Company may replace or remove and/or sell, trade in exchange or otherwise dispose of any machinery, equipment or fixtures constituting a part of the Project Property, without any responsibility or accountability to the Issuer, and thereby acquire title to such machinery, equipment or fixtures, provided that such replacement or removal will not change the nature of the Project as a qualified "project" as defined in and as contemplated by the Act. Upon the request and at the expense of the Company, the Issuer will deliver to the Company appropriate instruments evidencing the acquisition by the Company of title to any machinery, equipment or fixtures permitted by this Section 4.9 to be so replaced or removed. The delivery and form of any such instruments will be consistent with the conveyance instruments described in Article X. The removal from the Facility of any portion of the equipment, if any, pursuant to the provisions of this Section 4.9 will not entitle the Company to any abatement or diminution in amount of the Basic Rent, Additional Payments, or PILOT payable under this Agreement. The Company may acquire machinery, equipment or other property (other than fixtures) which does not constitute a part of the Project Property and title to any such property will not thereby be transferred to the Issuer.

**Section 4.10. Eminent Domain; Damage; Destruction.** The Company will give prompt notice to the Issuer and the Purchaser of any material damage to or destruction of the Project Property. If either the Issuer or the Company receives notice of the proposed taking of all or any part of the Project Property by Eminent Domain, it will give prompt notice to the other and the Purchaser. Any such notice will describe generally the nature and extent of such damage, destruction, taking or proposed taking. The Proceeds resulting from the exercise of Eminent Domain with respect to or from any damage to or destruction of all or any portion of the Project

Property shall at the option of the Purchaser, be applied to the prepayment of the Bonds or paid to the Company. All proceeds of insurance resulting from claims for losses to the Project and all proceeds of any condemnation award will be paid to the Company.

**Section 4.11. Access and Inspection.** The Company authorizes the Issuer and the Purchaser and their duly authorized agents during regular business hours, upon two (2) days prior written notice, (i) such rights of access to the Project Property as may be reasonably necessary to inspect the progress of the Project and (ii) the right of entry onto the Project Site for any purpose contemplated by this Agreement. Such rights of access and entry will not be terminated, curtailed or otherwise limited by any sale, assignment, lease or other transfer of the Project Property by the Company to any other Person. During any such access or entry, the Issuer and the Purchaser shall comply with all safety related rules and policies of the Company and its contractors.

**Section 4.12. Assessment in the Company's Name.** If this Agreement has not been terminated on or before the thirtieth (30<sup>th</sup>) anniversary of the Closing Date, the Company will take all necessary action to have the Project Property assessed for property tax purposes in the name of the Company on or within thirty (30) days before the thirtieth (30<sup>th</sup>) anniversary of the Closing Date, and the Company will pay all ad valorem taxes on the Project Property from and after the thirtieth (30<sup>th</sup>) anniversary of the Closing Date. If the Project Property must be conveyed to the Company to accomplish such assessment, the Issuer will convey the Project Property to the Company, and this Agreement will thereafter be construed to be an installment sale agreement and all terms and provisions of this Agreement will remain in full force and effect. The provisions of Article X govern the manner and form of any such conveyance. Notwithstanding the foregoing, if the Company fails to take all necessary action to have the Project Property assessed for property tax purposes in the name of the Company thirty (30) days before or on the thirtieth (30<sup>th</sup>) anniversary of the Closing Date, the Issuer may terminate this Agreement and execute, deliver and cause to be recorded, at the expense of the Company, appropriate documents reflecting such termination. In anticipation of the conveyance of the Project Property by the Issuer to the Company, the Issuer will, upon the request of the Company, deliver to an escrow agent agreed to by the Issuer and the Company appropriate documents, including, but not limited to, a quitclaim deed, an assignment of easements and other real property rights and a bill of sale, prepared by the Company at the Company's expense, conveying to the Company the Issuer's interest in the Project Property; such documents to be delivered to the Company at the time of purchase of the Project Property.

**Section 4.13. Use of Project Property.** The Company will use the Project Property or cause the Project Property to be used, and the Issuer grants the Company the full right to use, or cause the Project Property to be used continuously during the Term, so as to constitute a "project" within the meaning of the Act as in effect on the date of issuance of the Bonds. Temporary cessation of operations, or cessations of operations during holiday periods, for maintenance or retooling, for reasonable periods for the repair or replacement of facilities damaged or destroyed, resulting from labor disputes, strikes or because of short-term slack demand, riots or acts of God or the public enemy, shortages of materials or supplies or for any other reason beyond the reasonable control of the Company, or under similar circumstances will not constitute a failure by the Company to comply with this Section 4.13. If the Company terminates this Agreement or the Project ceases operations other than for a temporary cessation as described above prior to the

thirtieth (30<sup>th</sup>) anniversary of the Closing Date, the Company will pay to the Issuer (for the account of all taxing entities within whose jurisdiction the Project is or is to be located), within ninety (90) days of such cessation or non-completion of the Project, an amount equal to (i) the amount of ad valorem taxes on real and personal property that the Company did not pay, but would have been required to pay, if the Bonds had not been issued by the Issuer and the Project Property had been subject to ad valorem taxation, calculated using the mill levy rates and property tax valuations imposed in each applicable tax year, plus (ii) the amount of gross receipts tax that was not paid, but would have been payable by vendors of Project Property if the Bonds had not been issued and receipts from sales of Project Property had not been deducted from gross receipts of the vendors under NMSA 1978, Section 7-9-54 (2023), plus (iii) the amount of compensating tax that was not paid, but would have been payable by the Company pursuant to NMSA 1978, Section 7-9-14 (2023) with respect to Project Property if the Bonds had not been issued. Any payments required to be made under this Section 4.13 shall be reduced by any PILOT paid under this Agreement. The provisions of this Section 4.13 will survive the termination of this Agreement.

**Section 4.14. Existence.** Unless its successor or the transferee of its assets, as the case may be, assumes in writing all of the obligations of the Company under the Bond Documents, the Company will maintain its existence as a legal entity and will not dispose of all or substantially all of its assets, other than through execution of this Agreement. The Company shall have the right to change its organizational structure so long as such a change does not result in the Project failing to constitute a “project” within the meaning of the Act as in effect on the date of issuance of the Bonds, provided such restructured organization assumes in writing or is liable for, by operation of law, all of the obligations of the Company under the Bond Documents. Original executed copies of such assumption will be delivered to each of the other parties on or before the effective date of such succession or transfer. To the extent necessary under State law, the Company and its successors or transferees, will become and remain authorized to transact business in the State and, if applicable, in good standing in the State.

**Section 4.15. Subleases; Granting and Release of Easements; Amending or Modifying Subleases and Easements.** The Company may, at any time or times, cause to be granted subleases, easements, licenses, rights-of-way (temporary or perpetual and including the dedication of public highways) subject to the Indenture and this Agreement, or the Company may cause to be amended, modified or released existing subleases, easements, licenses, rights-of-way and other rights or privileges in the nature of easements, held with respect to any property included in the Project Property with or without consideration, and the Issuer agrees that it will, at the expense of the Company, execute and deliver any instrument necessary or appropriate to confirm and grant, amend, modify or release any such sublease, easement, license, right-of-way or other right or privilege upon receipt of: (i) a copy of the instrument of grant, amendment, modification or release, and (ii) a written application of the Company signed by an authorized representative of the Company requesting such instrument and stating (1) that such grant, amendment, modification or release is not detrimental to the proper conduct of the business of the Company, and (2) that such grant, amendment, modification or release will not impair the effective use or materially interfere with the operation of the Project Property; will not materially diminish or impair the security intended to be given by or under this Agreement or the Indenture and will not materially diminish or impair the obligations of the Company or the rights of the Issuer under this Agreement

or the Indenture.

**Section 4.16. Insurance.** The Company will keep the Project Property continuously insured against such risks and in such amounts, with such deductible provisions, as are customary in connection with the operation of facilities of the type, location and size comparable to the Facility, as reasonably determined by the Company. Each policy of such insurance will show the Company as loss payee and the Issuer as an additional insured under such policies as the respective interests of such parties may appear. Such insurance may, to the extent permitted under applicable law, be provided by blanket policies maintained by the Company, by a captive insurance company controlled by the Company or through self-insurance. Such insurance will include extended coverage insurance and general liability insurance against liability for (i) claims for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Project Property, and (ii) liability with respect to the Project Property under the workers' compensation laws of the State (unless the Company has complied with the requirements of the law of the State for self-insurance).

## **ARTICLE V LEASE; POSSESSION; RENT**

### **Section 5.1. Lease of the Project Property; Rights Upon Termination.**

(a) In consideration of the payment of Rent and for other good and valuable consideration, the Issuer leases the Project Property to the Company for the Term, subject to the terms and conditions of this Agreement.

(b) Except as provided in Sections 4.13 and 11.17, upon the termination of this Agreement, all right, title and interest of the Issuer and the Purchaser under this Agreement shall cease, terminate and become void, the Bonds shall cease to be entitled to any benefit under this Agreement, and all covenants, agreements and obligations of the Company to the Purchaser, the Issuer, and with respect to the School Districts, the School PILOT, shall thereupon cease, terminate and become void.

**Section 5.2. Quiet Enjoyment.** So long as no Event of Default has occurred and is continuing, the Issuer will not take any action, other than pursuant to Section 4.12 or Article VIII, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project Property during the Term (except as necessary with respect to Eminent Domain or condemnation for public projects and purposes) and will, at the request of the Company and at the Company's expense, including all expenses incident to any legal action, to the extent that the Issuer may lawfully do so, join in any legal action in which the Company asserts its right to such possession and enjoyment.

### **Section 5.3. Basic Rent and Additional Payments.**

(a) The Company will pay to the Purchaser for the account of the Issuer such amounts at such times as are required to make all payments of principal of, interest on and redemption price of the Bonds in accordance with the terms of the Bonds and the Indenture as and when due (the

“Basic Rent”), and the Company shall take all such actions relating to the withholding and reporting of interest as are required by the Internal Revenue Code of 1986, as amended. A copy of the anticipated payment schedule for the Bonds is attached hereto as Schedule 5.3(a). The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to, monies advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of making bond advances under the Indenture.

(b) The Company will make the following payments (the “Additional Payments”) to or on behalf of the Issuer: all actual costs, expenses and taxes (including, but not limited to, costs attributable to work performed by in-house staff and the fees of its outside advisors including Bond Counsel and its financial advisor) paid or incurred by the Issuer in connection with (i) the discussion, review, negotiation, preparation, approval, execution and delivery of the Bonds, the Bond Documents, and the other documents and instruments related hereto and thereto through the Closing Date, all of which amounts shall be paid in full on or before the Closing Date, (ii) any amendments or modifications to any of the foregoing documents, instruments or agreements and the negotiation, preparation, approval, execution and delivery of any and all documents necessary to effect such amendments or modifications, (iii) the enforcement by the Issuer during or after the Term of any of the rights or remedies of the Issuer under any of the foregoing documents, instruments or agreements including without limitation, costs and expenses of collection, whether or not suit is filed, (iv) the servicing and administration of the Bonds during the Term or thereafter, including the preparation of disclosures under GASB 77 and GASB 91, and (v) any requested subordination of the Issuer’s interest in the Project Property to a Lender.

**Section 5.4. Obligations Unconditional; Rights of Setoff.**

(a) The obligation of the Company to pay the PILOT payments and Rent, and to perform its other obligations under this Agreement is absolute and unconditional and, except as otherwise provided in 5.4(b) below, will not be subject to diminution by setoff, counterclaim, abatement or otherwise, whether as a result of Eminent Domain with respect to, damage to or destruction of or removal of all or any portion of the Project Property or any other event or condition. In the event the Issuer fails to perform its obligations under this Agreement, the Company may, subject to the limitations imposed by Section 11.3, institute such action against the Issuer as the Company may deem necessary to compel performance of those obligations of the Issuer. The Company may also, at its own cost and expense and in its own name or, if necessary, in the name of the Issuer prosecute or defend any action or proceeding or take any other action involving third parties which the Company deems reasonably necessary in order to secure or protect its title to or its right of possession, occupancy and use of the Project Site and the Project Property. In such event, if no Event of Default has occurred and is continuing, the Issuer will cooperate with the Company, so long as it is not the adverse party, upon receipt of indemnity satisfactory to the Issuer against any out-of-pocket cost, expense (including reasonable counsel fees and expenses) or liability the Issuer may incur or suffer as a result of or in connection with such cooperation.

(b) Notwithstanding the above paragraph, it is the intention of this Agreement that the Company shall make Basic Rent payments to the Purchaser for the account of the Issuer, in such amounts and at such times as are required to make payments of principal of, interest on and

redemption price of the Bonds in accordance with the terms of the Bond Documents as and when due, and the parties acknowledge that all such Basic Rent payments may be offset against any monies due and payable to the Company from the Purchaser in connection with any funds advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of any Advances to the Acquisition Fund (as defined in the Indenture) as provided for under Section 702 of the Indenture. The Purchaser will look only to the Company for payment of the Bonds and upon the security granted in the Indenture for the Company's obligations under this Agreement. As described in Section 7.1, the Issuer will assign and pledge to the Purchaser certain of its rights, title and interests in and to this Agreement including the right to receive payments of Basic Rent hereunder.

## ARTICLE VI SPECIAL COVENANTS

**Section 6.1. Recording and Filing; Further Assurances.** The Company will, at the expense of the Company, take all actions that at the time are and from time to time may be reasonably necessary to perfect, preserve, protect and secure the interests of the Issuer and the Purchaser in and to the Rent and in the Project Property, including, without limitation, the recordation of this Agreement and the Indenture, the filing of financing statements and continuation statements and the execution, acknowledgment, delivery, filing and recordation of such other instruments as may reasonably be required in carrying out the intention of or facilitating the performance of this Agreement. The Issuer will cooperate with the Company in all such matters.

**Section 6.2. Claims; Liens.** The Company will pay and discharge and will indemnify and hold harmless the Issuer from (a) any lien or charge upon payments by the Company to, or for the account of, the Issuer under this Agreement (other than the Indenture) and (b) any taxes, assessments, impositions and other charges in respect of the Project Property. If any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the Issuer will give prompt notice to the Company of any such lien, taxes, assessments, impositions or other charges of which the Issuer has actual notice, and the Company will have the sole right and duty to assume the defense of the same and will have the power to litigate, compromise or settle the same.

**Section 6.3. Release and Indemnification.**

(a) Except as provided in this Section 6.3, the Company releases the Issuer, its Commissioners, officials, employees and agents (each an "Indemnatee") from, and will indemnify and hold harmless each Indemnatee from and against any and all claims, damages, demands, expenses, liabilities and losses of every kind, character and nature (the "Losses") imposed upon, incurred or asserted against, any Indemnatee on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the installation, maintenance, operation and use of the Project Property; (ii) the inaccuracy of any representation by the Company (regardless of whether the Company was aware of such inaccuracy at the time the representation was made) or any breach or default on the part of

the Company in the performance of any representation, covenant or agreement of the Company under this Agreement, or any related document, or arising from any acts or failure to act by the Company, or any of its agents, contractors, servants, employees or licensees; (iii) the Company's failure to comply with any requirements of this Agreement; (iv) suits, legal or administrative proceedings, demands, losses, liabilities, damages, claims, causes of action, costs and expenses resulting from or in any way connected with the presence, release or disposal in or under the Project Site of, any hazardous substances (as defined in CERCLA), hazardous wastes (as defined in RCRA), oils, radioactive materials, asbestos in any form or condition, any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any Applicable Environmental Law; (v) any action by the Company in connection with the authorization, issuance and sale of the Bonds; (vi) any liability, whether under federal or state securities laws or otherwise, that may arise as a result of inaccurate information supplied by the Company in connection with the issuance of the Bonds or any subsequent sale of the Bonds; (vii) any other loss, claim, damage, penalty, liability, disbursement, litigation expenses and attorneys' fees or court costs arising out of or in any way relating to the execution of performance of this Agreement, actions taken under the Indenture, the ownership or leasing of the Project Property or any other cause whatsoever pertaining to the Project Property; and (viii) any claim, action or proceeding brought with respect to the matters set forth in clauses (i) through (viii). The Issuer will not be liable to the Company, and the Company releases and discharges the Issuer from, any liability for any and all losses, costs, expenses (including attorneys' fees), damages, judgments, claims and causes of action paid, incurred or sustained by the Company as a result of or relating to any action, or failure or refusal to act on the part of the Purchaser or the Depositary with respect to the Bonds, the Bond Documents or documents and the transactions contemplated thereby, including without limitation the exercise by the Purchaser of any of its rights thereunder. This Section 6.3 is not intended in any way to detract from provisions of the Bond Documents to the effect that the Issuer is not to incur any pecuniary liability with respect to the transactions contemplated by the Bond Documents.

(b) Notwithstanding the fact that it is the intention of the parties that the Issuer will not incur pecuniary liability by reason of this Agreement or the undertakings of the Issuer under this Agreement, by reason of the issuance of the Bonds, the execution of the Bond Documents, the performance of any act required of it by the Bond Documents, the performance of any act related to the Bond Documents or the Bonds requested of it by the Company or its position as owner or lessor of the Project Property, nevertheless if the Issuer incurs any such pecuniary liability or the same is claimed or sought, then in such event the Company will indemnify and hold harmless the Issuer against all claims by or on behalf of any person arising out of the same and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from the Issuer, the Company will defend the Issuer in any such action or proceeding.

(c) In case a claim is made or any action or proceeding is brought against an Indemnitee based on matters described in this Section 6.3 and for which indemnity is sought against the Company pursuant to this Section 6.3, the Indemnitee shall promptly notify the Company in writing, and the Company, upon receipt of that notice, shall promptly assume or cause the assumption of the defense thereof, including the employment of counsel chosen by the Company and approved in writing by the Issuer (provided, that such approval by the Issuer shall not be

unreasonably withheld or delayed), the payment of all expenses and the right to negotiate and consent to settlement. The failure of an Indemnitee to provide timely notice will not relieve the Company from any of its obligations under this Section 6.3 unless that failure prejudices the defense of the claim or action by the Company, in which case the liability of the Company under this Section 6.3 shall be reduced only by an amount equal to the amount of the loss sustained by the Company solely as a result of such failure to notify. If Indemnitee is advised in a written opinion of counsel that there may be legal defenses available to Indemnitee which are adverse to or in conflict with those available to the Company, or that the defenses of Indemnitee should be handled by separate counsel, the Company shall not have the right to assume or cause the assumption of the defense of Indemnitee. If the Company fails to assume or cause the assumption of the defense of such action or to retain counsel reasonably satisfactory to the Issuer within a reasonable time after notice of the commencement of such action, the fees and expenses of counsel retained by Indemnitee shall be paid by the Company. Notwithstanding, and in addition to any of the foregoing, Indemnitee shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid solely by such Indemnitee unless the employment of such counsel has been specifically authorized in writing by the Company, or if representation by the counsel retained by the Company would be inappropriate due to actual or potential differing interests between such Indemnitee and any other party represented by such counsel in such proceeding. The Company shall not be liable for any such claim or in any such action (i) with respect to any settlement without the prior written consent of the Company, or (ii) with respect to the gross negligence or willful misconduct of any of the Indemnitee.

(d) The Company will have no obligation to release and/or indemnify any Indemnitee (i) with respect to any settlement entered into by such Indemnitee without the prior consent of the Company (which consent will not be unreasonably withheld or delayed), or (ii) for Losses to the extent that such Losses are caused by the negligence or willful misconduct of any of the Indemnitees.

(e) The provisions of this Section 6.3 will survive the Payment of the Bonds and the termination of this Agreement.

**Section 6.4. Payments in Lieu of Taxes; Combined PILOT; County PILOT; School PILOT.**

(a) During the Term, the Company shall make annual payments in lieu of taxes to the Issuer in an amount equal to \$3,650 per megawatt of injection capability of the Combined Project (the "PILOT"), but in no event will the Combined PILOT be less than \$292,000, which amount represents the PILOT that would be due on a project with an injection capability of 80 megawatts.

(b) The Company shall pay the PILOT to the Issuer on the first anniversary of the Effective Date and, thereafter, on each succeeding anniversary, until July 10, 2054. The County PILOT shall be equal to 70.7273% of the PILOT and the School PILOT shall be equal to 29.2727% of the PILOT.

(c) The Issuer will allocate the School PILOT, to the School Districts in accordance with Exhibit C attached hereto and incorporated herein by reference. The School PILOT and the



allocation described in Exhibit C, have been determined in accordance with the requirements of NMSA 1978, Section 4-59-4(A)(2) (2023). The School PILOT is an amount greater than the amount of *ad valorem* property taxes due to the School Districts in the tax year immediately preceding the date of issuance of the Bonds from the Property if the Project were not constructed, and shall be distributed to the School Districts in accordance with that statute.

(d) The provisions of this Section 6.4 shall survive the termination of this Agreement.

**Section 6.5. GASB 77 and GASB 91 Information and Injection Capability Reporting.** The Company shall provide, promptly upon the Issuer's request, annually or more frequently if the Issuer so requests, such information concerning (i) expenditures of proceeds of the Bonds, (ii) the estimated value of the Project Property, (iii) estimates of the amounts and types of tax avoided by virtue of the issuance of all industrial revenue bonds by the Issuer for the benefit of the Company and any Affiliates of the Company, and (iv) all other information reasonably requested by the Issuer for the purpose of the Issuer's annual disclosure of tax expenditures under GASB 77 and other information required under GASB 91. The Company shall provide written notice of the injection capability (in megawatts) of the Project to the Issuer and the School Districts on the first anniversary of the Effective Date of this Agreement and, thereafter, on each succeeding anniversary, so long as title to the Project Property is held in the name of the Issuer.

**Section 6.6. Non-Use of County Roads.** The Company shall not use any County Road in connection with the acquisition, installation, or operation of the Project or the Project Property until such time as the Company and the Issuer enter into an agreement establishing what uses of County Roads by the Company are permitted and what responsibility for maintenance each of the parties thereto will undertake.

## ARTICLE VII ASSIGNMENT, LEASING AND SELLING

**Section 7.1. Assignment of Rights by the Issuer.** Concurrently with issuance of the Bonds, the Issuer will assign to the Purchaser certain of the Issuer's rights, title and interests in and to this Agreement, pursuant to the Indenture, as security for payment of the principal of, interest on and redemption price of the Bonds. Thereafter, the Purchaser will be vested with, and authorized to exercise, such rights of the Issuer and the Purchaser under this Agreement. The Company consents to such assignment.

**Section 7.2. No Other Transfer by Issuer.** Except for the assignment described in Section 7.1 and Article X hereof or transfer to the Company in accordance with Section 4.12 or 8.3, the Issuer will not sell, assign, transfer or convey its rights, title or interests in this Agreement or the Project Property, or its obligations under this Agreement. Except for tax liens created or permitted by the Company, the Issuer will not cause or create any liens on the Project Property or the Project Site and will cooperate with the Company to defend the Project Property, the Project Site and the Company from and against any claims of lien.

**Section 7.3. Assignment, Lease, Mortgage and Sale by the Company.** The rights and interests of the Company in, to and under this Agreement may be assigned, and the rights and interests of the Company in and to the Project Property may be assigned, subleased, mortgaged or sold as a whole or in part by the Company, without the consent of the Issuer, provided that under any such assignment or sale the Company remains liable for making payments of Rent and for the performance of its other obligations under this Agreement except where (i) the assignee or purchaser of all of the Company's interest in the Project Property assumes in writing the obligations of the Company under this Agreement, (ii) the financial standing of the assignee or purchaser immediately following such assignment or sale is the same or better than that of the Company immediately preceding such assignment or sale and (iii) the Issuer consents. For purposes of this Agreement, "financial standing" shall mean (a) the ownership or other beneficial possession of title to, all of the Project Property and all material rights and assets with respect to the Project, and (b) no material liabilities other than liabilities arising from, or in connection with, the Project. Any mortgagee or assignee that does not directly hold an interest in the Project Property or whose interest is held solely for security purposes shall have no obligation or liability under this Agreement prior to the time the mortgagee or assignee directly holds an interest in this Agreement or succeeds to absolute title to the Company's interest in the Project Property. A mortgagee or assignee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such interest or absolute title.

**Section 7.4 Collateral Assignment.** The Company shall be permitted to assign this Agreement to its Lenders as collateral for any financing or refinancing of the Project; provided, Company shall be responsible for Issuer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, including reasonable attorneys' fees. Issuer shall, upon request by Company and, at Company's sole expense, cooperate reasonably to execute, or arrange for the delivery within thirty (30) days of such request or such longer time as is reasonable under the circumstances, those normal, reasonable and customary consents, certificates, opinions and other documents and provide such other normal and customary representations or warranties (all in a form reasonably acceptable to Issuer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof), as may be necessary to assist Company in consummating any financing or refinancing of the Project Property or any part thereof.

## ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

**Section 8.1. Events of Default Defined.** Each of the following events is an "Event of Default":

(a) Failure by the Company to make any Rent payment, Additional Payments, or PILOT payments when due which continues unremedied for a period of thirty (30) days after the provision by the Issuer or the Purchaser of written notice of non-payment.

(b) Any representation of the Company in any of the Bond Documents or in any document or agreement delivered to any of the other parties in connection with the transactions contemplated by the Bond Documents proves to have been incorrect in any material respect when

made and remains incorrect for a period of thirty (30) days after written notice specifying such error and requesting that it be remedied is given by the Issuer unless such error cannot be remedied within thirty (30) days and the Company has instituted corrective action within thirty (30) days after such notice and diligently pursues such action until such failure is remedied.

(c) A decree or order for relief by a court of competent jurisdiction is entered in an involuntary case under any federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days, or the commencement by the Company of a voluntary case under such law, or the consent by the Company either to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company or for any substantial part of its property, or the making by it of any assignment for the benefit of creditors, or the taking of action by the Company to authorize or effect any of the foregoing. Provided, however, neither the bankruptcy nor the insolvency of the Company shall be grounds for default as long as all Basic Rent payments, PILOT payments and Additional Payments, and all other monetary charges payable by the Company under this Agreement are paid in accordance with this Agreement.

(d) Except as provided in Section 8.1(a), failure by the Company to perform any of its material obligations under this Agreement for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Company by the Issuer or the Purchaser, unless such failure is of a type which cannot reasonably be remedied within thirty (30) days and the Company has instituted corrective action within thirty (30) days after such notice and diligently pursues such action until such failure is remedied.

**Section 8.2. Purchaser Remedies.** The Issuer shall not be entitled to exercise any default remedies against the Company or the Project Property pursuant to this Agreement without the prior written consent of the Purchaser, except as (and then only to the extent) provided in Section 8.3 of this Agreement. If an Event of Default occurs and is continuing, the Purchaser (or its assignee), as the assignee of the Issuer under the Indenture and on behalf of the Issuer, may, but is not required to, take any one or more of the following remedial steps:

(a) By written notice to the Company declare all amounts of Basic Rent payable for the remainder of the Term as are required to provide for the Payment of the Bonds to be immediately due and payable, whereupon the same will be immediately due and payable;

(b) Take whatever action at law or in equity may appear necessary or desirable to collect the Rent then due and thereafter to become due or to enforce the performance and observance of any obligation of the Company under this Agreement or the Indenture;

(c) Exercise any remedies provided for in the Indenture; or

(d) Terminate this Agreement; provided, however, that upon any such termination, all amounts owed to the Issuer hereunder shall be paid, and the Issuer shall immediately reconvey the Project Property to the Company in accordance with Article X.

As the assignee of the Issuer, subject to Section 8.3, the Purchaser (or its assignee) has the sole right and responsibility for the exercise of any remedies if an Event of Default occurs and is continuing.

**Section 8.3. Issuer Remedies.** If:

(a) the Company fails to comply with its obligations set forth in Sections 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 5.3(b), 6.2, 6.3, 6.4, 6.5 or 8.5, and such failure continues for sixty (60) days after the Issuer gives the Company written notice of such failure; or

(b) the Company fails to comply with its obligations under Section 5.3(b), such failure continues for thirty (30) days after the Issuer or Purchaser or its assignee gives the Company written notice of such failure, and the Purchaser or its assignee exercises any of the remedies provided in Section 8.2 with respect to such failure; or

(c) any representation of the Company in any of the Bond Documents or any document or agreement delivered to any of the other parties in connection with the transactions contemplated by the Bond Documents proves to have been incorrect in any material respect when made;

then, subject to Section 8.6 hereof, the Issuer may, in addition to exercising any other remedy available at law or in equity, immediately terminate this Agreement and reconvey the Project Property to the Company; provided, however, that if any conditions described in Subsections 8.3(a), (b) or (c) cannot be cured within the time allotted for cure, if the Company initiates and proceeds with due diligence to effect a cure, a default will not be deemed to have occurred as long as the Company cures the default within a reasonable period.

**Section 8.4. Notice of Default.** The Company will promptly give notice of the occurrence of any Event of Default to the Issuer, the Purchaser and the Depository.

**Section 8.5. Agreement to Pay Attorneys' Fees and Expenses.** If an Event of Default, or an event which with the giving of notice or the passage of time, or both, would constitute an Event of Default, occurs, and the Issuer incurs expenses, including reasonable attorneys' fees, in connection with the enforcement or administration of this Agreement, the Company will reimburse the Issuer for the reasonable expenses so incurred, upon request. Such amounts shall constitute Additional Payments.

**Section 8.6. Right to Cure Defaults.**

(a) To prevent termination of this Agreement, any mortgagee or assignee of the Company that holds an interest in the Project Property as security shall have a right, but not the obligation, at any time to perform any act necessary to cure any default and to prevent the termination of this Agreement. If any default by the Company under this Agreement cannot be

cured without obtaining possession of all or part of the Project Property, then any such default shall be deemed remedied if a mortgagee or assignee (i) in the applicable cure period provided in Section 8.1 or within sixty (60) days thereafter begins appropriate judicial or non-judicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Project Property diligently proceeds to cure and perform all other obligations as and when the same are due in accordance with the terms of this Agreement. If a mortgagee or assignee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

(b) During any period of possession of the Project Property by a mortgagee (or a receiver requested by a mortgagee) and/or while any foreclosure proceedings instituted by a mortgagee are pending, the mortgagee shall pay or cause to be paid the Rent and all other monetary charges payable by the Company under this Agreement which accrue during the period of such possession.

#### **ARTICLE IX PREPAYMENTS**

The Company may at any time without penalty (including after the occurrence and during the continuance of an Event of Default) and for any reason cause all or any portion of the Bonds to be redeemed in accordance with the provisions of the Indenture by giving notice of such redemption to the Issuer, the Purchaser and, if there are monies on deposit in the Acquisition Fund (as defined in the Indenture), to the Depository not less than forty-five (45) days before the redemption date, or such shorter period to which the Issuer, the Purchaser, and the Company may agree. Such notice will specify the redemption date and the principal amount of the Bonds to be redeemed. On the redemption date the Company will prepay the Rent in an amount equal to such principal amount plus accrued interest on such principal amount to the redemption date by payment of such amounts to the Purchaser, and will pay all Additional Payments, plus interest, if any, including the PILOT payments owed to the Issuer as of such date. The parties acknowledge that the Company may prepay, pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by the Company to the Purchaser in anticipation of making Bond advances under the Indenture.

#### **ARTICLE X PURCHASE OF PROJECT PROPERTY**

The Company will purchase and the Issuer will sell the Project Property for \$1.00 at the expiration or sooner termination of the Term. The Company will give written notice to the Issuer and to the Purchaser, if the Bonds are then unpaid or provision for their payment has not been made, and will specify therein the date of termination and closing such purchase which date shall be the same date and which date will be not less than fifteen (15) nor more than ninety (90) days from the date such notice is mailed. At the closing of such purchase, the Issuer will, upon receipt of the purchase price, deliver to the Company or its nominee appropriate documents, including,

but not limited to, a quitclaim deed, assignment of easements and other real property rights and a bill of sale, as applicable, prepared by the Company at the Company's expense, conveying to the Company without representation or warranty the Issuer's interest in the Project Property, as it exists at the time of such purchase, subject only to: (i) those liens and encumbrances, if any, to which the Project Property was subject when conveyed to the Issuer; (ii) those liens and encumbrances created by the Company and or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to perform any of its obligations under this Agreement; and (iv) any other lien arising as a matter of law. The Company may exercise its rights under this Article X, whether or not a Default or an Event of Default has occurred and is continuing, so long as all Additional Payments and PILOT payments due to the Issuer and the School Districts are paid on or before the date of closing of such purchase. If the Company fails to take all necessary action to have the Project Property assessed for tax purposes in the name of the Company at the expiration of the Term, the Issuer may execute, deliver and cause to be recorded, at the expense of the Company, a bill of sale with respect to the Project Property and other appropriate documents reflecting the termination of this Agreement. If at the time of closing the Indenture has not been satisfied in full and released of record, a release by the Purchaser of the Indenture will also be delivered to the Company (or its designee). The right to prepay granted to the Company in this Agreement is and will remain prior and superior to the Indenture.

## ARTICLE XI MISCELLANEOUS

**Section 11.1. Remedies.** No right or remedy conferred on any party in this Agreement is intended to be exclusive of any other right or remedy conferred on such party in this Agreement. Except as provided in Section 11.3, each such right or remedy is in addition to every other right or remedy provided in any of the Bond Documents or by law; provided, that the remedies of Purchaser and/or Issuer in respect of an Event of Default or other breach of any Bond Document by the Company shall be limited in all cases to those expressly provided in Article VIII hereof. No delay or omission of any party to exercise any such right or remedy will impair any such right or remedy or be construed to be a waiver. Every such right or remedy may be exercised from time to time and as often as the relevant party may deem expedient. No waiver by any party of any right or remedy with respect to any Default or Event of Default will extend to or affect any other existing or subsequent Default or Event of Default.

**Section 11.2. Beneficiaries.** Nothing in this Agreement expressed or implied is intended or is to be construed to confer upon any natural person other than the parties and their successors and assigns (and, in the case of Section 6.3 of this Agreement, the Indemnitees) any right, remedy or claim, legal or equitable.

**Section 11.3. Limitation of Issuer's Liability.** No agreements or provisions contained in the Bond Documents nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of proceeds of the Bonds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer, its officials, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or obligate the

Issuer financially in any way, except with respect to the revenues available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds, and their application as provided under the Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in this Agreement or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officials, employees, agents and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the revenues available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds. Nothing in this Agreement will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement in this Agreement or in the Indenture; provided, however, that no monetary relief will be recoverable from the Issuer except as may be payable from the funds available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds.

Notwithstanding any other provisions of this Agreement, none of the provisions of this Agreement shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder unless it shall have first been adequately indemnified to its satisfaction against the cost, expense and liability which may be incurred thereby.

**Section 11.4. No Violation of Public Policies Regarding Indemnity.** To the extent, if at all, a court of competent jurisdiction determines that NMSA 1978, Section 56-7-1 (2005), applies to any indemnification provisions in this Agreement, including certain types of insurance coverage as set forth in NMSA 1978, Section 56-7-1 (2005), such provisions shall not apply to or extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee or additional insured, as the case may be, its officers, employees or agents and shall further be limited, if required, by the provisions of NMSA 1978, Section 56-7-2 (2003).

**Section 11.5. Notices.** Any notice, demand, direction, request, consent, approval, report or other instrument authorized or required by this Agreement or the Bond Ordinance to be executed, given or filed will be in writing and will be deemed to have been sufficiently given or filed for all purposes of this Agreement when delivered by hand delivery or by overnight courier or on the third business day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer:

Quay County, New Mexico  
Attn: County Manager  
300 South Third Street  
P.O. Box 1246  
Tucumcari, NM 88401  
Telephone: (575) 461-2112  
Fax: (575) 461-6208

with a copy to: Rodey, Dickason, Sloan, Akin & Robb, P.A.  
119 E. Marcy Street, Suite 200  
P.O. Box 1357  
Santa Fe, NM 87501 (87504)  
Attn: Luis G. Carrasco, Esq.  
Tel: (505) 954-3905  
E-mail: [LCarrasco@rodev.com](mailto:LCarrasco@rodev.com)

If to the Purchaser: Caprock Wind Investments, LLC  
6688 North Central Expressway, Suite 500  
Dallas, TX 75206

If to the Company: Caprock Wind, LLC  
6688 North Central Expressway, Suite 500  
Dallas, TX 75206  
Attn: Asset Management  
E-mail: [AssetMgmt@leewardenergy.com](mailto:AssetMgmt@leewardenergy.com)

with a copy to: Modrall, Sperling, Roehl, Harris & Sisk, P.A.  
500 Fourth Street NW, Suite 1000  
Albuquerque, NM 87102  
Attn: Peter Franklin, Esq.  
Tel: (505) 984-2856  
E-mail: [pfranklin@modrall.com](mailto:pfranklin@modrall.com)

Any party may, by notice to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent.

**Section 11.6. Severability.** In case any one or more of the provisions of this Agreement is for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of this Agreement, but this Agreement will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the Issuer or the Company contained in this Agreement is for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of the Issuer or the Company to the full extent permitted by law.

**Section 11.7. Successors.** Wherever the Issuer is referred to in this Agreement, it will be deemed to include its successors and all covenants and agreements in this Agreement will bind and inure to the benefit of the Issuer's successors. Wherever the Company is referred to in this Agreement, it will be deemed to include its successors in interest to the Project Property and all covenants and agreements in this Agreement will bind and inure to the benefit of such successors.

**Section 11.8. Title, Headings.** The title and headings of the articles, sections and subdivisions of this Agreement have been used for convenience only and do not modify or restrict any of the terms or provisions of this Agreement.



**Section 11.9. Execution in Counterparts.** This Agreement may be executed in multiple counterparts, all of which taken together will constitute one instrument. Delivery of a copy of this Agreement bearing an original signature by facsimile transmission, by electronic mail in “pdf” form or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means, shall have the same effect as physical delivery of the paper document bearing the original signature. “Originally signed” or “original signature” means or refers to a signature that has not been mechanically or electronically reproduced. Pursuant to the Uniform Electronic Transactions Act, NMSA 1978, Sections 14-16-1 to -21 (2001, as amended through 2013), the Issuer and the Company hereby agree and consent to the use of electronic signatures and electronic records in connection with the issuance of the Bonds; provided, however, that such consent and agreement only permits the use of, but does not require, electronic signatures or electronic records, including on documents delivered in counterparts.

**Section 11.10. Applicable Law.** The validity, construction and effect of this Agreement will be governed by the law of the State of New Mexico applicable to agreements made and to be performed in the State of New Mexico.

**Section 11.11. Obligations of Issuer Not Obligations of Officials Individually.** No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bonds will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

**Section 11.12. Payments Due on Days That Are Not Business Days.** If the date for any payment due hereunder is not a Business Day, as defined in the Indenture, then such payment will be made on the next Business Day and no interest on such payment will accrue for such period.

**Section 11.13. Federal Income Tax Treatment of Lease.** The Issuer and the Company acknowledge that this Agreement constitutes a financing for federal income tax purposes and not a lease of the Project Property, to the extent permitted by law. The Issuer and the Company further acknowledge that the Company shall, to the extent permitted by law, be entitled to all federal income tax attributes attributable to ownership of the Project Property, including the right to claim depreciation or cost recovery deductions and the right to claim any federal tax credits (or federal grants in lieu thereof) arising from ownership of the Project Property. Each of the Issuer and the Company agree not to file tax returns inconsistent with this Section 11.13.

**Section 11.14. Amendments.** This Agreement may be amended only by an instrument executed by the Issuer and the Company and consented to by the Purchaser.

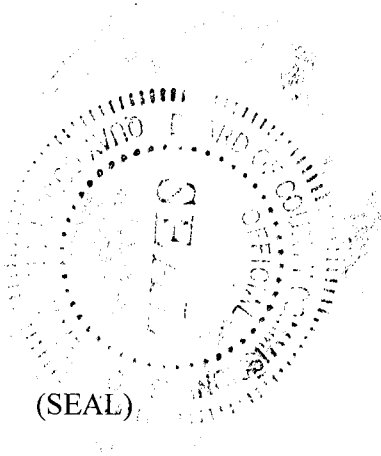
**Section 11.15. Further Assurances and Corrective Instruments.** The Issuer and the Company agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments to this Agreement and such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of this Agreement.

**Section 11.16. Recordation.** The Company may cause this Agreement, or a memorandum of this Agreement, in form and substance satisfactory to the Issuer, to be kept, recorded and filed in such manner and in such places as may be required by law to fully evidence, preserve and protect the leasehold estate of the Company.

**Section 11.17. Survivals.** The provisions of Sections 4.5, 4.6, 4.8, 4.12, 4.13, 5.3(b), 6.2, 6.3, 6.4, 8.3, 8.5 and Article XI shall survive the termination of this Agreement.

*[Signature pages follow]*

BOARD OF COUNTY COMMISSIONERS,  
QUAY COUNTY, NEW MEXICO



(SEAL)

By: Robert Lopez  
Robert Lopez, Chair

ATTEST:

By: Ellen White  
Ellen White, County Clerk

STATE OF NEW MEXICO            )  
                                                          )  
COUNTY OF QUAY                )

This instrument was acknowledged before me on this 8 day of July, 2024, by Robert Lopez, as Chair of the Board of County Commissioners, Quay County, New Mexico

(NOTARY SEAL)

Ellen Lubie  
Notary Public

My Commission Expires: \_\_\_\_\_

State of New Mexico  
Notary Public  
ELLEN L. WHITE  
Commission#1006761  
My Comm. Exp. 3-24-2027

(County Signature Page to Lease Agreement)



**EXHIBIT A**

**Project Property and Project Site**

1. PROJECT PROPERTY: The Project Site indicated below and all necessary facilities and equipment, including supporting towers, nacelles, rotors, supporting structures and related improvements currently located and to be located on the Project Site.

2. PROJECT SITE:

1. THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTY OF QUAY, STATE OF NEW MEXICO:

TOWNSHIP EIGHT (8) NORTH, RANGE THIRTY-THREE (33) EAST, N.M.P.M.

Section 11: SW ¼

TOWNSHIP NINE (9) NORTH, RANGE THIRTY-THREE (33) EAST, N.M.P.M.

Section 25: E½, NW ¼

TOWNSHIP NINE (9) NORTH, RANGE THIRTY-FOUR (34) EAST, N.M.P.M.

Section 30: S½

Section 31: N½

2. All that piece or parcel of real property located in Quay County, New Mexico, which is described as follows:

The East Half of the Southwest Quarter AND the Northwest Quarter of the Southeast Quarter AND the Southwest Quarter of the Northeast Quarter of Section 20, Township 9 North, Range 34 East, Quay County, New Mexico (approximately 160 acres, more or less).

The South Half of the Southwest Quarter of Section 28, Township 9 North, Range 34 East, Quay County, New Mexico (approximately 80 acres).

The South Half AND the Northwest Quarter AND the West Half of the Northeast Quarter of Section 29, Township 9 North, Range 34 East, Quay County, New Mexico (approximately 560 acres)

The North Half of Section 30, Township 9 North, Range 34 East, Quay County, New Mexico (approximately 320 acres)

**Agreement 1:**

**Landowner:** David Elmer Hatfield

**Landowner Documents:**

Wind Energy Lease Agreement dated April 14, 2023

Memorandum of Wind Energy Lease Agreement recorded in Quay County, New Mexico on May 9, 2023, as document number 202305090002.

**Legal Description:**

THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTY OF QUAY, STATE OF NEW MEXICO:

**TOWNSHIP EIGHT (8) NORTH, RANGE THIRTY-THREE (33) EAST, N.M.P.M.**

Section 11: SW ¼

**TOWNSHIP NINE (9) NORTH, RANGE THIRTY-THREE (33) EAST, N.M.P.M.**

Section 25: E½, NW ¼

**TOWNSHIP NINE (9) NORTH, RANGE THIRTY-FOUR (34) EAST, N.M.P.M.**

Section 30: S½

Section 31: N½

**Agreement 2:**

**Landowner:** Linda Ellis & Janet Callison

**Landowner Documents:**

Amendmed and Restated Wind Energy Lease and Agreement dated October 18, 2023.

Memorandum of Amended and Restated Wind Energy Lease and Agreement recorded in Quay County, New Mexico on October 26, 2023, as document number as 202310260004.

**Legal Description:**

All that piece or parcel of real property located in Quay County, New Mexico, which is described as follows:

The East Half of the Southwest Quarter AND the Northwest Quarter of the Southeast Quarter AND the Southwest Quarter of the Northeast Quarter of Section 20, Township 9 North, Range 34 East, Quay County, New Mexico (approximately 160 acres, more or less).

The South Half of the Southwest Quarter of Section 28, Township 9 North, Range 34 East, Quay County, New Mexico (approximately 80 acres).

The South Half AND the Northwest Quarter AND the West Half of the Northeast Quarter of Section 29, Township 9 North, Range 34 East, Quay County, New Mexico (approximately 560 acres)

The North Half of Section 30, Township 9 North, Range 34 East, Quay County, New Mexico (approximately 320 acres)

3. **EQUIPMENT:** All necessary equipment, including supporting towers, nacelles, rotors, supporting structures and related improvements currently located and to be located at the Project Site.
  
4. **FACILITY:** That certain wind project located at the Project Site, which is located within the County, but outside the boundaries of any incorporated municipality, for the generation and transportation of electricity.
  
5. **IMPROVEMENTS:** All necessary facilities and equipment, including supporting towers, nacelles, rotors, supporting structures and related improvements currently located and to be located at the Project Site.



## **EXHIBIT B**

### **Project Decommissioning Obligations for Project Site**

Capitalized terms not otherwise defined in this Exhibit B shall have the meanings defined in that certain Lease Agreement (the “Lease”) dated as of July 10, 2024, between Quay County, New Mexico (the “County”) and Caprock Wind, LLC (the “Company”), unless the context clearly requires otherwise.

**Removal of Wind Project Improvements.** Within twelve (12) months after the Project ceases operations or the Company abandons the Project, the Company shall remove all Project Property from the Project Site and take appropriate measures to restore the Project Site substantially to its condition on the Effective Date of such Lease. Company’s removal and restoration efforts shall be performed in accordance with the following standards:

- (a) Wind Turbines (including towers and pad-mount transformers): Shall be cleared, cleaned and removed from the Project Site. Any liquids, greases, etc. contained therein shall also be removed safely from the Project Site in accordance with then-existing laws and regulations;
  
- (b) Tower Foundations and Pad Mount Transformer Foundations: For all foundations installed in the ground, the foundations shall be cleared, cleaned and removed from the ground at least four (4) feet below the grade of the land affected thereby. Company shall ensure that any holes or cavities created in the ground as a result of such removal are filled with topsoil of the same or similar type found at the Project Site;
  
- (c) Any Overhead Transmission, Power and/or Communication Lines (if any) owned by Company and no longer in use: Shall be cleared, cleaned and removed from the Project Site;
  
- (d) Substation(s): Shall be cleared, cleaned and removed from the Project Site and any liquids, greases, etc. contained in the substation(s) shall be removed safely from the Project Site in accordance with then-existing laws and regulations;
  
- (e) Buried Cables (power and/or communication): For all buried cables of whatever type (power, fiber-optic, communication, etc.) installed in the ground, such cables shall be cleared, cleaned at least three (3) feet below the grade of the land affected thereby.

Company shall ensure that any holes or cavities created in the ground as a result of such removal are filled with topsoil of the same or similar type found at the Project Site;

- (f) Operation and Maintenance Buildings: Shall be cleared, cleaned and removed from Project Site. The owner of the Project Site may request that Company leave and assign such operation and maintenance buildings to the Project Site owner.
  
- (g) Restoration of Surface. To the extent reasonably practicable, the Project Site will be returned to the condition it was in on the Effective Date of the Lease, using scarification, V-rip and disc methods, as appropriate. Company shall ensure that any holes or cavities created in the ground are filled with topsoil of the same or similar type found at the Project Site and to the extent reasonably practicable, the surface is returned to the same condition as before Company dug the holes or cavities.

**EXHIBIT C**

**School PILOT Allocation**

The School PILOT described in that certain Lease Agreement (the “Lease”) dated as of July 10, 2024, between Quay County, New Mexico and Caprock Wind, LLC will be allocated among the School Districts (as defined in the Lease) as follows:

Grady Municipal School District	_____ %
House Municipal School District	_____ %
Logan Municipal School District	_____ %
Melrose Municipal School District	_____ %
San Jon Municipal School District	_____ %
Tucumcari Public School District	_____ %

**SCHEDULE 5.3(a)**

PAYMENT SCHEDULE  
 QUAY COUNTY, NEW MEXICO  
 TAXABLE INDUSTRIAL REVENUE BONDS  
 (CAPROCK WIND PHASE II)  
 SERIES 2024B  
 \$105,000,000

<b>Year</b>	<b>Total Debt Service</b>	<b>Principal</b>	<b>Interest</b>
2025	\$5,250,000	-0-	\$5,250,000
2026	5,250,000	-0-	5,250,000
2027	5,250,000	-0-	5,250,000
2028	5,250,000	-0-	5,250,000
2029	5,250,000	-0-	5,250,000
2030	5,250,000	-0-	5,250,000
2031	5,250,000	-0-	5,250,000
2032	5,250,000	-0-	5,250,000
2033	5,250,000	-0-	5,250,000
2034	5,250,000	-0-	5,250,000
2035	5,250,000	-0-	5,250,000
2036	5,250,000	-0-	5,250,000
2037	5,250,000	-0-	5,250,000
2038	5,250,000	-0-	5,250,000
2039	5,250,000	-0-	5,250,000
2040	5,250,000	-0-	5,250,000
2041	5,250,000	-0-	5,250,000
2042	5,250,000	-0-	5,250,000
2043	5,250,000	-0-	5,250,000
2044	5,250,000	-0-	5,250,000
2045	5,250,000	-0-	5,250,000
2046	5,250,000	-0-	5,250,000
2047	5,250,000	-0-	5,250,000
2048	5,250,000	-0-	5,250,000
2049	5,250,000	-0-	5,250,000
2050	5,250,000	-0-	5,250,000
2051	5,250,000	-0-	5,250,000
2052	5,250,000	-0-	5,250,000
2053	5,250,000	-0-	5,250,000
2054	110,250,000	\$105,000,000	5,250,000

Schedule 5.3(a)

QUAY COUNTY, NEW MEXICO,  
as Issuer

CAPROCK WIND INVESTMENTS, LLC,  
as Purchaser

CAPROCK WIND, LLC  
as Company

and

BOKF, NA,  
as Depositary

INDENTURE

Dated as of July 10, 2024

Securing

\$105,000,000  
Quay County, New Mexico  
Taxable Industrial Revenue Bonds  
(Caprock Wind Phase II)  
Series 2024B

This instrument constitutes a security agreement with respect to certain personal property, including certain after-acquired property as set forth herein, under the laws of the State of New Mexico.

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QUAY COUNTY, NEW MEXICO, a political subdivision existing under the laws of the State of New Mexico (together with its successors and assigns, the “Issuer”), CAPROCK WIND INVESTMENTS, LLC, a Delaware limited liability company (together with its successors and assigns, and transferees of the Bonds, the “Purchaser”), CAPROCK WIND, LLC, a Delaware limited liability company (the “Company”) and BOKF, NA (together with its successors and assigns, the “Depository”), agree:

## ARTICLE I - RECITALS

**Section 101. The Act.** Pursuant to the County Industrial Revenue Bond Act, NMSA 1978, Sections 4-59-1 to -16 (1975, as amended through 2023) (the “Act”), the Issuer is authorized to acquire, own, lease, or sell certain “projects” (as defined in the Act) for the purpose of promoting industry and trade, and to issue industrial revenue bonds to finance such projects and certain related costs. Such bonds are payable by the Issuer solely out of revenue derived from leasing of such projects. Such bonds may be further secured by, among other things, a pledge of the Issuer’s lease of such project and a mortgage and lien upon the properties acquired, constructed and equipped as part of the “Project” (as defined in the lease agreement described in Section 104). Under the Act, a project may include land, buildings, machinery, equipment and other property deemed necessary in connection with such project.

**Section 102. Government Proceeding.** The Company has presented to the Board of County Commissioners of Quay County, New Mexico a proposal relating to the issuance of taxable industrial revenue bonds to finance the acquisition, construction, equipping, and installation of wind energy generation facilities and associated electrical generating equipment and real property used to generate electricity from wind energy which is or will be located at a site in the County outside the corporate limits of any municipality (the “Project Site,” as defined in the lease agreement described in section 104) for the purpose of generating electricity from a second project site in proximity to the Company’s existing wind farm located in the County. The Issuer, by County Ordinance No. 57 adopted on May 28, 2024 (the “Ordinance”), authorized, among other matters, (i) the issuance of its Quay County, New Mexico, Taxable Industrial Revenue Bonds (Caprock Wind Phase II), Series 2024B (the “Bonds”), in the principal amount not to exceed \$105,000,000 with the Bonds being substantially in the form of Exhibit A, and (ii) the execution and delivery of this Indenture.

**Section 103. Indenture; Lien; Collateral Pledge.** The Bonds are to be issued under this Indenture (together with any and all amendments and supplements, this “Indenture”), which constitutes a collateral pledge of the Agreement (as defined below) in favor of the Purchaser.

**Section 104. The Agreement.** The Issuer has entered into a lease agreement (together with any and all amendments and supplements, the “Agreement”), dated as of the date of this Indenture, with the Company under which the Issuer has leased the Project Property (as defined in the Agreement) to the Company, and the Company has agreed to make rental payments in amounts sufficient to pay the principal of, interest on and redemption price of the Bonds. For the purpose of providing security for the payment of the principal of, interest on and redemption price of the Bonds, the Issuer wishes to assign to the Purchaser certain of its interests in the Agreement but

reserving its rights under the Agreement to certain payments, reimbursement for certain costs and expenses, and to give consents and to be indemnified.

**Section 105. Conditions Precedent Performed.** The Issuer is not aware of any act, condition or thing required on the part of the Issuer by the Constitution and laws of the State of New Mexico to happen, exist or be performed precedent to and in the execution and delivery of this Indenture, the Agreement and the issuance of the Bonds, except such as do exist and have happened and been performed.

**ARTICLE II - DEFINITIONS AND OTHER PROVISIONS OF  
GENERAL APPLICATION**

**Section 201. Meanings of Words and Terms.** All capitalized words and terms defined in the Agreement have the same meanings when used in this Indenture if not also defined in this Indenture. Defined terms in all Bond Documents have consistent meanings unless otherwise expressed. In addition:

“Acquisition Fund” has the meaning assigned in Section 701.

“Act” has the meaning assigned in Section 101.

“Advance” has the meaning assigned in Section 702.

“Agreement” has the meaning assigned in Section 104.

“Authorized Company Representative” means any one of the persons at the time designated to act on behalf of the Company in a certificate furnished to the Issuer and the Depository containing the specimen signatures of such persons and signed on behalf of the Company by an officer of the Company.

“Bond Documents” means this Indenture, the Agreement and the Bond Purchase Agreement.

“Bond Fund” has the meaning assigned in Section 602.

“Bond Purchase Agreement” means the Bond Purchase Agreement dated the date of the execution and delivery of this Indenture among the Purchaser, the Issuer and the Company.

“Bonds” have the meaning assigned in Section 102.

“Business Day” means any day that is not a Saturday or Sunday or a day on which banking institutions in the State or in the County of payment are authorized or required to close.

“Certificate of Qualified Investor” means the certificate attached hereto as Exhibit D.

“Company” has the meaning assigned in the first paragraph of this Indenture.

“Completion Certificate” means a certificate by the Company certifying that the Project is complete and all costs have been paid for or provisions have been made for their payment, in the form attached hereto as Exhibit C.

“Depository” has the meaning assigned in the first paragraph of this Indenture.

“Event of Default” has the meaning assigned in Section 901.

“Final Maturity Date” means the thirtieth anniversary of the date of this Indenture.

“Indenture” has the meaning assigned in Section 103.

“Issue Date” means the date of issuance and delivery of the Bond to the Purchaser.

“Issuer” has the meaning assigned in the first paragraph of this Indenture.

“Lender” or “Lenders” has the meaning assigned thereto in the Agreement.

“Ordinance” has the meaning assigned in Section 102.

“Parties” means the Company, the Issuer, the Purchaser and the Depository.

“Party” means any one of the Parties.

“Payment Date” means the thirtieth anniversary of the date of this Indenture.

“Payment of the Bonds” means payment in full of the principal of, interest on and redemption price of the Bonds in accordance with their terms and the provisions of this Indenture and payment of all fees and expenses of the Issuer, the Purchaser and the Depository payable by the Company under this Indenture, the Agreement or the Bond Purchase Agreement.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision.

“Project” has the meaning assigned thereto in the Agreement.

“Project Property” has the meaning assigned thereto in the Agreement.

“Project Site” has the meaning assigned thereto in the Agreement and is further described in Exhibit A thereto.

“Record Date” means each July 10 while the Bonds are outstanding.

“Related Costs” means expenditures incurred or to be incurred by the Company with respect to the Project, including, without limitation, the acquisition, installation, construction, equipping and commissioning of the Project Property.

“State” means the State of New Mexico.

**Section 202. Rules of Construction.**

(a) The captions and headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

(b) All references in this Indenture to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Indenture unless some other reference is established.

(c) Any inconsistency between the provisions of the Agreement and the provisions of this Indenture will be resolved in favor of the provisions of the Agreement.

**Section 203. Bonds Not General Obligations of Issuer.** Neither the faith and credit nor the taxing power of the State or of any of its political subdivisions, including the Issuer, is pledged to the payment of the principal of, interest on or redemption price of the Bonds. The Bonds will be payable by the Issuer solely out of the Basic Rent, proceeds and receipts and other security pledged hereby. The principal of, interest on and redemption price of the Bonds will never constitute a debt or indebtedness or general obligation of the Issuer within the meaning of any State constitutional provision or statutory limitation. The Bonds will never constitute or give rise to a pecuniary liability of the Issuer or be a charge against its general credit or a charge against the general credit or the taxing powers of the State or any political subdivision thereof.

**ARTICLE III - GRANT**

**Section 301. Assignment and Pledge.** In consideration of the purchase of the Bonds by the Purchaser, and in order to secure the payment of the principal of (including, without limitation, all sums advanced by the Purchaser, with interest thereon, in accordance with the terms of this Indenture and the other Bond Documents (all references in this Indenture to the payment of principal of the Bonds shall include such sums)), interest on and redemption price of the Bonds, and in order to secure the performance by the Issuer of its obligations under this Indenture and the Bonds, the Issuer assigns and pledges to the Purchaser and grants a mortgage and a security interest to the Purchaser in: (i) all the Issuer’s right, title and interest in and to the Agreement and any other easement, lease, sublease, license, concession or other grant of a possessory or use interest in the Project Property to the extent the Issuer has any interest therein but reserving its rights under the Agreement to payments under Sections 4.5, 5.3(b), 6.2, 6.3 and 6.4 of the Agreement, its rights to enforce Sections 4.4, 4.5, 4.6, 4.8, 4.11, 4.12, 4.13, 5.3(b), 6.2, 6.3, 6.4, 6.5, 6.6, 8.3 and 8.5 of the Agreement, to reimbursement for certain costs and expenses, to receive notices, to give consents and to be indemnified; (ii) the moneys and investments in the Acquisition Fund and the Bond Fund and all reserves payable to the Issuer pursuant to the Agreement or this Indenture (including, without limitation, insurance and eminent domain proceeds) with respect to the Project

Property; (iii) all lease rentals, revenues, profits, and receipts receivable by or on behalf of the Issuer from the Project Property; and (iv) the Project Property.

**Section 302. Release.** If (i) the principal of and interest on the Bonds are paid by the Issuer in full to the Bond Fund, as provided for herein, (ii) the Purchaser has received all sums due it under the Bond Documents, and (iii) the Issuer keeps, performs and observes all agreements, covenants and provisions under this Indenture, then all obligations of the Issuer as to the Bonds under this Indenture will terminate, and the Purchaser will cancel and discharge the lien of this Indenture and execute and deliver to the Issuer and the Company such instruments in writing as may be required to evidence such discharge. The Clerk of the Issuer is authorized to accept a certificate of the Purchaser stating that all principal and interest due on the Bonds has been paid as evidence of the satisfaction of this Indenture.

#### **ARTICLE IV - AUTHORIZATION, FORM, EXECUTION AND DELIVERY OF BONDS**

**Section 401. Authorization; Authorized Amount of the Bond.** The Bonds are hereby authorized to be issued under this Indenture and secured by this Indenture. The Bonds will be issued as one or more series of fully registered bonds without coupons, in the maximum principal amount not to exceed \$105,000,000. The Bonds will be numbered consecutively beginning with R-1. The Bonds may not be issued under this Indenture except in accordance with this Article.

**Section 402. Form of Bond.** The Bonds will be in substantially the form of Exhibit A. The Bonds will be dated the date of the execution and delivery of this Indenture and will bear interest on Advances made pursuant to Section 702 at the rate of five percent (5.000%). All interest on the Bonds will be calculated from the date of advance for all periods on the basis of a 360-day year of twelve thirty-day months. Accrued interest shall be payable annually on each July 10, beginning July 10, 2025, with the outstanding principal amount of the Bonds plus all unpaid interest thereon due and payable in full on the Final Maturity Date. Principal and interest, as applicable, will be payable by the Issuer from the Basic Rent received from the Company to the owner of the Bonds on the immediately preceding Record Date upon presentation of the Bonds for cancellation at the offices of the Issuer. All payments will be made in lawful money of the United States.

**Section 403. Execution and Delivery; Payment.** The Bonds will be signed by the Chairperson of the Board of County Commissioners of the Issuer or other officer designated by the Board to sign the Bonds, and delivered to the Purchaser on the date of the execution and delivery of this Indenture. Subject to the terms and conditions of the Bond Purchase Agreement, the Purchaser will purchase the Bonds and will pay the purchase price of the Bonds to the Issuer as set forth in Section 701.

**Section 404. Registration and Transfer of the Bonds.** The Company, on behalf of the Issuer, will cause to be kept at its office a book for the registration and transfer of the Bonds. The registration book will be open to inspection by the Issuer upon advance notice during the Company's normal business hours.

The Bonds, together with the obligation to fund advances thereunder, may be transferred by the Purchaser in whole, but not in part, in person or by duly authorized attorney, in the registration book upon (i) surrender of the Bonds, (ii) delivery of a written transfer instrument, and (iii) compliance with Securities Act of 1933, as amended (the “Federal Securities Act”), and applicable state securities laws as established to the satisfaction of the Issuer, and delivery to the Issuer and the Company of (A) an opinion, in form and substance satisfactory to the Issuer, from legal counsel experienced in securities laws matters, which counsel must be satisfactory to the Issuer, to the effect the transfer complies with the Federal Securities Act and applicable state securities laws and (B) written representations from the transferee, in form and substance satisfactory to the Issuer (including, but not limited to the form of Certificate of Qualified Investor), necessary to establish such compliance all as further set forth in the Bond form attached as Exhibit A. Such Issuer approval shall be in writing. The Issuer agrees that it will cooperate in delivering a new Bond, registered in the name of the transferee. The person requesting the transfer will pay any tax or fee or other charge imposed on the transfer and will pay the Issuer’s expenses in connection therewith. The Issuer may deem and treat the person in whose name the Bond is registered as the absolute owner thereof for the purpose of receiving payment and for all other purposes, and all such payments made to any such registered owner or upon its written order will be valid and effectual to satisfy and discharge the liability upon the Bond, to the extent of the sum or sums paid; and the Issuer will not be affected by any notice to the contrary.

The Issuer acknowledges that the Purchaser may assign its rights to receive payments of principal, interest and any amounts due under the Bonds to any party without the consent of the Issuer.

**Section 405. Lost, Stolen, Destroyed and Mutilated Bond.** If the Issuer receives satisfactory evidence that any Bonds have been lost, stolen, destroyed or mutilated and receives satisfactory indemnity, and the mutilated Bonds are surrendered and cancelled, then the Issuer will execute and deliver new Bonds. The applicant for new Bonds will pay any charges and expenses in connection with the issuance of the new Bonds. New Bonds issued under this Section 405 will be an original contractual obligation of the Issuer and will be entitled to all of the benefits of this Indenture. The provisions of this Section 405 with respect to the replacement of the lost, stolen, destroyed or mutilated bonds are exclusive.

**Section 406. Cancellation and Destruction of the Bonds by Issuer.** If the Bonds are delivered to the Issuer for cancellation, the Bonds will be cancelled immediately and destroyed by the Issuer.

**Section 407. Application of Payments for Bonds.** All payments received on behalf of the Issuer under the Agreement with respect to the Bonds will be applied first to accrued interest on the Bonds on the next date for the payment of such interest and, second, to the unpaid principal of the Bonds. If such payments exceed accrued interest on and the unpaid principal of the Bonds, and any other amounts owed, the excess will be paid to the Company. The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of making Bond advances under this Indenture.

## ARTICLE V - REDEMPTION

**Section 501. Redemption.** If the Company gives notice to the Issuer, the Depositary and the Purchaser pursuant to Article IX of the Agreement that the Company has elected to cause redemption of the Bonds in full or in part and the Company pays the redemption price, all or such portion of the Bonds will be deemed redeemed by the Issuer on the date indicated in such notice at a redemption price equal to the principal amount to be redeemed plus accrued interest on such principal amount to the redemption date. If the Company redeems the Bonds in full before the Completion Date, any monies held in the Acquisition Fund shall be returned to the Company.

## ARTICLE VI - BOND REVENUES AND FUNDS

**Section 601. Source of Payment of the Bonds.** The Bonds and all payments by the Issuer under this Indenture are not general obligations of the Issuer, and shall never constitute indebtedness of the Issuer, but are the limited, special obligations of the Issuer payable solely from revenues and receipts derived from the leasing of the Project Property under the Agreement and other security pledged to payment of the Bonds under this Indenture. The Project Property has been leased under the Agreement and the Basic Rent is to be remitted by the Company directly to the Purchaser on or before each Payment Date, subject to the rights of offset set forth in Section 5.4(b) of the Agreement. The portion of the Basic Rent necessary to pay amounts owing on the Bonds is to be deposited in the Bond Fund (except for any payments which are satisfied pursuant to the exercise of the right of offset as set forth in Section 5.4(b) of the Agreement). The Basic Rent is sufficient in amount to insure the prompt payment of the principal and accrued interest on the Bonds and the entire amount of the Basic Rent is pledged to the payment of principal and accrued interest on the Bonds.

**Section 602. Creation of the Bond Fund, Payments.** A fund shall be created for the benefit of Issuer by the Company and designated “Caprock Wind Phase II Series 2024B Bond Fund” (the “Bond Fund”). There will be deposited into the Bond Fund, as and when received (i) the Basic Rent (except to the extent offset pursuant to Section 5.4(b) of the Agreement), and (ii) all other moneys required to be deposited into the Bond Fund pursuant to this Indenture and the Agreement. The interest and other income received on investments of the Bond Fund moneys as provided in Section 708 will be retained in the Bond Fund. The Company covenants that so long as the Bonds are outstanding, it will deposit or cause to be deposited solely from the sources stated in Section 601, into the Bond Fund for Issuer’s account, sufficient sums from revenues and receipts from the Project Property promptly to meet and pay the installments of interest, or of principal and interest, as applicable, on the Bonds (except to the extent that any payments of principal, interest or redemption price are to be made pursuant to the right of offset set forth in Section 5.4(b) of the Agreement). The Parties acknowledge that NMSA 1978, Section 4-59-3 (2002) provides that it is not intended that any county itself be authorized to operate any manufacturing, industrial or commercial enterprise under the Act and, accordingly, the Issuer will not operate any such enterprise with the Project Property.

**Section 603. Use and Custody of the Bond Fund.** The moneys in the Bond Fund will be used solely for payment of principal of and interest on the Bonds, except as provided in Sections

604 and 905. The Bond Fund will be in the custody of the Company, and the Company will withdraw sufficient funds from the Bond Fund to pay the installments of principal and interest on the Bonds as due (except to the extent that any payments of principal, interest or redemption price are to be made pursuant to the right of offset set forth in Section 5.4(b) of the Agreement).

**Section 604. Repayment to the Company from the Bond Fund.** Any amounts remaining in the Bond Fund after actual payment in full of the Bonds, the fees, charges and expenses of the Issuer and the Purchaser, administrative expenses and other amounts required to be paid by the Company under the Agreement will be paid to the Company upon expiration of the Agreement.

**Section 605. Investments.** Moneys on deposit in the Bond Fund may be invested and reinvested by the Company. Such investments will be deemed at all times to be a part of the Bond Fund. Any interest received on any such investment and any profit realized from such investment will be credited to the Bond Fund. Any loss resulting from any such investment will be charged to the Bond Fund. The Company will use all reasonable efforts to sell at the best price obtainable or present for redemption any such investment, when necessary, in order to provide cash to meet any payment or transfer from the Bond Fund.

**Section 606. Non-presentment of the Bonds.** If the Bonds are not presented for payment when the final payment of principal and interest is due, and if there are funds sufficient to make such final payment deposited with the Company, all liability of the Issuer for payment of the Bonds will cease. Interest shall not accrue after the Final Maturity Date. The Purchaser will be restricted to such funds for any claim against the Issuer relating to the Bonds.

**Section 607. No Liability.** The Issuer will not be liable or responsible for any misapplication of funds, loss, liability or expense (or failure to realize profits) with respect to the Bond Fund and Company shall indemnify and hold the Issuer harmless from and against all claims, liabilities or whatsoever nature arising from or relating to the Bond Fund or Company's management of the Bond Fund.

## ARTICLE VII - ACQUISITION FUND

**Section 701. Creation of the Acquisition Fund; Deposits.** A fund is hereby created with the Depository and designated "Caprock Wind Phase II Series 2024B Acquisition Fund" (the "Acquisition Fund"). Subject to the terms of the Bond Purchase Agreement, the Purchaser will purchase the Bonds on the date of execution and delivery of the Indenture and will pay the purchase price of the Bonds through the Advances described in Section 702. The proceeds of the sale of the Bonds, the interest and other income received on investments of the Acquisition Fund moneys as provided in Section 708 will be retained in the Acquisition Fund. The moneys in the Acquisition Fund will be held by the Depository and will be applied to the payment of Related Costs and, pending such application, will be subject to a lien in favor of the Purchaser or its assignee to secure payment of principal and accrued interest on the Bonds. The Acquisition Fund will be in the custody of the Depository, and the Depository is authorized and directed to wire from or issue checks on the Acquisition Fund for the payment of Related Costs pursuant to Section 702.



**Section 702. Disbursements.** The Company may request Advances from time to time to finance the Project (each, an “Advance”) by delivery of a Requisition Notice to the Purchaser and the Depositary in the form attached hereto as Exhibit B (the “Requisition Notice”). On or before the fifth business day following receipt of the Requisition Notice from the Company requesting an Advance, so long as no Event of Default has occurred and is continuing, the Purchaser will pay or cause to be paid the amount of the Advance requested in such Requisition Notice to the Depositary for deposit in the Acquisition Fund, provided, however, that the aggregate amount of such Advances shall not exceed \$105,000,000 for the Bonds. The Depositary will make payments of Related Costs from the Acquisition Fund not later than the business day following the date of receipt of payment of the amount of the Advance from Purchaser, provided that immediately available funds are on deposit therein. The Requisition Notice signed by an Authorized Company Representative shall state to whom the payment is to be made, the general purpose for which the obligation to be paid was incurred, and that:

(a) obligations in the stated amounts were incurred for Related Costs and are due and payable (or, if the Company is indicated as the payee, were duly paid by the Company) and that each item is a proper charge against the Acquisition Fund and has not been the subject of a previous withdrawal from the Acquisition Fund; and

(b) to the best knowledge of such Authorized Company Representative there has not been filed with or served upon the Issuer or the Company notice of any lien, right or attachment upon, or claim, other than such lien, right, attachment or claim as are filed or made in the ordinary course of constructing and operating the Project, affecting the right of any such payees to receive payment of, the respective amounts stated in such requisition which has not been released or will not be released simultaneously with the payment of such obligation; and

(c) with respect to any item for payment for labor or to contractors, builders or materialmen, (i) the obligations stated have been properly incurred, (ii) such work was actually performed or such materials or supplies were actually furnished or installed in or about the Project, and (iii) either such materials or supplies are not subject to any lien or security interest or any such lien or security interest will be released or discharged upon payment of the requisition.

**Section 703. Records.** The Depositary will keep and maintain all Requisition Notices and adequate records pertaining to the Acquisition Fund, and payments made therefrom, which will be open to inspection by the Issuer, the Purchaser, the Company, or their agents, upon advance notice, during normal business hours.

**Section 704. Depositary May Rely on Requisitions.** All writings, requisitions and certificates received by the Depositary as conditions of payment from the Acquisition Fund, and which are proper and complete on their face, may be conclusively relied upon by the Depositary and will be retained by the Depositary, subject at all reasonable times, upon advance notice, to examination by the other Parties and their respective agents and representatives.

**Section 705. Status Reports.** At least annually, the Depositary will make a written report covering all receipts and moneys then on deposit in the Acquisition Fund, and will report any investments of such moneys and all transfers and disbursements of such moneys as of and for

the preceding year. The reports will be prepared in conformity with the provisions of this Indenture, and copies of each report will be filed with the Purchaser, the Company, and, if requested by the Issuer, with the Issuer, not later than the fifteenth day of the month following the year covered by the report.

**Section 706. Completion Date.** Upon receipt of a certificate substantially in the form of Exhibit C signed by an Authorized Company Representative establishing the Construction Completion Date, as established in Section 4.4 of the Agreement, the Depositary will set aside in the Acquisition Fund the moneys necessary for the payment of the Related Costs incurred by the Company but not then due or payable as set forth in such certificate, and then will transfer any other moneys remaining in the Acquisition Fund to the Company or its assignee.

**Section 707. Payment on Acceleration.** If the Purchaser declares the unpaid principal of and accrued interest on the Bonds to be immediately due and payable pursuant to Section 902(a), the Depositary will promptly, upon receipt of notice of such declaration from the Purchaser or its assignee, return all moneys then held for the credit of the Acquisition Fund in accordance with Section 905 to the Purchaser or its assignee for application to the unpaid principal of and accrued interest on the Bonds.

**Section 708. Investments.** Moneys on deposit in the Acquisition Fund may be invested and reinvested by the Depositary, at the written direction of an Authorized Company Representative. Such investments will be deemed at all times to be a part of the Acquisition Fund. Any interest received on any such investment and any profit realized from such investment will be credited to the Acquisition Fund. Any loss resulting from any such investment will be charged to the Acquisition Fund. The Depositary will use all reasonable efforts to sell at the best price obtainable or present for redemption any such investment, when necessary, in order to provide cash to meet any payment or transfer from the Acquisition Fund. Neither the Depositary nor the Issuer will be responsible for any loss, liability or expense (or failure to realize profits) resulting from any such investment. The Depositary may make any such investment through its own or its affiliated bond or investment department, unless otherwise directed in writing by an Authorized Company Representative.

**Section 709. No Liability.** Issuer will not be liable or responsible for any misapplication of funds, loss, liability or expense (or failure to realize profits) with respect to the Acquisition Fund and the Company shall indemnify and hold Issuer harmless from and against all claims and liabilities of whatsoever nature arising from or relating to the Acquisition Fund or the Company's management of the Acquisition Fund.

## ARTICLE VIII - PARTICULAR COVENANTS AND PROVISIONS

**Section 801. Extent of Covenants; Disclaimer of Liability.** It is expressly made a condition of this Indenture that any covenants, stipulations, obligations, representations or agreements herein contained or contained in the Bonds or this Indenture do not and will never give rise to a personal or pecuniary liability of any present or future officer, employee or agent of the Issuer, or be a charge against the general credit or taxing powers of the Issuer, and in the event of a breach of such covenant; stipulation, obligation, representation or agreement, no personal or

pecuniary liability of any present or future officer, employee or agent of the Issuer, or charge payable by the Issuer directly or indirectly from the revenues of the Issuer, other than the Basic Rent, will arise therefrom. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR OF ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE ISSUER, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, INTEREST ON OR REDEMPTION PRICE OF THE BONDS. THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE OF THE BONDS WILL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OR GENERAL OBLIGATION OF THE ISSUER WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR LAWS OF THE STATE. THE BONDS OR THIS INDENTURE WILL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE STATE, ANY OF ITS POLITICAL SUBDIVISIONS OR OF THE ISSUER OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS. NONE OF THE PROVISIONS OF THIS INDENTURE SHALL REQUIRE THE ISSUER TO EXPEND OR RISK ITS OWN FUNDS OR TO OTHERWISE INCUR FINANCIAL LIABILITY IN THE PERFORMANCE OF ANY OF ITS DUTIES OR IN THE EXERCISE OF ANY OF ITS RIGHTS OR POWERS HEREUNDER.

**Section 802. Performance; Authority.** The Issuer covenants that it will faithfully perform all covenants and provisions contained in this Indenture and in the Bonds. The Issuer represents that it is duly authorized under the Constitution and laws of the State of New Mexico, including the Act, to issue the Bonds, to execute and deliver this Indenture, to grant a security interest in the property described in this Indenture, to pledge the rentals and other revenues described in this Indenture and that it has, to its knowledge, taken all actions required on its part for the issuance of the Bonds, and for the execution and delivery of this Indenture and the Agreement.

**Section 803. Office or Agency.** The Issuer will maintain an office or agency in Quay County, New Mexico, while the Bonds are outstanding and where demands with respect to this Indenture or the Bonds may be made. The office of the County Clerk of the Issuer will be such agency until further notice.

**Section 804. Obligations Under the Agreement.** The Issuer: (i) will perform all of its obligations under the Agreement; (ii) will not execute or agree to any change, amendment or modification of or supplement to the Agreement except in accordance with the provisions thereof and Section 1101 of this Indenture; and (iii) will not agree to any abatement, reduction or diminution of the Basic Rent without the written approval of the Purchaser. The parties acknowledge that the Issuer has no obligation to enforce the Agreement but any actions taken by the Issuer to enforce the Agreement shall be at the expense of the Company.

**Section 805. Use and Possession by the Company.** So long as not otherwise provided in this Indenture or the Agreement, the Company will be permitted to possess, use and enjoy the Project Property so as to carry out its obligations under the Agreement.

**Section 806. Instruments of Further Assurance.** The Issuer will, at the expense of the Company or the Purchaser, execute, acknowledge, deliver and perform such supplemental indentures or such further acts, instruments, documents and transfers as the Depository or the

Purchaser may reasonably require for better assuring, transferring, mortgaging and pledging unto the Depository or the Purchaser all the property and revenues and receipts pledged to the payment of the Bonds under this Indenture.

**Section 807. Recording of Agreement and Other Documents.** The Company will cause the Agreement, and all supplements to the Agreement, as well as all security instruments, financing statements, continuation statements and any other instruments as may be required, to be recorded or filed in such manner and places as required to fully preserve and protect the security of the Purchaser and the rights of the Depository, including recording in the real estate records of Quay County, New Mexico. The Depository will have no responsibility to make any such filings except for filings as the Company may from time-to-time request, and the Issuer will have no responsibility to make any such filings.

## ARTICLE IX - EVENTS OF DEFAULT AND REMEDIES

**Section 901. Events of Default.** Each of the following events is an “Event of Default:”

(a) Failure to pay any installment of principal or interest due under the Bonds when due and such failure continues unremedied for a period of thirty (30) days after the provision by the Issuer or the Purchaser of written notice of non-payment;

(b) An Event of Default under the Agreement or any other Bond Document (other than this Indenture) occurs and is continuing;

(c) The Issuer, the Company or the Depository fails to perform any covenant contained in this Indenture or the Bond Documents, other than as specified in subsections (a) and (b) above, and such failure is not cured within thirty (30) days after receipt by the Company of the written notice of such failure unless the Purchaser shall agree in writing to the extension of such time prior to its expiration.

(d) Any bankruptcy, insolvency, reorganization, etc. of the Issuer, the Company or the Depository.

**Section 902. Remedies on Events of Default.** Upon the occurrence of an Event of Default, the Purchaser will have the following rights and remedies:

(a) Acceleration. The Purchaser or its assignee may, by written notice given to the other Parties, declare the principal amount of the Bonds outstanding to be immediately due and payable and principal and interest thereon will become immediately due and payable; provided, however, that the Purchaser or its assignee, by written notice to the other Parties, may annul such declaration and destroy its effects and waive any such default: (i) if all covenants, conditions and agreements with respect to which such default shall have been made shall be fully performed, (ii) all arrears shall have been paid on any installment of interest and principal which has been theretofore due, plus (to the extent permitted by law) interest thereon from the due dates, and (iii) all reasonable charges and expenses of the Issuer, the Purchaser, the Depository and their agents

and counsel shall have been paid or provided for. Any such declaration that the Bonds are due and payable will be deemed to be a redemption of the Bonds;

(b) **Suit for Judgment on the Bonds.** The Purchaser will be entitled to sue either for the specific enforcement of any covenant or agreement contained herein, or in any of the Bond Documents, or in and of the execution of any power herein granted and/or for and recover judgment, either before or after or during the pendency of any proceedings for the enforcement of the lien of this Indenture or for the enforcement of any of its rights, but any such judgment against the Issuer will be enforceable only against the funds and accounts related to and held under this Indenture for the Bonds. There will not be authorized any deficiency judgment against the Issuer. No recovery of any judgment by the Purchaser will in any manner or to any extent affect the lien of this Indenture or any rights, powers or remedies of the Purchaser hereunder, but such lien, rights, powers and remedies of the Purchaser will continue unimpaired; and

(c) **Enforcement of Rights under Agreement.** The Purchaser or its assignee may, as assignee of specified interests of the Issuer in the Agreement, enforce any remedy available to the Issuer under the Agreement (except the remedies of the Issuer pursuant to Section 8.3 of the Agreement) and under any other lease, sublease, license or other grant of a possessory or use interest in the Project Property.

No right or remedy confirmed on any Party hereunder is intended to be exclusive of any other right or remedy confirmed on such Party hereunder, but each and every such right or remedy will be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute; provided, that the remedy of Purchaser in respect of an Event of Default or other breach hereunder or any other Bond Document shall be limited in all cases to those expressly provided in Section 902.

**Section 903. Rights and Remedies of Purchaser.** The Purchaser will not have the right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust related thereto or for the appointment of a receiver or any other remedy hereunder, unless an Event of Default has occurred and is continuing of which the Company has been notified, it being understood and intended that the Purchaser will not have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its actions or to enforce any right hereunder except in the manner herein provided. Nothing in this Indenture will, however, affect or impair the right of the Purchaser to enforce the payment of the principal of and interest on the Bonds, when due or at and after the maturity thereof, or the obligation of the Issuer to pay the principal and interest on the Bonds at the time and place and from the revenues provided in this Indenture or in the Bonds.

**Section 904. Issuer and Depository Not Responsible.** Neither the Issuer nor the Depository has any responsibility or right to act on behalf of the Purchaser with respect to any Event of Default. All rights and remedies arising from or related to any Event of Default are solely the rights and remedies of the Purchaser; provided that, upon request and at the expense of the Purchaser, the Issuer will cooperate with the Purchaser in the lawful enforcement of such rights and remedies upon receipt of indemnity satisfactory to the Issuer in the Issuer's sole discretion against any out-of-pocket costs and expenses incurred by the Issuer in its sole discretion (including

any counsel fees and expenses) or liability the Issuer may incur or suffer as a result of or in connection with such cooperation.

**Section 905. Application of Moneys.** All moneys received by the Purchaser pursuant to any right given or action taken under the provisions of this Article will, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys, be applied (i) first to pay the fees and expenses of the Issuer and the Depositary; (ii) then to pay sums advanced by the Purchaser (other than Advances) pursuant to the Bond Documents, with interest thereon; (iii) then to the payment of charges due the Purchaser pursuant to the Bond Documents, and (iv) then to the payment of interest and principal and premium, if any, due and unpaid on the Bonds. Whenever moneys are to be applied pursuant to the provisions of this Section 905, such moneys will be applied at such times, and from time to time, as the Purchaser will determine.

Whenever the Bonds and interest thereon have been paid under the provisions of this Section 905 and all expenses and charges of the Purchaser, the Issuer and the Depositary (and their respective counsel and agents) have been paid, any balance remaining will be paid to the Company.

**Section 906. Purchaser to File Proofs of Claim.** In the case of any insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceedings affecting the Project Property or the Company, the Purchaser and the Issuer will, to the extent permitted by law, be entitled to file such proofs of claims and other documents as may be necessary or advisable in order to have claims of the Purchaser or the Issuer, respectively, allowed in such proceedings for the entire amount due and payable by the Issuer, or by the Company, as the case may be, under the Indenture or the Agreement, at the date of the institution of such proceedings and for any additional amounts which may become due and payable after such date.

**Section 907. Delay or Omission; No Waiver.** No delay or omission of the Purchaser to exercise any right or power accruing upon any Event of Default will exhaust or impair any such right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence therein; and every power and remedy given by this Indenture to the Purchaser may be exercised from time to time and as often as may be deemed expedient by the Purchaser.

**Section 908. No Waiver of One Default to Affect Another.** No waiver of any Event of Default by the Purchaser will extend to or affect any subsequent or any other then existing Event of Default or shall impair any rights or remedies consequent thereon.

**Section 909. Discontinuance of Proceedings on Default; Position of Parties Restored.** In case the Purchaser shall have proceeded to enforce any right under this Indenture by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Purchaser, then and in every such case the Issuer and Purchaser will be restored to their former positions and rights under this Indenture with respect to the Project Property and all rights, remedies, and powers of the Purchaser will continue as if no such proceedings had been taken.

**Section 910. Waivers of Events of Default.** The Purchaser may, in its discretion, waive any Event of Default and its consequences and rescind any declaration of maturity of principal of

and interest on the Bonds. In case of any such waiver or rescission, or in case any proceeding taken by the Purchaser on account of any such Event of Default shall have been discontinued or abandoned or determined adversely to the Purchaser, then in every such case the Issuer and the Purchaser shall be restored to their former respective positions and rights hereunder, and the Event of Default which was waived will be considered to be cured, but no waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

**Section 911. Lender Right to Cure Defaults.** If an Event of Default has occurred and is continuing under this Indenture of which the Company has been notified, any mortgagee or assignee of the Company that holds an interest in the Project Property as security, including but not limited to a Lender, shall at any time have the right, but not the obligation, to perform any act necessary to cure any such Event of Default and to prevent the release and discharge of this Indenture. Such right to cure must be performed no later than sixty (60) days following the applicable cure period provided in Section 901.

## **ARTICLE X - THE DEPOSITARY**

**Section 1001. Acceptance of Duties.** The Depositary accepts the duties imposed on it by this Indenture, but only on the following express terms and conditions:

(a) The Depositary undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations will be read into this Indenture against the Depositary.

(b) In the absence of negligence or willful misconduct on its part, the Depositary may conclusively rely on certificates or notices furnished to the Depositary and conforming to the requirements of this Indenture or the Agreement, as the case may be; but if any such certificates or notices are specifically required to be furnished to the Depositary under this Indenture or the Agreement, the Depositary will examine the same to determine whether they conform to the requirements of this Indenture or the Agreement, as the case may be.

(c) The Company hereby indemnifies and holds harmless the Depositary from and against any and all loss, liability, cost, damage and expense, including, without limitation, reasonable counsel fees, which the Depositary may suffer or incur by reason of any action, claim or proceeding brought against the Depositary arising out of or relating in any way to this Indenture or any transaction to which the Indenture relates unless such action, claim or proceeding is the result of the negligence or willful misconduct of the Depositary. The indemnification shall survive the resignation, removal and termination of the Depositary. No provision of this Indenture will be construed to relieve the Depositary from liability for its own negligence or willful misconduct.

(d) The Depositary may consult with counsel and other professionals and the advice of such counsel and other professionals shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Depositary hereunder in good faith and in reliance thereon.

(e) The Depositary shall be under no obligation to take any action or exercise any right or power under the Indenture unless the Company shall first have provided to the Depositary, its directors, officers, agents and employees, security or indemnity satisfactory to the Depositary against the costs (including without limitation reasonable fees of attorneys), expenses and liabilities that might be incurred by the Depositary in connection herewith.

**Section 1002. Compensation.** The Company will pay directly to the Depositary its reasonable fees and charges and all of its reasonable expenses (including reasonable counsel fees and expenses).

**Section 1003. Qualification.** The Depositary must be an association or a corporation organized and doing business under the laws of the United States of America or of any state and be subject to supervision or examination by federal or state banking authorities. If at any time the Depositary ceases to be eligible in accordance with the provisions of this Section 1003, it will resign immediately in the manner and with the effect specified in Section 1004.

**Section 1004. Resignation and Removal.**

(a) No resignation or removal of the Depositary and no appointment of a successor Depositary will become effective until the acceptance of appointment by the successor Depositary under Section 1005.

(b) The Depositary may resign at any time upon ten (10) business days' written notice to the other Parties. If an instrument of acceptance by a successor Depositary has not been delivered to the retiring Depositary within thirty (30) days after the giving of such notice of resignation, the retiring Depositary may petition any court of competent jurisdiction for the appointment of a successor Depositary.

(c) The Depositary may be removed at any time by the Company upon ten (10) business days' written notice to the other Parties.

(d) The Depositary will be automatically removed on the occurrence of the Completion Date of the Project and the application of all moneys on deposit in the Acquisition Fund as provided in Section 706. No successor Depositary will thereafter be appointed and each reference to the Depositary in this Indenture and the Agreement will thereafter be ineffective.

(e) If the Depositary resigns or is removed (except as provided in subsection (d) of this Section 1004), the Company will promptly appoint a successor Depositary and give written notice of such appointment to the Issuer, the Purchaser and the retiring or removed Depositary.

**Section 1005. Successor Depositary.**

(a) Every successor Depositary appointed under this Indenture will execute, acknowledge and deliver to its predecessor and the other Parties an instrument accepting such appointment, and thereupon such successor Depositary, without any further act, will become fully



vested with all the rights, and be subject to all the obligations, of its predecessor; but such predecessor will, nevertheless, on the request of its successor, the Issuer, the Company or the Purchaser execute and deliver an instrument transferring to such successor Depository all the rights of such predecessor under this Indenture. Every predecessor will deliver all property, including all records relating hereto, and moneys held by it under this Indenture to its successor. The Issuer and the Purchaser will execute, acknowledge and deliver any instrument, satisfactory to each of them, required by any successor Depository to more fully and certainly vest in such Depository the rights vested in the predecessor Depository by this Indenture.

(b) Notwithstanding any of the foregoing provisions of this Article, any Person qualified to act as Depository under this Indenture with or into which the Person acting as Depository may be merged or consolidated, or to which the assets and business of such Person may be sold, will automatically become the successor Depository.

## ARTICLE XI - SUPPLEMENTS AND AMENDMENTS TO INDENTURE

**Section 1101. Other Supplemental Indentures.** This Indenture may be supplemented or amended only by one or more instruments executed by the Issuer, the Purchaser and the Depository.

**Section 1102. Consent of the Company.** Any supplemental indenture affecting the rights of the Company will not be effective unless and until the Company shall have consented in writing to the execution and delivery of such supplemental indenture.

## ARTICLE XII - MISCELLANEOUS PROVISIONS

**Section 1201. Notices.** Any notice, demand, direction, request, consent, report or other instrument authorized or required by any of the Bond Documents to be executed, given or filed (excluding Uniform Commercial Code filings, recordings and other governmental filings) will be in writing and will be deemed to have been sufficiently given or filed for all purposes of the Bond Documents when delivered by hand delivery or overnight courier mail or other electronic means, or on the third Business Day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer:

Quay County, New Mexico  
Attn: County Clerk  
300 South Third Street  
P.O. Box 1246  
Tucumcari, NM 88401  
Telephone: (575) 461-0510  
Fax: (575) 461-0513

with a copy to:

Rodey, Dickason, Sloan, Akin & Robb, P.A.  
119 E. Marcy Street, Suite 200  
P.O. Box 1357  
Santa Fe, NM 87501 (87504)

Attn: Luis G. Carrasco, Esq.  
Tel: (505) 954-3905  
E-mail: [LCarrasco@rodey.com](mailto:LCarrasco@rodey.com)

If to the Purchaser: CAPROCK WIND INVESTMENTS, LLC  
6688 North Central Expressway, Suite 500  
Dallas, TX 75206

If to the Company: Caprock Wind, LLC  
6688 North Central Expressway, Suite 500  
Dallas, TX 75206  
Attn: Asset Management  
E-mail: [AssetMgmt@leewardenergy.com](mailto:AssetMgmt@leewardenergy.com)

with a copy to: Modrall, Sperling, Roehl, Harris & Sisk, P.A.  
500 Fourth Street NW, Suite 1000  
Albuquerque, NM 87102  
Attn: Peter Franklin, Esq.  
Tel: (505) 984-2856  
E-mail: [pfranklin@modrall.com](mailto:pfranklin@modrall.com)

If to the Depository: BOKF, NA  
100 Sun Avenue NE, Suite 500  
Albuquerque, NM 87102  
Attention: Corporate Trust  
Tel: (505) 222-8447

Any Party may, by notice to each of the other Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent. Receipt by the Issuer, the Company and the Depository of a notice from a transferee of the Bonds will constitute notice of such a different address for the Purchaser.

**Section 1202. Remedies.** No right or remedy conferred on any Party in any of the Bond Documents is intended to be exclusive of any other right or remedy conferred on such Party in any of the Bond Documents. Each such right or remedy is in addition to every other right or remedy provided in any of the Bond Documents, or any other applicable agreement or contract; provided, that the remedy of the Issuer or the Purchaser in respect of an Event of Default or other breach hereunder or any other Bond Document shall be limited in all cases to those expressly provided in Section 902 hereunder or Article VIII of the Agreement, as the case may be. No delay or omission of any Party to exercise any such right or remedy will impair any such right or remedy or be construed to be a waiver. Every such right or remedy may be exercised from time to time and as often as the relevant Party may deem expedient. No waiver by any Party of any right or remedy with respect to any default or Event of Default will extend to or affect any other existing or subsequent default or Event of Default.

**Section 1203. Beneficiaries.** Nothing in any of the Bond Documents expressed or implied is intended or is to be construed to confer upon any Person other than the Parties any right, remedy or claim, legal or equitable.

**Section 1204. Severability.** In case any one or more of the provisions of any of the Bond Documents or of the Bonds are for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of any of the Bond Documents or of the Bonds, but the Bond Documents and the Bonds will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the any Party contained in any of the Bond Documents or the Bonds is for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of such Party to the full extent permitted by law.

**Section 1205. Obligations of Issuer Not Obligations of Officials Individually.** No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bonds will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

**Section 1206. Payments Due on Days That Are Not Business Days.** If the date for any payment called for under any of the Bond Documents or the Bonds is not a Business Day, then such payment will be made on the next Business Day and no interest on such payment will accrue for the period after the scheduled date for such payment.

**Section 1207. Limitation of Issuer's Liability.** No agreements or provisions contained in any Bond Document nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of Bond proceeds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer, its officers, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or obligate the Issuer financially in any way, except with respect to the Basic Rent, and its application as provided under this Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in any Bond Document or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officers and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the Basic Rent. Without limiting the requirement to perform its duties or exercise its rights and powers under the Bond Documents upon receipt of appropriate indemnity or payment, none of the provisions of any Bond Document will require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under any Bond Document.

**Section 1208. Successors.** Wherever a Party is referred to in this Indenture, it shall be deemed to include its successors, and all covenants and agreements in this Indenture will bind and inure to the benefit of the such Party's successors.

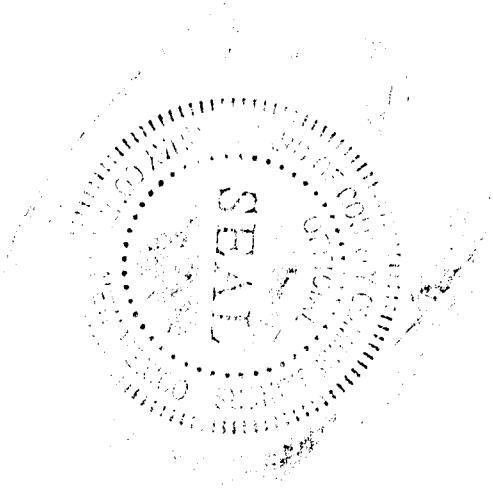
**Section 1209. Title, Headings.** The title and headings of the articles, sections and subdivisions of this Indenture have been used for convenience only and will not modify or restrict any of the terms or provisions of this Indenture.

**Section 1210. Consents and Approvals.** In any action requiring the consent or approval of a party to this Indenture, such consent or approval will not be unreasonably withheld.

**Section 1211. Execution in Counterparts.** Each of the Bond Documents may be executed in multiple counterparts, all of which taken together will constitute one instrument. Any Party may execute any of the Bond Documents by executing any such counterpart of such Bond Document.

**Section 1212. Applicable Law.** The validity, construction and effect of each of the Bond Documents will be governed by and construed in accordance with the laws of the State applicable to agreements made and to be performed in the State of New Mexico.

*[Signature pages follow]*



BOARD OF COUNTY COMMISSIONERS,  
QUAY COUNTY, NEW MEXICO  
as Issuer

By: Robert Lopez  
Robert Lopez, Chair

(SEAL)

ATTEST:

By: Ellen White  
Ellen White, County Clerk

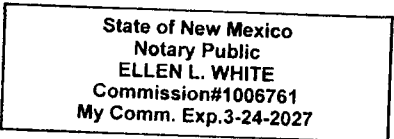
STATE OF NEW MEXICO            )  
                                                  )  
COUNTY OF QUAY                )

This instrument was acknowledged before me on this 8 day of July, 2024, by Robert Lopez, as Chair of the Board of County Commissioners, Quay County, New Mexico.

(NOTARY SEAL)

Ellen L. White  
Notary Public

My Commission Expires: \_\_\_\_\_



(County Signature Page to Indenture)

CAPROCK WIND, LLC,  
as Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, as \_\_\_\_\_ of Caprock Wind, LLC, a Delaware limited liability company.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

*(Company Signature Page to Indenture)*

CAPROCK WIND INVESTMENTS, LLC  
as Purchaser

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by \_\_\_\_\_, as \_\_\_\_\_ of Caprock Wind Investments, LLC, a  
Delaware limited liability company.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

BOKF, NA,  
as Depositary

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEW MEXICO )

)

COUNTY OF BERNALILLO )

)

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2024,  
by \_\_\_\_\_, as \_\_\_\_\_ of BOKF, NA, as Depositary.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

*(Depositary Signature Page to Indenture)*



**EXHIBIT A**  
**FORM OF BOND**

**THIS BOND IS TRANSFERABLE ONLY UPON COMPLIANCE  
WITH THE RESTRICTIVE TERMS PROVIDED BELOW**

No. R-1

Up to \$105,000,000

United States of America  
State of New Mexico

Quay County, New Mexico  
Taxable Industrial Revenue Bonds  
(Caprock Wind Phase II)  
Series 2024B

REGISTERED OWNER: \_\_\_\_\_

<u>FINAL MATURITY DATE</u>	<u>INTEREST RATE</u>	<u>ISSUE DATE</u>
_____, 20__	5.00%	July 10, 2024

Quay County, a political subdivision of the State of New Mexico existing under the Constitution and laws of the State of New Mexico (the “Issuer”), for value received, promises to pay, solely from the sources described below, to Caprock Wind Investments, LLC (together with its successors and assigns, and transferees as permitted below, the “Purchaser”) One Hundred Five Million Dollars (\$105,000,000) (subject to prior optional redemption as described below) or so much of such amount as has been advanced by the Purchaser and is outstanding and to pay, solely from such sources, to the Purchaser, interest on principal amounts advanced with respect to this Bond from the dates of such Advances at the Interest Rate specified above (computed on the basis of a 360-day year consisting of twelve 30-day months) until payment of such principal amount. Interest at the rate of five percent (5.00%) of the principal amount of the Bonds outstanding shall be payable annually on each July 10, beginning July 10, 2025, with the outstanding principal amount of the Bonds plus all interest thereon due and payable in full on the Final Maturity Date.

This Bond is issued under and pursuant to the Constitution and laws of the State of New Mexico, particularly NMSA 1978, Sections 4-59-1 to -16 (1975, as amended through 2023), as amended, and under and pursuant to Ordinance No. 57 duly adopted by the Issuer on May 28, 2024.

The principal of, interest on and redemption price of this Bond are payable solely from Basic Rent derived by the Issuer from the Lease Agreement dated as of July 10, 2024 (the “Agreement”) between the Issuer and Caprock Wind, LLC (the “Company”), which has been pledged and assigned by the Issuer to the Purchaser under the Indenture, dated as of July 10, 2024

(together with any amendments and supplements, the “Indenture”) among the Issuer, the Purchaser, the Company and BOKF, NA (the “Depository”).

Reference is made to the Indenture and the Agreement for the provisions, among others, with respect to the custody and application of the proceeds of the sale of this Bond, the collection and disposition of income and other revenues, a description of the account charged with and pledged to the payment of the principal of, interest on and redemption price of this Bond, the nature and extent of the security, the terms and conditions under which this Bond is issued and amounts are to be advanced with respect to this Bond by the Purchaser, and the rights, duties and obligations of the Issuer, the Company, the Purchaser and the Depository.

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW MEXICO OR OF ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE ISSUER, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, INTEREST ON OR REDEMPTION PRICE OF THIS BOND. THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE OF THIS BOND WILL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR LAWS OF THE STATE OF NEW MEXICO. THIS BOND WILL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE STATE OF NEW MEXICO, ANY OF ITS POLITICAL SUBDIVISIONS OR OF THE ISSUER OR A CHARGE AGAINST THEIR GENERAL CREDIT OR TAXING POWERS.

This Bond may be called for redemption as provided in the Indenture, at the option of the Company as a whole or in part on any date selected by the Company, at a redemption price equal to the principal amount to be redeemed plus interest accrued on such principal amount to the redemption date.

If an Event of Default (as defined in the Indenture) occurs, the Purchaser may cause the then unpaid principal amount of this Bond and all accrued interest to be immediately due and payable as provided in the Indenture. Neither the Issuer nor the Depository has any right or responsibility to act on behalf of the Purchaser with respect to any Event of Default.

THIS BOND MAY BE TRANSFERRED IN WHOLE BUT NOT IN PART. SUBJECT TO THE LAST PARAGRAPH OF SECTION 404 OF THE INDENTURE AND NOTWITHSTANDING ANY PROVISION OF THIS BOND TO THE CONTRARY, NEITHER THIS BOND NOR ANY INTEREST IN THIS BOND MAY BE, DIRECTLY OR INDIRECTLY, OFFERED, SOLD, HYPOTHECATED, ENCUMBERED OR OTHERWISE TRANSFERRED OR DISPOSED OF (INDIVIDUALLY AND COLLECTIVELY, A “TRANSFER”) EXCEPT IN COMPLIANCE WITH SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), AND APPLICABLE STATE SECURITIES LAWS AS ESTABLISHED TO THE SATISFACTION OF THE ISSUER, AND ANY SUCH PURPORTED TRANSFER OF THIS BOND WILL NOT BE EFFECTIVE UNLESS THE TRANSFEROR PROVIDES TO THE ISSUER, THE DEPOSITARY AND THE COMPANY (A) AN OPINION, IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, FROM LEGAL COUNSEL EXPERIENCED IN SECURITIES LAWS MATTERS, WHICH COUNSEL MUST BE SATISFACTORY TO THE ISSUER, TO THE EFFECT THE TRANSFER COMPLIES WITH THE ACT AND

APPLICABLE STATE SECURITIES LAWS AND (B) WRITTEN REPRESENTATIONS FROM THE TRANSFEREE, IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, NECESSARY TO ESTABLISH SUCH COMPLIANCE.

All acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this Bond and the execution of the Indenture have happened, exist and have been performed as so required.

The validity, construction and performance of this Bond are governed by the law of New Mexico applicable to agreements made and to be performed in New Mexico.

QUAY COUNTY, NEW MEXICO

By: \_\_\_\_\_  
Chair, Board of County Commissioners

(SEAL)

ATTEST:

By: \_\_\_\_\_  
County Clerk

## SCHEDULE OF ADVANCES AND PAYMENTS

<u>Date</u>	<u>Amount Of Advance</u>	<u>Amount of Principal Payment or Redemption</u>	<u>Resulting Principal Amount</u>	<u>Notation Made By</u>
-------------	------------------------------	--------------------------------------------------------------	-------------------------------------------	-----------------------------

**EXHIBIT B**

**REQUISITION AND CERTIFICATE NO.**

To: CAPROCK WIND INVESTMENTS, LLC, as Purchaser  
BOKF, NA, as Depositary

The undersigned, pursuant to the Indenture dated as of July 10, 2024 (the "Indenture"), among Quay County, New Mexico (the "Issuer"), Caprock Wind Investments, LLC (the "Purchaser"), Caprock Wind, LLC (the "Company") and BOKF, NA (the "Depositary"), requests on behalf of the Company, the disbursement of \$\_\_\_\_\_ from the Acquisition Fund (as defined in the Indenture) to pay the following costs and expenses (or to reimburse the Company for payment of such costs and expenses) related to the Project (as defined in the Indenture) or to the issuance of the Bond (as defined in the Indenture):

Amount	General Classification Of Expenditure	Payee
\$		

Amount of this requisition: \$\_\_\_\_\_

The undersigned certifies that:

(1) obligations in the stated amounts were incurred for Related Costs (as defined in the Indenture) and are due and payable (or, if the Company is indicated as the Payee, were duly paid by the Company) and that each item is a proper charge against the Acquisition Fund and has not been the subject of a previous withdrawal from the Acquisition Fund;

(2) to the best knowledge of the undersigned there has not been filed with or served upon the Issuer or the Company notice of any lien, right or attachment upon, or claim affecting the right of any such payee to receive payment of, the respective amounts stated in such requisition which has not been released or will not be released simultaneously with the payment of such obligation; and

(3) with respect to any item for payment for labor or to contractors, builders or materialmen, (i) the obligations stated have been properly incurred, (ii) such work was actually performed or such materials or supplies were actually furnished or installed in or about the Project, and (iii) either such materials or supplies are not subject to any lien or security interest or any such lien or security interest will be released or discharged upon payment of this requisition.

DATED: \_\_\_\_\_

CAPROCK WIND, LLC

\_\_\_\_\_  
Authorized Company Representative

Acknowledged:  
[BOKF, NA]

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT C**

**COMPLETION CERTIFICATE**

The undersigned Authorized Company Representative, pursuant to Section 706 of the Indenture, dated as of July 10, 2024 (the "Indenture"), among Quay County, New Mexico, Caprock Wind Investments, LLC, as Purchaser, Caprock Wind, LLC (the "Company") and BOKF, NA, as Depositary, states that, except for specified amounts remaining in the Acquisition Fund for any specified Related Costs as described in Appendix A hereto incurred by the Company, but not now due and payable, the Project is complete and all costs of labor, services, materials and supplies in connection with the Project Property have been paid for or provisions have been made for their payment. After the transfer of remaining moneys in the Acquisition Fund to the Company pursuant to Section 706 of the Indenture, the Company will have sole responsibility for the payment of any Related Cost in excess of the amount specified to be retained in the Acquisition Fund.

Moneys set aside for payment of pending expenses equal \$ \_\_\_\_\_ and total disbursements equal \$ \_\_\_\_\_.

DATED: \_\_\_\_\_

CAPROCK WIND, LLC

\_\_\_\_\_  
Authorized Company Representative

## EXHIBIT D

### CERTIFICATE OF QUALIFIED INVESTOR

Quay County, New Mexico

BOKF, NA, as Depositary

Caprock Wind, LLC

Re: Quay County, New Mexico Taxable Industrial Revenue Bonds (Caprock Wind Phase II), Series 2024B.

Please be advised that the undersigned is purchasing the captioned Bonds (hereinafter referred to as the “Bonds”). Such purchase is for the account of the undersigned, for the purpose of investment and not with a present intent for distribution or resale. In the event that the undersigned transfers such Bonds, the undersigned shall comply with all provisions of the Indenture dated as of July 10, 2024 (as amended from time to time, the “Indenture”), among Quay County, New Mexico (the “Issuer”), Caprock Wind Investments, LLC, as Purchaser, Caprock Wind, LLC (the “Company”) and BOKF, NA, as Depositary (the “Depositary”), as described in the Bonds. The undersigned assumes all responsibility for complying with any applicable federal and state securities laws in such regard and must present to the Depositary, the Issuer and the Company a Certificate of Qualified Investor executed by the proposed transferee, among other things as may be required by the agreements authorizing the Bonds, before such transfer will be effective.

The undersigned acknowledges that it is one of the following:

1. a bank as defined in Section 3(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), or savings and loan association or other institution as defined in Section 3(a)(S)(A) of the Securities Act, whether acting in its individual or fiduciary capacity; broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”); insurance company as defined in Section 2(13) of the Securities Act; insurance company as registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act; Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; plan established and maintained by a state, its political subdivision, or any agency or instrumentality of a state or its political subdivision, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;



2. a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;

3. an organization described in Section 501(c)(3) of the Internal Revenue Code with total assets in excess of \$5,000,000;

4. a natural person whose individual net worth, or joint net worth with that person's spouse, at the time of this purchase exceeds \$1,000,000, excluding the value of the primary residence of such person;

5. a natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with the person's spouse in excess of \$300,000 in each of those years and who reasonably expects reaching the same income level the current year; or

6. one or more of the following, as indicated, that it is acting for its own account or the accounts of other Qualified Institutional Buyers and that it in the aggregate owns and/or invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the Company:

(a) an insurance company, as defined in Section 2(13) of the Securities Act;

(b) an investment company registered under the Investment Company Act of 1940, as amended, or any business development company as defined in Section 2(a)(48) of that Act;

(c) a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958;

(d) a plan established and maintained by a state, its political subdivision or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees;

(e) an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974;

(f) a trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in Paragraph (d) or (e) above, and not a trust fund that includes as participants individual retirement accounts or H.R. 10 plans;

(g) a business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (the "Investment Advisers Act");

(h) an organization described in Section 501(c)(3) of the Internal Revenue Code, a corporation (other than a bank as defined in Section 3(a)(2) of the Securities Act or a savings and loan association or other institution referenced in Section 3(a)(5)(A) of the Securities Act or a foreign bank or savings and loan association or equivalent institution), partnership or similar business trust; or

(i) an investment adviser registered under the Investment Advisers Act;

7. a dealer registered pursuant to Section 15 of the Exchange Act, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$10 million of securities of issuers that are not affiliated with the dealer, provided that securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as a participant in a public offering shall not be deemed to be owned by such dealer; or

8. a dealer registered pursuant to Section 15 of the Exchange Act acting in a riskless principal transaction on behalf of a qualified institutional buyer; or

9. an investment company registered under the Investment Company Act, acting for its own account or for the accounts of other qualified institutional buyers, that is part of a family of investment companies which own in the aggregate at least \$100 million in securities of issuers, other than issuers that are affiliated with the investment company or are part of such family of investment companies. "Family of investment companies" means any two or more investment companies registered under the Investment Company Act, except for a unit investment trust whose assets consist solely of shares of one or more registered investment companies, that have the same investment adviser (or, in the case of unit investment trusts, the same depositor), provided that, for purposes of this section:

(a) each series of a series company (as defined in Rule 18f-2 under the Investment Company Act) shall be deemed to be a separate investment company; and

(b) investment companies shall be deemed to have the same adviser (or depositor) if their advisers (or depositors) are majority-owned subsidiaries of the same parent, or if one investment company's adviser (or depositor) is a majority-owned subsidiary of the other investment company's adviser (or depositor);

10. an entity, all of the equity owners of which are qualified institutional buyers, acting for its own account or the accounts of other qualified institutional buyers; or

11. a bank as defined in Section 3(a)(2) of the Securities Act, any savings and loan association or other institution as referenced in Section 3(a)(5)(A) of the Securities Act, or any foreign bank or savings and loan association or equivalent institution, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with it and that has an audited net worth of at least \$25 million as demonstrated in its latest annual financial statements, as of a date not more than 16 months preceding the date of sale in the case of a U.S. bank or savings and loan association, and not more than 18 months preceding such date of sale for a foreign bank or savings and loan association or equivalent institution; or

12. any entity that is acquiring the Bond for the purpose of facilitating investment therein by “qualified institutional buyers” as defined under Rule 144A promulgated under the Securities Act; or

13. The parent, affiliate or subsidiary of Caprock Wind, LLC.

The undersigned further acknowledges that (i) interest on the Bonds is not exempt from gross income for federal income tax purposes, and (ii) an opportunity was available to obtain and that the undersigned has obtained all materials which were regarded as necessary to evaluate the merits and risks of investment in the Bonds and after such evaluation, the undersigned understands and knows that investment in the Bonds involves certain risks, including, but not limited to, those related to limited security and source for payment of the Bonds and the probable lack of any secondary market for the Bonds.

The undersigned acknowledges, warrants and represents that the undersigned is experienced in transactions such as those relating to the Bonds and that the undersigned is knowledgeable and fully capable of independently evaluating the risks involved in investing in the Bonds. The undersigned further acknowledges that neither the Issuer nor any of its officials, counsel, agents or consultants is responsible for any information contained in or omitted from the materials furnished, whether directly or by any other means, relating to the Bonds and acknowledges that the undersigned will not look and has not looked to any of them to obtain such information on its behalf.

CAPROCK WIND INVESTMENTS, LLC,  
a Delaware limited liability company

By: CAPROCK WIND, LLC,  
a Delaware limited liability company  
its sole member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Notices and  
Payment of principal and interest:

Attn:

CAPROCK WIND INVESTMENTS, LLC,

QUAY COUNTY, NEW MEXICO

and

CAPROCK WIND, LLC

BOND PURCHASE AGREEMENT

Dated July 10, 2024

\$105,000,000  
Quay County, New Mexico  
Taxable Industrial Revenue Bonds  
(Caprock Wind Phase II)  
Series 2024B

## **BOND PURCHASE AGREEMENT**

**CAPROCK WIND INVESTMENTS, LLC** (the “Purchaser”), **QUAY COUNTY, NEW MEXICO** (the “Issuer”), and **CAPROCK WIND, LLC** (the “Company”), agree:

**Section 1. Recitals.** The Issuer, the Purchaser, the Company and BOKF, N.A., as depository (the “Depository”) have entered into an Indenture dated as of July 10, 2024 (the “Indenture”). Pursuant to the Indenture, the Issuer will issue its Taxable Industrial Revenue Bonds (Caprock Wind Phase II), Series 2024B in the maximum principal amount of \$105,000,000 (the “Bonds”). Capitalized terms used in this Bond Purchase Agreement (this “Agreement”) but not defined herein shall have the meanings assigned to such terms in the Indenture.

**Section 2. Purchase and Delivery.** On the basis of the representations and covenants contained in this Agreement and subject to the terms and conditions contained in this Agreement, the Purchaser will purchase the Bonds from the Issuer and the Issuer will sell the Bonds to the Purchaser. As consideration for the sale of the Bonds, the Purchaser will make advances on the Bonds at the times and under the conditions specified in Section 702 of the Indenture. The Issuer will deliver the Bonds to the Purchaser as provided in Section 403 of the Indenture, or at such other time as is mutually agreeable to the Purchaser and the Issuer (the “Closing Date”).

**Section 3. Issuer Representations.** The Issuer represents that, as of the date of this Agreement:

(a) Each of the representations of the Issuer in the Lease Agreement, dated as of July 10, 2024 (the “Lease” and, together with the Indenture and this Agreement, the “Bond Documents”), between the Issuer and the Company, and the Indenture is true and correct as if made on and as of the date of this Agreement, which is July 10, 2024.

(b) Pursuant to Ordinance No. 57 duly adopted by the Board of County Commissioners of Quay County on May 28, 2024 (the “Bond Ordinance”), the Issuer duly authorized and approved (i) the execution and delivery by the Issuer of the Bond Documents and the performance by the Issuer of its obligations under the Bond Documents, and (ii) the issuance, execution and delivery of the Bonds. The Bond Ordinance has not been amended, modified or repealed.

**Section 4. Company Representations.** The Company represents that as of the date hereof:

(a) Each of the representations of the Company in the Lease is true and correct as if made on and as of the date of this Agreement.

(b) This Agreement and the Lease constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally and general principles of equity.

(c) The Company is a Delaware limited liability company, duly organized, validly existing and in good standing under the law of the State of Delaware and is a duly registered foreign limited liability company authorized to do business in the State of New Mexico and has full legal capacity, right, power and authority to own the Company's properties and conduct the Company's business. The Company has full legal capacity, right, power and authority to execute and deliver this Agreement and the Lease, to provide for the operation and management of the Project Property, and to take any and all such action as may be required on its part to carry out, give effect to and consummate the transactions contemplated by this Agreement and the Lease.

(d) Neither the execution and delivery of this Agreement and the Lease, nor the consummation of the transactions contemplated therein or the compliance with the provisions thereof, will conflict with, or constitute on the part of the Company a material violation of, or a material breach of or material default under any indenture, mortgage, commitment, note or other agreement or instrument to which the Company is a party or by which the Company is bound, or any material order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its activities or properties. All consents, approvals, authorizations and orders of governmental or regulatory authorities (except as required under state securities laws) which are required for the Company's execution and delivery of, consummation of the transactions contemplated by, and compliance with the provisions of this Agreement and the Lease have been obtained.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the best of the knowledge of the Company, threatened, against or affecting the Company, or the actions taken or contemplated to be taken by the Company, nor, to the best of the knowledge of the Company, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the business or financial condition of the Company, or the transactions contemplated by, or the validity or enforceability of, this Agreement or the Lease.

(f) No event has occurred and no condition exists which, upon issuance of the Bonds, would constitute (or with the giving of notice or lapse of time, or both, would constitute) an Event of Default under the Lease.

(g) The Company is not in violation of any provisions of, or in default under any statute, indenture, mortgage, commitment, note or other agreement or instrument to which it is a party or by which it is bound, or any order, rule, regulation or decision of any court or governmental agency or body having jurisdiction over it or any of its activities or properties, which violation would materially and adversely affect its business or financial condition.

**Section 5. Purchaser Representations.** The Purchaser represents and acknowledges that, as of the date of this Agreement:

(a) The Purchaser is purchasing the Bonds for its own account for investment and with no present intention of distributing or reselling the Bonds or any interest in the Bonds but without prejudice, however, to its right at all times to sell or otherwise dispose of all but not part

of the Bonds in compliance with the Securities Act of 1933, as amended, the regulations promulgated thereunder, applicable state securities laws and regulations and the terms of the Bonds, upon receipt of appropriate investor representations, an opinion of counsel experienced in securities law matters and satisfactory to the Issuer and in accordance with the applicable terms of the Indenture.

(b) The Purchaser understands that the Bonds are a special limited, and not general, obligation of the Issuer, are payable solely from the Basic Rent received under the Lease and from the security therefor as described in the Indenture but from no other sources. The Purchaser understands that the Bonds are not secured by any obligation or pledge of any monies received or to be received from taxation or from the State or any political subdivision, taxing district, or municipality thereof (including, without limitation, the Issuer), and that the Bonds will never represent or constitute a general obligation, debt or bonded indebtedness of the Issuer, the State, any political subdivision or municipality thereof, and that no right will exist to have taxes levied by the Issuer, the State, any political subdivision or municipality thereof, for the payment of principal of, premium, if any, and interest on the Bonds. The Purchaser understands that payment of the Bonds depends upon the general credit of the Company, and upon the security granted in the Indenture for the Company's obligations under the Lease.

(c) The Purchaser is an affiliate of the Company and has been afforded the opportunity to discuss the business, assets and financial position of the Company with the officers, employees and auditors of the Company; and has received such information concerning the Company and its business, assets and financial position, and the Project (as defined in the Lease) as it deems necessary in making its decision to purchase the Bonds.

(d) The Purchaser is duly and legally authorized to purchase the Bonds, has such knowledge and experience in financial and business matters (including the ownership of municipal conduit obligations) as are required for, and is capable of, evaluating the merits and risks of its purchase of the Bonds, is aware of the intended use of proceeds of the Bonds, and understands that interest on the Bonds is not excludable from gross income for federal income tax purposes.

(e) The Purchaser understands that neither the Issuer nor any of its officials, counsel, consultants or agents has undertaken to furnish any information with respect to the Company or to ascertain the accuracy of any information furnished to the Purchaser with respect to the Company, and the Purchaser has not requested or received any representations from the Issuer with respect to any such information, its accuracy or completeness. The Purchaser waives any requirement of due diligence in investigation or inquiry on the part of the Issuer, its officials, counsel, agents and consultants and all claims, actions or causes of action which the Purchaser may have from and after the date hereof against the Issuer, its officials, counsel, agents and consultants growing out of any such action which any of the foregoing took, or could have taken, in connection with the authorization, execution, delivery, and sale of the Bonds to the Purchaser or in connection with any statement or representation by the Company which induced the Purchaser to purchase the Bonds.

(f) The Purchaser has received and reviewed copies of the Bond Documents and the Bond Ordinance.

(g) This Agreement constitutes the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

(h) The Purchaser has been informed by the Company and agrees that the Indenture has not been qualified under the Trust Indenture Act of 1939, and that the Bonds (i) are not being registered or otherwise qualified for sale under (a) the Securities Act of 1933, as amended, or (b) the "Blue Sky" laws and regulations of any state, (ii) will not be listed on any stock or other securities exchange, (iii) will not carry a rating from any rating service and (iv) will not be readily marketable. The Purchaser has been informed by the Company and agrees that a legend will be placed on the Bonds certificate or any other documents evidencing ownership of the Bonds to the effect that it has not been registered under the Securities Act of 1933, as amended, or the applicable state "Blue Sky" laws and that it may only be transferred in compliance with the Indenture and applicable securities laws.

(i) The execution, delivery and performance of this Agreement by the Purchaser will not constitute a default under any other agreement by which the Purchaser is bound.

(j) The Purchaser acknowledges that its purchase of the Bonds constitutes a transaction in a bond secured by the Indenture which is, among other things, a personal property security agreement, pursuant to which the Bonds are offered and sold as a unit.

## **Section 6. Indemnification.**

(a) The Company and the Purchaser will, jointly and severally, indemnify, defend and hold harmless the Depository, as defined in the Indenture, each agent and employee of the Depository, the Issuer, each County Commission member, official, agent or employee of the Issuer and each person, if any, who has the power, directly or indirectly, to direct or cause the direction of the management and policies of the Issuer (each an "Indemnified Party" and, collectively, the "Indemnified Parties") from and against any and all losses, claims, damages, liabilities, joint or several, or expenses related thereto arising out of or in connection with or caused by any offering, sale or resale of the Bonds in violation of any federal or state securities laws or by an untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact made to any person or caused by an omission or alleged omission of any material fact in connection with the Bonds or the sale, resale or delivery thereof.

(b) In case a claim is made or any action is brought against one or more of the Indemnified Parties based upon the matters described in the preceding paragraph and in respect of which indemnity is sought against the Company or the Purchaser pursuant to the preceding paragraph, the Indemnified Party or Parties seeking indemnity shall promptly notify the Company and the Purchaser, in writing, and the Company or the Purchaser shall promptly assume or cause the assumption of the defense thereof, including the employment of counsel chosen by the



Company or the Purchaser and approved in writing by the Issuer (provided, that such approval by the Issuer shall not be unreasonably withheld), the payment of all expenses (including reasonable counsel fees and expenses) and the right to negotiate and consent to settlement. If the Company and the Purchaser fail to assume or cause the assumption of the defense of such action or to retain counsel reasonably satisfactory to the Issuer within a reasonable time after notice of the commencement of such action, the reasonable fees and expenses of counsel retained by the Indemnified Party shall be paid by the Company or the Purchaser. If any Indemnified Party is advised in a written opinion of counsel that the defenses of such Indemnified Party should be handled by separate counsel, the Company or the Purchaser shall not have the right to assume or cause the assumption of the defense of such Indemnified Party, but the Company and/or the Purchaser shall be responsible for the fees and expenses of such separate counsel (the "Separate Counsel") retained by such Indemnified Party. Notwithstanding, and in addition to, any of the foregoing, any one or more of the Indemnified Parties shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnified Party or Indemnified Parties unless the employment of such counsel has been specifically authorized in writing by the Company and the Purchaser. Neither the Company nor the Purchaser shall be liable for any settlement of any such action effected without the written consent of the Company or the Purchaser, but if settled with the written consent of the Company and the Purchaser or if there is a final judgment for the plaintiff in any such action with or without consent, the Company and the Purchaser will indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.

(c) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in this Section 6 is for any reason held to be unavailable to the Indemnified Parties in accordance with its terms, the Purchaser and the Company shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by this Section 6 incurred by the Indemnified Parties in such proportions as determined by a court having jurisdiction of the matter.

(d) The covenants and agreements of the Purchaser and the Company under this Section 6 are joint and several.

**Section 7. Conditions.** The obligation of the Purchaser to purchase the Bonds and the obligation of the Issuer to sell the Bonds are subject to satisfaction of the following conditions precedent:

(a) The representations of the Issuer, the Purchaser and the Company in this Agreement will be true and correct on and as of the date the Bonds are issued (the "Closing Date") as if made on and as of the Closing Date.

(b) As of the Closing Date, no Default (as defined in the Indenture) or Event of Default (as defined in the Lease) will have occurred and be continuing, and no event will have occurred and be continuing which, with the lapse of time or the giving of notice or both, would constitute a Default or Event of Default.

(c) On or before the Closing Date, all actions required to be taken as of the Closing Date in connection with the Bonds, the Bond Ordinance and the Bond Documents by the Issuer, the Purchaser and the Company will have been taken, and the Issuer, the Purchaser and the Company will each have performed and complied with all agreements, covenants and conditions required to be performed or complied with by the Bond Ordinance and the Bond Documents.

(d) The Indenture will have been duly executed and delivered by the Issuer, the Purchaser and the Depository. The Lease will have been duly executed by the Issuer and the Company. Each of the Bond Documents, the Bond Ordinance and all other official action of the Issuer relating to the Bonds, the Project (as defined in the Lease) and the Bond Documents will be in full force and effect on the Closing Date and will not have been amended, modified or supplemented on or before the Closing Date.

(e) The Issuer, the Company and the Purchaser will have received the following, each dated the Closing Date:

(i) the approving opinion of Rodey, Dickason, Sloan, Akin & Robb, P.A., Bond Counsel, substantially in the form of Exhibit A;

(ii) the opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A., counsel to the Company, substantially in the form of Exhibit B;

(iii) the opinion of the Attorney for the Issuer, substantially in the form set forth in Exhibit C;

(iv) the opinion of counsel to the Purchaser, substantially in the form set forth in Exhibit D;

(v) a certificate of and with reference to the Issuer and signed by a duly authorized officer of the Issuer to the effect set forth in subsections (a) and (c) of this Section 7 with respect to the Issuer;

(vi) a certificate of and with reference to the Company signed by a duly authorized officer of the Company to the effect set forth in subsections (a), (b) and (c) of this Section 7;

(vii) a certificate of and with reference to the Purchaser signed by a duly authorized officer of the Purchaser to the effect set forth in (a) and (c) of this Section 7;

(viii) a certificate of the Depository signed by a duly authorized officer of the Depository to the effect that (a) he or she is an authorized officer of the Depository; (b) the Indenture has been duly executed and delivered by the Depository; (c) the Depository has all necessary corporate powers required to execute, deliver and perform its obligations under the Indenture; and (d) to the best of his or her knowledge, the execution and delivery by the Depository of the Indenture and the performance by the Depository of its obligations under the Indenture will not conflict with or constitute a breach of or default under any law, administrative regulation,

consent decree or any agreement or other instrument to which the Depository is subject or by which the Depository is bound;

(ix) such additional legal opinions, certificates, proceedings, instruments and other documents as any such party or Bond Counsel may reasonably request; and

(x) an investment intent letter from the Purchaser in the form of the Certificate of Qualified Investor attached to the Indenture.

If any conditions to the obligations of the Purchaser or the Issuer under this Agreement are not satisfied and if the satisfaction of such conditions is not waived by the Purchaser and the Issuer, then, at the option of the Purchaser or the Issuer, respectively in accordance with their interests (1) the Closing Date will be postponed for such period, not to exceed five business days, as may be necessary for such conditions to be satisfied or (2) the obligations of the Purchaser and the Issuer under this Agreement will terminate, and neither the Purchaser nor the Issuer will have any further obligations or liabilities under this Agreement.

**Section 8. Survival.** All agreements, covenants and representations and all other statements of the Issuer and the Company and their respective officers set forth in or made pursuant to this Agreement will survive the Closing Date and the delivery of and payment for the Bonds.

**Section 9. Notices.** Any notice, demand, direction, request, consent, approval, report or other instrument authorized or required by any of the Bond Documents to be executed, given or filed will be in writing and will be deemed to have been sufficiently given or filed for all purposes of the Bond Documents when delivered by hand delivery or on the third Business Day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer: Quay County, New Mexico  
Attn: County Clerk  
300 South Third Street  
P.O. Box 1246  
Tucumcari, NM 88401  
Telephone: (575) 461-0510  
Fax: (575) 461-0513

with a copy to: Rodey, Dickason, Sloan, Akin & Robb, P.A.  
119 E. Marcy Street, Suite 200  
P.O. Box 1357  
Santa Fe, NM 87501 (87504)  
Attn: Luis G. Carrasco, Esq.  
Tel: (505) 954-3905  
E-mail: [LCarrasco@rodey.com](mailto:LCarrasco@rodey.com)

If to the Purchaser: Caprock Wind Investments, LLC  
6688 North Central Expressway, Suite 500

Dallas, TX 75206

If to the Company:

Caprock Wind, LLC  
6688 North Central Expressway, Suite 500  
Dallas, TX 75206  
Attn: Asset Management  
E-mail: [AssetMgmt@leewardenergy.com](mailto:AssetMgmt@leewardenergy.com)

with a copy to:

Modrall, Sperling, Roehl, Harris & Sisk, P.A.  
500 Fourth Street NW, Suite 1000  
Albuquerque, NM 87102  
Attn: Peter Franklin, Esq.  
Tel: (505) 984-2856  
E-mail: [pfranklin@modrall.com](mailto:pfranklin@modrall.com)

Any Party may, by notice to each of the other Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent.

**Section 10. Remedies.** No right or remedy conferred on any party in this Agreement is intended to be exclusive of any other right or remedy. No delay or omission of any party to exercise any such right or remedy may be exercised from time to time and as often as the relevant party may deem expedient. No waiver by any party of any right or remedy with respect to any Default or Event of Default will extend to or affect any other existing or subsequent Default or Event of Default.

**Section 11. Severability.** In case any one or more of the provisions of this Agreement or of the Bonds are for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of any of this Agreement or of the Bonds, but this Agreement and the Bonds will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the Issuer contained in this Agreement or the Bonds are for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of the Issuer to the full extent permitted by law.

**Section 12. Obligations of Issuer Not Obligations of Officials Individually.** No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bond will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

**Section 13. Limitation of Issuer's Liability.** No agreements or provisions contained in this Agreement nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of the Bond proceeds or the issuance, sale and delivery of the Bond will give rise to any pecuniary liability of the Issuer, its officials, employees, agents or members of its

governing body or constitute a charge against the Issuer's general credit, or will obligate the Issuer financially in any way, except with respect to the Basic Rent available under the Lease and the Indenture provided by the Company and pledged to the payment of the Bonds, and their application as provided under the Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in this Agreement or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officials, employees, agents and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the funds available under the Lease or the Indenture provided by the Company and pledged to the payment of the Bonds. None of the provisions of the Bond Documents will require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under the Bond Documents. Nothing in this Agreement will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement in any of the Bond Documents; provided, that no costs, expenses or other monetary relief will be recoverable from the Issuer except as may be payable from the funds available under the Lease or the Indenture provided by the Company and pledged to the payment of the Bonds.

**Section 14. Title, Headings.** The title and headings of the articles and sections of this Purchase Agreement have been used for convenience only and do not modify or restrict any of the terms or provisions hereof.

**Section 15. Execution in Counterparts.** This Agreement may be executed in counterparts, all of which taken together will constitute one instrument.

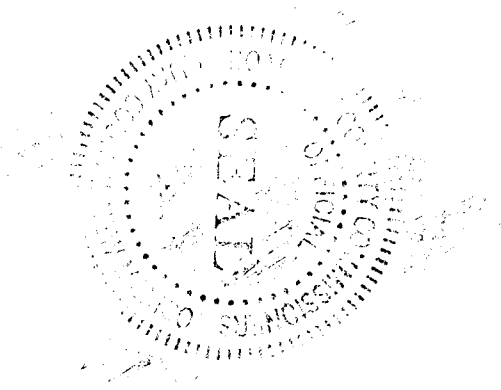
**Section 16. Applicable Law.** The validity, construction and effect of this Agreement will be governed by the law of the State of New Mexico.

**Section 17. Expenses.** All costs and expenses relating to the preparation, issuance, delivery and sale of the Bonds and the preparation, execution and delivery of the Bond Ordinance, the Bond Documents and all other agreements, documents and instruments related to the transactions contemplated by the Bond Documents, including the fees and expenses of Issuer's outside review counsel, are to be paid by the Company.


**Section 18. Performance of the Parties.** The respective obligations of the parties hereunder are subject to the performance by each other party hereto of its own obligations hereunder.

*[Signature pages follow]*

DATED AS OF JULY 10, 2024.

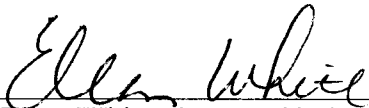


BOARD OF COUNTY COMMISSIONERS  
QUAY COUNTY, NEW MEXICO

By:   
Robert Lopez, Chair

(SEAL)

ATTEST:

By:   
Ellen White, County Clerk

*(Issuer Signature Page to Bond Purchase Agreement)*

DATED: JULY 10, 2024

CAPROCK WIND INVESTMENTS, LLC,  
as Purchaser

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CAPROCK WIND, LLC  
as Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*(Purchaser and Company Signature Page to Bond Purchase Agreement)*

**Exhibit A**

Form of Opinion of Bond Counsel

*[Subject to Review and Approval of Opinions Committee]*

July 10, 2024

Quay County, New Mexico  
Tucumcari, New Mexico

Caprock Wind Investments, LLC  
Dallas, Texas

Caprock Wind, LLC  
Dallas, Texas

BOKF, NA  
Albuquerque, New Mexico

Re: \$105,000,000 Quay County, New Mexico Taxable Industrial Revenue Bonds (Caprock Wind Phase II), Series 2024B.

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance and sale by Quay County, New Mexico (the “Issuer”) of its Taxable Industrial Revenue Bonds (Caprock Wind Phase II), Series 2024B, in the maximum principal amount of \$105,000,000 (the “Bonds”).

The Bonds will bear interest on the outstanding principal amount at a per annum rate equal to five and 00/100 percent (5.00%). Interest on the Bonds is payable each July 10, beginning July 10, 2025, with the outstanding principal amount of the Bonds plus all interest thereon due and payable in full at their final maturity.

The Bonds are subject to redemption prior to maturity as described in the Indenture dated as of July 10, 2024 (the “Indenture”) among the Issuer, Caprock Wind Investments, LLC (the “Purchaser”), Caprock Wind, LLC (the “Company”) and BOKF, NA (the “Depository”).

The principal of, interest on and redemption price of the Bonds are not general obligations of the Issuer but special obligations payable solely from the revenues pledged under the Indenture. Neither the faith and credit nor the taxing power of the State of New Mexico or of any of its political subdivisions or municipalities, including the Issuer, is pledged to the payment of the principal of, interest on or redemption price of the Bonds. The principal of, interest on and redemption price of the Bonds will never constitute a debt or indebtedness of the Issuer within the



meaning of any provision or limitation of the constitution or laws of the State of New Mexico. The Bonds will never constitute nor give rise to a pecuniary liability of the State of New Mexico, any of its political subdivisions or of the Issuer or a charge against their general credit or taxing powers.

In connection with the issuance of the Bonds, we have examined (a) a certified copy of an ordinance passed by the Quay County Commission on May 28, 2024 authorizing the issuance of the Bonds, pursuant to and under the provisions of NMSA 1978, Sections 4-59-1 to-16 (1975, as amended through 2023) (the “Act”); (b) the executed Bonds; (c) executed counterparts of the Indenture, the Lease Agreement dated as of July 10, 2024 (the “Agreement”) between the Issuer and the Company and the Bond Purchase Agreement dated the date hereof (the “Bond Purchase Agreement” and, together with the Indenture and the Agreement, the “Bond Documents”) among the Purchaser, the Issuer and the Company; and (d) such other opinions, documents, certificates and letters as we deemed relevant in rendering this opinion.

Based on such examination, in our opinion:

1. The Issuer is a political subdivision of the State of New Mexico and has the power and authority, under the constitution and laws of the State of New Mexico, including the Act, to execute and deliver the Bond Documents, and to authorize, execute, issue and deliver the Bonds.
2. The terms and provisions of the Bonds and the Bond Documents comply in all respects with the requirements of the Act.
3. The Bonds have been validly authorized, executed and issued in accordance with the law of New Mexico and represent the valid and binding special obligation of the Issuer.
4. The Bond Documents have been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties to the Bond Documents, constitute legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally and general principles of equity.
5. Neither the offer nor sale of the Bonds to the Purchaser pursuant to the Bond Documents is required to be registered under any federal or New Mexico securities law. The Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.
6. The issuance and sale of the Bonds to the Purchaser is not subject to Rule 15c2-12 of the Securities and Exchange Commission.

Our opinion in paragraph 4 above, insofar as it relates to the enforceability of the Indenture, is subject to the following qualifications:

- (i) New Mexico law may require that notice of acceleration be given to the Company before foreclosure of the Indenture. *Comer v. Hargrave*, 1979-NMSC-059, 93 N.M. 170, 598 P.2d 213.
- (ii) We express no opinion as to title to or the priority of any lien on or security interest in any real or personal property.
- (iii) NMSA 1978, Section 42A-1-24(C) (2001) provides that a court which has heard and adjudicated a condemnation proceeding has the power over the condemnee's compensation to "make orders as the court deems necessary with respect to encumbrances, liens, rents, insurance and other just and equitable charges."

The foregoing opinions represent our legal judgment based upon a review of existing legal authorities that we deem relevant to render such opinions and are not a guarantee of a result.

Very truly yours,

**Exhibit B**

Form of Opinion of Counsel to the Company

July 10, 2024

Quay County, New Mexico  
Tucumcari, New Mexico

Caprock Wind, LLC  
Dallas, Texas

BOKF, NA  
Albuquerque, New Mexico

Ladies and Gentlemen:

We have represented Caprock Wind, LLC (the “Company”) in connection with (i) the Lease Agreement dated as of July 1], 2024 (the “Agreement”) between Quay County, New Mexico (the “Issuer”) and the Company, (ii) the Bond Purchase Agreement (the “Bond Purchase Agreement”) dated the date hereof, among Caprock Wind Investments, LLC (the Purchaser”), the Issuer and the Company, pursuant to which the Purchaser has agreed to purchase the Issuer’s Taxable Industrial Revenue Bonds (Caprock Wind Phase II), Series 2024B, in the maximum principal amount of \$105,000,000 to be issued under the Indenture dated as of July 10, 2024 (the “Indenture”) among the Issuer, the Purchaser, the Company and the Depository, and (iii) the Indenture. We have reviewed executed copies of the Bond Documents (as defined below), and certificates of officers of the Company and public officials and we have made such other investigations of law and fact as we have deemed necessary. The Agreement, the Indenture and the Bond Purchase Agreement are referred to herein as the Bond Documents.

Based upon the foregoing, in our opinion:

1. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware, is duly registered as a foreign limited liability company under the laws of New Mexico and has duly authorized the execution, delivery and performance of the Agreement, the Indenture and the Bond Purchase Agreement.

2. The execution, delivery and performance by the Company of the Agreement, the Indenture and the Bond Purchase Agreement will not conflict with, contravene, violate or constitute a breach of or default under the articles of organization or operating agreement of the Company or any law, rule, regulation, ordinance, or, to our knowledge, based on a certificate of an officer of the Company, any order, consent, decree, agreement or instrument to which the Company is a party or by which it or its properties, including the Project Property as defined in the Lease, is bound.

3. All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Company of the Agreement, the Indenture and the Bond Purchase Agreement have been obtained and are in full force and effect.

4. There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to our knowledge, threatened against the Company, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bond or the execution and delivery of any of the Bond Documents, (ii) in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents, or (iii) questions the authority of the Company to own or operate any of the Project Property, as defined in the Lease.

5. The Agreement, the Indenture and the Bond Purchase Agreement have been duly authorized, executed and delivered and constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

The opinions expressed in this opinion letter are limited to the federal laws of the United States, the laws of the State of New Mexico, and the Limited Liability Company Act of the State of Delaware.

Very truly yours,

**Exhibit C**

Form of Opinion of Counsel to the Issuer

July 10, 2024

Quay County, New Mexico  
300 South Third Street  
P.O. Box 1246  
Tucumcari, NM 88401

Caprock Wind Investments, LLC  
6688 North Central Expressway  
Suite 500  
Dallas, TX 75206

Caprock Wind, LLC  
6688 North Central Expressway  
Suite 500  
Dallas, TX 75206

\$105,000,000  
Quay County, New Mexico  
Taxable Industrial Revenue Bonds  
(Caprock Wind Phase II)  
Series 2024B

Ladies and Gentlemen:

This opinion is being delivered in connection with the issuance by Quay County, New Mexico (the “County” or “Issuer”) of its \$105,000,000 Taxable Industrial Revenue Bonds (Caprock Wind Phase II), Series 2024B (the “Bonds”). The Bonds have been issued and delivered pursuant to an in accordance with the provisions of Ordinance No. 57 adopted on May 28, 2024 (the “Bond Legislation”).

Terms which are not defined in this opinion have the same meanings as set forth in the Bond Legislation unless the context requires otherwise.

It is the opinion of the undersigned that, as of the date hereof:

1. The Issuer is a duly organized and validly existing political subdivision of the State of New Mexico (the “State”) under the Constitution and laws of the State.
2. County Ordinance No. 57 (the “Bond Ordinance”) was duly adopted by the Quay County Board of County Commissioners (the “Commission”) on May 28, 2024, in accordance with all applicable laws and has not been repealed or rescinded.
3. Without opining as to the legality, validity or enforceability of the Bonds, the Indenture, the Lease Agreement and the Bond Purchase Agreement (all as defined in the Bond Ordinance), the adoption of the Bond Ordinance by the Commission will not violate any provision of the Constitution or laws of the State.

**Exhibit D**

Form of Opinion of Counsel to the Purchaser

July 10, 2024

Quay County, New Mexico  
Tucumcari, New Mexico

Caprock Wind Investments, LLC  
Dallas, Texas

BOKF, NA  
Albuquerque, New Mexico

Ladies and Gentlemen:

We have acted as counsel to Caprock Wind Investments, LLC (the “Purchaser”) in connection with the Indenture dated as of July 10, 2024 (the “Indenture”) among BOKF, NA, as depositary (the “Depositary”), Quay County, New Mexico (the “Issuer”), Caprock Wind, LLC (the “Company”) and the Purchaser, and the Bond Purchase Agreement (the “Bond Purchase Agreement”) dated the date hereof among the Purchaser, the Issuer and the Company, pursuant to which the Purchaser has agreed to purchase the Issuer’s Taxable Industrial Revenue Bonds (Caprock Wind Phase II), Series 2024B, in the maximum principal amount of \$105,000,000 to be issued under the Indenture. The Indenture, the Bond Purchase Agreement, and the Lease Agreement dated as of July 10, 2024 between the Company and the Issuer are referred to herein as the “Bond Documents.” In connection with this transaction, we have examined executed copies of the Bond Documents, certificates of officers of the Purchaser and certificates of public officials and have made such other investigations of law and fact as we have deemed necessary.

Based upon the foregoing, in our opinion:

1. The Purchaser is a limited liability company duly organized and validly existing and in good standing under the laws of the State of New Mexico.
2. The execution, delivery and performance by the Purchaser of the Indenture and the Bond Purchase Agreement will not conflict with, contravene, violate or constitute a breach of or default under the Articles of Incorporation or the bylaws of the Purchaser or any law, rule, regulation, ordinance, or, to our knowledge, based on a certificate of an officer of the Purchaser, any order, consent, decree, agreement or instrument to which the Purchaser is a party or by which it or its property is bound.
3. All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Purchaser of the Indenture and the Bond Purchase Agreement have been obtained and are in full force and effect.

4. To my knowledge, no litigation is now pending or threatened against the Issuer which seeks to or does restrain or enjoin the issuance or delivery of the Bonds, or in any manner questions the authority or proceedings for the issuance of the Bonds.

Very truly yours,

\_\_\_\_\_  
Quay County Attorney

4. There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to our knowledge, threatened against the Purchaser, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents, or (ii) in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents.

5. The Indenture and the Bond Purchase Agreement constitute legal, valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

This opinion has been delivered at your request for the purposes in connection with the Bond Documents. Without our prior written consent, this opinion is not to be utilized or quoted for any other purpose and no one other than you is entitled to rely thereon. The opinions expressed in this opinion letter are limited to the federal laws of the United States, the laws of the State of New Mexico.

Very truly yours,





# QUAY COUNTY GOVERNMENT

FISCAL YEAR 2024-2025

## RESOLUTION NO. 1

PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM  
ADMINISTERED  
BY NEW MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS, **Quay County** and the New Mexico Department of Transportation have entered into a cooperative grant under the Local Government Road Fund Program for a local road project.

WHEREAS, the total cost of the project will be \$ **325,713.00** to be funded in proportional share by the parties hereto as follows:

CN L400679' Project Funding	Department Share	Public Entity Share	Total Project Cost
<b>Funding Source 1</b>	<b>75%</b>	<b>25%</b>	<b>100%</b>
<b><u>FY 2025 Local Government Road Fund</u></b>	<b>\$244,285.00</b>	<b>\$81,428.00</b>	<b>\$325,713.00</b>
Planning, design, construction, reconstruction, pavement rehabilitation, drainage Improvements and miscellaneous construction			

WHEREAS, **Quay County** shall pay all costs, which exceed the total amount of \$ **325,713.00**.

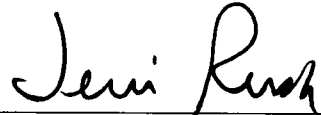
NOW THEREFORE, be it resolved in official session that **Quay County** determines, resolves, and orders as follows:

- a. That the project for this Cooperative Agreement is adopted and has priority standing.
- b. The Cooperative Agreement terminates on **12/31/2025**, and **Quay County** incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.
- c. The agent of the Quay County, Road Superintendent Stephen Salas, shall have signature authority to bind the Quay County to the terms and conditions of this Cooperative Agreement, and shall have authority to request in writing and secure extensions to the Cooperative Agreement on behalf of the Quay County in the manner set forth by the Cooperative Agreement.

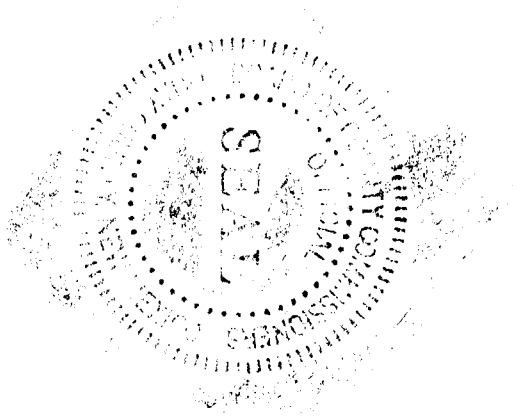
NOW THEREFORE, be it resolved by the **Quay County** to enter into Cooperative Agreement Control Number HW2L400679 with the New Mexico Department of Transportation for LGRF Project for fiscal year **2025 Various County Roads - Planning, design, construction management, construction, reconstruction, pavement rehab, drainage improvements and miscellaneous construction** within the control of **Quay County** in the State of New Mexico

**DONE AND RESOLVED** this 8<sup>th</sup> day of July 2024.

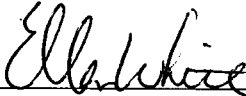
  
\_\_\_\_\_  
Robert Lopez, Chairman

  
\_\_\_\_\_  
Jerri Rush, Member

  
\_\_\_\_\_  
Brian Fortner, Member



Attest:

  
\_\_\_\_\_  
Ellen White, Quay County Clerk



# QUAY COUNTY GOVERNMENT

FISCAL YEAR 2024-2025

## RESOLUTION NO. 2

PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM  
AND REQUEST FOR MATCH WAIVER ADMINISTERED  
BY NEW MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS, **Quay County** and the New Mexico Department of Transportation enter into a Cooperative Agreement.

**WHERE AS**, the total cost of the project will be **\$325,713.00** to be funded in proportional share by the parties hereto as follows:

- a. New Mexico Department of Transportation's share shall be 75% or **\$ 244,285.00**

and

- b. **Quay County's** proportional matching share shall be 25% or **\$ 81,428.00**

TOTAL PROJECT COST IS **\$ 325,713.00**

Quay County shall pay all costs, which exceed the total amount of **\$ 325,713.00**

WHEREAS, NMAC 27.3.8 allows Public Entities who are experiencing financial hardship to apply for a Match Waiver of all or part of the above-mentioned Public Entity match.

WHEREAS, **Quay County** qualifies for the Match Waver because Quay County has a limited tax base, which limits the funding for meeting the proportional matching share; and, a fund exists in the NMDOT appropriated by the New Mexico State Legislature for Public Entities in need of "hardship" match money.

NOW, therefore, be it resolved in official session that **Quay County** determines, resolves, and orders as follows:

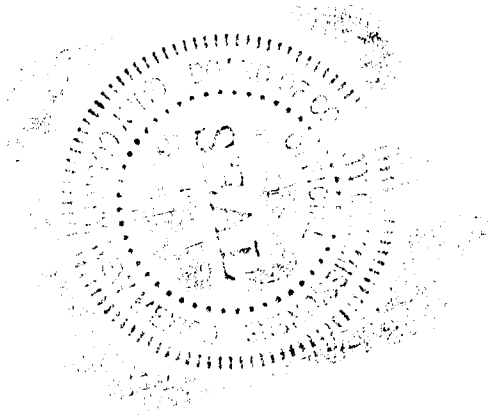
That **Quay County** requests a Match Waiver in the amount of **\$ 81,428.00** for LGRF Project for year 2024-2025 to

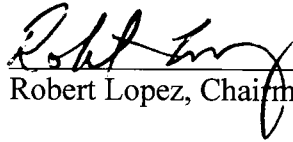
**SCOPE:** Plan design, construction management, construction, reconstruction, pavement rehab, drainage improvements, blading and shaping, and miscellaneous construction to various county roads

**TERMINI:** Quay Road 63 (Blocks 4150-4200) .50 mile  
Quay Road AP (Blocks 6300-6400) 1.00 mile  
Quay Road AD (Blocks 6300-6920) 6.20 miles

Within the control of **Quay County** in Quay County, New Mexico.

**DONE AND RESOLVED** this 8<sup>th</sup> day of July 2024.




  
Robert Lopez, Chairman

  
Jerri Rush, Member

  
Brian Fortner, Member

Attest:

  
Ellen White, Quay County Clerk



# QUAY COUNTY GOVERNMENT

FISCAL YEAR 2024-2025

## RESOLUTION NO. 3

PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM  
ADMINISTERED  
BY NEW MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS, **Quay County** and the New Mexico Department of Transportation have entered into a cooperative grant under the Local Government Road Fund Program for a local road project.

WHEREAS, the total cost of the project will be \$ **136,133.00** to be funded in proportional share by the parties hereto as follows:

CN L400665 Project Funding	Department Share	Public Entity Share	Total Project Cost
<b>Funding Source 1</b>	75%	25%	100%
<b><u>FY 2025 Local Government Road Fund</u></b>  Planning, design, construction, reconstruction, pavement rehabilitation, drainage Improvements and miscellaneous construction	\$102,100.00	\$34,033.00	\$136,133.00

WHEREAS, the **Quay County** shall pay all costs, which exceed the total amount of \$ **136,133.00**.

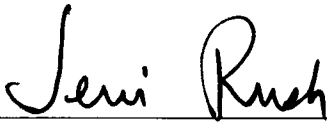
NOW THEREFORE, be it resolved in official session that **Quay County** determines, resolves, and orders as follows:

- a. That the project for this Cooperative Agreement is adopted and has priority standing.
- b. The Cooperative Agreement terminates on **12/31/2025**, and **Quay County** incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.
- c. The agent of the **Quay County**, Road Superintendent, Stephen Salas, shall have signature authority to bind the Quay County to the terms and conditions of this Cooperative Agreement, and shall have authority to request in writing and secure extensions to the Cooperative Agreement on behalf of the Quay County in the manner set forth by the Cooperative Agreement.

NOW THEREFORE, be it resolved by the **Quay County** to enter into Cooperative Agreement Control Number hw2 L400665 with the New Mexico Department of Transportation for LGRF Project for fiscal year **2025 Various County Roads - Planning, design, construction management, construction, reconstruction, pavement rehab, drainage improvements and miscellaneous construction** within the control of **Quay County** in the State of New Mexico

**DONE AND RESOLVED** this 8<sup>th</sup> day of July 2024.

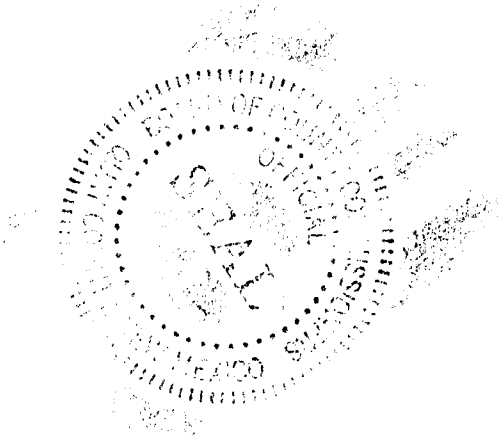
  
\_\_\_\_\_  
Robert Lopez, Chairman

  
\_\_\_\_\_  
Jerri Rush, Member

  
\_\_\_\_\_  
Brian Fortner, Member

Attest:

  
\_\_\_\_\_  
Ellen White, Quay County Clerk





# QUAY COUNTY GOVERNMENT

FISCAL YEAR 2024-2025

## RESOLUTION NO. 4

### PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM AND REQUEST FOR MATCH WAIVER ADMINISTERED BY NEW MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS, **Quay County** and the New Mexico Department of Transportation enter into a Cooperative Agreement.

WHERE AS, the total cost of the project will be **\$136,133.00** to be funded in proportional share by the parties hereto as follows:

a. New Mexico Department of Transportation's share shall be 75% or **\$ 102,100.00**

and

b. **Quay County's** proportional matching share shall be 25% or **\$ 34,033.00**

TOTAL PROJECT COST IS **\$ 136,133.00**

Quay County shall pay all costs, which exceed the total amount of **\$ 136,133.00**

WHEREAS, NMAC 27.3.8 allows Public Entities who are experiencing financial hardship to apply for a Match Waiver of all or part of the above-mentioned Public Entity match.

WHEREAS, **Quay County** qualifies for the Match Waver because Quay County has a limited tax base, which limits the funding for meeting the proportional matching share; and, a fund exists in the NMDOT appropriated by the New Mexico State Legislature for Public Entities in need of "hardship" match money.

NOW, therefore, be it resolved in official session that **Quay County** determines, resolves, and orders as follows:

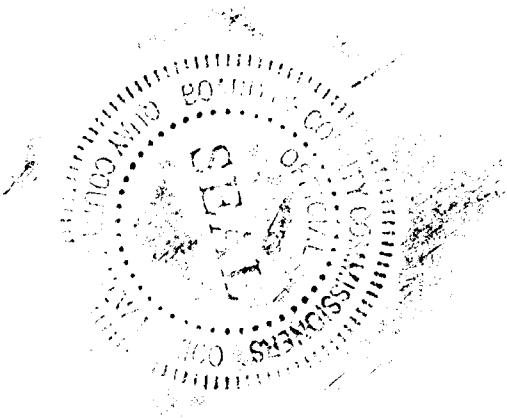
That **Quay County** requests a Match Waiver in the amount of **\$ 34,033.00** for LGRF Project for year 2024-2025 to

**SCOPE:** Plan design, construction management, construction, reconstruction, pavement rehab, drainage improvements, blading and shaping, and miscellaneous construction to various county roads

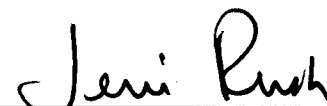
**TERMINI:** Quay Road 62.9 (Blocks 4150-4312) 1.7 miles

Within the control of **Quay County** in Quay County, New Mexico.

**DONE AND RESOLVED** this 8<sup>th</sup> day of July 2024.



  
Robert Lopez, Chairman

  
Jerri Rush, Member

  
Brian Fortner, Member

Attest:

  
Ellen White, Quay County Clerk





# QUAY COUNTY GOVERNMENT

FISCAL YEAR 2024-2025

## RESOLUTION NO. 5

PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM  
ADMINISTERED  
BY NEW MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS, **Quay County** and the New Mexico Department of Transportation have entered into a cooperative grant under the Local Government Road Fund Program for a local road project.

WHEREAS, the total cost of the project will be \$ **163,517.00.00** to be funded in proportional share by the parties hereto as follows:

CN L400672 Project Funding	Department Share	Public Entity Share	Total Project Cost
<b>Funding Source 1</b>	75%	25%	100%
<b><u>FY 2025 Local Government Road Fund</u></b>  Planning, design, construction, reconstruction, pavement rehabilitation, drainage Improvements and miscellaneous construction	\$122,638.00	\$40,879.00	\$163,517.00

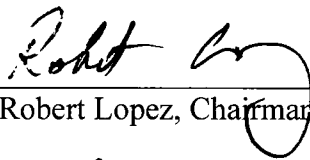
WHEREAS, the **Quay County** shall pay all costs, which exceed the total amount of \$ **163,517.00**

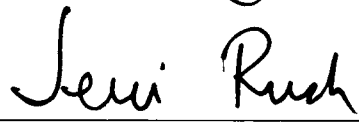
NOW THEREFORE, be it resolved in official session that **Quay County** determines, resolves, and orders as follows:

- a. That the project for this Cooperative Agreement is adopted and has priority standing.
- b. The Cooperative Agreement terminates on **12/31/2025**, and **Quay County** incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.
- c. The agent of the Quay County, Road Superintendent Stephen Salas, shall have signature authority to bind the Quay County to the terms and conditions of this Cooperative Agreement, and shall have authority to request in writing and secure extensions to the Cooperative Agreement on behalf of the Quay County in the manner set forth by the Cooperative Agreement.

NOW THEREFORE, be it resolved by the **Quay County** to enter into Cooperative Agreement Control Number HW2L400672 with the New Mexico Department of Transportation for LGRF Project for fiscal year **2025 Various County Roads - Planning, design, construction management, construction, reconstruction, pavement rehab, drainage improvements and miscellaneous construction** within the control of **Quay County** in the State of New Mexico

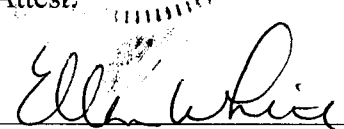
**DONE AND RESOLVED** this 8<sup>th</sup> day of July 2024.

  
\_\_\_\_\_  
Robert Lopez, Chairman

  
\_\_\_\_\_  
Jerri Rush, Member

  
\_\_\_\_\_  
Brian Fortner, Member



Attest:  
  
\_\_\_\_\_  
Ellen White, Quay County Clerk

Contract No. \_\_\_\_\_  
 Vendor No. 0000054395  
 Control No. HW2L400665

**LOCAL GOVERNMENT ROAD FUND  
 COOPERATIVE AGREEMENT**

**This Agreement** is between the **New Mexico Department of Transportation** (Department) and **Quay County** (Public Entity), collectively referred as the “parties.” This Agreement is effective as of the date of the last party to sign it on the signature page below.

Pursuant to NMSA 1978, Sections 67-3-28 and 67-3-28.2, and State Transportation Commission Policy No. 44, and

Pursuant to the Public Entity’s resolution that assumes ownership, liability, and maintenance responsibility for the project scope, or related amenities, and required funding to support the Project identified herein, the parties agree as follows:

**1. Purpose.**

The purpose of this Agreement is to provide Local Government Road Funds to the Public Entity for the Project, as described in Control No. L400665, and the Public Entity’s resolution attached as **Exhibit C**. See:

Planning, design, construction, reconstruction, pavement rehabilitation, drainage Improvements and miscellaneous construction

The Project is a joint and coordinated effort for which the parties each have authority or jurisdiction. This Agreement specifies and delineates the rights and duties of the parties.

**2. Project Funding.**

- a. The estimated total cost for the Project is **One Hundred Thirty Six Thousand One Hundred Thirty Three Dollars and No Cents (\$136,133)** to be funded in proportional share by the parties as follows:

<b>Project Funding</b>	<b>Department Share</b>	<b>Public Entity Share</b>	<b>Total Project Cost</b>
<b>Funding Source 1</b>	<b>75%</b>	<b>25%</b>	
<b><u>FY 2025 Local Government Road Fund</u></b>	<b>\$102,100</b>	<b>\$34,033</b>	<b>\$136,133</b>
<b>For the purpose stated above in Section 1.</b>			
<b>Total Project Cost</b>			<b>\$136,133</b>

- b. The Public Entity shall pay all Project costs, which exceed the Total Project Cost.
- c. Any costs incurred by the Public Entity prior to this Agreement are not eligible for reimbursement and are not included in the amount listed in this Section 2.

**3. The Department Shall:**

Pay the Department's Share of Project Funding identified in Section 2, Paragraph a, to the Public Entity in a single lump sum payment after:

- a. Receipt of a cover letter requesting funds;
- b. Receipt of a Notice of Award and Notice to Proceed;
- c. Receipt of Estimated Summary of Costs and Quantities;
- d. Verification of available Local Government Road Funds and Public Entity's local matching funds identified in Section 2, Paragraph a; and
- e. All required documents must include Department Project and Control Number.

**4. The Public Entity Shall:**

- a. Act in the capacity of lead agency for the Project described in Section 1.
- b. Submit an estimate of the Project, including work to be performed and cost to the District Engineer within thirty (30) calendar days of execution of this Agreement, or as otherwise agreed to in writing by the parties.
- c. Be solely responsible for all proportional matching funds identified in Section 2. Certify that these matching funds have been appropriated, budgeted, and approved for expenditure prior to execution of this Agreement.
- d. Pay all costs, and perform and supply or contract for all labor and material, for the purpose as described in Section 1 and the Project estimate approved by the District Engineer.
- e. Procure and award any contract in accordance with applicable procurement law, rules, regulations and ordinances.
- f. In accordance with project parameters, assume the lead planning and implementation role and sole responsibility for environmental, archaeological, utility clearances; railroad and Intelligent Transportation System (ITS) clearances; right-of-way acquisition; project development and design; and project construction and management.
- g. Cause all designs and plans to be performed under the direct supervision of a Registered New Mexico Professional Engineer, when applicable, as approved by the Department.
- h. Obtain all required written agreements or permits, as applicable, from all public and private entities.
- i. Allow the Department to inspect the Project to confirm that the Project is constructed in accordance with the provisions of this Agreement. Disclosures of any failure to meet such requirements and standards as identified by the Department, will result in termination for default, including without limitation the Public Entity's costs for funding, labor, equipment and materials.
- j. Complete the project within eighteen (18) months of approval of funding by the State Transportation Commission.
- k. Within thirty (30) calendar days of completion, provide written certification that all work under this Agreement was performed in accordance with either the New Mexico Department of Transportation's Standard Specification, Current Edition; American Public Works Association (APWA) Specifications; Department approved Public Entity

established Specifications; or Department Specifications established for Local Government Road Fund projects, by submitting the **Project Certification of Design, Construction, and Cost form**, attached as **Exhibit B**.

- l. Within thirty (30) calendar days of completion, furnish the Department an **AS BUILT Summary of Costs and Quantities** form, attached as **Exhibit C**. The report should reflect the total cost of the Project as stated in the **Project Certification of Design, Construction, and Cost form**.
- m. Failure to provide the **Project Certification of Design, Construction, and Cost form** and an **AS BUILT Summary of Costs and Quantities** report within thirty (30) calendar days of Project completion is a material breach of this Agreement and Public Entity shall reimburse to the Department all funds disbursed in accordance with this Agreement.
- n. Upon completion, maintain all Public Entity facilities that were constructed or reconstructed under this Agreement.

**5. Both Parties Agree:**

- a. Upon termination of this Agreement any remaining property, materials, or equipment belonging to the Department will be accounted for and disposed of by the Public Entity as directed by the Department.
- b. Any unexpended or unencumbered balance from the Local Government Road Fund appropriated for this Project reverts to the Department. These balances, if any, must be reimbursed to the Department within thirty (30) calendar days of project completion or expiration of this Agreement, whichever occurs first.
- c. This Project is not being incorporated into the State Highway System and the Department is not assuming maintenance responsibility or liability.
- d. Pursuant to NMSA 1978, Section 67-3-28.2, Local Government Road Funds granted under this provision cannot be used by the Public Entity to meet a required match under any other program.
- e. As applicable for state-funded projects, the provisions of the Tribal/Local Public Agency (T/LPA) State Funding Handbook (Current Edition), and for projects with federal funds, the provisions of the Tribal/Local Public Agency (T/LPA) Federal Funding Handbook (Current Edition), are incorporated by reference and control the contractual rights and obligations of the parties unless in conflict with the specific terms expressed in this Agreement or any amendments.

**6. Term.**

This Agreement becomes effective upon signature of all Parties. The effective date is the date when the last party signed the Agreement on the signature page below. This Agreement terminates on **12/31/2025**. In the event an extension to the term is needed, the Public Entity shall provide through a duly authorized agent written notice along with detailed justification to the Department sixty (60) calendar days prior to the expiration date to ensure timely processing of an Amendment.

**7. Termination.**

- a. If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement by providing thirty (30) calendar days written notice.
- b. The Department may terminate this Agreement if the funds identified in Section 2 have not been contractually committed within one year from the effective date of this Agreement.

- c. If sufficient appropriations and authorizations are not made, this Agreement will terminate immediately upon written notice of the Department to the Public Entity.
- d. Neither party has any obligation after termination, except as stated in Sections 4, 5, and 16.

**8. Third Party Beneficiary.**

It is not intended by any of the provisions of this Agreement to create in the public or any member of the public a third party beneficiary or to authorize anyone not a party to the Agreement to maintain suit for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

**9. Liability.**

As between the Department and Public Entity, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, *et seq.*, and other applicable law.

**10. Contractors Insurance Requirements.**

The Public Entity shall require contractors and subcontractors hired for the Project to have a general liability insurance policy, with limits of liability of at least \$1,000,000 per occurrence. The Department is to be named as an additional insured on the contractors and subcontractor's policy and a certificate of insurance and endorsements listing the Department as an additional insured must be provided to the Department and must state that coverage provided under the policy is primary over any other valid insurance.

To the fullest extent permitted by law, the Public Entity shall require the contractor and subcontractors to defend, indemnify and hold harmless the Department from and against any liability, claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) arising out of or resulting from the negligence, act, error, or omission of the contractor and subcontractor in the performance of the Project, or anyone directly or indirectly employed by the contractor or anyone for whose acts they are liable in the performance of the Project.

**11. Scope of Agreement.**

This Agreement incorporates agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents are valid or enforceable unless included in this Agreement.

**12. Terms of this Agreement.**

The terms of this Agreement are lawful. Performance of all duties and obligations must conform with and not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

**13. Legal Compliance.**

The Public Entity shall comply with all applicable federal, state, and local laws, and

Department regulations and policies in the performance of this Agreement, including, but not limited to laws governing civil rights, equal opportunity compliance, environmental issues, workplace safety, employer-employee relations and all other laws governing operations of the workplace. The Public Entity shall include the requirements of this Section 13 in each contract and subcontract at all tiers.

**14. Equal Opportunity Compliance.**

The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States will, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age, disability, or other protected class, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the Public Entity is found to not comply with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies, subject to Section 7 above.

**15. Appropriations and Authorizations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Public Entity, Legislature of New Mexico, or the Congress of the United States if federal funds are involved, this Agreement will terminate upon written notice being given by one party to the other. The Department and Public Entity are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

**16. Accountability of Receipts and Disbursements.**

There shall be strict accountability for all receipts and disbursements relating to this Agreement. The Public Entity shall maintain all records and documents relative to the Project for a minimum of five years after completion of the Project. The Public Entity shall furnish the Department and State Auditor, upon demand, any and all such records relevant to this Agreement. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation must be reimbursed to the Department within thirty (30) calendar days. If an audit finding determines that specific funding was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) calendar days of written notification.

**17. Severability.**

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement will remain in full force and effect.

**18. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue is proper in a New Mexico Court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

**19. Amendment.**

This Agreement may be altered, modified, or amended only by an instrument in writing executed by the parties.

**The remainder of this page is intentionally left blank.**



In witness whereof, each party is signing this Agreement on the date stated opposite that party's signature.

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Cabinet Secretary or Designee

Date: \_\_\_\_\_

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: \_\_\_\_\_  
Assistant General Counsel

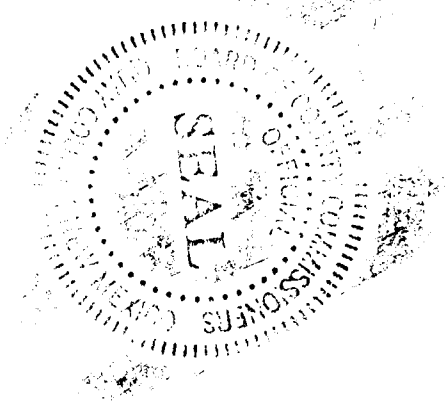
Date: \_\_\_\_\_

**Quay County**

By: Robert Lopez  
Title: Robert Lopez

Date: 7/8/2024

Attest: Ella Lohmeier  
Quay County Clerk or Designee



**EXHIBIT A**  
**PROJECT CERTIFICATION OF**  
**DESIGN, CONSTRUCTION, AND COST**

TO: New Mexico Department of Transportation  
District \_\_\_\_\_ LGRF Coordinator

Cooperative Agreement No. \_\_\_\_\_ Control No. \_\_\_\_\_  
Joint Powers Agreement No. \_\_\_\_\_ Control No. \_\_\_\_\_

Entity: \_\_\_\_\_

Scope of Work (Including Routes and Termini):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, the undersigned, in my capacity as \_\_\_\_\_ of \_\_\_\_\_ state that:

1. The design is in compliance with all state laws, rules, regulations, and local ordinances and was performed in accordance with the provisions set forth in this Agreement and in the Tribal/Local Public Agency State Funding Handbook (Current Edition);

2. Construction of the project was performed in accordance with standards and specifications set forth in:

\_\_\_\_\_ and completed on \_\_\_\_\_, 20\_\_\_\_; and

3. That the total project cost of \_\_\_\_\_, with New Mexico Department of Transportation 75% share of \_\_\_\_\_ and the Public Entity share of \_\_\_\_\_ (as submitted in attached "As Built Summary of Costs and Quantities") is accurate, legitimate, and appropriate for the project.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title





Contract No. \_\_\_\_\_  
 Vendor No. 0000054395  
 Control No. HW2L400679

**LOCAL GOVERNMENT ROAD FUND  
 COOPERATIVE AGREEMENT**

**This Agreement** is between the **New Mexico Department of Transportation** (Department) and **Quay County** (Public Entity), collectively referred as the “parties.” This Agreement is effective as of the date of the last party to sign it on the signature page below.

Pursuant to NMSA 1978, Sections 67-3-28 and 67-3-28.2, and State Transportation Commission Policy No. 44, and

Pursuant to the Public Entity’s resolution that assumes ownership, liability, and maintenance responsibility for the project scope, or related amenities, and required funding to support the Project identified herein, the parties agree as follows:

**1. Purpose.**

The purpose of this Agreement is to provide Local Government Road Funds to the Public Entity for the Project, as described in Control No. L400679, and the Public Entity’s resolution attached as **Exhibit C**. See:

Planning, design, construction, reconstruction, pavement rehabilitation, drainage Improvements and miscellaneous construction

The Project is a joint and coordinated effort for which the parties each have authority or jurisdiction. This Agreement specifies and delineates the rights and duties of the parties.

**2. Project Funding.**

- a. The estimated total cost for the Project is **Three Hundred Twenty Five Thousand Seven Hundred Thirteen Dollars and No Cents (\$325,713)** to be funded in proportional share by the parties as follows:

<b>Project Funding</b>	<b>Department Share</b>	<b>Public Entity Share</b>	<b>Total Project Cost</b>
<b>Funding Source 1</b>	<b>75%</b>	<b>25%</b>	
<b><u>FY 2025 Local Government Road Fund</u></b>	<b>\$244,285</b>	<b>\$81,428</b>	<b>\$325,713</b>
<b>For the purpose stated above in Section 1.</b>			
<b>Total Project Cost</b>			<b>\$325,713</b>

- b. The Public Entity shall pay all Project costs, which exceed the Total Project Cost.
- c. Any costs incurred by the Public Entity prior to this Agreement are not eligible for reimbursement and are not included in the amount listed in this Section 2.

**3. The Department Shall:**

Pay the Department's Share of Project Funding identified in Section 2, Paragraph a, to the Public Entity in a single lump sum payment after:

- a. Receipt of a cover letter requesting funds;
- b. Receipt of a Notice of Award and Notice to Proceed;
- c. Receipt of Estimated Summary of Costs and Quantities;
- d. Verification of available Local Government Road Funds and Public Entity's local matching funds identified in Section 2, Paragraph a; and
- e. All required documents must include Department Project and Control Number.

**4. The Public Entity Shall:**

- a. Act in the capacity of lead agency for the Project described in Section 1.
- b. Submit an estimate of the Project, including work to be performed and cost to the District Engineer within thirty (30) calendar days of execution of this Agreement, or as otherwise agreed to in writing by the parties.
- c. Be solely responsible for all proportional matching funds identified in Section 2. Certify that these matching funds have been appropriated, budgeted, and approved for expenditure prior to execution of this Agreement.
- d. Pay all costs, and perform and supply or contract for all labor and material, for the purpose as described in Section 1 and the Project estimate approved by the District Engineer.
- e. Procure and award any contract in accordance with applicable procurement law, rules, regulations and ordinances.
- f. In accordance with project parameters, assume the lead planning and implementation role and sole responsibility for environmental, archaeological, utility clearances; railroad and Intelligent Transportation System (ITS) clearances; right-of-way acquisition; project development and design; and project construction and management.
- g. Cause all designs and plans to be performed under the direct supervision of a Registered New Mexico Professional Engineer, when applicable, as approved by the Department.
- h. Obtain all required written agreements or permits, as applicable, from all public and private entities.
- i. Allow the Department to inspect the Project to confirm that the Project is constructed in accordance with the provisions of this Agreement. Disclosures of any failure to meet such requirements and standards as identified by the Department, will result in termination for default, including without limitation the Public Entity's costs for funding, labor, equipment and materials.
- j. Complete the project within eighteen (18) months of approval of funding by the State Transportation Commission.
- k. Within thirty (30) calendar days of completion, provide written certification that all work under this Agreement was performed in accordance with either the New Mexico Department of Transportation's Standard Specification, Current Edition; American Public Works Association (APWA) Specifications; Department approved Public Entity

established Specifications; or Department Specifications established for Local Government Road Fund projects, by submitting the **Project Certification of Design, Construction, and Cost form**, attached as **Exhibit B**.

- l. Within thirty (30) calendar days of completion, furnish the Department an **AS BUILT Summary of Costs and Quantities** form, attached as **Exhibit C**. The report should reflect the total cost of the Project as stated in the **Project Certification of Design, Construction, and Cost form**.
- m. Failure to provide the **Project Certification of Design, Construction, and Cost form** and an **AS BUILT Summary of Costs and Quantities** report within thirty (30) calendar days of Project completion is a material breach of this Agreement and Public Entity shall reimburse to the Department all funds disbursed in accordance with this Agreement.
- n. Upon completion, maintain all Public Entity facilities that were constructed or reconstructed under this Agreement.

**5. Both Parties Agree:**

- a. Upon termination of this Agreement any remaining property, materials, or equipment belonging to the Department will be accounted for and disposed of by the Public Entity as directed by the Department.
- b. Any unexpended or unencumbered balance from the Local Government Road Fund appropriated for this Project reverts to the Department. These balances, if any, must be reimbursed to the Department within thirty (30) calendar days of project completion or expiration of this Agreement, whichever occurs first.
- c. This Project is not being incorporated into the State Highway System and the Department is not assuming maintenance responsibility or liability.
- d. Pursuant to NMSA 1978, Section 67-3-28.2, Local Government Road Funds granted under this provision cannot be used by the Public Entity to meet a required match under any other program.
- e. As applicable for state-funded projects, the provisions of the Tribal/Local Public Agency (T/LPA) State Funding Handbook (Current Edition), and for projects with federal funds, the provisions of the Tribal/Local Public Agency (T/LPA) Federal Funding Handbook (Current Edition), are incorporated by reference and control the contractual rights and obligations of the parties unless in conflict with the specific terms expressed in this Agreement or any amendments.

**6. Term.**

This Agreement becomes effective upon signature of all Parties. The effective date is the date when the last party signed the Agreement on the signature page below. This Agreement terminates on **12/31/2025**. In the event an extension to the term is needed, the Public Entity shall provide through a duly authorized agent written notice along with detailed justification to the Department sixty (60) calendar days prior to the expiration date to ensure timely processing of an Amendment.

**7. Termination.**

- a. If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement by providing thirty (30) calendar days written notice.
- b. The Department may terminate this Agreement if the funds identified in Section 2 have not been contractually committed within one year from the effective date of this Agreement.

- c. If sufficient appropriations and authorizations are not made, this Agreement will terminate immediately upon written notice of the Department to the Public Entity.
- d. Neither party has any obligation after termination, except as stated in Sections 4, 5, and 16.

**8. Third Party Beneficiary.**

It is not intended by any of the provisions of this Agreement to create in the public or any member of the public a third party beneficiary or to authorize anyone not a party to the Agreement to maintain suit for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

**9. Liability.**

As between the Department and Public Entity, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, *et seq.*, and other applicable law.

**10. Contractors Insurance Requirements.**

The Public Entity shall require contractors and subcontractors hired for the Project to have a general liability insurance policy, with limits of liability of at least \$1,000,000 per occurrence. The Department is to be named as an additional insured on the contractors and subcontractor's policy and a certificate of insurance and endorsements listing the Department as an additional insured must be provided to the Department and must state that coverage provided under the policy is primary over any other valid insurance.

To the fullest extent permitted by law, the Public Entity shall require the contractor and subcontractors to defend, indemnify and hold harmless the Department from and against any liability, claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) arising out of or resulting from the negligence, act, error, or omission of the contractor and subcontractor in the performance of the Project, or anyone directly or indirectly employed by the contractor or anyone for whose acts they are liable in the performance of the Project.

**11. Scope of Agreement.**

This Agreement incorporates agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents are valid or enforceable unless included in this Agreement.

**12. Terms of this Agreement.**

The terms of this Agreement are lawful. Performance of all duties and obligations must conform with and not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

**13. Legal Compliance.**

The Public Entity shall comply with all applicable federal, state, and local laws, and



Department regulations and policies in the performance of this Agreement, including, but not limited to laws governing civil rights, equal opportunity compliance, environmental issues, workplace safety, employer-employee relations and all other laws governing operations of the workplace. The Public Entity shall include the requirements of this Section 13 in each contract and subcontract at all tiers.

**14. Equal Opportunity Compliance.**

The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States will, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age, disability, or other protected class, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the Public Entity is found to not comply with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies, subject to Section 7 above.

**15. Appropriations and Authorizations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Public Entity, Legislature of New Mexico, or the Congress of the United States if federal funds are involved, this Agreement will terminate upon written notice being given by one party to the other. The Department and Public Entity are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

**16. Accountability of Receipts and Disbursements.**

There shall be strict accountability for all receipts and disbursements relating to this Agreement. The Public Entity shall maintain all records and documents relative to the Project for a minimum of five years after completion of the Project. The Public Entity shall furnish the Department and State Auditor, upon demand, any and all such records relevant to this Agreement. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation must be reimbursed to the Department within thirty (30) calendar days. If an audit finding determines that specific funding was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) calendar days of written notification.

**17. Severability.**

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement will remain in full force and effect.

**18. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue is proper in a New Mexico Court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

**19. Amendment.**

This Agreement may be altered, modified, or amended only by an instrument in writing executed by the parties.

**The remainder of this page is intentionally left blank.**

In witness whereof, each party is signing this Agreement on the date stated opposite that party's signature.

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Cabinet Secretary or Designee

Date: \_\_\_\_\_

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: \_\_\_\_\_  
Assistant General Counsel

Date: \_\_\_\_\_

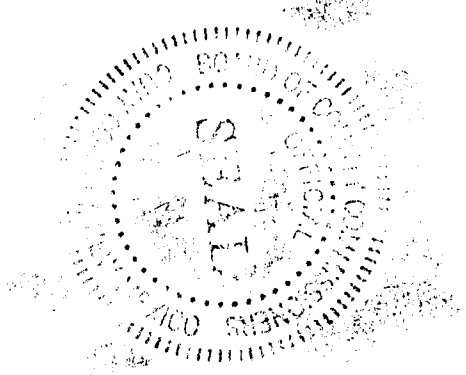
**Quay County**

By: Robert Lopez

Date: 7/8/24

Title: Robert Lopez

Attest: Ellen L. White  
Quay County Clerk or Designee



**EXHIBIT A**  
**PROJECT CERTIFICATION OF**  
**DESIGN, CONSTRUCTION, AND COST**

TO: New Mexico Department of Transportation  
District \_\_\_\_\_ LGRF Coordinator

Cooperative Agreement No. \_\_\_\_\_ Control No. \_\_\_\_\_  
Joint Powers Agreement No. \_\_\_\_\_ Control No. \_\_\_\_\_

Entity: \_\_\_\_\_

Scope of Work (Including Routes and Termini):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, the undersigned, in my capacity as \_\_\_\_\_ of \_\_\_\_\_ state that:

1. The design is in compliance with all state laws, rules, regulations, and local ordinances and was performed in accordance with the provisions set forth in this Agreement and in the Tribal/Local Public Agency State Funding Handbook (Current Edition);

2. Construction of the project was performed in accordance with standards and specifications set forth in:

\_\_\_\_\_ and completed on \_\_\_\_\_, 20\_\_\_\_; and

3. That the total project cost of \_\_\_\_\_, with New Mexico Department of Transportation 75% share of \_\_\_\_\_ and the Public Entity share of \_\_\_\_\_ (as submitted in attached "As Built Summary of Costs and Quantities") is accurate, legitimate, and appropriate for the project.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title





Contract No. \_\_\_\_\_  
 Vendor No. 0000054395  
 Control No. HW2L400672

**LOCAL GOVERNMENT ROAD FUND  
 COOPERATIVE AGREEMENT**

**This Agreement** is between the **New Mexico Department of Transportation** (Department) and **Quay County** (Public Entity), collectively referred as the “parties.” This Agreement is effective as of the date of the last party to sign it on the signature page below.

Pursuant to NMSA 1978, Sections 67-3-28 and 67-3-28.2, and State Transportation Commission Policy No. 44, and

Pursuant to the Public Entity’s resolution that assumes ownership, liability, and maintenance responsibility for the project scope, or related amenities, and required funding to support the Project identified herein, the parties agree as follows:

**1. Purpose.**

The purpose of this Agreement is to provide Local Government Road Funds to the Public Entity for the Project, as described in Control No. L400672, and the Public Entity’s resolution attached as **Exhibit C**. See:

Planning, design, construction, reconstruction, pavement rehabilitation, drainage Improvements and miscellaneous construction

The Project is a joint and coordinated effort for which the parties each have authority or jurisdiction. This Agreement specifies and delineates the rights and duties of the parties.

**2. Project Funding.**

- a. The estimated total cost for the Project is **One Hundred Sixty Three Thousand Five Hundred Seventeen Dollars and No Cents (\$163,517)** to be funded in proportional share by the parties as follows:

<b>Project Funding</b>	<b>Department Share</b>	<b>Public Entity Share</b>	<b>Total Project Cost</b>
<b>Funding Source 1</b>	<b>75%</b>	<b>25%</b>	
<b><u>FY 2025 Local Government Road Fund</u></b>	<b>\$122,638</b>	<b>\$40,879</b>	<b>\$163,517</b>
<b>For the purpose stated above in Section 1.</b>			
<b>Total Project Cost</b>			<b>\$163,517</b>

- b. The Public Entity shall pay all Project costs, which exceed the Total Project Cost.
- c. Any costs incurred by the Public Entity prior to this Agreement are not eligible for reimbursement and are not included in the amount listed in this Section 2.

**3. The Department Shall:**

Pay the Department's Share of Project Funding identified in Section 2, Paragraph a, to the Public Entity in a single lump sum payment after:

- a. Receipt of a cover letter requesting funds;
- b. Receipt of a Notice of Award and Notice to Proceed;
- c. Receipt of Estimated Summary of Costs and Quantities;
- d. Verification of available Local Government Road Funds and Public Entity's local matching funds identified in Section 2, Paragraph a; and
- e. All required documents must include Department Project and Control Number.

**4. The Public Entity Shall:**

- a. Act in the capacity of lead agency for the Project described in Section 1.
- b. Submit an estimate of the Project, including work to be performed and cost to the District Engineer within thirty (30) calendar days of execution of this Agreement, or as otherwise agreed to in writing by the parties.
- c. Be solely responsible for all proportional matching funds identified in Section 2. Certify that these matching funds have been appropriated, budgeted, and approved for expenditure prior to execution of this Agreement.
- d. Pay all costs, and perform and supply or contract for all labor and material, for the purpose as described in Section 1 and the Project estimate approved by the District Engineer.
- e. Procure and award any contract in accordance with applicable procurement law, rules, regulations and ordinances.
- f. In accordance with project parameters, assume the lead planning and implementation role and sole responsibility for environmental, archaeological, utility clearances; railroad and Intelligent Transportation System (ITS) clearances; right-of-way acquisition; project development and design; and project construction and management.
- g. Cause all designs and plans to be performed under the direct supervision of a Registered New Mexico Professional Engineer, when applicable, as approved by the Department.
- h. Obtain all required written agreements or permits, as applicable, from all public and private entities.
- i. Allow the Department to inspect the Project to confirm that the Project is constructed in accordance with the provisions of this Agreement. Disclosures of any failure to meet such requirements and standards as identified by the Department, will result in termination for default, including without limitation the Public Entity's costs for funding, labor, equipment and materials.
- j. Complete the project within eighteen (18) months of approval of funding by the State Transportation Commission.
- k. Within thirty (30) calendar days of completion, provide written certification that all work under this Agreement was performed in accordance with either the New Mexico Department of Transportation's Standard Specification, Current Edition; American Public Works Association (APWA) Specifications; Department approved Public Entity



established Specifications; or Department Specifications established for Local Government Road Fund projects, by submitting the **Project Certification of Design, Construction, and Cost form**, attached as **Exhibit B**.

- l. Within thirty (30) calendar days of completion, furnish the Department an **AS BUILT Summary of Costs and Quantities** form, attached as **Exhibit C**. The report should reflect the total cost of the Project as stated in the **Project Certification of Design, Construction, and Cost form**.
- m. Failure to provide the **Project Certification of Design, Construction, and Cost form** and an **AS BUILT Summary of Costs and Quantities** report within thirty (30) calendar days of Project completion is a material breach of this Agreement and Public Entity shall reimburse to the Department all funds disbursed in accordance with this Agreement.
- n. Upon completion, maintain all Public Entity facilities that were constructed or reconstructed under this Agreement.

**5. Both Parties Agree:**

- a. Upon termination of this Agreement any remaining property, materials, or equipment belonging to the Department will be accounted for and disposed of by the Public Entity as directed by the Department.
- b. Any unexpended or unencumbered balance from the Local Government Road Fund appropriated for this Project reverts to the Department. These balances, if any, must be reimbursed to the Department within thirty (30) calendar days of project completion or expiration of this Agreement, whichever occurs first.
- c. This Project is not being incorporated into the State Highway System and the Department is not assuming maintenance responsibility or liability.
- d. Pursuant to NMSA 1978, Section 67-3-28.2, Local Government Road Funds granted under this provision cannot be used by the Public Entity to meet a required match under any other program.
- e. As applicable for state-funded projects, the provisions of the Tribal/Local Public Agency (T/LPA) State Funding Handbook (Current Edition), and for projects with federal funds, the provisions of the Tribal/Local Public Agency (T/LPA) Federal Funding Handbook (Current Edition), are incorporated by reference and control the contractual rights and obligations of the parties unless in conflict with the specific terms expressed in this Agreement or any amendments.

**6. Term.**

This Agreement becomes effective upon signature of all Parties. The effective date is the date when the last party signed the Agreement on the signature page below. This Agreement terminates on **12/31/2025**. In the event an extension to the term is needed, the Public Entity shall provide through a duly authorized agent written notice along with detailed justification to the Department sixty (60) calendar days prior to the expiration date to ensure timely processing of an Amendment.

**7. Termination.**

- a. If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement by providing thirty (30) calendar days written notice.
- b. The Department may terminate this Agreement if the funds identified in Section 2 have not been contractually committed within one year from the effective date of this Agreement.

- c. If sufficient appropriations and authorizations are not made, this Agreement will terminate immediately upon written notice of the Department to the Public Entity.
- d. Neither party has any obligation after termination, except as stated in Sections 4, 5, and 16.

**8. Third Party Beneficiary.**

It is not intended by any of the provisions of this Agreement to create in the public or any member of the public a third party beneficiary or to authorize anyone not a party to the Agreement to maintain suit for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

**9. Liability.**

As between the Department and Public Entity, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, *et seq.*, and other applicable law.

**10. Contractors Insurance Requirements.**

The Public Entity shall require contractors and subcontractors hired for the Project to have a general liability insurance policy, with limits of liability of at least \$1,000,000 per occurrence. The Department is to be named as an additional insured on the contractors and subcontractor's policy and a certificate of insurance and endorsements listing the Department as an additional insured must be provided to the Department and must state that coverage provided under the policy is primary over any other valid insurance.

To the fullest extent permitted by law, the Public Entity shall require the contractor and subcontractors to defend, indemnify and hold harmless the Department from and against any liability, claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) arising out of or resulting from the negligence, act, error, or omission of the contractor and subcontractor in the performance of the Project, or anyone directly or indirectly employed by the contractor or anyone for whose acts they are liable in the performance of the Project.

**11. Scope of Agreement.**

This Agreement incorporates agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents are valid or enforceable unless included in this Agreement.

**12. Terms of this Agreement.**

The terms of this Agreement are lawful. Performance of all duties and obligations must conform with and not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

**13. Legal Compliance.**

The Public Entity shall comply with all applicable federal, state, and local laws, and Department regulations and policies in the performance of this Agreement, including, but not limited to laws governing civil rights, equal opportunity compliance, environmental issues, workplace safety, employer-employee relations and all other laws governing operations of the workplace. The Public Entity shall include the requirements of this Section 13 in each contract and subcontract at all tiers.

**14. Equal Opportunity Compliance.**

The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States will, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age, disability, or other protected class, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the Public Entity is found to not comply with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies, subject to Section 7 above.

**15. Appropriations and Authorizations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Public Entity, Legislature of New Mexico, or the Congress of the United States if federal funds are involved, this Agreement will terminate upon written notice being given by one party to the other. The Department and Public Entity are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

**16. Accountability of Receipts and Disbursements.**

There shall be strict accountability for all receipts and disbursements relating to this Agreement. The Public Entity shall maintain all records and documents relative to the Project for a minimum of five years after completion of the Project. The Public Entity shall furnish the Department and State Auditor, upon demand, any and all such records relevant to this Agreement. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation must be reimbursed to the Department within thirty (30) calendar days. If an audit finding determines that specific funding was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) calendar days of written notification.

**17. Severability.**

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement will remain in full force and effect.

**18. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue is proper in a New Mexico Court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

**19. Amendment.**

This Agreement may be altered, modified, or amended only by an instrument in writing executed by the parties.

**The remainder of this page is intentionally left blank.**

In witness whereof, each party is signing this Agreement on the date stated opposite that party's signature.

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Cabinet Secretary or Designee

Date: \_\_\_\_\_

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: \_\_\_\_\_  
Assistant General Counsel

Date: \_\_\_\_\_

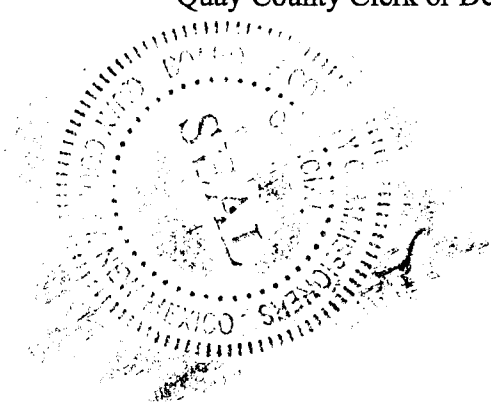
**Quay County**

By: Robert Lopez

Date: 7/8/2024

Title: Robert Lopez

Attest: Ellen Lurhise  
Quay County Clerk or Designee



**EXHIBIT A**  
**PROJECT CERTIFICATION OF**  
**DESIGN, CONSTRUCTION, AND COST**

TO: New Mexico Department of Transportation  
District \_\_\_\_\_ LGRF Coordinator

Cooperative Agreement No. \_\_\_\_\_ Control No. \_\_\_\_\_  
Joint Powers Agreement No. \_\_\_\_\_ Control No. \_\_\_\_\_

Entity: \_\_\_\_\_

Scope of Work (Including Routes and Termini):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, the undersigned, in my capacity as \_\_\_\_\_ of \_\_\_\_\_ state that:

1. The design is in compliance with all state laws, rules, regulations, and local ordinances and was performed in accordance with the provisions set forth in this Agreement and in the Tribal/Local Public Agency State Funding Handbook (Current Edition);
2. Construction of the project was performed in accordance with standards and specifications set forth in:

\_\_\_\_\_ and completed on \_\_\_\_\_, 20\_\_\_\_; and

3. That the total project cost of \_\_\_\_\_, with New Mexico Department of Transportation 75% share of \_\_\_\_\_ and the Public Entity share of \_\_\_\_\_ (as submitted in attached "As Built Summary of Costs and Quantities") is accurate, legitimate, and appropriate for the project.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title







July 8, 2024

Quay County Commission Meeting

We held a State Delinquent Tax Sale on June 13. The sale was a success. Eleven properties were sold and only one did not receive a bid. This is the first sale where we have collected “excess” money beyond the minimum bid on all 11 properties. When we started working on the sale, we had 35 properties on the list to sell. We collected the taxes or made arrangements to collect the taxes on all but 12 properties. We are waiting for the State to complete the financial process and send us our money.

I wanted to mention a change that I have discussed with the Finance Office regarding the process we use to pay larger more technical vendors. We have discussed this matter and I agree that these two exceptions to our usual process are justified. We issue checks for accounts payable and you routinely approve expenditures. For that reason I wanted to let you know that we are going to start allowing two vendors to debit our bank account on a monthly basis: WEX Bank (provider of debit card services for gasoline purchases primarily) and Excel Energy (provider of electrical utilities to all the county buildings). These two vendors prefer the ACH method of receiving payments and are very quick to react negatively if our checks run even a few days late. These two vendors are likely not subject to your objection as they are “required” to do normal County Business. The Finance Office will continue to use the features of our Caselle GL software to fully document the ACH items and my office will carefully reconcile these items on the Bank statement. We will require any agreement with these two vendors for this process to be signed in dual control by authorized signers on the checking account.

Also, I wanted to remind the Commissioners that we request checks to be issued by FO, monthly, in payment of taxes collected for the municipal, hospital and school entities for whom we collect property taxes. These monies do not belong to the County and are collected and passed thru to the entities by the 15<sup>th</sup> of each month as per State Statute using the regular Purchase Voucher procedures and processes required for FO to issue checks. For security reasons, the Treasurer’s Office does not issue checks. We only collect all types of revenue. The FO does not collect revenues. Because we are not spending County money, these checks do not require approval by the Commission. We have never segregated them from other checks written and do not propose to do so at this time. Our normal procedures are not changing. Should you ever have questions regarding these checks, I will be happy to respond.

Patsy Gresham, Quay County Treasurer

**QUAY COUNTY  
FISCAL YEAR 2023-2024  
RESOLUTION No. 56**

Authorization of Budgetary Increase to General Fund (401)

**WHEREAS**, at meeting of the Board of Quay County Commissioners on July 8, 2024 the following was among the proceedings;

**WHEREAS**, the Board of Quay County Commissioners deems it necessary to request this Budgetary Increase;

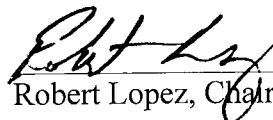
**State Fund  
Budgetary Increase 11000**

	<u>DEBIT</u>	<u>CREDIT</u>
<b>11000-1003-41200- Gross Receipts Tax</b>		<b>\$17,000</b>
<b>11000-1003-57050- Employee Training</b>	<b>\$17,000</b>	


**WHEREAS**, the above activity was not contemplated at the time the final budget was adopted and approved.

**NOW THEREFORE, BE IT RESOLVED** that after approval of the Local Government Division of the Department of Finance and Administration, the above Budgetary Adjustment be made.


DONE at Tucumcari, County of Quay, New Mexico this 8<sup>th</sup> day of July ,2024.

  
\_\_\_\_\_  
Robert Lopez, Chairman

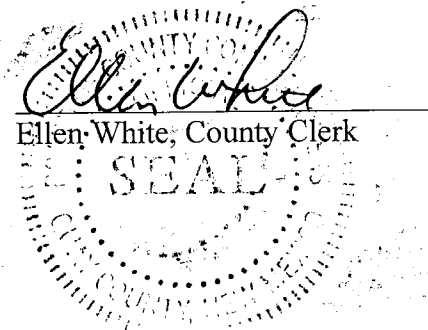
  
\_\_\_\_\_  
Jerri Rush, Commissioner

  
\_\_\_\_\_  
Brian Fortner, Commissioner

ATTEST:

  
\_\_\_\_\_  
Ellen White, County Clerk

**SEAL**



**QUAY COUNTY  
FISCAL YEAR 2023-2024  
RESOLUTION No. 57**

Authorization of Budgetary Increase to **Bard Endee Fire (413)**

**WHEREAS**, at meeting of the Board of Quay County Commissioners on July 8, 2024 the following was among the proceedings;

**WHEREAS**, the Board of Quay County Commissioners deems it necessary to request this Budgetary Increase;

**State Fund  
Budgetary Increase 20900**

	<u>DEBIT</u>	<u>CREDIT</u>
<b>20900-3002-58080- Gross Receipts Tax</b>	<b>\$300,000</b>	

**WHEREAS**, the above activity was not contemplated at the time the final budget was adopted and approved.

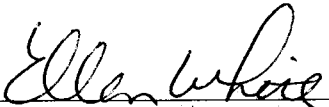
**NOW THEREFORE, BE IT RESOLVED** that after approval of the Local Government Division of the Department of Finance and Administration, the above Budgetary Adjustment be made.

DONE at Tucumcari, County of Quay, New Mexico this 8<sup>th</sup> day of July ,2024.

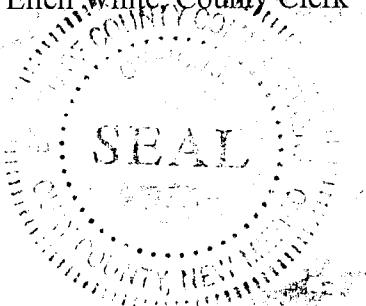
  
\_\_\_\_\_  
Robert Lopez, Chairman

  
\_\_\_\_\_  
Jerri Rush, Commissioner

ATTEST:

  
\_\_\_\_\_  
Ellen White, County Clerk

  
\_\_\_\_\_  
Brian Fortner, Commissioner





**QUAY COUNTY GOVERNMENT**  
FISCAL YEAR 2024-2025

**RESOLUTION NO. 6**

**A RESOLUTION ADOPTING THE FY 2026-2030 INFRASTRUCTURE  
CAPITAL IMPROVEMENTS PLAN (ICIP)**

**WHEREAS**, The County of Quay recognizes that the financing of capital projects has become a major concern in New Mexico and nationally; and

**WHEREAS**, in time of scarce resources, it is necessary to find new financing mechanisms and maximize the use of existing resources; and

**WHEREAS**, systematic capital improvements planning is an effective tool for communities to define their development needs, establish priorities and pursue concrete actions and strategies to achieve necessary project development; and

**WHEREAS**, this process contributes to local and regional efforts to project identification and selection in short and long range capital planning efforts.

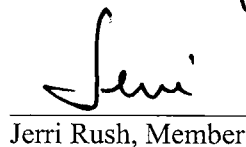
**NOW, THEREFORE, BE IT RESOLVED BY THE QUAY COUNTY COMMISSION** that:

1. The county has adopted the attached FY 2026-2030 Infrastructure Capital Improvement Plan, and
2. It is intended that the Plan be a working document and is the first of many steps towards improving rational, long-range capital planning and budgeting for New Mexico's infrastructure.
3. This resolution supersedes Resolution No. 7 for FY 2022-2023.

**PASSED, APPROVED AND ADOPTED** by governing body at its meeting of July 8<sup>th</sup>, 2024.

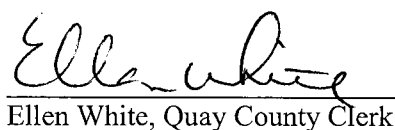
**QUAY COUNTY COMMISSION**

  
Robert Lopez, Chairman

  
Jerri Rush, Member

  
Brian Fortner, Member

ATTEST:

  
Ellen White, Quay County Clerk

## Infrastructure Capital Improvement Plan FY 2026-2030

### Quay County Project Summary

ID	Year	Rank	Project Title	Category	Funded					Total Project Cost	Amount Not Yet Funded	Phases?	
					to date	2026	2027	2028	2029				2030
40191	2026	001	Hospital	Facilities - Housing-Related Cap Infrastructure	1,000,000	30,000,000	0	0	0	0	31,000,000	30,000,000	No
27731	2026	002	Courthouse Window Replacement	Facilities - Administrative Facilities	0	1,164,000	0	0	0	0	1,164,000	1,164,000	No
42967	2026	003	Courthouse HVAC Replacement	Facilities - Administrative Facilities	0	500,000	0	0	0	0	500,000	500,000	No
42969	2026	004	Transport Truck	Facilities - Administrative Facilities	0	300,000	0	0	0	0	300,000	300,000	No
42971	2026	005	Loader	Facilities - Administrative Facilities	0	250,000	0	0	0	0	250,000	250,000	Yes
42972	2026	006	Backhoe	Vehicles - Other	0	200,000	0	0	0	0	200,000	200,000	No
40192	2026	007	Regional Behavior Health Facility	Facilities - Housing-Related Cap Infrastructure	10,000,000	35,000,000	0	0	0	0	45,000,000	35,000,000	No
32711	2026	008	Ute Reservoir Watershed Restoration	Water - Storm/Surface Water Control	0	1,000,000	0	0	0	0	1,000,000	1,000,000	No
36219	2027	001	Quay Road 63 Construction	Transportation - Highways/Roads/Bridges	0	0	250,000	1,000,000	0	0	1,250,000	1,250,000	Yes
24423	2027	002	Bridge #1042 on Historic Rt. 66	Transportation - Highways/Roads/Bridges	2,500,000	0	6,000,000	0	0	0	8,500,000	6,000,000	Yes
35893	2027	003	Quay Road AP Construction	Transportation - Highways/Roads/Bridges	0	0	550,000	300,000	0	0	850,000	850,000	No
36223	2027	004	Quay Road AR Construction	Transportation - Highways/Roads/Bridges	0	0	1,000,000	500,000	0	0	1,500,000	1,500,000	Yes
22058	2027	005	County Vehicles	Vehicles - Other	0	0	300,000	0	0	0	300,000	300,000	No
			Other - Other	Other - Other									No

### Infrastructure Capital Improvement Plan FY 2026-2030

31133	2027	006	Asset Management Procedure Plan			0	0	100,000	0	0	0	100,000	100,000
27887	2027	007	Quay County Detention Center Renovations	Facilities - Other	560,000	0	300,000	0	0	0	0	860,000	300,000
40203	2027	008	Excavator	Equipment - Other	0	0	800,000	0	0	0	0	800,000	800,000
<b>Number of projects:</b>					16								
<b>Funded to date:</b>					14,060,000								
<b>Year 1:</b>					68,414,000								
<b>Year 2:</b>					9,300,000								
<b>Year 3:</b>					1,800,000								
<b>Year 4:</b>					0								
<b>Year 5:</b>					0								
<b>Total Project Cost:</b>					93,574,000								
<b>Total Not Yet Funded:</b>					79,514,000								
<b>Grand Totals</b>					14,060,000								

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**STATE OF NEW MEXICO**  
**DEPARTMENT OF FINANCE AND ADMINISTRATION**  
**GENERAL FUND 93100 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of the date it is executed, by and between the Department of Finance and Administration, hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **QUAY COUNTY**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the **Laws of 2024, Chapter 66, Section 28, Paragraph 394**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

**24-13036                      \$400,000.00                      APPROPRIATION REVERSION DATE: June 30, 2026**

Laws of 2024, Chapter 66, Section 28, Paragraph 394, Four Hundred Thousand (\$400,000.00), from the General Fund 93100 to purchase and equip a dump truck and utility equipment for the road department in Quay county;

The Grantee's total reimbursements shall not exceed Four Hundred Thousand \$400,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")<sup>1</sup>, if applicable, Zero \$0.00, which equals Four Hundred Thousand \$400,000.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." [Optional Language if special conditions apply. Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict.] The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

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## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

- A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:
- i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
  - ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
  - iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
  - iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
  - v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
    - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
    - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.
- Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and
- vi. The Grantee shall request approval of its obligation(s) by submitting a Notice of Obligation form as provided by the Department. The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
    - a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
    - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
    - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date.
    - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
- B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- C. Project funds shall not be used for purposes other than those specified in the Project Description.
- D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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<sup>1</sup>The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

<sup>2</sup>"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.



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**ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: QUAY COUNTY  
Name: Daniel Zamora  
Title: County Manager  
Address: PO Box 1246, Tucumcari, NM 88401  
Email: daniel.zamora@quaycounty-nm.gov  
Telephone: 575-461-2112

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: QUAY COUNTY  
Name: Andrea Page  
Title: Finance Director  
Address: PO Box 1246, Tucumcari, NM 88401  
Email: andrea.page@quaycounty-nm.gov  
Telephone: 575-461-2112

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division  
Name: Donna Stewart  
Title: Program Manager  
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501  
Email: DonnaJ.Stewart@dfa.nm.gov  
Telephone: 505-231-2993

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

**ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS**

- A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2026** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
- B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

---

## **ARTICLE V. EARLY TERMINATION**

### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- i. Termination due to completion of the Project before the Reversion Date; or
- ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- iii. Termination for violation of the terms of this Agreement; or
- iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

### **B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

### **C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

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## **ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

- A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
  - i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
  - ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
  - iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.
- B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.
- C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

### **D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

---

## **ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

## **ARTICLE VIII. REPORTS**

### **A. Database Reporting**

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration. Additionally, the Grantee shall certify on the Request for Payment form that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports are due on the last day of each quarter. Quarter end reporting periods are September 30th, December 31st, March 31st, and June 30th.

### **B. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- i. request such additional information regarding the Project as it deems necessary; and
- ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

## **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

- A. The Grantee shall request payment by submitting a Request for Payment, in the form provided by the Department. Payment requests are subject to the following procedures:
- i. The Grantee must submit a Request for Payment; and
  - ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
  - iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.
- B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of execution of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

### **C. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- ii. Twenty (20) days from date of Early Termination; or

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iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

#### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

A. The following general conditions and restrictions are applicable to the Project:

- i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
- iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
- v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- i. The Grantee has the legal authority to receive and expend the Project's funds.
- ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower

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protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

- vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

#### **ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

- A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.
- B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.
- C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the **QUAY COUNTY** may immediately terminate this Agreement by giving Contractor written notice of such termination. The **QUAY COUNTY**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the **QUAY COUNTY** or the Department of

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Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **QUAY COUNTY** or the Department"

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the QUAY COUNTY may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the QUAY COUNTY only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

**ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

**ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

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[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

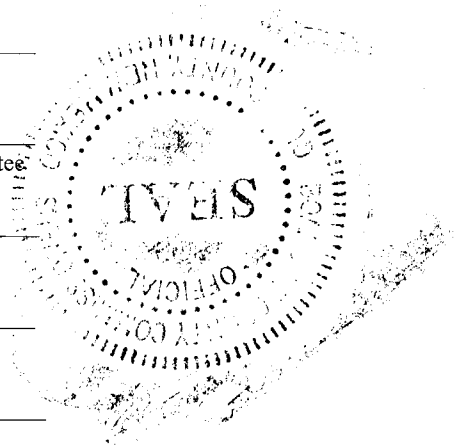
Quay County Government  
Entity Name

Rht Z  
Signature of Official with Authority to Bind Grantee

By: Robert Lopez  
(Print Name)

Its: Chairman  
(Title)

7/8/2024  
Date



DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION

By: \_\_\_\_\_

Its: Cabinet Secretary or Designee

\_\_\_\_\_  
Date



**STATE OF NEW MEXICO  
GRANT PROJECT  
Request for Payment Form  
Exhibit 1**

**I. Grantee Information**

(Make sure information is complete & accurate)

- A. Grantee: \_\_\_\_\_  
 B. Address: \_\_\_\_\_  
(Complete Mailing, including Suite, if applicable)  
 \_\_\_\_\_  
City, State, Zip  
 C. Contact Name/Phone #: \_\_\_\_\_  
 D. Grant No: \_\_\_\_\_  
 E. Project Title: \_\_\_\_\_  
 F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

- A. Payment Request No. \_\_\_\_\_  
 B. Grant Amount: \_\_\_\_\_  
 C. AIPP Amount (If Applicable): \_\_\_\_\_  
 D. Funds Requested to Date: \_\_\_\_\_  
 E. Amount Requested this Payment: \_\_\_\_\_  
 F. Reversion Amount (If Applicable): \_\_\_\_\_  
 G. Grant Balance: \_\_\_\_\_  
 H. Final Request for Payment (if Applicable) \_\_\_\_\_

**III. Fiscal Year :** \_\_\_\_\_

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

- IV.  Reporting Certification:** I hereby certify to the best of my knowledge and belief, that reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with the Grant Agreement.

- V.  Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

\_\_\_\_\_  
**Grantee Fiscal Officer**  
 or Fiscal Agent (if applicable)

\_\_\_\_\_  
**Grantee Representative**

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Printed Name

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**(State Agency Use Only)**

Vendor Code: \_\_\_\_\_ Fund No.: \_\_\_\_\_ PO # \_\_\_\_\_ Loc No.: \_\_\_\_\_

I certify that the State Agency financial and vendor file information agree with the above submitted information.

\_\_\_\_\_  
 Division Fiscal Officer

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Division Project Manager

\_\_\_\_\_  
 Date

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE**  
**EXHIBIT 2**

Notice of Obligation to Reimburse Grantee # \_\_\_\_\_

DATE: \_\_\_\_\_

TO: Department Representative: \_\_\_\_\_, \_\_\_\_\_

FROM: Grantee Entity: \_\_\_\_\_

Grantee Official Representative: \_\_\_\_\_

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: \_\_\_\_\_

Grant Termination Date: \_\_\_\_\_

As the designated representative of the Department for Grant Agreement number \_\_\_\_\_ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): \_\_\_\_\_

The Amount of this Notice of Obligation: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Date: \_\_\_\_\_

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

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**STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
GENERAL FUND 93100 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of the date it is executed, by and between the Department of Finance and Administration, hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **QUAY COUNTY**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the **Laws of 2024, Chapter 66, Section 28, Paragraph 396**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

**24-I3038                      \$100,000.00                      APPROPRIATION REVERSION DATE: June 30, 2026**

Laws of 2024, Chapter 66, Section 28, Paragraph 396, One Hundred Thousand (\$100,000.00), from the General Fund 93100 to purchase and equip vehicles for the sheriff's office in Quay county;

The Grantee's total reimbursements shall not exceed One Hundred Thousand \$100,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")<sup>1</sup>, if applicable, Zero \$0.00, which equals One Hundred Thousand \$100,000.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." [Optional Language if special conditions apply. Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict.] The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

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## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

- A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:
- i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
  - ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
  - iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
  - iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
  - v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
    - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
    - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.
- Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and
- vi. The Grantee shall request approval of its obligation(s) by submitting a Notice of Obligation form as provided by the Department. The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
    - a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
    - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
    - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date.
    - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
- B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- C. Project funds shall not be used for purposes other than those specified in the Project Description.
- D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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<sup>1</sup>The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

<sup>2</sup>"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

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**ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: QUAY COUNTY  
Name: Daniel Zamora  
Title: County Manager  
Address: PO Box 1246, Tucumcari, NM 88401  
Email: daniel.zamora@quaycounty-nm.gov  
Telephone: 575-461-2112

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: QUAY COUNTY  
Name: Andrea Page  
Title: Finance Director  
Address: PO Box 1246, Tucumcari, NM 88401  
Email: andrea.page@quaycounty-nm.gov  
Telephone: 575-461-2112

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division  
Name: Donna Stewart  
Title: Program Manager  
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501  
Email: DonnaJ.Stewart@dfa.nm.gov  
Telephone: 505-231-2993

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

**ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS**

- A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2026** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
- B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

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## **ARTICLE V. EARLY TERMINATION**

### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- i. Termination due to completion of the Project before the Reversion Date; or
- ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- iii. Termination for violation of the terms of this Agreement; or
- iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

### **B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

### **C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

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## **ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

- A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
- i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
  - ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
  - iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

- B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

- C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

### **D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

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## **ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

## **ARTICLE VIII. REPORTS**

### **A. Database Reporting**

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration. Additionally, the Grantee shall certify on the Request for Payment form that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports are due on the last day of each quarter. Quarter end reporting periods are September 30th, December 31st, March 31st, and June 30th.

### **B. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- i. request such additional information regarding the Project as it deems necessary; and
- ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

## **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form provided by the Department. Payment requests are subject to the following procedures:

- i. The Grantee must submit a Request for Payment; and
- ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of execution of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

### **C. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- ii. Twenty (20) days from date of Early Termination; or

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iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

#### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

A. The following general conditions and restrictions are applicable to the Project:

- i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
- iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
- v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- i. The Grantee has the legal authority to receive and expend the Project's funds.
- ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower



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protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

- vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

#### **ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

- A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.
- B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.
- C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the QUAY COUNTY may immediately terminate this Agreement by giving Contractor written notice of such termination. The QUAY COUNTY's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the QUAY COUNTY or the Department of

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Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the QUAY COUNTY or the Department"

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the QUAY COUNTY may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the QUAY COUNTY only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

**ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

**ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

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[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

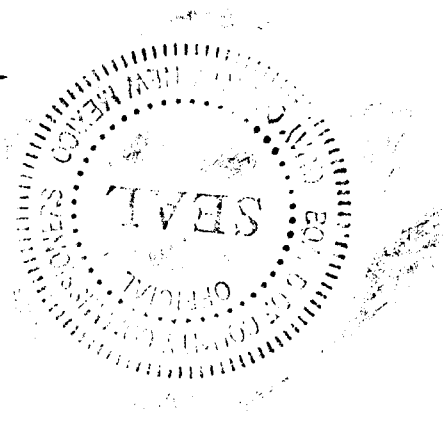
Quay County Government  
Entity Name

Robert Lopez  
Signature of Official with Authority to Bind Grantee

By: Robert Lopez  
(Print Name)

Its: Chairman  
(Title)

7/8/2024  
Date



DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION

By:

Its: Cabinet Secretary or Designee

Date

**STATE OF NEW MEXICO  
GRANT PROJECT  
Request for Payment Form  
Exhibit 1**

**I. Grantee Information**

(Make sure information is complete & accurate)

- A. Grantee: \_\_\_\_\_
- B. Address: \_\_\_\_\_  
(Complete Mailing, including Suite, if applicable)  
\_\_\_\_\_  
City, State, Zip
- C. Contact Name/Phone #: \_\_\_\_\_
- D. Grant No: \_\_\_\_\_
- E. Project Title: \_\_\_\_\_
- F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

- A. Payment Request No. \_\_\_\_\_
- B. Grant Amount: \_\_\_\_\_
- C. AIPP Amount (If Applicable): \_\_\_\_\_
- D. Funds Requested to Date: \_\_\_\_\_
- E. Amount Requested this Payment: \_\_\_\_\_
- F. Reversion Amount (If Applicable): \_\_\_\_\_
- G. Grant Balance: \_\_\_\_\_
- H. Final Request for Payment (if Applicable) \_\_\_\_\_

**III. Fiscal Year :** \_\_\_\_\_

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

**IV.  Reporting Certification:** I hereby certify to the best of my knowledge and belief, that reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with the Grant Agreement.

**V.  Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

\_\_\_\_\_  
**Grantee Fiscal Officer**  
or Fiscal Agent (if applicable)

\_\_\_\_\_  
**Grantee Representative**

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**(State Agency Use Only)**

Vendor Code: \_\_\_\_\_ Fund No.: \_\_\_\_\_ PO # \_\_\_\_\_ Loc No.: \_\_\_\_\_

I certify that the State Agency financial and vendor file information agree with the above submitted information.

\_\_\_\_\_  
Division Fiscal Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Division Project Manager

\_\_\_\_\_  
Date

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE**  
**EXHIBIT 2**

**Notice of Obligation to Reimburse Grantee #** \_\_\_\_\_

DATE: \_\_\_\_\_

TO: Department Representative: \_\_\_\_\_, \_\_\_\_\_

FROM: Grantee Entity: \_\_\_\_\_

Grantee Official Representative: \_\_\_\_\_

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: \_\_\_\_\_

Grant Termination Date: \_\_\_\_\_

As the designated representative of the Department for Grant Agreement number \_\_\_\_\_ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): \_\_\_\_\_

The Amount of this Notice of Obligation: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Date: \_\_\_\_\_

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

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**STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
GENERAL FUND 93100 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of the date it is executed, by and between the Department of Finance and Administration, hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **QUAY COUNTY**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the **Laws of 2024, Chapter 66, Section 28, Paragraph 395**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

**24-I3037                      \$250,000.00                      APPROPRIATION REVERSION DATE: June 30, 2026**

Laws of 2024, Chapter 66, Section 28, Paragraph 395, Two Hundred Fifty Thousand (\$250,000.00), from the General Fund 93100 to purchase and equip a pneumatic roller for Quay county;

The Grantee's total reimbursements shall not exceed Two Hundred Fifty Thousand \$250,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")<sup>1</sup>, if applicable, Zero \$0.00, which equals Two Hundred Fifty Thousand \$250,000.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." [Optional Language if special conditions apply. Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict.] The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

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## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

- A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:
- i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
  - ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
  - iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
  - iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
  - v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
    - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
    - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.
- Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and
- vi. The Grantee shall request approval of its obligation(s) by submitting a Notice of Obligation form as provided by the Department. The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
    - a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
    - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
    - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date.
    - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
- B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- C. Project funds shall not be used for purposes other than those specified in the Project Description.
- D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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<sup>1</sup>The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

<sup>2</sup>"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.



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**ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: QUAY COUNTY  
Name: Daniel Zamora  
Title: County Manager  
Address: PO Box 1246, Tucumcari, NM 88401  
Email: daniel.zamora@quaycounty-nm.gov  
Telephone: 575-461-2112

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: QUAY COUNTY  
Name: Andrea Page  
Title: Finance Director  
Address: PO Box 1246, Tucumcari, NM 88401  
Email: andrea.page@quaycounty-nm.gov  
Telephone: 575-461-2112

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division  
Name: Donna Stewart  
Title: Program Manager  
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501  
Email: DonnaJ.Stewart@dfa.nm.gov  
Telephone: 505-231-2993

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

**ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS**

- A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2026** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
- B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

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## **ARTICLE V. EARLY TERMINATION**

### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- i. Termination due to completion of the Project before the Reversion Date; or
- ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- iii. Termination for violation of the terms of this Agreement; or
- iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

### **B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

### **C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

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## **ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

- A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
  - i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
  - ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
  - iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.
- B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.
- C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

### **D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

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## **ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

## **ARTICLE VIII. REPORTS**

### **A. Database Reporting**

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration. Additionally, the Grantee shall certify on the Request for Payment form that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports are due on the last day of each quarter. Quarter end reporting periods are September 30th, December 31st, March 31st, and June 30th.

### **B. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- i. request such additional information regarding the Project as it deems necessary; and
- ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

## **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form provided by the Department. Payment requests are subject to the following procedures:

- i. The Grantee must submit a Request for Payment; and
- ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of execution of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

### **C. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- ii. Twenty (20) days from date of Early Termination; or

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iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

#### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

A. The following general conditions and restrictions are applicable to the Project:

- i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
- iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
- v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- i. The Grantee has the legal authority to receive and expend the Project's funds.
- ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower

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protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

- vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

#### **ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

- A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.
- B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.
- C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the QUAY COUNTY may immediately terminate this Agreement by giving Contractor written notice of such termination. The QUAY COUNTY's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the QUAY COUNTY or the Department of

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Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the QUAY COUNTY or the Department"

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the QUAY COUNTY may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the QUAY COUNTY only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

**ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

**ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

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[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

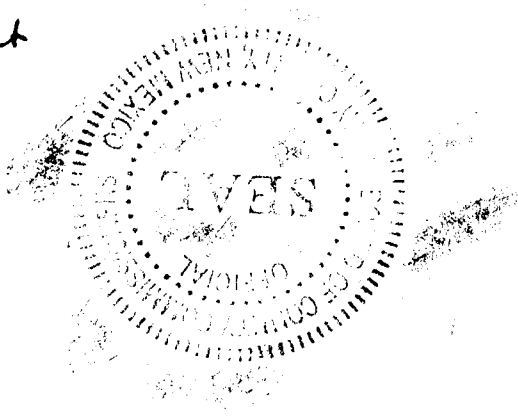
Quay County Government  
Entity Name

Robert Lopez  
Signature of Official with Authority to Bind Grantee

By: Robert Lopez  
(Print Name)

Its: Chairman  
(Title)

7/8/24  
Date



DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION

By: \_\_\_\_\_

Its: Cabinet Secretary or Designee

\_\_\_\_\_  
Date



**STATE OF NEW MEXICO  
GRANT PROJECT  
Request for Payment Form  
Exhibit 1**

**I. Grantee Information**

(Make sure information is complete & accurate)

- A. Grantee: \_\_\_\_\_  
 B. Address: \_\_\_\_\_  
(Complete Mailing, including Suite, if applicable)  
 \_\_\_\_\_  
City, State, Zip  
 C. Contact Name/Phone #: \_\_\_\_\_  
 D. Grant No: \_\_\_\_\_  
 E. Project Title: \_\_\_\_\_  
 F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

- A. Payment Request No. \_\_\_\_\_  
 B. Grant Amount: \_\_\_\_\_  
 C. AIPP Amount (If Applicable): \_\_\_\_\_  
 D. Funds Requested to Date: \_\_\_\_\_  
 E. Amount Requested this Payment: \_\_\_\_\_  
 F. Reversion Amount (If Applicable): \_\_\_\_\_  
 G. Grant Balance: \_\_\_\_\_  
 H. Final Request for Payment (if Applicable) \_\_\_\_\_

**III. Fiscal Year :** \_\_\_\_\_

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

- IV.  Reporting Certification:** I hereby certify to the best of my knowledge and belief, that reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with the Grant Agreement.

- V.  Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

\_\_\_\_\_  
 Grantee Fiscal Officer  
 or Fiscal Agent (if applicable)

\_\_\_\_\_  
 Grantee Representative

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Printed Name

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**(State Agency Use Only)**

Vendor Code: \_\_\_\_\_ Fund No.: \_\_\_\_\_ PO # \_\_\_\_\_ Loc No.: \_\_\_\_\_

I certify that the State Agency financial and vendor file information agree with the above submitted information.

\_\_\_\_\_  
 Division Fiscal Officer

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Division Project Manager

\_\_\_\_\_  
 Date

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 2**

**Notice of Obligation to Reimburse Grantee #** \_\_\_\_\_

DATE: \_\_\_\_\_

TO: Department Representative: \_\_\_\_\_, \_\_\_\_\_

FROM: Grantee Entity: \_\_\_\_\_

Grantee Official Representative: \_\_\_\_\_

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: \_\_\_\_\_

Grant Termination Date: \_\_\_\_\_

As the designated representative of the Department for Grant Agreement number \_\_\_\_\_ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): \_\_\_\_\_

The Amount of this Notice of Obligation: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Date: \_\_\_\_\_

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

## INTERGOVERNMENTAL AGREEMENT

**THIS INTERGOVERNMENTAL AGREEMENT, # 25 924 00148**, is entered into by and between the **State of New Mexico Public Education Department (PED)**, hereinafter referred to as the "DEPARTMENT," and **Quay County**, a public entity, hereinafter referred to as the "CONTRACTOR."

**WHEREAS**, the DEPARTMENT is the agency; and

**WHEREAS**, the DEPARTMENT desires to engage and the CONTRACTOR is willing to provide certain portions of the DEPARTMENT'S program.

**NOW THEREFORE**, the DEPARTMENT and the CONTRACTOR in consideration of mutual covenants and agreements herein contained, do hereby agree as follows:

### **I. Period of Agreement.**

This Agreement shall become effective when signed by both parties, retroactive to **May 1, 2024**, and shall terminate on **June 30, 2025**, unless terminated pursuant to Article VII, *infra*.

### **II. Statement of Work.**

The CONTRACTOR shall provide the program of services as set forth in the scope of work which is attached hereto as "**EXHIBIT A – STATEMENT OF WORK**" and incorporated herein by reference, unless amended or terminated pursuant to Article VII, *infra*. In consideration for the provision of those services, the DEPARTMENT agrees to purchase and the CONTRACTOR agrees to perform the services identified in the Statement of Work.

### **III. Limitation of Cost.**

The total amount of the monies payable to the CONTRACTOR under this Agreement shall not exceed **ONE HUNDRED NINETY THOUSAND DOLLARS AND ZERO CENTS (\$190,000.00)**. The annual budget is attached hereto as "**EXHIBIT B – FINANCIAL INFORMATION SHEET**" and incorporated herein by reference.

### **IV. Payment.**

The DEPARTMENT shall make monthly payments to the CONTRACTOR for services and costs specified in "**EXHIBIT B.**" The CONTRACTOR shall submit certified and documented invoices and vouchers monthly for actual work performed and expenses incurred to the DEPARTMENT. Invoices must include the agreement number for which services have been rendered, the PED purchase order number and should be mailed to **Breezy Gutierrez, Director, College and Career Readiness Bureau, NM Public Education Department, 300 Don Gaspar Ave, Santa Fe, NM 87501** or submitted via the Request for Payment form at <https://bit.ly/CCRB-payment>. The CONTRACTOR'S failure to submit such payment vouchers, invoices and supporting documentation within fifteen days after they are due may result in the non-availability of funds for payment and/or the denial of payment by the DEPARTMENT.

## **V. Return of Funds.**

Upon termination of this Agreement, or after the services provided for herein have been rendered, surplus money, if any, shall be returned by the CONTRACTOR to the DEPARTMENT.

## **VI. Appropriations.**

Performance under this Agreement is contingent upon sufficient authority and appropriations granted by the New Mexico State Legislature.

## **VII. Termination of Agreement.**

The Department may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Department's uncured, material breach of this Agreement. **By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THE PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE STATE IN SUCH CIRCUMSTANCES AS CONTRACTOR'S DEFAULT/BREACH OF CONTRACT.**

## **VIII. Funds Accountability.**

The parties shall provide for strict accountability of all monies made subject to this Agreement. The CONTRACTOR shall maintain fiscal records, follow generally accepted accounting principles and account for all receipts and disbursements of funds transferred to the CONTRACTOR pursuant to this Agreement. The CONTRACTOR will include all monies made subject to this Agreement in the annual audit and will provide the DEPARTMENT with a copy of the annual audit.

## **IX. Restriction on Payment for Employees**

The CONTRACTOR shall be restricted and refrain from making payment directly to a PED employee or on a PED employee's behalf. This would include payment for purposes of lodging, per diem, or reimbursement of costs for attending trainings, events, or activities. In the event that payment is intended for a PED employee under this agreement, such payment may only be made to the PED directly to be processed internally in accordance with fiscal policies issued by the New Mexico Department of Finance and Administration.

## **X. Maintenance of Records.**

The DEPARTMENT shall maintain records as required of any administering state agency pursuant to applicable state law and regulation. The CONTRACTOR shall maintain fiscal and programmatic records relative to those funds and activities that have been made subject to this Agreement for a minimum of three years.

## **XI. Requests for Records Under Inspection of Public Records Act.**

CONTRACTOR may be subject to the Inspection of Public Records Act (“IPRA”), and is separately and independently responsible for complying with an IPRA request for records. CONTRACTOR must notify the DEPARTMENT when the CONTRACTOR has received an IPRA request for records relating to this agreement within forty-eight (48) hours of receipt of the request. CONTRACTOR must also provide the DEPARTMENT with a copy of any responsive records it intends to make available, along with notification of its intent to release such records, at least three (3) business days prior to their release. CONTRACTOR shall also provide all responsive records subject to IPRA to the DEPARTMENT promptly upon notice from the DEPARTMENT of the DEPARTMENT’S receipt of a related or relevant IPRA request. Provision of such records to the DEPARTMENT shall be done in a manner so as to permit the DEPARTMENT to comply with the IPRA request.

**XII. Confidentiality.**

Any confidential information provided to or developed by the CONTRACTOR in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the CONTRACTOR without the prior written approval of the DEPARTMENT or as required by a court of competent jurisdiction.

**XIII. Amendments.**

This Agreement shall not be altered, changed, or amended except by an instrument, in writing, executed and approved by both parties.

**XIV. Assignment.**

The CONTRACTOR shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the DEPARTMENT.

**XV. Applicable Law.**

This Agreement shall be governed by the laws of the United States and the State of New Mexico.

**XVI. Status of Entity.**

The CONTRACTOR affirms that it is a public agency exempt from the procurement code under NMSA 1978, § 13-1-98(A).

**XVII. Acquisition of Property.**

The parties agree that neither party shall acquire any property as the result of this Agreement.

**XVIII. Liability.**

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation or alleged violation or requirements applicable to the performance of the Agreement. Each party shall be liable for its actions according to this Agreement subject to the

immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et. seq., NMSA 1978, as amended.

**XIX. Execution of Documents.**

The DEPARTMENT and the CONTRACTOR agree to execute any document(s) necessary to implement the terms of this Agreement.

**XX. Sub-Contracts.**

The CONTRACTOR shall be ultimately responsible for all items enumerated in the Statement of Work (Exhibit A) of this Agreement.

The CONTRACTOR shall seek advance approval from the DEPARTMENT of all sub-contracts, including qualifications and job descriptions for any professional service sub-contract.

The CONTRACTOR shall comply, and shall ensure that all sub-contractors comply, with all applicable procurement laws and regulations.

**XXI. Equal Opportunity Compliance.**

The CONTRACTOR agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the CONTRACTOR agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, or, if the employer has fifty or more employees, spousal affiliation, or, if the employer has fifteen or more employees, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If CONTRACTOR is found not to be in compliance with these requirements during the life of this Agreement, CONTRACTOR agrees to take appropriate steps to correct these deficiencies.

**XXII. Workers' Compensation.**

The CONTRACTOR agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the CONTRACTOR fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the DEPARTMENT.

**XXIII. Lobbying Certification.**

The CONTRACTOR, by signing below, certifies to the best of his/her knowledge and belief, that:

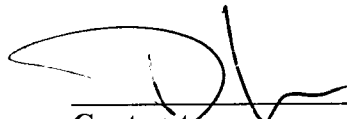
No federal appropriated funds have been paid or will be paid by or on the behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, continuation, renewal,

amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit a Standard Form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of facts upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. (United States Code). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

IN WITNESS WHEREOF, the DEPARTMENT and the CONTRACTOR have caused this Agreement to be executed, said Agreement to become effective when signed by both parties.

**CONTRACTOR:**

**DEPARTMENT:**

  
\_\_\_\_\_  
Contractor  
Quacy County Manager  
Printed Title of Authorized Signatory

\_\_\_\_\_  
Arsenio Romero, PhD  
Secretary of Public Education

Date: 7-9-24

Date: \_\_\_\_\_

\_\_\_\_\_  
Department's Legal Counsel -  
Certifying Legal Sufficiency

Date: \_\_\_\_\_



## EXHIBIT A - STATEMENT OF WORK

### Scope of work:

The CONTRACTOR shall provide an internship program for students as part of, and as permitted through, the Department's Summer Enrichment program. The CONTRACTOR shall:

1. Strive to encourage at-risk students to participate in internship program using explicit engagement strategies.
2. Ensure that students participating in the internship program are able to arrive at their internships by providing access to transportation, including public transportation, as an in-kind contribution.
3. Place student participants into internship placements that reflect the state, regional and local economic data regarding specific, in-demand workforce opportunities.
4. Design internship placements so that students are exposed to high wage, high-skill, or in-demand careers, as determined by New Mexico Department of Workforce Solutions labor market information.
5. Have coordinators employed to oversee interns and ensure that coordinators undergo background checks if not currently an employee of a local public charter school or school district.
6. Ensure that no coordinator oversees over twenty (20) interns.
7. Ensure coordinators collaborate with local employers, such as government managers who request interns, and with local Workforce Connection Office staff to develop job descriptions for students.
8. Ensure each coordinator collaborates with staff from their local Workforce Connection Office to evaluate student applicants and determine appropriate placement of students.
9. Ensure each coordinator attends a statewide training to learn expected internship protocols and learning objectives.
10. Ensure each coordinator attends weekly statewide virtual meetings with other coordinators.
11. Ensure that both coordinators and student workers are covered by liability insurance.

12. Ensure that local labor laws reflected in the following website are adhered to:  
<https://www.dws.state.nm.us/Child-Labor> and  
[https://www.dws.state.nm.us/Portals/0/DM/LaborRelations/Working\\_as\\_a\\_Teen.pdf](https://www.dws.state.nm.us/Portals/0/DM/LaborRelations/Working_as_a_Teen.pdf)
13. Ensure that students with the coordinator learn employability skills before they begin their internship placement.

**EXHIBIT B**  
**FINANCIAL INFORMATION SHEET**  
(Please see table of awards)

		<b>Total</b>
Summer Enrichment Internship Program		\$190,000.00
<b>SUBTOTAL</b>		\$190,000.00
<b>TOTAL</b>		\$190,000.00

**Funding Source: State**

	<b>State</b>
<b>Fund:</b>	68110/21160
<b>Dept:</b>	ZI5179
<b>Bud Ref:</b>	92424
<b>Class Code:</b>	I5179

***Prior to approval of a subcontract, please ensure that:***

- (1) the person making the assurances that follow is authorized to make such assurances;
- (2) the contractor has verified that the subcontractor possesses the necessary credentials to qualify for payment of state funds that flow from the PED contract with the contractor including, as applicable, a vendor ID number, a W9 or Form 1099;
- (3) the contractor has verified that the subcontractor possesses a valid certificate or license authorizing the subcontractor to teach, administer or perform medical procedures, if the certification or licensure is required under NMSA Section 22, Article 10A;
- (4) the contractor accepts liability under NMSA 1978 Section 22-8-42 on behalf of the subcontractor for (1) any falsification of record, account or report filed pursuant to the Public School Finance Act; (2) the subcontractor's use of funds budgeted or appropriated for public school use for a purpose other than that provided in the appropriation or grant;
- (5) the contractor acknowledges that no subcontract requires direct payment from PED to the subcontractor;
- (6) the contractor requires the subcontractor to affirm that all materials developed or acquired under the subcontract become the property of the Public Education Department and nothing developed or produced, in whole or in part, by the subcontractor under the agreement with the contractor shall be the subject of an application for copyright or other claim of ownership by or on behalf of the subcontractor;
- (7) the contractor verifies that the subcontractor has no conflict of interest and complies with the Governmental Conduct Act,
- (8) the contractor verifies that the subcontractor abides by all federal and state laws, rules and executive orders of the Governor of the State of New Mexico pertaining to nondiscrimination and equal employment opportunity;
- (9) the contractor ensures that the subcontractor complies with all requirements of Contractor's agreement with PED including but not limited to requirements for worker's compensation coverage, and limitations on lobbying; and
- (10) the contractor ensures that the subcontractor complies with State of New Mexico's employee pay equity reporting requirements.

PRINTED NAME OF PERSON MAKING ASSURANCES: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

***Approval of subcontract by PED does not exempt contractor from following and adhering to state procurement rules and regulations in securing contractual services of subcontractor.***