

**CHAVES COUNTY BOARD OF COMMISSIONERS**  
**REGULAR BUSINESS MEETING AGENDA**

**February 19, 2015 –9:00 a.m.**

**Chaves County Administrative Center – Joseph R. Skeen Building**  
**Commission Chambers - #1 St. Mary's Place**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**DETERMINATION OF QUORUM**

**APPROVAL OF MINUTES**

**PRESENTATIONS: CHAVES COUNTY QUEEN-STEPHANIE MILLER**

**HEINFELD, MEECH & CO., P.C.**

**AGENDA ITEMS**

**A. PUBLIC HEARINGS**

1. Question on Whether a Property Tax Rebate Benefitting Low Income Property Taxpayers in the County Should be Made Available through the Adoption of a County Ordinance
2. Ordinance O-093-Authorizing the Issuance and Sale of Taxable Industrial Revenue Bonds for the NextEra Solar Project
3. Case Z 2015-1-Petition for Rezoning from Agricultural District to Industrial Zoning

**B. AGREEMENTS AND RESOLUTIONS**

4. Ratification of Amendment No. 1 to Agreement A-14-004 between Chaves County and the State of New Mexico Children, Youth and Families Department
5. Ratification of Agreement A-14-038-between Chaves County and Southeastern New Mexico Veterans Transportation Network
6. Agreement A-15-002-between Chaves County and Roswell Medical Care to Provide Indigent Residents with Primary Health Care Services
7. Agreement A-15-003-between Chaves County and Kansas State Bank
8. Resolution R-15-003-Approval of Budget Adjustments
9. Resolution R-15-005-Appointment to the County Board of Registration
10. Resolution R-15-006-DWI Grant and Distribution Application for Fiscal Year 2016 Local DWI Grant Fund
11. Resolution R-15-008-Approving Change in Manpower Allocation

12. Resolution R-15-009-Authorizing the Submission of an Application under the 2015 Community Development Block Grant (CDBG) Program

13. Resolution R-15-010-Budget Increase to Fiscal Year 2014/2015 Final Budget for Other Grants and Contracts

**C. OTHER BUSINESS**

14. Request for Out-of-State Travel-Planning and Zoning Department

15. Request for Out-of-State Travel-Sheriff's Office

16. 2015 Commission Committee Appointments

**APPROVAL OF CHECKS  
APPROVAL OF REPORTS**

**UNSCHEDULED COMMUNICATIONS LIMITED TO FIVE MINUTES PER VISITOR  
NO FORMAL ACTION TAKEN BY COMMISSION**

- **COUNTY MANAGERS' COMMUNICATIONS**
- **COMMISSIONER'S COMMUNICATIONS**
- **SIGNATURE OF DOCUMENTS**
- **ADJOURNMENT**

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If you are an individual with a disability who is in need of a reader, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing of a meeting, please contact the County Commissioner's office at 575-624-6600. This should be done at least one week prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the County Commissioner's office if a summary or other type of accessible format is needed.

**AGENDA ITEM:** \_\_\_\_\_ 1 \_\_\_\_\_

A Public Hearing on the Question of Whether a Property Tax Rebate Benefitting Low Income Property Taxpayers in the County Should be Made Available through the Adoption of a County Ordinance

**MEETING DATE:** February 19, 2015

**STAFF SUMMARY REPORT**

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**ACTION REQUESTED BY:** Stanton L. Riggs

**ACTION REQUESTED:** Public Hearing

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**ITEM SUMMARY:**

According to Section 7-2-14.3G, NMSA 1978, in every odd numbered year, the Board of County Commissioners shall conduct a public hearing on the question of whether a property tax rebate benefitting low income property tax payers in the County should be made available through adoption of a County Ordinance.

The problem with this rebate to low income property taxpayers is twofold. First, who actually qualifies as low income? The procedure to qualify is set out in Section 7-2-14, NMSA 1978. However, it is based upon New Mexico Income Tax returns and could possibly be manipulated. The second issue revolves around the tax itself. The taxes are not forgiven. The tax burden is shifted to the County to pay until an election occurs and the voters decide whether to impose a 1 mil property tax increase to pay for the taxes which have been rebated.

In addition, this does not rebate state or school taxes, bond levies, etc. It only rebates the County and City portion of the property tax.

Staff recommends denial of creating an ordinance.

This public hearing has been properly advertised.

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**SUPPORT DOCUMENTS:**

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**SUMMARY BY:** Stanton L. Riggs

**TITLE:** County Manager

**AGENDA ITEM:**   2  

Public Hearing Regarding Ordinance  
#O-093 Authorizing the Issuance and  
Sale of Taxable Industrial Revenue  
Bonds for the NextEra Solar Project

**MEETING DATE:** February 19, 2015

**STAFF SUMMARY REPORT**

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**ACTION REQUESTED BY:** Stanton L. Riggs, County Manager

**ACTION REQUESTED:** Conduct Public Hearing and Approve Ordinance

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**ITEM SUMMARY:**

The Ordinance, if approved, would authorize Chaves County to issue and sale taxable industrial revenue bonds (IRBs) in the maximum principle amount of \$290,000,000.00 for the Next Energy Solar Project. The IRBs would provide funds to finance the acquisition, construction and equipping of a solar farm for the purpose of generating electricity. The bond term is thirty years. NextEra is purchasing all of these bonds. This Ordinance authorizes the execution and delivery of an indenture, a lease agreement, a bond purchase agreement, bonds, and other documents in connection with the issuance of the bonds. NextEra will indemnify the County from and against any claim or issue that may arise as a result of these bonds. At no time will Chaves County be obligated to pay these bonds.

NextEra will also make PILOT payments to Chaves County in the amount of \$480,000.00 per year for the term of the bonds. NextEra will also be paying PILOT payments to the Roswell Independent School District in the amount of \$320,000.00 per year for the term of the bonds. The Roswell Independent School District passed a resolution on February 10, 2015 approving the PILOT payments to the school district.

Staff recommends approval. This is a public hearing.

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**SUPPORT DOCUMENTS:** Ordinance #O-093  
Bond Purchase Agreement  
Indenture  
Lease Agreement

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**SUMMARY BY:** Stanton L. Riggs

**TITLE:** County Manager

February 12, 2015

CHAVES COUNTY, NEW MEXICO  
BOARD OF COUNTY COMMISSIONERS  
ORDINANCE NO. O-093

AUTHORIZING THE ISSUANCE AND SALE OF CHAVES COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (ROSWELL SOLAR, LLC PROJECT, CHAVES COUNTY SOLAR, LLC AND CHAVES COUNTY SOLAR II, LLC PROJECTS) SERIES 2015A, SERIES 2015B AND SERIES 2015C, IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$290,000,000, TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF SOLAR PHOTOVOLTAIC ELECTRIC GENERATING FACILITIES FOR THE PURPOSE OF GENERATING ELECTRICITY; AUTHORIZING THE EXECUTION AND DELIVERY OF INDENTURES, LEASE AGREEMENTS, BOND PURCHASE AGREEMENTS, BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECTS; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECTS; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Chaves County (the “County”) is a legally and regularly created, established, organized and existing political subdivision of the State of New Mexico (the “State”) created pursuant to Sections 4-30-1 and 4-30-2, NMSA 1978; and

WHEREAS, pursuant to Sections 4-59-1 through 4-59-16, NMSA 1978 (the “Act”), the County is authorized to acquire industrial revenue projects to be located within the County, to issue industrial revenue bonds and to use the proceeds of such bonds for the purpose of promoting the use of the natural resources of the State and promoting industry and developing trade or other economic activity to secure and maintain a balanced and stable economy in the county to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, NextEra Energy Resources, LLC, a Delaware limited liability company (the “Company”), has formed or will form 1) Roswell Solar, LLC, 2) Chaves County Solar, LLC and 3) Chaves County Solar II, LLC (collectively, the “Project Companies”); and

WHEREAS, the Company has presented to the Chaves County Board of County Commissioners (the “Commission”) a proposal whereby the County would 1) issue its Taxable Industrial Revenue Bonds (Roswell Solar LLC, Project), Series 2015A (the “Series 2015A Bonds”), 2) issue its Taxable Industrial Revenue Bonds (Chaves County Solar, LLC Project), Series 2015B (the “Series 2015B Bonds”), 3) issue its Taxable Industrial Revenue Bonds (Chaves County Solar II, LLC Project), Series 2015C (the “Series 2015C Bonds” and, together with the Series 2015A Bonds and the Series 2015B Bonds, the “Bonds”), and 4) acquire certain equipment for solar photovoltaic electric generating facilities, including solar tracking hardware and software, photovoltaic panels and inverters, support structures, transformers and associated

electrical generating equipment used to generate electricity from solar energy and related equipment, and real property related to the Roswell Solar LLC, Project, the Chaves County Solar LLC, Project and the Chaves County Solar II, LLC Project (collectively, the “Projects”), located within a part of the County which is outside the corporate limits of any municipality in the County (each a “Project Property” and, collectively, the “Project Properties”), to be used by the Project Companies for the generation and transportation of electricity; and

WHEREAS, under the Company’s proposal, the County would enter into Indentures of Trust (each an “Indenture,” and, collectively, the “Indentures”) with Roswell Solar Holdings, LLC, Chaves County Solar Holdings, LLC and Chaves County Solar II Holdings, LLC (collectively, the “Purchasers”) and BOKF, N.A. dba Bank of Albuquerque (the “Depositary”), pursuant to which and together with this ordinance (the “Bond Ordinance”), the County would issue the Series 2015A Bonds, the Series 2015B Bonds, and the Series 2015C Bonds, respectively; and

WHEREAS, under the Company’s proposal, the County and the Project Companies would enter into Leases (the “Leases”), pursuant to which the Project Companies will lease the Project Properties from the County and the Project Companies will make payments sufficient to pay the principal of and interest on the Series 2015A Bonds, the Series 2015B Bonds, and the Series 2015C Bonds, as applicable, and to pay all other obligations incurred pursuant to the provisions of the Leases and this Bond Ordinance; and

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

WHEREAS, the Series 2015A Bonds in a principal amount not to exceed \$120,000,000, the Series 2015B Bonds in a principal amount not to exceed \$120,000,000, and the Series 2015C Bonds in a principal amount not to exceed \$50,000,000, will be issued, sold and delivered by the County in a private sale to the Purchasers pursuant to the bond purchase agreements to be dated as of the initial date of delivery of the Bonds among the County, the Purchasers and the Company (the “Bond Purchase Agreements”); and

WHEREAS, the proceeds of the Bonds shall be applied to pay the costs of the Projects and to pay certain costs associated with the transactions; and

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

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

1. Leases
2. Indentures

3. Bond Purchase Agreements
4. Bonds

The Leases, Indentures, Bond Purchase Agreements and Bonds are collectively referred to in the Bond Ordinance as the “Bond Documents”; and

WHEREAS, the County is authorized to issue the Bonds under the Act and after having considered the Company’s proposal, has concluded that it is desirable at this time to authorize the issuance of the Bonds to finance the Projects and that the County’s issuance of the Bonds will constitute and be a valid public purpose; and

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

WHEREAS, there has been published in the *Roswell Daily Record*, a newspaper of general circulation in the County, public notice of the Commission’s intention to adopt this Bond Ordinance, which notice contained certain information concerning the ownership, purpose, location and size of the Projects and the amount of the Bonds to be issued to finance the Projects, which notice was published at least fourteen (14) days prior to final action upon this Bond Ordinance; and

WHEREAS, the requirements of Section 4-59-4(A)(2) have been met.

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

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Bond Ordinance previously taken by the Commission and the officials of the County directed toward approval of the issuance and sale of the Bonds be approved and the same hereby are ratified, approved and confirmed.

Section 2. FINDINGS.

A. General. The Commission hereby declares that it has considered all relevant information presented to it relating to the Bonds and the Projects and hereby finds and determines that the issuance of the Bonds pursuant to the Bond Ordinance to provide funds for the Projects are necessary and advisable and in the interest of and will promote the use of the natural resources of the State, industry and trade and a sound and proper balance in the State between agriculture, commerce and industry.

B. The Commission finds that:

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

(2) The aggregate face amount of obligations to be issued with respect to financing the Projects will not collectively exceed \$290,000,000.

(3) The developers of the Project Properties are the Project Companies.

(4) The Project Properties are located in the County approximately 5-8 miles northeast of Roswell, New Mexico.

Section 3. BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Bonds in a principal amount not to collectively exceed \$290,000,000 and the use of the proceeds of the Bonds to finance the cost of the Projects including payment of transaction expenses related thereto are hereby approved and confirmed. The sale of the Bonds at par at a purchase price not to collectively exceed \$290,000,000 is approved.

B. Form and Terms.

Subject to the limitations set forth in this Bond Ordinance, the Bonds shall (i) be in the form and denomination and shall be numbered and dated as set forth in the Indentures, (ii) be payable as to principal and interest and subject to optional and mandatory redemption and defeasance in the amounts, upon the conditions and at the times and prices set forth in the Indentures; and (iii) be issued in a principal amount not to collectively exceed \$290,000,000, bearing interest at the rate and maturing on the date set forth in the Indentures.

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

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

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The Bond Documents in the form presented to the Commission are hereby approved. The presiding officer of the Board of County Commissioners of the County is authorized to approve the form, terms and provisions of the Bond Documents on behalf of the Commission, provided that such form, terms and provisions are consistent with this Bond Ordinance, and to execute and deliver in the name and on behalf of the County, and the County Clerk or Deputy County Clerk is hereby authorized to attest, as necessary, the Bond Documents. The County Clerk is further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including security agreements, and to do such other acts and things, either prior to or after the date of delivery of the Bonds, as are



necessary or appropriate to consummate the transactions contemplated by the Bond Documents. The Presiding Officer of the Commission, the County Manager and other officers of the County shall take such action as is necessary to effectuate the provisions of the Indentures and shall take such action as is necessary in conformity with the Act to finance the costs of the Projects and for carrying out other transactions as contemplated by this Ordinance, and the Bond Documents, including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Bonds.

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

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

Section 7. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER MATTERS. The following determinations are made:

A. The maximum amount necessary in each year to pay the principal of and interest on the Series 2015A Bonds, assuming issuance of the Series 2015A Bonds as of June 1, 2015, in the maximum aggregate principal amount of \$120,000,000 and bearing a maximum interest rate of 3.00%, is as follows:

<b><u>Year</u></b>	<b><u>Total Debt Service</u></b>	<b><u>Principal</u></b>	<b><u>Interest</u></b>
2016	\$3,600,000	\$-0-	\$3,600,000
2017	\$3,600,000	\$-0-	\$3,600,000
2018	\$3,600,000	\$-0-	\$3,600,000
2019	\$3,600,000	\$-0-	\$3,600,000
2020	\$3,600,000	\$-0-	\$3,600,000
2021	\$3,600,000	\$-0-	\$3,600,000
2022	\$3,600,000	\$-0-	\$3,600,000
2023	\$3,600,000	\$-0-	\$3,600,000
2024	\$3,600,000	\$-0-	\$3,600,000
2025	\$3,600,000	\$-0-	\$3,600,000
2026	\$3,600,000	\$-0-	\$3,600,000
2027	\$3,600,000	\$-0-	\$3,600,000
2028	\$3,600,000	\$-0-	\$3,600,000
2029	\$3,600,000	\$-0-	\$3,600,000
2030	\$3,600,000	\$-0-	\$3,600,000
2031	\$3,600,000	\$-0-	\$3,600,000
2032	\$3,600,000	\$-0-	\$3,600,000
2033	\$3,600,000	\$-0-	\$3,600,000
2034	\$3,600,000	\$-0-	\$3,600,000
2035	\$3,600,000	\$-0-	\$3,600,000
2036	\$3,600,000	\$-0-	\$3,600,000
2037	\$3,600,000	\$-0-	\$3,600,000
2038	\$3,600,000	\$-0-	\$3,600,000
2039	\$3,600,000	\$-0-	\$3,600,000
2040	\$3,600,000	\$-0-	\$3,600,000
2041	\$3,600,000	\$-0-	\$3,600,000
2042	\$3,600,000	\$-0-	\$3,600,000
2043	\$3,600,000	\$-0-	\$3,600,000
2044	\$3,600,000	\$-0-	\$3,600,000
2045	\$128,000,000	\$120,000,000	\$3,600,000

B. The maximum amount necessary in each year to pay the principal of and interest on the Series 2015B Bonds, assuming issuance of the Series 2015B Bonds as of June 1, 2015, in the maximum aggregate principal amount of \$120,000,000 and bearing a maximum interest rate of 3.00%, is as follows:

<u>Year</u>	<u>Total Debt Service</u>	<u>Principal</u>	<u>Interest</u>
2016	\$3,600,000	\$-0-	\$3,600,000
2017	\$3,600,000	\$-0-	\$3,600,000
2018	\$3,600,000	\$-0-	\$3,600,000
2019	\$3,600,000	\$-0-	\$3,600,000
2020	\$3,600,000	\$-0-	\$3,600,000
2021	\$3,600,000	\$-0-	\$3,600,000
2022	\$3,600,000	\$-0-	\$3,600,000
2023	\$3,600,000	\$-0-	\$3,600,000
2024	\$3,600,000	\$-0-	\$3,600,000
2025	\$3,600,000	\$-0-	\$3,600,000
2026	\$3,600,000	\$-0-	\$3,600,000
2027	\$3,600,000	\$-0-	\$3,600,000
2028	\$3,600,000	\$-0-	\$3,600,000
2029	\$3,600,000	\$-0-	\$3,600,000
2030	\$3,600,000	\$-0-	\$3,600,000
2031	\$3,600,000	\$-0-	\$3,600,000
2032	\$3,600,000	\$-0-	\$3,600,000
2033	\$3,600,000	\$-0-	\$3,600,000
2034	\$3,600,000	\$-0-	\$3,600,000
2035	\$3,600,000	\$-0-	\$3,600,000
2036	\$3,600,000	\$-0-	\$3,600,000
2037	\$3,600,000	\$-0-	\$3,600,000
2038	\$3,600,000	\$-0-	\$3,600,000
2039	\$3,600,000	\$-0-	\$3,600,000
2040	\$3,600,000	\$-0-	\$3,600,000
2041	\$3,600,000	\$-0-	\$3,600,000
2042	\$3,600,000	\$-0-	\$3,600,000
2043	\$3,600,000	\$-0-	\$3,600,000
2044	\$3,600,000	\$-0-	\$3,600,000
2045	\$123,600,000	\$120,000,000	\$3,600,000

C. The maximum amount necessary in each year to pay the principal of and interest on the Series 2015C Bonds, assuming issuance of the Series 2015C Bonds as of June 1, 2015, in the maximum aggregate principal amount of \$50,000,000 and bearing a maximum interest rate of 3.00%, is as follows:

<u>Year</u>	<u>Total Debt Service</u>	<u>Principal</u>	<u>Interest</u>
2016	\$1,500,000	\$-0-	\$1,500,000
2017	\$1,500,000	\$-0-	\$1,500,000
2018	\$1,500,000	\$-0-	\$1,500,000
2019	\$1,500,000	\$-0-	\$1,500,000
2020	\$1,500,000	\$-0-	\$1,500,000
2021	\$1,500,000	\$-0-	\$1,500,000
2022	\$1,500,000	\$-0-	\$1,500,000
2023	\$1,500,000	\$-0-	\$1,500,000
2024	\$1,500,000	\$-0-	\$1,500,000
2025	\$1,500,000	\$-0-	\$1,500,000
2026	\$1,500,000	\$-0-	\$1,500,000
2027	\$1,500,000	\$-0-	\$1,500,000
2028	\$1,500,000	\$-0-	\$1,500,000
2029	\$1,500,000	\$-0-	\$1,500,000
2030	\$1,500,000	\$-0-	\$1,500,000
2031	\$1,500,000	\$-0-	\$1,500,000
2032	\$1,500,000	\$-0-	\$1,500,000
2033	\$1,500,000	\$-0-	\$1,500,000
2034	\$1,500,000	\$-0-	\$1,500,000
2035	\$1,500,000	\$-0-	\$1,500,000
2036	\$1,500,000	\$-0-	\$1,500,000
2037	\$1,500,000	\$-0-	\$1,500,000
2038	\$1,500,000	\$-0-	\$1,500,000
2039	\$1,500,000	\$-0-	\$1,500,000
2040	\$1,500,000	\$-0-	\$1,500,000
2041	\$1,500,000	\$-0-	\$1,500,000
2042	\$1,500,000	\$-0-	\$1,500,000
2043	\$1,500,000	\$-0-	\$1,500,000
2044	\$1,500,000	\$-0-	\$1,500,000
2045	\$51,500,000	\$50,000,000	\$1,500,000

D. The Bonds will bear interest at the rate of three percent (3.00%) per annum.

E. The Bonds may be redeemed at any time without premium.

F. It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund for the maintenance of the Project Property.

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

H. The Leases require the Company to make lease payments in an amount sufficient to pay the principal of and interest on the Bonds as principal and interest become due and to pay all Related Costs.

I. The Leases shall include a provision that the Company pay the County payments in lieu of taxes (“PILOT Payments”) for so long as the Bonds are outstanding. The amount of the PILOT Payments shall be acceptable to the Commission and the Board of the Roswell Independent School District.

Section 8. LIMITED OBLIGATIONS. The Bonds shall be a special limited obligation of the County, payable solely from the Base Rent (as defined in the Leases) paid by the Project Companies to the County as described in the Indentures and any other property or interest of the County specifically pledged under the Indenture and shall never constitute a debt or indebtedness of the County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing contained in the Bond Ordinance or in the Bond Documents or any other instruments shall be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing powers, nor shall the breach of any agreement contained in the Bond Ordinance, the Bond Documents, the Bonds or any other instrument be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, the County having no power to pay out of its general funds, or otherwise contribute any part of the costs of constructing or equipping the Project Property, nor power to operate the Project Property as a business or in any manner except as lessor of the Project Property.

Section 9. APPROVAL OF INDEMNIFICATION. The Commission specifically requires that the Leases contain provisions relating to indemnification which provide that the Company shall indemnify and hold harmless the County and its Board of County

Commissioners, officials, employees and agents against liability to the Company, or to any third parties, that may be asserted against the County or its Board of County Commissioners, officials, members, officers, employees or agents with respect to the County's ownership of the Project Property or the issuance of the Bonds and arising from the condition of the Project Property or the acquisition, construction and operation of the Project Property by the Company, except to the extent Section 56-7-1, NMSA 1978 may preclude such indemnity, and except claims for any loss or damage arising out of or resulting from the gross negligence or willful misconduct of the County or its Board of County Commissioners, or any official, employee or agent of the County.

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

Section 11. **REPEALER.** All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 12. **SEVERABILITY.** If any section, paragraph, clause or provision of the Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of the Bond Ordinance.

Section 13. **RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE.** This Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the presiding officer of the Board of Commissioners, and by the signature of the County Clerk or any Deputy County Clerk, and shall be recorded in the Ordinance book of the County, kept for that purpose, and shall be in full force and effect thereafter in accordance with the laws of the State, and notice of adoption thereof shall be published once in a newspaper which maintains an office in, and is of general circulation in the County.

Done this \_\_\_\_ day of February, 2015.

**BOARD OF CHAVES COUNTY COMMISSIONERS**

\_\_\_\_\_  
James W. Duffey, Chairman

\_\_\_\_\_  
Robert Corn, Vice Chairman

**ATTEST:**

\_\_\_\_\_  
Kim Chesser, Member

\_\_\_\_\_  
Dave Kunko  
County Clerk

\_\_\_\_\_  
Kyle D. "Smiley" Wooton, Member

\_\_\_\_\_  
William E. Cavin, Member

ROSWELL SOLAR HOLDINGS, LLC  
CHAVES COUNTY, NEW MEXICO

and

ROSWELL SOLAR, LLC  
BOND PURCHASE AGREEMENT

Dated \_\_\_\_\_, 2015

\$120,000,000  
Chaves County, New Mexico  
Taxable Industrial Revenue Bonds  
(Roswell Solar, LLC Project)  
Series 2015A



## **BOND PURCHASE AGREEMENT**

**ROSWELL SOLAR HOLDINGS, LLC** (the “Purchaser”), **CHAVES COUNTY, NEW MEXICO** (the “Issuer”), and **ROSWELL SOLAR, LLC** (the “Company”), agree:

**Section 1. Recitals.** The Issuer, the Purchaser, the Company and BOKF, N.A. dba Bank of Albuquerque, as depository (the “Depository”) have entered into an Indenture dated as of \_\_\_\_\_, 2015 (the “Indenture”). Pursuant to the Indenture, the Issuer will issue its Taxable Industrial Revenue Bonds (Roswell Solar, LLC Project), Series 2015A, in the maximum principal amount of \$120,000,000 (the “Series 2015A Bonds” or 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 \_\_\_\_\_, 2015 (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.

(b) Pursuant to Ordinance No. \_\_\_\_\_ duly adopted by the Board of County Commissioners of Chaves County on February \_\_, 2015 (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 Bond 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 Modrall, Sperling, Roehl, Harris & Sisk, P.A., Bond Counsel, substantially in the form of Exhibit A;

(ii) the opinion of 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 Depositary signed by a duly authorized officer of the Depositary to the effect that (a) he or she is an authorized officer of the Depositary; (b) the Indenture has been duly executed and delivered by the Depositary; (c) the Depositary 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 Depositary of the Indenture and the performance by the Depositary 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 Depositary is subject or by which the Depositary is bound;

(ix) such additional legal options, 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 (x) 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 (y) 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: Chaves County, New Mexico  
#1 St. Mary's Place  
Roswell, NM 88203  
Attn: County Manager  
Telephone: 575-624-6602  
Fax: 575-624-6631

With a copy to:

If to the Purchaser: Roswell Solar Holdings, LLC

c/o Jim Shandalov  
One Post St, Suite 2550  
San Francisco, CA 94104  
Telephone: 415-318-5910  
E-mail: jim.shandalov@nexteraenergy.com

If to the Company: Roswell Solar, LLC  
c/o Jim Shandalov  
One Post St, Suite 2550  
San Francisco, CA 94104  
Telephone: 415-318-5910  
E-mail: jim.shandalov@nexteraenergy.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. Receipt by the Issuer and the Company of a Certificate of Qualified Investor in the form attached to the Indenture as Exhibit B, from a transferee of the Bonds will constitute notice by the transferee of such a different address for the Purchaser.

**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: \_\_\_\_\_, 2015

ROSWELL SOLAR HOLDINGS, LLC  
as Purchaser

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ROSWELL SOLAR, LLC  
as Company

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*(Purchaser and Company Signature Page for Bond Purchase Agreement)*

Attest:  
  
(SEAL)

BOARD OF COUNTY COMMISSIONERS,  
CHAVES COUNTY, NEW MEXICO

\_\_\_\_\_  
Chaves County Clerk

By \_\_\_\_\_  
Its Chair

*(Issuer Signature Page for Bond Purchase Agreement)*

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**Exhibit A**

[Opinion of Bond Counsel]

\_\_\_\_\_, 2015

Chaves County, New Mexico

Roswell Solar Holdings, LLC

Roswell Solar, LLC

BOKF, N.A. dba Bank of Albuquerque

\$120,000,000  
Chaves County, New Mexico  
Taxable Industrial Revenue Bonds  
(Roswell Solar, LLC Project)  
Series 2015A

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance and sale by Chaves County, New Mexico (the “Issuer”) of its Taxable Industrial Revenue Bonds (Roswell Solar, LLC Project), Series 2015A in the maximum principal amount of \$120,000,000 (the “Bonds”).

The Bonds will bear interest on the outstanding principal amount at a per annum rate equal to three and \_\_\_\_/100 percent (\_\_\_\_%). Interest on the Bonds is payable each \_\_\_\_\_ 1 beginning \_\_\_\_\_, 20\_\_\_\_, 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 \_\_\_\_\_, 2015 (the “Indenture”) among the Issuer and Roswell Solar Holdings, LLC (the “Purchaser”), Roswell Solar, LLC (the “Company”) and BOKF, N.A. dba Bank of Albuquerque, (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 Chaves County Commission on February \_\_, 2015 authorizing the issuance of the Bonds,

pursuant to and under the provisions of Sections 4-59-1 through 4-59-16, New Mexico Statutes Annotated, 1978 Compilation, as amended (the “Act”); (b) the executed Bonds; (c) executed counterparts of the Indenture, the Lease Agreement dated as of \_\_\_\_\_, 2015 (the “Agreement”) between the Issuer and the Company and the Bond Purchase Agreement dated \_\_\_\_\_, 2015 (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 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*, 93 N.M. 170, 598 P.2d 213 (1979).
- (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) Section 42A-1-24(C), NMSA 1978 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**

[Opinion of Counsel to the Company]

\_\_\_\_\_, 2015

Chaves County, New Mexico

Roswell Solar Holdings LLC

BOKF, N.A. dba Bank of Albuquerque

Ladies and Gentlemen:

We have represented Roswell Solar, LLC (the “Company”) in connection with (i) the Lease Agreement dated as of \_\_\_\_\_, 2015 (the “Agreement”) between Chaves County, New Mexico (the “Issuer”) and the Company, (ii) the Bond Purchase Agreement (the “Bond Purchase Agreement”) dated \_\_\_\_\_, 2015 among Roswell Solar Holdings, LLC (the Purchaser”), the Issuer and the Company, pursuant to which the Purchaser has agreed to purchase the Issuer’s Taxable Industrial Revenue Bonds (Roswell Solar, LLC Project), Series 2015A in the maximum principal amount of \$120,000,000 to be issued under the Indenture dated as of \_\_\_\_\_, 2015 (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.

6. The opinions expressed in this opinion letter are limited to the federal laws of the United States, the Limited Liability Company Act of the State of Delaware which, in the experience of the undersigned, are normally applicable to transactions of the type contemplated by the Bond Purchase Agreement.

Very truly yours,

**Exhibit C**

[Opinion of Counsel to Issuer]

\_\_\_\_\_, 2015

Roswell Solar Holdings, LLC

Roswell Solar, LLC

BOKF, N.A. dba Bank of Albuquerque

Ladies and Gentlemen:

This opinion is being rendered to you in connection with the issuance by the Chaves County, New Mexico (the “Issuer”) of its Taxable Industrial Revenue Bond (Roswell Solar, LLC Project), Series 2015A in the maximum principal amount of \$120,000,000 (the “Bonds”).

In our opinion:

1. The Issuer is a duly organized and validly existing political subdivision of the State of New Mexico under the Constitution and laws of the State of New Mexico.

2. Ordinance No. \_\_\_\_\_ was duly adopted by the Chaves County Commission on February \_\_, 2015, (the “Bond Ordinance”) in accordance with all applicable laws and has not been repealed or rescinded.

3. To our knowledge and without opining as to the legality, validity or enforceability of the Bond, 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 County Commission of the Issuer will not violate any provision of the Constitution or laws of the State of New Mexico.

4. To our 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.

The foregoing opinions are limited to matters involving the law of the State of New Mexico and the Issuer, and we do not express any opinion as to the laws of any other jurisdiction.

Very truly yours,



**Exhibit D**

[Opinion of Counsel to the Purchaser]

\_\_\_\_\_, 2015

Chaves County, New Mexico

Roswell Solar, LLC

BOKF, N.A. dba Bank of Albuquerque

Ladies and Gentlemen:

We have acted as counsel to Roswell Solar Holdings, LLC (the “Purchaser”) in connection with the Indenture dated as of \_\_\_\_\_, 2015 (the “Indenture”) among BOKF, N.A. dba Bank of Albuquerque, as depository (the “Depository”), Chaves County (the “Issuer”), Roswell Solar, LLC (the “Company”) and the Purchaser, and the Bond Purchase Agreement (the “Bond Purchase Agreement”) dated \_\_\_\_\_, 2015 among the Purchaser, the Issuer and the Company, pursuant to which the Purchaser has agreed to purchase the Issuer’s Taxable Industrial Revenue Bonds (Roswell Solar, LLC Project), Series 2015A in the maximum principal amount of \$120,000,000 to be issued under the Indenture. The Indenture, the Bond Purchase Agreement, and the Lease Agreement dated as of \_\_\_\_\_, 2015 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 Delaware.
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 Limited Liability Company Act of the State of Delaware which, in the experience of the undersigned, are normally applicable to transactions of the type contemplated by the Bond Purchase Agreement.

Very truly yours,

CHAVES COUNTY, NEW MEXICO,  
as Issuer

ROSWELL SOLAR HOLDINGS, LLC,  
as Purchaser

ROSWELL SOLAR, LLC  
as Company

and

BOKF, N.A. dba BANK OF ALBUQUERQUE,  
as Depositary

INDENTURE

Dated as of \_\_\_\_\_, 2015

Securing

\$120,000,000  
Chaves County, New Mexico  
Taxable Industrial Revenue Bonds  
(Roswell Solar, LLC Project)  
Series 2015A

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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CHAVES COUNTY, NEW MEXICO, a political subdivision existing under the laws of the State of New Mexico (together with its successors and assigns, the “Issuer”), ROSWELL SOLAR HOLDINGS, LLC, a Delaware limited liability company (together with its successors and assigns, and transferees of the Bonds, the “Purchaser”), ROSWELL SOLAR, LLC, (the “Company”) and BOKF, N.A. dba BANK OF ALBUQUERQUE (together with its successors and assigns, the “Depositary”), agree:

## ARTICLE I - RECITALS

**Section 101. The Act.** Pursuant to Sections 4-59-1 through 4-59-16, NMSA 1978 (the “Act”), the Issuer is authorized to acquire, construct and equip certain industrial or commercial projects 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 of the leasing of such projects. Such bonds may be further secured by, among other things, a mortgage and lien upon the properties acquired, constructed and equipped as part of the project. 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 Chaves County Commission a proposal relating to the issuance of taxable industrial revenue bonds and the development and equipping of a solar photovoltaic electric generating facility, including solar tracking hardware and software; photovoltaic panels and inverters; support structures; transformers and associated electrical generating equipment used to generate electricity from solar energy; and related equipment. The Issuer, by County Commission Ordinance No. \_\_\_\_\_ adopted on February \_\_, 2015 (the “Ordinance”), authorized, among other matters, (i) the issuance of its Chaves County, New Mexico, Taxable Industrial Revenue Bonds (Roswell Solar, LLC Project), Series 2015A (the “Series 2015A Bonds” or the “Bonds”), in the principal amount not to exceed \$120,000,000 and 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 (defined below).

**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 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.

“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.

“Bonds” have the meaning assigned in Section 102.

“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.

“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.

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

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

“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 D.

“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 \_\_\_\_\_, 20\_\_\_\_.

“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” means any and all persons or successors in interest thereof 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 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 right 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 arrangement shall not be deemed to include the Lease Agreement, and which person or persons shall not include Company or any of its Affiliates).

“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” means the acquisition of the Project Site and the acquisition, construction and equipping of a solar photovoltaic electric generating project (including the Project Property) made with the proceeds of the Bonds from time to time for use by the Company.

“Project Property” means (i) the Facility (as defined in the Agreement) and all improvements suitable for use and used thereon, including all equipment and other personal property of any kind whether now owned or hereafter acquired with the proceeds of the Bonds prior to the Completion Date which is subject to depreciation for federal income tax purposes and (ii) the Project Site.

“Project Site” means the real property in Chaves County, New Mexico described in Exhibit A to the Agreement.

“Record Date” means each \_\_\_\_\_ 1 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 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 5.3(b), 6.2, 6.3, 6.4 and 6.5 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 and/or the County Manager of the Issuer are 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 series of fully registered bonds without coupons, in the maximum principal amount not to exceed \$120,000,000. 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 \_\_\_\_\_ and \_\_\_/100 percent (\_\_\_\_\_%). 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 \_\_\_\_\_ 1, beginning \_\_\_\_\_ 1, 20\_\_, 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 Chairman of the Board of County Commissioners of the Issuer 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 Bonds 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 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 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 by 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 "Roswell Solar, LLC Project Series 2015A 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 Section 4-59-3 NMSA provides that 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 has no intention of taking possession of or operating 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 Bond.** 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.** 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 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 "Roswell Solar, LLC Project Series 2015A 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 Depository in the form attached hereto as Exhibit C (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 Depository for deposit in the Acquisition Fund, provided, however, that the aggregate amount of such Advances shall not exceed \$120,000,000 for the Series 2015A Bonds. The Depository 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 Depository 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. Depository May Rely on Requisitions.** All writings, requisitions and certificates received by the Depository as conditions of payment from the Acquisition Fund, and which are proper and complete on their face, may be conclusively relied upon by the Depository and will be retained by the Depository, 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 Depository 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 D signed by an Authorized Company Representative establishing the Construction Completion Date, as established in Section 4.4 of the Agreement, the Depository 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 Bond to be immediately due and payable pursuant to Section 902(a), the Depository 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 Depository, 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 Depository 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 Depository nor the Issuer will be responsible for any loss, liability or expense (or failure to realize profits) resulting from any such investment. The Depository 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, liabilities or 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 BOND. THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE OF THE BOND 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 BOND 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 Bond, 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 Chaves 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 Manager 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 Depositary or the Purchaser may reasonably require for better assuring, transferring, mortgaging and pledging unto the Depositary or the Purchaser all the property and revenues and receipts pledged to the payment of the Bond under this Indenture.

**Section 807. Recording of Indenture. Supplemental Indentures and Other Documents.** The Company will cause this Indenture, the Agreement, and all supplements to this Indenture and 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 Depositary, including recording in the real estate records of Chaves County, New Mexico. The Depositary 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 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 Depositary 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 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 Depositary.

**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 Bond 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 Depositary and their agents and counsel shall have been paid or provided for. Any such declaration that the Bond is due and payable will be deemed to be a redemption of the Bond;

(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 Bond, 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 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 one hundred twenty (120) days following the applicable cure period provided in Section 901.

**Section 912. Consequential Damages.** Notwithstanding any provision contained herein to the contrary, in no event shall the Issuer, the Depository, the Purchaser or the Company be liable to each other under any provision of this Indenture or the other Bond Documents for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, business interruption damages, loss of use of equipment, costs of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability.

## **ARTICLE X-THE DEPOSITARY**

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

(a) The Depository 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 Depository.

(b) In the absence of negligence or willful misconduct on its part, the Depository may conclusively rely on certificates or notices furnished to the Depository 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 Depository under this Indenture or the Agreement, the Depository 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 Depository from and against any and all loss, liability, cost, damage and expense, including, without limitation, reasonable counsel fees, which the Depository may suffer or incur by reason of any action, claim or proceeding brought against the Depository 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 Depository. The indemnification shall survive the resignation, removal and termination of the Depository. No provision of this Indenture will be construed to relieve the Depository from liability for its own negligence or willful misconduct.

(d) The Depository 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 Depository hereunder in good faith and in reliance thereon.

(e) The Depository 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 Depository, its directors, officers, agents and employees, security or indemnity satisfactory to the Depository against the costs (including without limitation reasonable fees of attorneys), expenses and liabilities that might be incurred by the Depository in connection herewith.

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

**Section 1003. Qualification.** The Depository 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 Depository 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 Depository and no appointment of a successor Depository will become effective until the acceptance of appointment by the successor Depository under Section 1005.

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

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

(d) The Depository 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 Depository will thereafter be appointed and each reference to the Depository in this Indenture and the Agreement will thereafter be ineffective.

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

**Section 1005. Successor Depository.**

(a) Every successor Depository 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 Depository, 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 e-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: Chaves County, New Mexico  
#1 St. Mary's Place  
Roswell, NM 88203  
Attn: County Manager  
Telephone: 575-624-6602  
Fax: 575-624-6631

With a copy to:

Telephone:  
Fax:

If to the Issuer: Chaves Count, New Mexico  
#1 St. Mary's Place  
Roswell, NM 88203  
Attn: County Manager  
Telephone: 575-624-6602

Fax: 575-624-6631

E-mail:

With a copy to:

Telephone:

Fax:

E-mail:

If to the Purchaser: Roswell Solar Holdings, LLC  
700 Universe Blvd.  
P.O. Box 14000  
Juno Beach, FL 33408-0420  
Attn: Vice President, Business Management  
Tel: (561) 304-5511 (for use in connection with courier deliveries)  
E-mail:

With a copy to:

Roswell Solar Holdings, LLC  
700 Universe Blvd.  
P.O. Box 14000  
Juno Beach, FL 33408-0420  
Attn: Legal Department  
Vice President, Business Management  
Tel: (561) 304-5511 (for use in connection with courier deliveries)  
E-mail:

If to the Company: Roswell Solar, LLC  
700 Universe Blvd.  
P.O. Box 14000  
Juno Beach, FL 33408-0420  
Attn: Vice President, Business Management  
Tel: (561) 304-5511 (for use in connection with courier deliveries)  
E-mail:

With a copy to:

Roswell Solar, LLC  
700 Universe Blvd.  
P.O. Box 14000  
Juno Beach, FL 33408-0420  
Attn: Legal Department  
Vice President, Business Management  
Tel: (561) 304-5511 (for use in connection with courier deliveries)  
E-mail:

If to the Depository: BOKF, N.A. dba Bank of Albuquerque  
Corporate Trust

201 Third Street NW, Suite 1400  
Albuquerque, NM 87102  
Attn: Project Finance – Roswell Solar, LLC Project  
Telephone: 505-222-8457 (for use in connection with courier deliveries)  
Fax: 505-222-8453

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.]



DATED AS OF \_\_\_\_\_, 2015.

(SEAL)

BOARD OF COUNTY COMMISSIONERS,  
CHAVES COUNTY, NEW MEXICO

Attest:

\_\_\_\_\_  
Chaves County Clerk

By \_\_\_\_\_  
Its Chair

*(Issuer Signature Page for Indenture)*

ROSWELL SOLAR HOLDINGS, LLC,  
as Purchaser

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, as \_\_\_\_\_ of Roswell Solar Holdings, LLC, a Delaware limited liability company.

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

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

*(Purchaser Signature Page for Indenture)*

ROSWELL SOLAR, LLC,  
as Company

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, as \_\_\_\_\_ of Roswell Solar, LLC, a Delaware limited liability company.

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

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

*(Company Signature Page for Indenture)*

BOKF, N.A. dba BANK OF ALBUQUERQUE,  
as Depositary

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by  
\_\_\_\_\_, as \_\_\_\_\_ of BOKF, N.A. dba Bank of  
Albuquerque.

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

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

*(Depositary Signature Page for Indenture)*

**EXHIBIT A**

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

No. R-1

Up to \$120,000,000

United States of America  
State of New Mexico

Chaves County, New Mexico  
Taxable Industrial Revenue Bonds  
(Roswell Solar, LLC Project)  
Series 2015A

Registered Owner: ROSWELL SOLAR HOLDINGS, LLC

FINAL MATURITY DATE

INTEREST RATE

ISSUE DATE

\_\_\_\_\_, 20\_\_

\_\_\_\_\_%

\_\_\_\_\_, 2015

Chaves 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 ROSWELL SOLAR HOLDINGS, LLC (together with its successors and assigns, and transferees as permitted below, the "Purchaser") One Hundred Twenty Million Dollars (\$120,000,000) (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 \_\_\_\_\_ and \_\_\_\_/100 Percent (\_\_\_\_%) of the principal amount of the Bonds outstanding shall be payable annually on each \_\_\_\_\_ 1, beginning \_\_\_\_\_ 1, 20\_\_, 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 Sections 4-59-1 to 4-59-16, NMSA 1978, as amended, and under and pursuant to Ordinance No. \_\_\_\_\_ duly adopted by the Issuer on January 15, 2015.

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 \_\_\_\_\_, 2015 (the "Agreement") between the Issuer and Roswell Solar, LLC (the "Company"), which has been pledged and assigned by the Issuer to the Purchaser under the Indenture, dated as of \_\_\_\_\_, 2015 (together with any amendments and

supplements, the “Indenture”) among the Issuer, the Purchaser, the Company and BOKF, N.A. dba Bank of Albuquerque as Depositary (the “Depositary”).

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 Depositary.

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 Depositary 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.

CHAVES COUNTY, NEW MEXICO

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

Attest

\_\_\_\_\_  
Chaves County Clerk

(Seal)

**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  
PROJECT SITE**



**EXHIBIT C  
REQUISITION AND CERTIFICATE NO.**

To: Roswell Solar Holdings, LLC, as Purchaser  
BOKF, N.A. dba Bank of Albuquerque as Depository

The undersigned, pursuant to the Indenture dated as of \_\_\_\_\_, 2015 (the "Indenture"), among Chaves County, New Mexico (the "Issuer"), Roswell Solar Holdings, LLC (the "Purchaser"), Roswell Solar, LLC (the "Company") and BOKF, N.A. dba Bank of Albuquerque (the "Depository"), 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):

<u>Amount</u>	<u>General Classification Of Expenditure</u>	<u>Payee</u>
\$		
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: \_\_\_\_\_

ROSWELL SOLAR, LLC

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

Acknowledged:

\_\_\_\_\_

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

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

**EXHIBIT D**  
**COMPLETION CERTIFICATE**

The undersigned Authorized Company Representative, pursuant to Section 706 of the Indenture, dated as of \_\_\_\_\_, 2015 (the "Indenture"), among Chaves County, New Mexico, Roswell Solar Holdings, LLC, as Purchaser, Roswell Solar LLC (the "Company") and BOKF, N.A. dba Bank of Albuquerque 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: \_\_\_\_\_, 201\_

ROSWELL SOLAR, LLC

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

**EXHIBIT E**

**CERTIFICATE OF QUALIFIED INVESTOR**

Chaves County, New Mexico

BOKF, N.A. dba Bank of Albuquerque, as Depository

Roswell Solar, LLC

Re: Chaves County, New Mexico  
Taxable Industrial Revenue Bonds  
(Roswell Solar, LLC Project), Series 2015A

Please be advised that the undersigned is purchasing the captioned Series 2015A 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 \_\_\_\_\_, 2015 (as amended from time to time, the “Indenture”), among Chaves County, New Mexico (the “Issuer”), Roswell Solar Holdings, LLC, as Purchaser, Roswell Solar, LLC (the “Company”) and BOKF, N.A. dba Bank of Albuquerque, as Depository (the “Depository”), 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 Depository, 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. Roswell Solar, LLC, the parent or subsidiary thereof, or any affiliated entity.

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.

ROSWELL SOLAR HOLDINGS, LLC, a

Delaware limited liability company

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

Address for Notices and  
Payment of principal and interest:

c/o Jim Shandalov  
One Post St, Suite 2550  
San Francisco, CA 94104  
Telephone: 415-318-5910  
E-mail: jim.shandalov@nexteraenergy.com

DRAFT – January 30, 2015

A-15-006

CHAVES COUNTY, NEW MEXICO  
and  
ROSWELL SOLAR, LLC

LEASE AGREEMENT

Dated as of \_\_\_\_\_, 2015

\$120,000,000  
Chaves County, New Mexico  
Taxable Industrial Revenue Bonds  
(Roswell Solar, LLC Project)  
Series 2015A



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

**ARTICLE I  
RECITALS**

**Section 1.1. Recitals.**

A. The Company has requested that the Issuer issue its Taxable Industrial Revenue Bonds (Roswell Solar, LLC Project), Series 2015A in the maximum principal amount of \$120,000,000 (the “Series 2015A Bonds” or the “Bonds”). The proceeds of the Bonds will be used to finance the Project (defined below).

B. The Issuer is authorized under Section 4-59-1 to 4-59-16, NMSA 1978 (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 (defined below) pursuant to Ordinance No. \_\_\_\_\_ (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 \_\_\_\_\_, 2015 (together with any and all amendments and supplements, the “Indenture”) among the Issuer, Roswell Solar Holdings, LLC (together with its successors and assignees, and transferees of the Bonds, the “Purchaser”), the Company and BOKF, N.A. dba Bank of Albuquerque, as Depositary (the “Depositary”). The Bonds will be a special limited obligation of the Issuer payable as therein provided and the Bonds will not constitute a debt or pledge of the credit of the Issuer, and 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 in this Agreement).

D. The proceeds of the Bonds will be used to finance the acquisition of the Project Property (defined below) leased to the Company under this Lease Agreement (together with all amendments and supplements, this “Agreement”).

E. The Company has conveyed the Project Site described in Exhibit A to the Issuer pursuant to a special warranty deed. The Project Property, which includes the Project Site, is to be leased to the Company pursuant to this Agreement.

F. The Bonds are to be purchased under a Bond Purchase Agreement dated as of \_\_\_\_\_, 2015 (together with any and all amendments and supplements, the “Bond Purchase Agreement”) among the Issuer, the Purchaser and the Company.

G. 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).

**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:

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

“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.

“Assignment” has the meaning assigned in Recital E.

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

“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.

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

“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.

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

“Facility” means a solar photovoltaic electric generating facility located in Chaves County, New Mexico, and its related supporting equipment and all improvements thereon for the generation and transmission of electricity.

“Indemnitee” has the meaning assigned in Article VI.

“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, backleverage financing or credit derivative arrangement) to the Company or to an Affiliate of the Company including: (i) for the 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).

“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 of the Project Site and the acquisition, design, permitting, construction and equipping of the Facility.

“Project Property” means (i) the Facility and all improvements suitable for use and used thereon, including all equipment and other personal property of any kind whether now owned or hereafter acquired with the proceeds of the Bonds prior to the Completion Date as further described in Exhibit A and (ii) any rights of the Company in, or related to, the Project Site now owned or hereafter acquired under easements, agreements or leases assigned to the Issuer.

“Project Site” means the real property in Chaves County, New Mexico described in Exhibit A.

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

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

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

“School District” mean the Roswell Independent School District.

“State” means the state of New Mexico.

“Term” means the duration of the leasehold estate created by this Agreement pursuant to Section 5.1 hereof.

“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 Projects including the acquisition, construction and equipping 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 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 and the Bond Purchase Agreement.

(c) The execution, delivery and performance by the Company of this Agreement 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 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 Site.

(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 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 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 that part of Chaves County which is outside the corporate limits of any municipality and is or will be an electric generation facility which does not require 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, Sections 62-3-1, et seq., NMSA 1978.

#### **ARTICLE IV THE PROJECT AND THE COMPANY**

**Section 4.1. Acquisition, Equipping and Completion.** The Company will use reasonable commercial efforts to acquire, construct and install the Project Property 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 Facility with other funds. The Project Property will at all times during the Term be located within Chaves 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.

**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. 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 or the Facility to be operated so as to cause the Project Property 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 Bond proceeds 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. Construction Completion Date.** The Company will complete the Project as promptly as practicable and, in any event, within five (5) years of the date of this Agreement. On the date the Projects are complete and a certificate of occupancy has been obtained for the Facility (if such certificate is required to be obtained) (the “Construction 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.** 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, will file returns for reporting and paying compensating tax which may be become due because of the Projects 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 Nontaxable Transaction Certificates 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 Projects 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 Projects. The Issuer will join in any reasonable modifications to this Agreement which are necessary or desirable to obtain Nontaxable Transaction Certificates 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, construction and installation of the Project Property and will otherwise cooperate with the Company to address any reasonable request of the Company regarding issues raised by TRD with respect to Non-Taxable Transaction Certificates. 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 Property, 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.** 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. 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.

To the extent that the use which the Company makes of the Project Property 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 Property, 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.

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.

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 by the Company or its employees, agents or contractors. If the Company fails to timely take any action required under this Section 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, 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 caused by the Company or its employees, agents, or contractors 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 (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 4.8 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.

**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 Projects 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 4.10 to be so replaced or removed. The provisions of Article X govern the delivery and form of any such instruments. The removal from the Projects of any portion of the equipment, if any, pursuant to the provisions of this Section will not entitle the Company to any abatement or diminution in amount of the Basic Rent, Additional Payments, School PILOTs or County PILOTs 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 Bond or paid to the Company. All proceeds of insurance resulting from claims for losses to the Projects 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 Projects 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 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 30 days before the thirtieth anniversary of the Closing Date, and the Company will pay all ad valorem taxes on the Project Property from and after the thirtieth 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 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 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 4.14.

**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 if such a change 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 under this Agreement or the Indenture.

**ARTICLE V  
LEASE; TERM; POSSESSION; RENT**

**Section 5.1. Lease of the Project Property; Term.**

(a) This Agreement shall become effective upon its execution and delivery, and the leasehold estate created hereby and the Term shall then begin, and subject to the provisions of this Agreement, the Term shall expire on the earlier of (i) the thirtieth (30<sup>th</sup>) anniversary of the date of this agreement or (ii) on such earlier date as the payment or redemption and discharge of the whole amount of the principal and interest on the Bonds at the time outstanding shall have been made as provided in the Indenture, or on such earlier date as arrangements satisfactory to the Issuer and the Purchaser for such payment or redemption and discharge of the Bonds shall have been made. 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 the Company to the Purchaser in anticipation of making Bond advances under the Indenture.

(b) Upon the termination of this Agreement, all right, title and interest of the Issuer and the Purchaser under this Agreement shall thereupon 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 (except for the provisions pertaining to Issuer indemnification), and with respect to the School District, the School PILOTs, 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 4.11 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 counsel and its financial advisor) paid or incurred by the Issuer in connection with the discussion, review, negotiation, preparation, approval, execution and delivery of the Bonds, the Indenture, this Agreement, and the other documents and instruments related hereto and thereto through the Closing Date.

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

(a) The obligation of the Company to pay 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 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 Bond 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 Account (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. Release and Indemnification.**

Except as provided in this Section 6.2, the Company releases the Issuer, its Trustees, officials, employees and agents (each an "Indemnitee") from, and will indemnify each Indemnitee against all liabilities, claims, costs and expenses imposed upon, incurred or asserted against any Indemnitee on account of: (a) 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; (b) the material 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 Event of Default on the part of the Company under this Agreement, or any related document; (c) any action by the Company in connection with the authorization, issuance and sale of the Bonds; (d) any liability, whether under federal or state securities laws or otherwise, that may arise as a result of inaccurate information supplied in writing by the Company in connection with the issuance of the Bonds or any subsequent sale of the Bonds; and (e) 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 or performance of this Agreement, the issuance or sale of the Bonds, actions taken under the Indenture, the ownership or leasing of the Project Property or any other cause whatsoever pertaining to the Project Property. 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 Bond Documents or the documents and transactions related thereto or contemplated thereby, including without limitation the exercise by the Purchaser of any of its rights. This Section 6.2 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.

In case a claim is made or any action is brought against Indemnitee based upon the matters described in the preceding paragraph and in respect of which indemnity is sought against the Company pursuant to the preceding paragraph, the Indemnitee shall promptly notify the Company, in writing, and the Company 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. 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. 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 (ii) with respect to the negligence or willful misconduct of any of the Indemnitees.

The provisions of this Section will be enforceable by the Issuer to the full extent permitted by law, but will not include the negligence or willful misconduct of the Indemnitees. The provisions of this Section will survive the payment of the Bonds and the termination of this Agreement for a period of two (2) years.

**Section 6.3. Payments to the School District.** So long as the Issuer continues to be the owner of the Project Property, the Company shall make annual payments to the Roswell Independent School District in an amount equal to \$132,000 (the “School PILOT”). The first School PILOT payment shall be made on the first anniversary of the date of this Agreement and, thereafter, each annual payment shall be made on the same day of every year so long as the Bonds are outstanding. The School PILOT has been negotiated with the School District and fully satisfies the requirements of Section 4-59-4(A), NMSA 1978, as amended and supplemented. The payment provisions of this Section may be amended by mutual agreement of the Company, the Issuer and the School District.

**Section 6.4. Payments to Issuer.** So long as the Issuer continues to be the owner of the Project Property, the Company shall make annual payments to the Issuer in an amount equal to \$198,000 (the “County PILOT” and together with the School PILOT, the “PILOTS”). The first County PILOT payment shall be made on the first anniversary of the date of this Agreement and, thereafter, each annual payment shall be made on the same day of every year so long as the Bonds are outstanding. The payment provisions of this Section may be amended by mutual agreement of the Company and the Issuer.

## 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 4.13 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 at Issuer's request 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 30 days after the provision by the Issuer, the School District or the Purchaser of written notice of non-payment.

(b) Any representation of the Company in any Bond Document or in any document or agreement delivered to any of the other Parties in connection with the transactions contemplated by any Bond Document proves to have been incorrect in any material respect when made and remains incorrect for a period of 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 30 days and the Company has instituted corrective action within 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 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) Failure by the Company to perform any of its material obligations under this Agreement, other than the payment of Basic Rent, PILOT payments and Additional Payments for a period of 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 30 days and the Company has instituted corrective action within 30 days after such notice and diligently pursues such action until such failure is remedied.

**Section 8.2. Remedies on Default.** 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 an Event of Default by the Company has occurred with respect to its obligations set forth in Sections 5.3(b), 6.2, 6.4 or 7.3 or which would cause the use or the operation of the Project Property to be in violation of applicable law, and such failure continues for sixty (60) days after the Issuer gives the Company notice of such failure, then, the Issuer shall have the right to immediately terminate this Agreement and take all steps necessary to have the Project Property immediately assessed for property tax purposes in the name of the Company, including without limitation, reconveying the Project Property to the Company in accordance with Article X and retaining a lien against and security interest in the Project Property securing payment of all amounts owed to Issuer under this Agreement. Provided however if any Event of Default described in this Section 8.3 cannot be cured within the time allotted for cure, so long as the Company initiates and proceeds with due diligence to effect a cure, Issuer shall not be entitled to have the Project Property assessed in the name of the Company. Such reconveyance and retention of security interest and the right to pursue Company for debt and money due for non-payment of the PILOT and Additional Payments shall be Issuer's sole and exclusive remedies under this Agreement.

**Section 8.4. Notice of Default.** The Company will promptly give notice to the Depositary of the occurrence of any Event of Default as evidenced by notice from the Purchaser or Issuer.

**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.

**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 8.01* 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 Account (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 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, will pay all Additional Payments, plus interest, if any, 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 15 nor more than 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 District are paid on or before the date of closing of such purchase. 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 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.** Except as provided in Section 6.2, 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 Bond proceeds 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. Waiver; Consequential Damages.** Notwithstanding any provision contained herein to the contrary, in no event shall either Party be liable to the other Party under any provision of this Agreement or the Bonds for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, business interruption damages, loss of use of equipment, costs of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability. No delay or omission of any Party to exercise any right or remedy hereunder or with respect hereto 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 Event of Default will extend to or affect any other existing or subsequent Event of Default.

**Section 11.5. Waiver of Jury Trial.** Each Party irrevocably waives any and all right to jury trial in any legal proceeding in connection with this Agreement or the Bonds.

**Section 11.6. No Violation of Public Policies Regarding Indemnity.** To the extent, if at all, a court of competent jurisdiction determines that Section 56-7-1, NMSA 1978 applies to any indemnification provisions in this Agreement, including certain types of insurance coverage as set forth in Section 56-7-1, NMSA 1978, 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 Section 56-7-2, NMSA 1978.

**Section 11.7. 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 e-mail or other electronic means, 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: Chaves Count, New Mexico  
#1 St. Mary's Place  
Roswell, NM 88203  
Attn: County Manager  
Telephone: 575-624-6602  
Fax: 575-624-6631  
E-mail:

With a copy to:

Telephone:

Fax:  
E-mail:

If to the Purchaser: Roswell Solar Holdings, LLC  
700 Universe Blvd.  
P.O. Box 14000  
Juno Beach, FL 33408-0420  
Attn: Vice President, Business Management  
Tel: (561) 304-5511 (for use in connection with courier deliveries)  
E-mail:

With a copy to:

Roswell Solar Holdings, LLC  
700 Universe Blvd.  
P.O. Box 14000  
Juno Beach, FL 33408-0420  
Attn: Legal Department  
Vice President, Business Management  
Tel: (561) 304-5511 (for use in connection with courier deliveries)  
E-mail:

If to the Company: Roswell Solar, LLC  
700 Universe Blvd.  
P.O. Box 14000  
Juno Beach, FL 33408-0420  
Attn: Vice President, Business Management  
Tel: (561) 304-5511 (for use in connection with courier deliveries)  
E-mail:

With a copy to:

Roswell Solar, LLC  
700 Universe Blvd.  
P.O. Box 14000  
Juno Beach, FL 33408-0420  
Attn: Legal Department  
Vice President, Business Management  
Tel: (561) 304-5511 (for use in connection with courier deliveries)  
E-mail:

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 11.8. 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 11.9. 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 11.10. 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 11.11. Execution in Counterparts.** This Agreement may be executed in multiple counterparts, all of which taken together will constitute one instrument.

**Section 11.12. 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 11.13. 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 11.14. 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 11.15. 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 11.16. Amendments.** Except for Section 6.4 which may be amended only by an instrument executed by the School District, the Company and the Issuer, this Agreement may be amended only by an instrument executed by the Issuer and the Company and consented to by the Purchaser.

**Section 11.17. 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.

The Company may cause this Agreement, or a memorandum of this Agreement, 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.

[Signature pages follow.]



DATED AS OF \_\_\_\_\_, 2015.

(SEAL)

BOARD OF COUNTY COMMISSIONERS,  
CHAVES COUNTY, NEW MEXICO

Attest:

\_\_\_\_\_  
Chaves County Clerk

By \_\_\_\_\_  
Its Chair

*(County Signature Page for Lease Agreement)*

ROSWELL SOLAR, LLC,

By \_\_\_\_\_

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

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

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

)

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

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, as \_\_\_\_\_ of Roswell Solar, LLC, a Delaware limited liability company.

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

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

*(Company Signature Page for Lease Agreement)*

EXHIBIT A

Project Property and Project Site

SCHEDULE 5.3(a)

PAYMENT SCHEDULE  
CHAVES COUNTY, NEW MEXICO  
TAXABLE INDUSTRIAL REVENUE BONDS (ROSWELL SOLAR LLC PROJECT)  
SERIES 2015A  
\$120,000,000

<u>Year</u>	<u>Maximum Total Debt Service</u>	<u>Principal Payments Required in such Period</u>	<u>Maximum Interest for such Period</u>
1			
2			
3			
4			
5			
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8			
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10			
11			
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## Planning and Zoning Commission

Summary of Commission Action

Hearing Date: February 5, 2015

<b>CASE NUMBER:</b>	Z 2015-1
<b>ACTION REQUESTED:</b>	Petition for Rezoning from Agricultural District to Industrial Zoning
<b>PURPOSE:</b>	To accommodate future development of industrially-related land uses
<b>PETITIONER:</b>	Ernie Hacker
<b>PROPERTY LOCATION:</b>	Braich Industrial Center, Lot 11, parcel # 4-136-055-149-026-000-000
<b>STAFF RECOMMENDATION:</b>	Approval, subject to 7 Conditions of Approval
<b>PLANNING COMMISSION ACTION</b>	Unanimous Approval (4-0) Subject to 7 Conditions of Approval contained in the Staff Report
<b>CONDITIONS OF APPROVAL:</b>	<ol style="list-style-type: none"> <li>1. All requirements of the Chaves County Zoning Ordinance be adhered to during the construction of all structures and related improvements of the subject property;</li> <li>2. A fully-dimensioned site plan meeting the requirements of the Chaves County Zoning Ordinance shall be submitted illustration all land uses and improvements contemplated for the subject property prior to commencing any further construction and improvement activities;</li> <li>3. All permits required by Chaves County and all other agencies be obtained by the petitioner prior to commencing construction and improvement activities;</li> <li>4. The proposed land use development shall comply with all provisions of the International Building Code, 2009 Edition;</li> <li>5. Any on-site lighting which may be needed for security or other purposes be shielded from surrounding uses and be developed in accordance with the New Mexico Night Skies Act;</li> <li>6. The applicant shall submit a fully dimensioned site plan of the parking spaces, loading area, number of parking spaces and landscaping including an associated irrigation system plan to be reviewed by the Planning and Zoning Director; and</li> </ol>

	<p>7. The applicant shall secure all required permits from the New Mexico State Engineer's Department, and the New Mexico Environment Department prior to the issuance of a Certificate of Occupancy.</p>
<p><b>Attachments</b></p>	<p>Staff Report, February 5, 2015          Petition for Case Review, Chaves County Planning &amp; Zoning Department          Vicinity Map          Assessor's Aerial Map          Petitioner's Preliminary Site Plan          Photos of subject property          Draft Minutes of Planning and Zoning Commission meeting</p>

**CHAVES COUNTY  
PLANNING COMMISSION  
PLANNING AND ZONING REPORT**

**APPLICATION NO:** Z 2015-01      **DATE OF HEARING:** February 5, 2015

**NAME OF APPLICANT:** Ernie F. Hacker

**PROPOSED USE OF PROPERTY:**      Rezone from Area I Zone AG Agricultural District,  
to Zone D Industrial District

**1. REQUEST**

To rezone a 2.5 acre parcel from Area I, AG Agricultural District to Industrial District.

The subject property is addressed in the 300 block of East Gallina Road. Presently, the property is vacant. The petitioner proposes to operate a trailer sales and repair operation, accompanied by the outside storage of trailers and recreational vehicles and for sale of concrete on a full-time basis from the premises.

**2. RELATED CASES**

There are no related zoning cases for the subject property.

**3. BACKGROUND AND LAND USE HISTORY**

There is no land use history.

**4. COMMISSION DISTRICT**

The subject property is located in Commission District Number 3. This District is represented by Commissioner Kyle D. Smiley Wooton

**5. NATURE OF SURROUNDING LAND USE AND ZONING**

This property is zoned AG, Agricultural District. It is located within Area I. The subject property is located on the east side of north US Highway 285 and north of East Gallina Road. The property directly north is zoned with a current Wireless Telecommunications facility (cell tower). The land use is for a Special Use Permit in an Industrial zone to allow a communications tower for a ten (10) year period. Surrounding properties to the west across US Highway 285 are zoned Industrial, the properties to the south of east Gallina Road in the Glen Alto Subdivision are zoned Industrial, and are developed with predominantly single family residences/manufactured home residences

that are developed at a moderately low density with some Industrial use. This subdivision has a mix use of Residential and Industrial Use. The parcel to the east of the subject property is being reviewed for the land use as a *Non-Conforming Land Use* (Industrial). The Chaves County Code Enforcement Officer is reviewing the “*Grandfather Clause*”.

6. **EXISTING PUBLIC ACCESS**

The existing property access is from East Gallina Road.

7. **CHAVES COUNTY COMPREHENSIVE PLAN**

**Commercial and Industrial Land Uses**

For a commercial or industrial use to be economically viable, it should be located along a major arterial that is easy to access and highly visible. Commercial and industrial development is appropriate for major roads and intersections within the County and ETZ.

**Development Standards for Commercial and Industrial Land Uses**

Development Standards are defined as those requirements that developers should follow in order to create visually pleasing and efficient projects that promote and enhance the value of neighboring properties. Typically, development standards relate to:

- Screening from view certain unsavory uses like outdoor storage, trash bins and mechanical equipment (screening can take the form of walls, fences, landscaping, and/or trees;
- Lighting standards;
- Wall/fence standards;
- Building setback standards;
- Site design standards;
- Landscaping requirements
- Standards relating to traffic circulation;
- Utility standards and;
- Architectural designed standards.

**Commercial and Industrial Development Goals, Objectives and Policies**

The goals, objectives and policies listed below are intended to help the County deal with current issues and guide commercial and industrial growth and development throughout the County.



***Goal 5.2: Direct commercial and industrial development to appropriate locations in Chaves County.***

***Objective 5.2A:*** Promote commercial and industrial development at major intersections along the Roswell Relief Route and at the intersections of County arterial and collector road with US 285, US 70, US 380 and NM 2 provided that the development standards buffer adjacent residential properties.

***Objective 5.2B:*** Allow commercial and industrial development along major highways and arterials with certain standards in place relating to setback and parking.

The Comprehensive Plan Land Use Plan Map identifies the subject property and adjacent lands bordering on Highway (285) as being suitable for commercial and Industrial development land uses.

Finding: The proposed zoning designation is in general conformance with Land Use Goal of the Chaves County Comprehensive Plan.

**8. STAFF ANALYSIS AND FINDINGS**

***General Findings:***

- A. The property is zoned **AG Agricultural District**. The property is currently vacant and undeveloped. The petitioner proposes to operate a Trailer Sales-Repair Store and Concrete Sales from the subject property. The petitioner seeks to rezone the subject property from AG Agricultural, to Industrial District, to permit the proposed business operation. This land use requires an Industrial zoning designation.

Finding: The subject property is currently located within the AG Agricultural District. It must be rezoned to an Industrial District to accommodate the land use proposed. The rezoning of the property shall be accomplished prior to operating an Industrial/commercially-related land uses from the premises.

- B. The proposed land uses require **an Industrial** zoning, and all affiliated land uses to be in conformance with the Chaves County Zoning Ordinance.

Finding: The petition seeks to rezone the property from AG Agricultural to Industrial District, in order to accommodate the requested Trailer Sales-Repair Store and Concrete Sales enterprise.

Finding: The petitioner proposes to construct a 60' by 40' storage building as the principal structure to conduct the proposed commercial land use from. The proposed land use will also be conducted from an outdoor area, with the outside storage of trailers and a few recreational vehicles as storage and located mostly to the rear of the proposed structure and beside the west property line.

- C. ***Article XV, Additional Height, Area and Use Requirements.*** There are no specified setback requirements for commercial/industrial land uses specified within this Article.

**Finding:** Article XV does not impose minimum setback requirements for most commercial/ industrial land uses, including structures being utilized to house retail sales. The proposed structure on the subject property meets all required setbacks.

E. **Article XVI, Off-Street Parking and Loading, Provision for Parking Spaces**, contains the following regulations for industrial land uses:

- f. furniture or appliance store, hardware store, wholesale establishments, machinery or **equipment sales and service**, clothing or **service shop**: two (2) parking spaces, plus one (1) additional parking space for each 300 square feet of floor area over 1,000 square feet.

**Finding:** The site is not developed. The site plan submitted illustrates a structure measuring 60' by 40' (2,400 ft<sup>2</sup>). The petitioner has designated an outside area measuring 237' by 40' (9,480 ft<sup>2</sup>) that will be utilized for the business parking. Upon review of the Braich Industrial Center Subdivision Plat, it has been confirmed that there is a 40' easement for right-of-way granted to Chaves County for road purposes. For this reason, it is unclear if the petitioner will be able to utilize this easement for parking. The site plan submitted illustrates a 30' driveway access. The site plan does not illustrate the number or location of parking spaces, ADA-parking spaces, or loading space. Therefore, a Condition of Approval shall require the submittal of a fully-dimensioned site plan that illustrates these items, should the petition be approved.

F. **Section D, Loading Space Requirements**, states, "**1. Any business or industrial building, hospital, institution, or hotel hereafter erected, converted, or extended in any district, shall provide adequate off-street facilities for the loading and unloading of merchandise and goods within or adjacent to the building, in such a manner as not to obstruct freedom of traffic movement on the public streets or alleys, provided that each loading and unloading space shall have a minimum width of twelve (12) feet, a minimum length of thirty-five (35) feet and a minimum height clearance of fifteen (15) feet, and shall not reduce the required off-street parking area required by the section.**"

**Finding:** The site plan does not illustrate the location of loading spaces. Therefore, a Condition of Approval shall require the submittal of a fully-dimensioned site plan that illustrates this item, should the petition be approved.

G. **Section E, Construction and Maintenance of Parking Areas**, states, "**1. All open parking areas provided in compliance with this Ordinance shall be surfaced with a durable, dust-proof surface consisting of concrete, bituminous concrete, or compacted gravel or crushed stone, properly sealed and surface treated as approved. The parking areas shall be maintained in a usable dust-proof condition and graded and drained to dispose of all surface water. Whenever lighting is provided, it shall be hooded or shielding as to reflect the light away from abutting or neighboring property, including public right-of-way.**"

**Finding:** The site plan does not illustrate the materials proposed to be used to meet this requirement. Therefore, a Condition of Approval shall require the submittal of a site plan that illustrates this item, should the petition be approved.

H. **Article III General Provisions and Supplemental Regulations, Section 2, Supplemental Regulations, Section A, Road Setback Requirements-All Zones**, states, “In order to make adequate provision for transportation, water, sewerage, and other utilities, and to assure that land be available, when required, for widening of county roads:

1. The construction or placement of permanent structures is prohibited nearer than fifty (50) feet from the section line, on section line roads; forty (40) feet from the half-section line roads; thirty (30) feet from the center line on other roads, even if the existing county road has a narrower right-of-way, and was acquired by deed, dedication, prescription, condemnation, declaration, or other means.

Finding: Commercial and Industrial land uses do not specify setback requirements for placement of permanent structures. Gallina Road is a section line road, thus the construction or placement of permanent structures is prohibited nearer than fifty (50) feet from the section line, as defined in *Article III General Provisions and Supplemental Regulations, Section 2, Supplemental Regulations*.

- I. **Article XVIII, Land Use Permits, Section 1, A**, states, “No buildings or structures shall be erected, constructed, reconstructed, or structurally altered, nor shall any building, structure, or land be used for any purpose other than those permitted in the district in which such building, structure, or land is situated.”

Finding: The uses proposed require Industrial zoning to comply with the requirements of the Chaves County Zoning Ordinance. Upon approval of this rezoning petition, the Planning and Zoning Department will be able to complete processing of the required Building Permit application.

- J. **Section 1, C. Plans, 1**, states, “Application for permit shall be accompanied by such drawings of the proposed work, drawn to scale, including such flood plains, sections, elevations, and structural details as the Ordinance Officer may require.”

**Section 1, D. Plot Diagrams**, states, “There shall also be filed a plot diagram showing the lot in a form and size suitable for filing permanently within the permit record, drawn to scale, with all dimension figures, showing accurately the size and exact location of all proposed new construction or, in the case of demolition, of such construction as is to be demolished and of all existing buildings and structures that are to remain.”

Finding: Although a site plan was submitted illustrating the location of the area to be used for the operation of the proposed Industrial and commercial land use outdoors, there are a number of items that are outstanding that shall be illustrated on the site plan. Therefore, as a Condition of Approval, the petitioner shall submit a fully-dimensioned site plan that illustrates the items that are identified as being required, outlining all future construction, including all contemplated land uses, for staff review and approval, should the petition be approved.

**Floodplain:** Finding: The subject property is not located within a FEMA floodplain.

***Compatibility with Surrounding Land Uses:***

**Finding:** Lot sizes in the immediate area typically range from ¾ acre to 10.0 acres in size. Most of the parcels are developed with an Industrial land use, a small fraction are single family residential land uses. All adjacent land uses are Industrial land use in nature. The nearest Special Use Permit for a cell tower and is located directly north of the petitioner's property. Staff finds that the proposed Industrial land use would be dedicated to potential Industrial development, a few Industrial uses have been approved throughout the surrounding area. Would not have a detrimental impact on the character of the immediate area.

***Public Participation:***

**Finding:** Staff has not received a letter of protest at the time of report.

***Permits:***

***Chaves County Ordinances*** identify several permits that an applicant must obtain prior to establishing a commercial enterprise on this parcel.

**Finding:** All required permits shall be obtained by the petitioner.

**9. RECOMMENDATION**

The proposed rezoning appears to be in general conformance with the Land Use Map of the Chaves County Comprehensive Plan, Staff feels that such a land use is compatible with the nature of the adjacent land uses and with the character of the neighborhood. Compatibility is important, because it enhances rational land use planning.

Therefore, staff recommends approval of the rezoning petition for property located at 300 Block of East Gallina Road, from AG, Agricultural District to Industrial District.

If substantial evidence is submitted that would support the rezoning petition, then staff respectfully requests that approval of the rezoning petition be subject to the following Conditions of Approval:

1. All requirements of the ***Chaves County Zoning Ordinance*** be adhered to during the construction of all structures and related improvements of the subject property;
2. A fully-dimensioned site plan meeting the requirements of the ***Chaves County Zoning Ordinance*** shall be submitted illustrating all land uses and improvements contemplated for the subject property prior to commencing any further construction and improvement activities;
3. All permits required by Chaves County and all other agencies be obtained by the petitioner prior to commencing construction and improvement activities;
4. The proposed land use development shall comply with all provisions of the International Building Code, 2009 Edition;
5. Any on-site lighting which may be needed for security or other purposes be shielded from surrounding uses and be developed in accordance with the New Mexico Night Skies Act;

6. The applicant shall submit a fully dimensioned site plan of the parking spaces; loading area, the number of parking spaces and landscaping and an associated irrigation system plan to be reviewed by the Planning and Zoning Department.
7. The applicant shall secure all required permits from the New Mexico State Engineer's Department, and the New Mexico Environmental Department prior to the issuance of a Certificate of Occupancy.

**10. ATTACHMENTS**

- a. Petition for Case Review, Chaves County Planning & Zoning Department
- b. Vicinity Map
- c. Assessor's Aerial Map
- d. Petitioner's Preliminary Site Plan
- e. Photos of subject property



# CHAVES COUNTY APPLICATION CHAVES COUNTY ZONING ORDINANCE

Case Number: Z 2015-1 Date Received: 01-06-2015 Fee: 150<sup>00</sup>

Type of Request:  Rezoning     Special Use     Variance     Change of Use

Name of Property Owner: Ernie Hacker Phone Number: 575-626-2809

Mailing Address: 1102 ONE Horse Rd Roswell NM 88201

Name of Applicant: Ernie Hacker

Mailing Address: 1102 ONE Horse Rd Roswell NM 88201 Home Phone Number: 575-626-2809  
Business Phone Number: 575-622-6493

Applicant Status:  Owner     Agent     Tenant     Other

Case Address, Legal Description, and Parcel Number: Braich Industrial Center Lot 11  
4-136-055-149-026-000-000 . Ernie + Leanne Hacker  
RD45645

Present Land Use: OPEN NON USE

Intended Use: TRAILER SALES

Present Zoning: NONE Residential / Agriculture Requested Zoning: COMMERCIAL-INDUSTRIAL

Applicant's Reason for Requested Change: (Use back if more space is needed) I AM PUTTING IN  
A TRAILER SALES-REPAIR STORE; CONCRETE SALES.

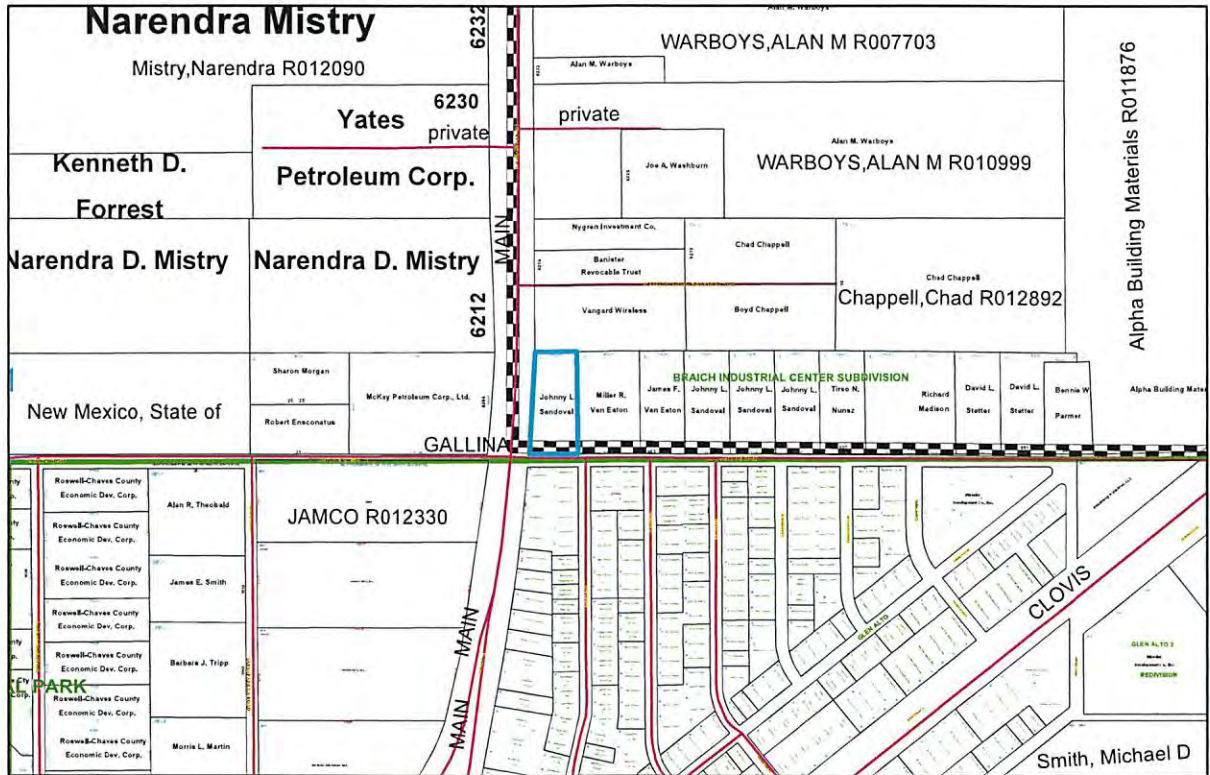
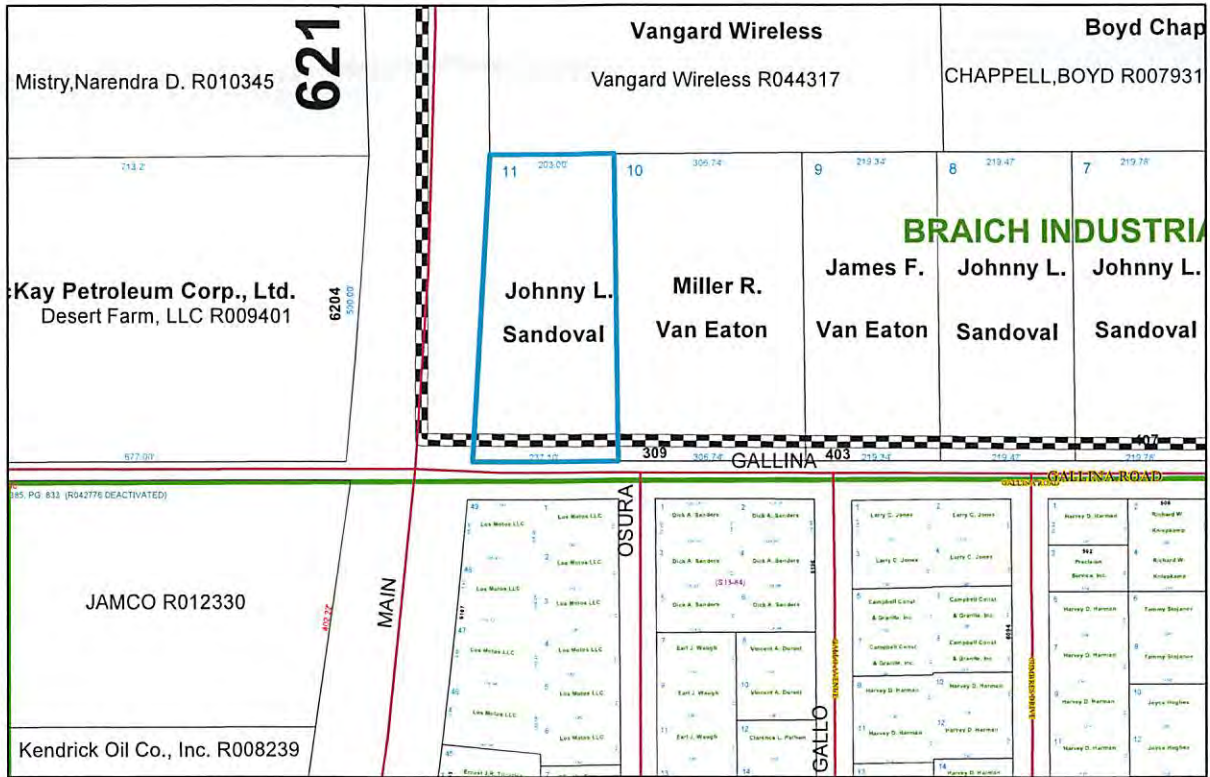
I ACKNOWLEDGE THAT I HAVE BEEN INFORMED OF THE DATES, TIMES, AND LOCATIONS OF THE PUBLIC MEETINGS WHICH I OR MY AGENT MUST ATTEND IN ORDER TO FULFILL THE REQUIREMENTS OF THIS APPLICATION.

Ernie Hacker Owner's Signature    01-06-2015 Date

Feb. 3<sup>rd</sup> @ 6pm - Planning + Zoning Commission

2/8/08 Feb. 19<sup>th</sup> @ 9am - Chaves County Board of Commissioners.

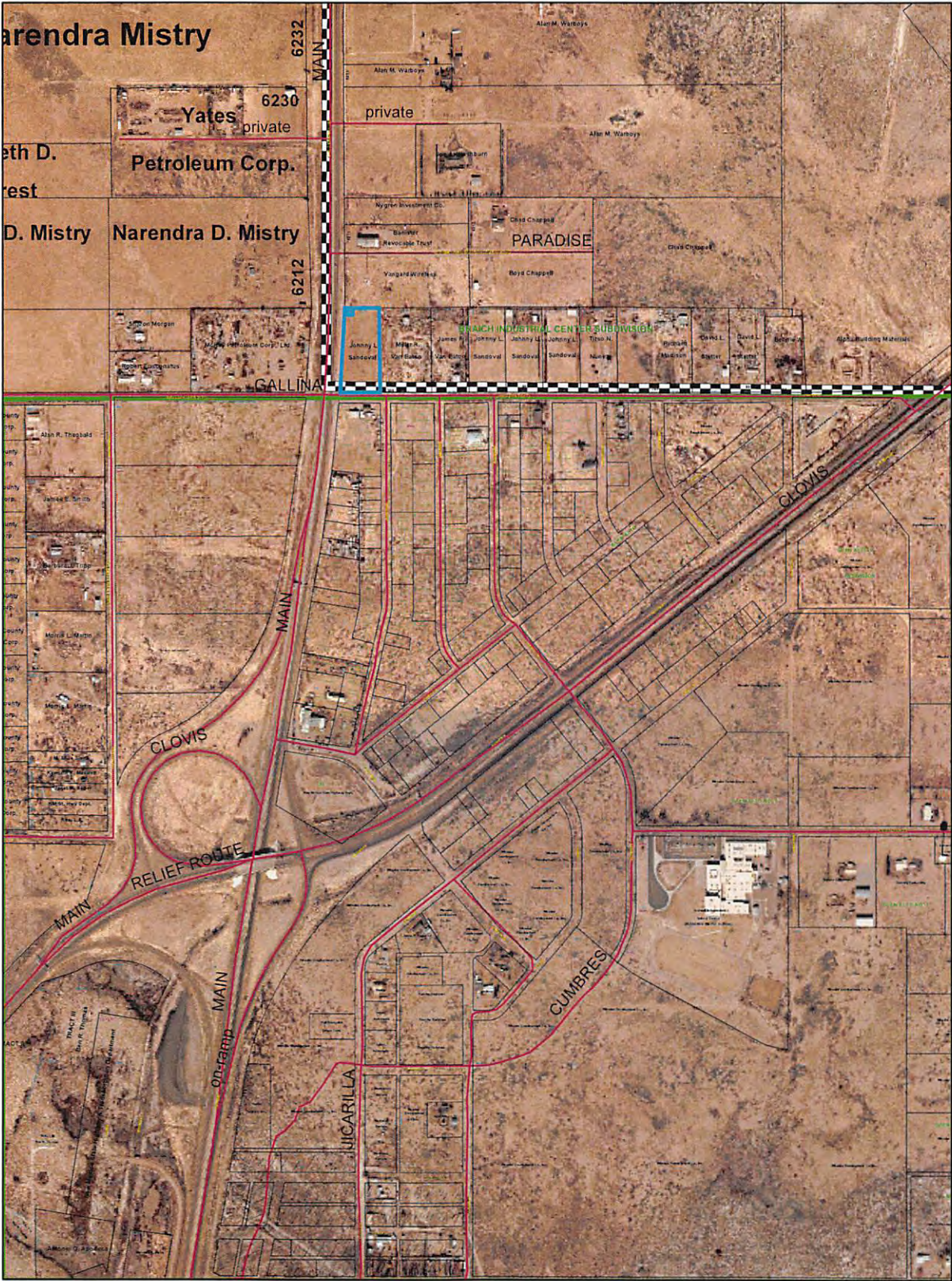
# VICINITY MAP



CASE Z 2015-1



# AERIAL MAP

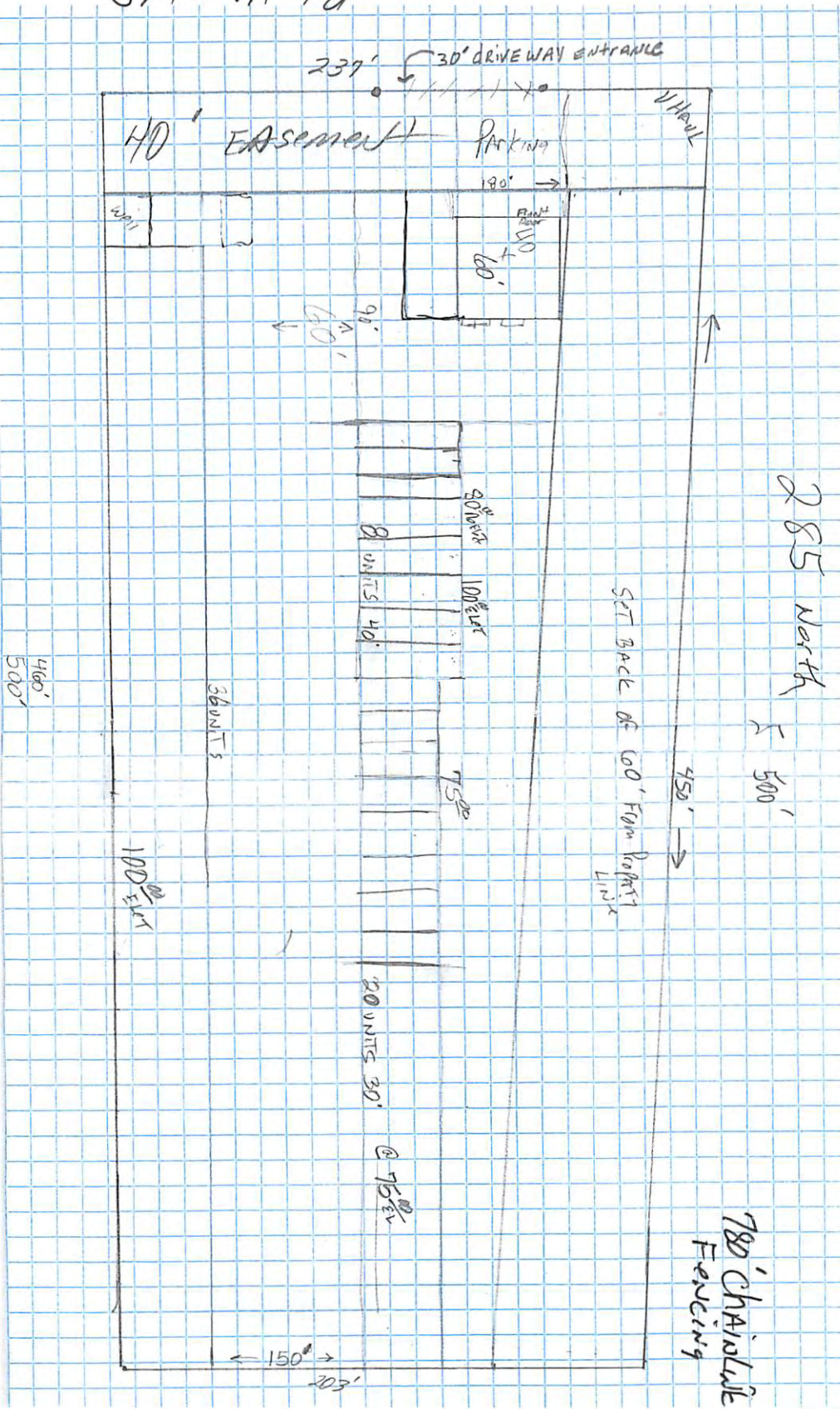


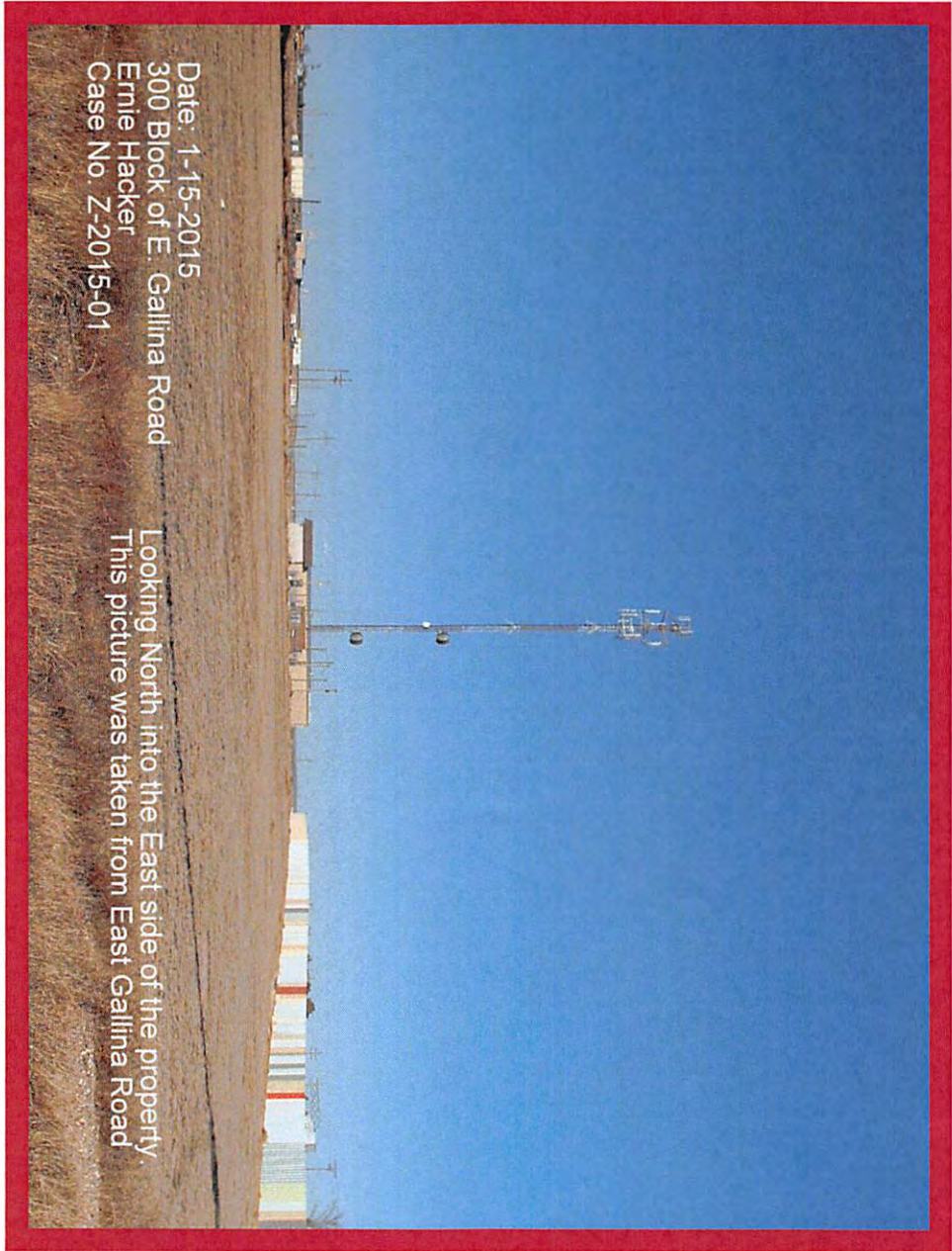
Case Z 2015-1





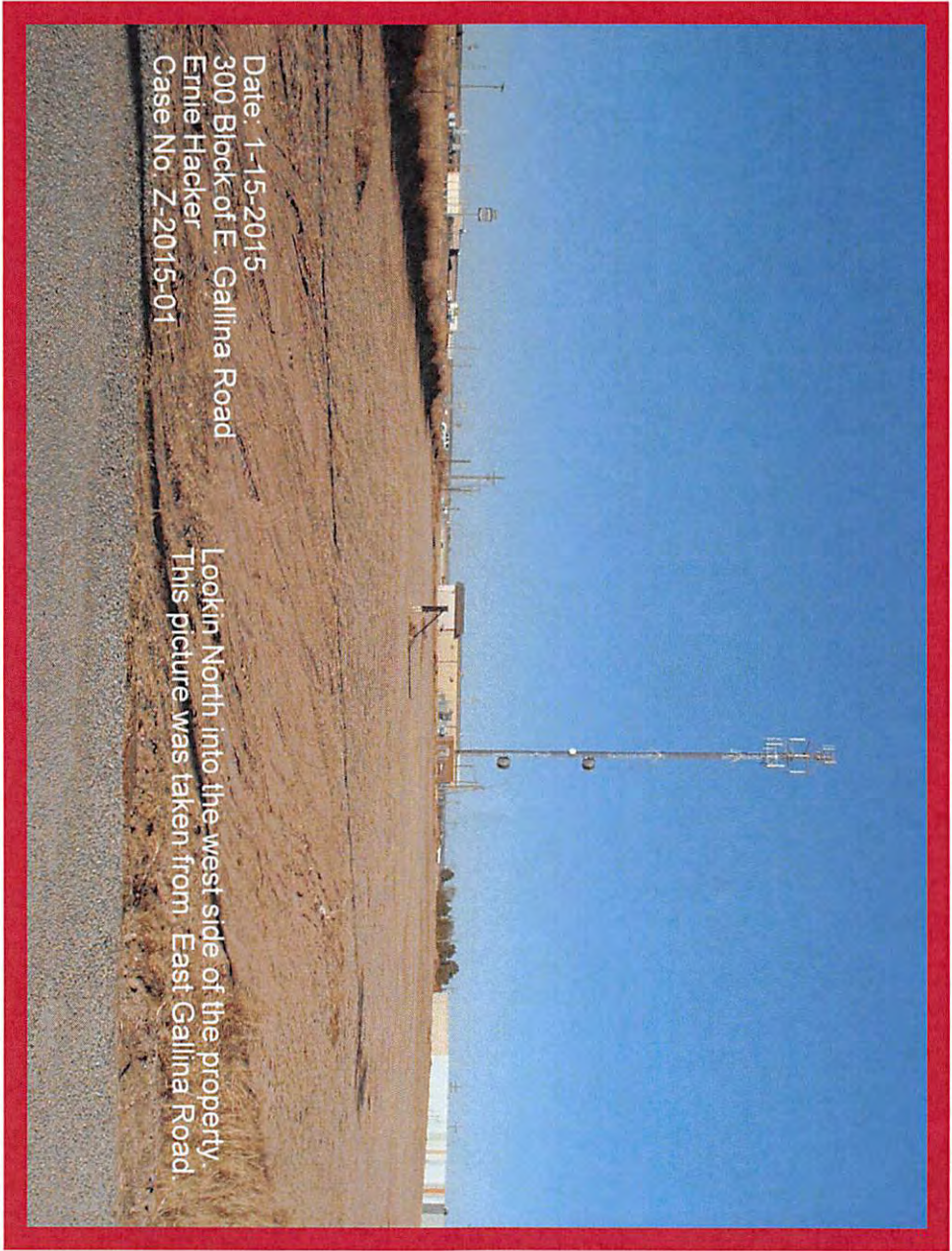
# GALLINA RJ





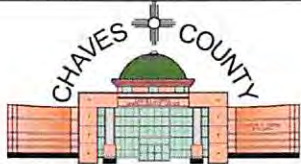
Date: 1-15-2015  
300 Block of E. Gallina Road  
Ernie Hacker  
Case No. Z-2015-01

Looking North into the East side of the property.  
This picture was taken from East Gallina Road



Date: 1-15-2015  
300 Block of E. Gallina Road  
Ernie Hacker  
Case No Z-2015-01

Lookin North into the west side of the property.  
This picture was taken from East Gallina Road.

Chaves County Planning & Zoning Commission	Chaves County	
Hearing Date: February 5, 2015	<i>Meeting Minutes</i>	Created By: Julia A. Torres

**Members Present:**

Dale Rogers  
 Cherri M. Snyder  
 Jerry Wagner  
 Robbie White

**Members Absent:**

Andy Morley

**Staff Present:**

Marlin J. Johnson  
 Julia A. Torres

**Public:** Susana Ribeiro and Corrie Rivera

The Regular Meeting of the Chaves County Planning & Zoning Commission was held in the Commission Chambers at the Chaves County Administrative Center on February 5, 2015, beginning at 6:00PM. The meeting was originally scheduled on February 3, 2015 but had to be rescheduled due to lack of quorum.

I. Minutes

The minutes of the September 9, 2014 meeting were approved as submitted by a unanimous vote.

II. **Election of Officers for 2015**

*Commissioner Wagner made a motion to reappoint Dale Rogers as Chairman and Andy Morley as Vice-Chairman for 2015. Commissioner White seconded the motion. Motion carried by a 4-0 vote.*

III. New Business

**Case Z 2015-1:**

*Petition to rezone property from Agricultural/Residential to Commercial-Industrial, located in Braich Industrial Center, Lot 11, parcel # 4136055149026000000 to allow for trailer sales/repair and concrete sales as well as RV parking/storage.*

**PRESENTATION**

**Mr. Johnson** stated that this was a Special Use Permit request to allow the petitioner to operate a trailer sales and repair operation, accompanied by the outside storage of trailers and recreational vehicles and for sale of concrete.

There is Industrial zoning to the North and South of the subject property as well as to the West across from Highway 285. The proposed rezoning appears to be in general conformance with the Land Use Map of the Chaves County Comprehensive Plan. Staff did not receive any letters of protest at the time of report.

Staff recommends approval of this rezoning petition, from AG- Agricultural District to Industrial District, subject to the following Conditions of Approval:

1. All requirements of the Chaves County Zoning Ordinance be adhered to during the construction of all structures and related improvements of the subject property;
2. A fully-dimensioned site plan meeting the requirements of the Chaves County Zoning Ordinance shall be submitted illustrating all land uses and improvements contemplated for the subject property prior to commencing any further construction and improvement activities;
3. All permits required by Chaves County and all other agencies be obtained by the petitioner prior to commencing construction and improvement activities;
4. The proposed land use development shall comply with all provisions of the International Building Code, 2009 Edition;
5. Any on-site lighting which may be needed for security or other purposes be shielded from surrounding uses and be developed in accordance with the New Mexico Night Skies Act;
6. The applicant shall submit a fully dimensioned site plan of the parking spaces; loading area, the number of parking spaces and landscaping and an associated irrigation system plan to be reviewed by the Planning and Zoning Department.
7. The applicant shall secure all required permits from the New Mexico State Engineer's Department, and the New Mexico Environmental Department prior to the issuance of a Certificate of Occupancy; and

**Mr. Johnson** continued his report by stating that the landscaping requirements ends on the South side of Gallina Road. The applicant is willing to do some landscaping in exchange for being able to use the 40 foot Chaves County ROW on the South side of the subject property for parking. Until such time that Chaves County wishes to expand this road, the applicant may use it for customer parking.

**Mr. Johnson** concluded his presentation by asking if the Commissioners had any questions. Nobody had any questions for Mr. Johnson.

*There was nobody present in the audience, except for the Commissioners, Staff and applicant. No one spoke either in favor or in opposition to the petition.*

*Commissioner Wagner made a motion to approve Case Z 2015-1, including Staff Findings and Conditions of Approval. Commissioner Snyder seconded the motion. The motion carried by a 4-0 vote.*

The recommendation of the Planning and Zoning Commission will be presented for public review and action at the **February 19, 2015** regular meeting of the Board of Chaves County Commissioners. This public hearing will begin at 9:00 AM.

#### IV. Other Business

**Mr. Johnson** asked the P&Z Commission members if the meeting day and time worked OK for everyone. Commissioner White responded that the day was okay, but not the 6:00 p.m. time because of her schedule at the University. She would prefer to have the meetings begin at 5:30 p.m. Commissioner Wagner responded that there may be times that it would be hard for him to attend at 5:30 p.m. due to farming, but he would somehow make it work.

*Commissioner White made a motion to change the meeting time to 5:30 p.m. during the winter months and possibly changing the time during the summer months back to 6:00 p.m. Commission Snyder seconded the motion. Motion carried by a 4-0 vote.*

There being no other business listed on the agenda or to come before the Commission, the meeting adjourned at 5:37PM.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Attest

*Note: The minutes of this meeting are on file in the Chaves County Planning and Zoning office for review, upon request.*

**AGENDA ITEM:** 4

Ratification of Amendment No. 1 to Agreement A-14-004 between Chaves County and the State of New Mexico Children, Youth and Families Department

**MEETING DATE:** 02/19/15

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**Action Requested by:** Rebecca Melendez-Turner, Continuum Coordinator

**Action Requested:** Ratification of Amendment No. 1 to Agreement A-14-004

---

**Item Summary:**

A.) Chaves County received Amendment No. 1 under Contract # 15-690-17253 from the New Mexico Children, Youth and Families Department. The purpose of the amendment is to:

1. Revise Attachment 2-Budget (executed on 05/21/14) to correct the match liability language.

All other articles of the Agreement remain the same.

The terms of the Agreement continue through June 30, 2015.

Staff recommends ratification of amendment.

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**SUPPORT DOCUMENTS:** Amendment No. 1 to Agreement A-14-004

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Summary by: Rebecca Melendez-Turner

Title: Continuum Coordinator

STATE OF NEW MEXICO

**CHILDREN, YOUTH AND FAMILIES DEPARTMENT  
AGREEMENT  
AMENDMENT NUMBER 1**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **CHILDREN, YOUTH AND FAMILIES DEPARTMENT**, hereinafter referred to as the "Agency" and **CHAVES COUNTY**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Agency.

**PURPOSE OF AMENDMENT**

1. Revise **Attachment 2 – Budget (executed on 05/21/2014)** to correct the match liability language.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED AGREEMENT ARE AMENDED AS FOLLOWS:

**All other articles of this Agreement remain the same.**



IN WITNESS WHEREOF, the Agency and the Contractor have caused this Agreement to be executed, said Agreement to become effective as of the date set forth below upon which it is executed by the Agency Secretary or Designee.

CHAVES COUNTY

[Signature]  
Authorized Signatory

Date: 1-13-15

Commission Chairman  
Printed Title of Authorized Signatory

[Signature]  
Legal Counsel, Contractor

Date: 01/13/15

Agency – Children, Youth and Families Department

[Signature]  
Secretary or Designee, Agency

Date: 1/20/15

Approved as to legal form and sufficiency.

[Signature]  
Office of General Counsel, Agency

Date: 1/15/15

**Revised Attachment 2 – Budget dated 11/21/2014  
CHAVES COUNTY**

**Budgeted and Contracted Grant Amount**

	Continuum	Wings	Girl's Circle	Youth Advocacy	RAC/Day Reporting Center	
<b>Personnel</b>	\$31,720.00	\$40,565.00	\$16,000.00	\$53,000.00	\$66,600.00	
<b>Benefits</b>						
<b>Contractual</b>						
<b>Travel</b>	\$3,900.00		\$3,000.00	\$3,000.00	\$1,500.00	
<b>Supplies</b>	\$1,100.00	\$4,400.00	\$1,000.00	\$4,000.00	\$3,500.00	
<b>Other Costs</b>	\$4,000.00	\$1,035.00			\$5,900.00	
<b>TOTALS</b>	<b>\$40,720.00</b>	<b>\$46,000.00</b>	<b>\$20,000.00</b>	<b>\$60,000.00</b>	<b>\$77,500.00</b>	<b>\$244,220.00</b>

The Contractor shall be required to source a minimum of forty-percent (40%) of the total budgeted grant amount with local matching funds. The local matching funds may consist of money, land, equipment or in-kinds services. Matching funds should be expended at the same rate as the grant funds and must be reported on the monthly invoices.

Budgeted and Contracted Grant Amount	\$ 244,220.00
40% Minimum Match Liability for Chaves County	<u>97,688.00</u>
Total Project Budget	\$ 341,908.00

\* Per diem and mileage, and other miscellaneous expenses, will be paid in accordance with the Department of Finance and Administration (DFA) Rule 2.42.2 NMAC.

**FUNDING INFORMATION:**  
Juvenile Continuum Grant Fund

**AGENDA ITEM:** \_\_\_\_\_ 5 \_\_\_\_\_

Ratify Agreement A-14-038  
Ratification of Agreement  
between Chaves County and  
Southeastern New Mexico  
Veterans Transportation Network

**MEETING DATE:** February 19, 2015

**STAFF SUMMARY REPORT**

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**ACTION REQUESTED BY:** Stanton L. Riggs

**ACTION REQUESTED:** Ratify Agreement No. A-14-038

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**ITEM SUMMARY:**

The recently purchased vans for the Southeastern New Mexico Veterans Transportation Network arrived after our last commission meeting. Mr. Duran requested that the vans be utilized immediately. As such, the chairman signed the agreement with the veterans. Staff is requesting ratification of the agreement.

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**SUPPORT DOCUMENTS:**

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**SUMMARY BY:** Stanton L Riggs

**TITLE:** County Manager

**AGREEMENT A-14-038  
BETWEEN CHAVES COUNTY AND  
SOUTHEASTERN NEW MEXICO VETERANS TRANSPORTATION NETWORK**

THIS AGREEMENT is made and entered into this 1st day of February, 2015, by and between the County of Chaves, a political subdivision of the State of New Mexico, acting by and through its duly elected Board of Commissioners, hereinafter referred to as "COUNTY" and the Southeastern New Mexico Veterans Transportation Network, a non-profit corporation, acting by and through its duly appointed representative, hereinafter referred to as "VTN".

WHEREAS, VTN has provided and continues to provide services to the veterans of Chaves County regardless of race, color, creed, ethnic background or gender, and VTN desires to continue to provide these services to the veterans of the county, and

WHEREAS, VTN has been awarded 2014 Legislative funding for the purchase of vehicles. These monies are forwarded to the COUNTY and the COUNTY procures the vehicles for use by VTN, in accordance with the New Mexico Procurement Code, Section 13-1-28 through 13-1-199 NMSA, 1978, and

WHEREAS, The COUNTY desires to lease vehicles and equipment to VTN in order for VTN to continue to provide services to the residents of Chaves County.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and agreements set forth herein, the parties do hereby agree as follows:

1. SCOPE. The COUNTY does hereby agree to lease to VTN the vehicles and equipment described in "Exhibit A" attached hereto and incorporated into this Agreement.

2. RENT. The lease amount shall be paid in annual installments of Fifty Dollars (\$50.00) per van per year. All rentals required by the terms of this Lease shall be paid in lawful money of the United States or by check or draft of VTN redeemable in lawful money of the United States, and shall be paid to Chaves County Treasurer, PO Box 1172, Roswell, NM 88202-1772 (check shall reference this Agreement).

3. TERM. The term of this Lease will be for a period of five years commencing February 1, 2015 and terminating December 31, 2020. Either party may terminate this Lease with or without cause, by giving the other party sixty (60) days written notice of their intention to terminate. Upon the completion or termination of this Agreement VTN shall surrender the vehicles and equipment to the COUNTY in as good condition and repair as the same shall be at the commencement of the Lease, excepting only natural wear and decay which cannot reasonably be arrested by regular repair and maintenance.

4. MAINTENANCE AND REPAIRS. During the term of this Lease, VTN shall make, at its own expense, all repairs needed to maintain the vehicles and equipment in good working condition.

5. INSURANCE. At all times during the term of this Lease, VTN shall, at its sole cost and expense, and maintain a comprehensive automobile insurance policy which provides full coverage for the vehicles described in Exhibit A. The policy shall be in the amount of \$1,000,000.00 with no limiting modifications and shall include the COUNTY as an additional insured party. VTN shall provide the COUNTY with evidence of such insurance.

6. INDEMNIFICATION AND HOLD HARMLESS. VTN agrees to defend, indemnify, and save COUNTY harmless from and against any and all claims, losses, damages or expenses of litigation arising out of the use of the vehicles by VTN, its agents, employees or invitees, or out of any accident or other incident or occurrence arising out of the use of the vehicles, causing injury or death to any person whomsoever, or damage to property whatsoever, due directly or indirectly to the use of the vehicles by VTN, its agents, employees, invitees or patrons.

The COUNTY shall not be liable to VTN or any other person for any damage or injury arising out of the use of the vehicles or equipment by VTN to any person or property occasioned by VTN's use. VTN agrees and covenants to defend, indemnify and save harmless COUNTY from all such liability and expense in connection with VTN's use of the vehicles or property.

7. CONTRACTOR STATUS. VTN and its employees and agents are independent contractors and are not employees of the COUNTY. As such, VTN has no authority to contract for nor obligate the COUNTY in any manner.

8. ASSIGNMENTS, LEASES AND SUBLEASES. VTN shall not assign any interest under the terms of this Lease or sublease the vehicles without the prior written consent of the COUNTY.

9. NOTICES. At any notice provided for herein shall be sufficiently given if served personally or if deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the party to whom the notice is to be served. If either the COUNTY or VTN shall at any time change its name, or if there be an assignment or other disposition of lease rights by either party, or if either party changes the place of address to which such notice or communication shall be sent, written notice of such communication shall be given to the other party. Until further notice in writing is served, any notice or communication with reference to this Lease Agreement addressed to COUNTY may be addressed to Chaves County Manager, PO Box 1817, Roswell, NM 88202-1817, and any such notices or communication addressed to VTN may be addressed to 2114 W 2<sup>nd</sup> Street, Roswell, New Mexico 88201. Notices given as provided herein shall be deemed effectively given as of the date of personal delivery or as of the third business day following the date of deposit of same for mailing in the United States Post Office.

10. ENTIRE AGREEMENT. The parties hereto agree that this Agreement incorporates all of the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and that all covenants, agreements and understandings have been merged into this Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable.

11. AMENDMENTS. The parties hereto agree that this Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

IN WITNESS WHEREFORE, the parties hereto have executed this Lease Agreement as of the date first written above.

BOARD OF CHAVES COUNTY COMMISSIONERS

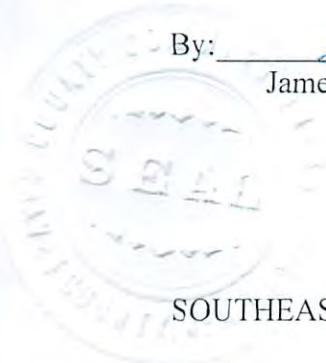
ATTEST:

By:   
James W. Duffey, Chairman

  
Dave Kunko  
County Clerk

SOUTHEASTERN NEW MEXICO VETERANS TRANSPORTATION NETWORK

  
Magil Duran, President



**Exhibit A**  
**to**  
**Agreement A-14-038**

The following vehicles are included in this Lease Agreement:

2015 Toyota Sienna Van	VIN 5TDKK3DC7FS07A632
2015 Toyota Sienna Van	VIN 5TDKK3DC1FS527608
2015 Toyota Sienna Van	VIN 5TDKK3DC0FS567632
2015 Toyota Sienna Van	VIN 5TDKK3DCXES501555
2015 Toyota Sienna Van	VIN 5TDKK3DC4ES520344
2015 Nissan NV Pass SL Van	VIN 5BZAF0AA7FN850312

Fair Market Lease for each van is \$110.00 per day, 250 days per year, for a total value of \$27,500.00 per van.

In accordance with the Lease, Southeastern New Mexico Veterans Transportation Network (SENMVTN) will have to pay the following;

1. Insurance	\$18,000.00
2. Maintenance and repairs estimate	\$ 7,000.00

Services SENMVTN donates to our Community

Average of 15,000 miles per month at \$0.45 per mile	\$81,000.00 / van
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Rent and Fees

1. Annual rent covers any admin costs County might incur	\$50.00 / van
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These numbers show that the County receives a huge benefit from SENMVTN. That coupled with the expenses and responsibilities offset the Fair Market Value of the vans.

**AGENDA ITEM:** \_\_\_\_\_ 6 \_\_\_\_\_

Agreement A-15-002  
Between Chaves County and  
Roswell Medical Care to Provide  
Indigent Residents with Primary  
Health Care Services

**MEETING DATE:** February 19, 2015

**STAFF SUMMARY REPORT**

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**ACTION REQUESTED BY:** Stanton L. Riggs

**ACTION REQUESTED:** Approve Agreement

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**ITEM SUMMARY:**

This Agreement, if approved, would allow Chaves County to compensate Roswell Medical Care for services they provide indigent residents of Chaves County in accordance with Ordinance #58. The funds would come from the Chaves County Indigent Fund. The initial contract is for a period of five months with the option of the parties to continue the agreement for a year at a time beginning July 1, 2015. The initial amount of the contract is \$50,000.

Staff recommends approval of Agreement A-15-002.

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**SUPPORT DOCUMENTS:** Agreement A-15-002

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**SUMMARY BY:** Stanton L. Riggs

**TITLE:** County Manager



**AGREEMENT A-15-002  
BETWEEN CHAVES COUNTY AND ROSWELL MEDICAL CARE  
TO PROVIDE INDIGENT RESIDENTS WITH PRIMARY HEALTH CARE SERVICES**

THIS AGREEMENT is made and entered into this 19<sup>th</sup> day of February 2015, by and between the County of Chaves, a political subdivision of the State of New Mexico acting by and through its duly elected Board of Commissioners, hereinafter referred to as "County", and Roswell Medical Care, a New Mexico non-profit corporation, hereinafter referred to as "Provider".

WHEREAS, Chaves County has established a County Indigent Hospital/Health Care Fund for the purpose of providing funds for the medical care of indigent residents of the County, and

WHEREAS, the Board of Commissioners has adopted the Indigent Hospital/Health Care Ordinance #58 which sets forth rules and regulations governing the County Indigent Hospital/Health Care Fund, and

WHEREAS, Provider is a non-profit corporation engaged in providing primary health care services for indigent residents of Chaves County, and

WHEREAS, Provider and the County have agreed that it is in the best interest of the indigent residents of the County to enter into an agreement to provide primary health care, preventive and educational services for residents of Chaves County under the terms and conditions of the Chaves County Indigent Hospital/Health Care Ordinance #58,

NOW THEREFORE, in consideration of the mutual covenants contained herein the parties agree as follows:

1. SCOPE OF SERVICES: Provider shall provide professional medical services to indigent patients domiciled in the County of Chaves as that term is defined by the Indigent Hospital/Health Care Ordinance #58. Those services shall include the following:
  - A. Acute Medical (e.g. colds, upper respiratory infection, urinary tract infection, etc.) for adult and geriatric patients.
  - B. Chronic medical (e.g. hypertension, diabetes, arthritis, etc.).
  - C. Minor emergency medical (e.g. lacerations, fractures, sprains, etc.).
  - D. Pediatric care (e.g. upper respiratory infections, urinary tract infections, asthma, etc.).

2. ELIGIBILITY: Provider shall be responsible for insuring that all County indigent patients it treats meet all of the guidelines as established by the Indigent Hospital/Health Care Ordinance #58.
3. COMPENSATION. Provider will bill the County for services rendered to eligible indigent patients. The County shall adjudicate the claim and compensate provider in accordance with the Indigent Hospital/Health Care Ordinance #58. Provider agrees that it will waive the remainder of any charges after adjudication. Further, provider understands and agrees that all payments shall only come from the Chaves County Indigent/Health Care Fund.
4. PERIOD OF PERFORMANCE: The period of performance of this contract is February 1, 2015 through June 30, 2015. The parties may agree to extend the contract in one-year increments for a period not to exceed four (4) additional one year terms provided the services are still required, monies are available and that the services provided by Provider are satisfactory.
5. AMOUNT OF CONTRACT: The total amount of the contract shall not exceed Fifty Thousand Dollars (\$50,000.00).
6. ASSIGNMENT OF CLAIMS: Provider shall not assign or delegate any interest in this contract or transfer any interest or assign any claims for money due or to become due under this contract, without the written consent of the County.
7. INDEMNITY AND HOLD HARMLESS: Provider agrees to indemnify, defend, hold harmless and release the County, its Commissioners, Officers and employees from any and all expenses, losses, penalties, professional fees, charges, damages, settlements and costs of litigation or other expenses or liabilities of every kind and character resulting from the error, omission, intentional or negligent acts of Provider, its employees or agents in the performance of Provider's duties under this agreement.
8. INSURANCE: Provider shall obtain and maintain the following minimum limits of insurance continuously during the life of this agreement.
  - A. Comprehensive General Liability Insurance in an amount not less than one million dollars (\$1,000,000.00) per occurrence.
  - B. Comprehensive Property Damage Liability Insurance in an amount not less than one million dollars (\$1,000,000.00) per occurrence.
  - C. Malpractice/Professional Liability Insurance in an amount not less than one million dollars (\$1,000,000.00) per occurrence.
  - D. Worker's Compensation as required by New Mexico law.

- E. Provider shall furnish the County with certificates of insurance for the foregoing coverages which designate Chaves County as an additional named insured. Said certificate of insurance shall include a provision wherein the coverage shall not be cancelled, terminated or otherwise modified without thirty (30) days prior written notice provided to Chaves County.
  
- 9. TERMINATION: Either party may terminate this contract with or without cause by providing written notice thirty (30) days in advance of the termination. In the event of termination, Provider shall be reimbursed for services performed up to the point of termination. In no event shall the dollar amount exceed the amount of the contract.
  
- 10. CONTRACT CONTENTS: This instrument contains the entire contract between the parties. No statement, promises, or inducements made by either party or agent of either party that is not contained in this written contract shall be valid or binding; and this contract may not be enlarged, modified, or altered except in writing as signed by both parties.
  
- 11. STATUTES, LAWS AND RULES: Provider shall observe and obey all laws, ordinances, regulations and rules of the Federal, State, County, and Municipal Governments which may be applicable to its services under this contract.

APPROVED by the Chaves County Commissioners this 19<sup>th</sup> day of February, 2015.

ROSWELL MEDICAL CARE

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Penny L. Kelley, President

BOARD OF CHAVES COUNTY COMMISSIONERS

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James W Duffey, Chairman

ATTEST:

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Dave Kunko, County Clerk

Item # 7

Agreement A-15-003 – between Chaves  
County and Kansas State Bank

Meeting Date: 2-19-15

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## STAFF SUMMARY

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**REQUESTED BY:** Tammy Brisco West, Purchasing Director

**ACTION REQUIRED:** Approve Agreement A-15-003

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### SUMMARY:

The Road Department received funding in the amount of \$31,860 this fiscal year to lease a new wheel loader. The County has contracted with Sierra Machinery under the government HGAC Contract for a Volvo L90G in the amount of \$166,394.00. Since this, and most, governmental contract allow only for purchase and not lease of heavy equipment, Sierra Machinery is offering lease financing through their regular financing agency, Kansas State Bank. The County has successfully entered into multiple lease agreements for other equipment in the past through this bank and has a good relationship with the firm. This lease is for a five year term, commencing on March 5, 2015 and ending March 5, 2020, with monthly payments of \$1,410.42. The contract includes a document/administrative fee of \$395 and the fair market value price of \$101,394 at the end of the term if the County decides to purchase the equipment. This lease pricing obtained is \$14,935 less than the annual payment amount budgeted for this equipment originally. The contract contains a provision which authorizes the Purchasing Director to execute contract documents. Staff recommends approval of Agreement A-15-003.



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**SUPPORT DOCUMENTS:** Agreement A-15-003

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**Submitted by:** Tammy Brisco West  
**Title:** Purchasing Director

**DOCUMENTATION INSTRUCTIONS**

The instructions listed below should be followed when completing the enclosed documentation. Documentation completed improperly will delay funding. If you have any questions regarding the Conditions to Funding, instructions or the documentation, please call us at (877) 587-4054.

**I. Attached Documentation**

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- 1. Government Obligation Contract**
  - ◆ Complete or verify Special Fund designated from which Contract Payments will be made in space provided in Section 2.01(j).
  - ◆ An authorized individual that is with the Obligor should sign on the first space provided.
- 2. Exhibit A – Description of Equipment**
  - ◆ Review equipment description. Complete serial number/VIN if applicable.
  - ◆ List the location where the equipment will be located after delivery/installation.
- 3. Exhibit B – Payment Schedule**
  - ◆ Sign and print name and title
- 4. Exhibit C - Certificate of Acceptance**
  - ◆ Sign and print name and title
- 5. Exhibit D - Obligor Resolution**
  - ◆ Type in the date of the meeting in which the purchase was approved.
  - ◆ Print or type the name and title of the individual(s) who is authorized to execute the Contract.
  - ◆ The secretary, chairman or other authorized board member of the Obligor must sign the Resolution where indicated.
  - ◆ A second authorized individual that is with the Obligor should attest the Resolution where indicated.
- 6. Exhibit E - Bank Qualified Certificate**
  - ◆ Sign and print name and title
- 7. Insurance Requirements**
  - ◆ Complete insurance company contact information where indicated.
- 8. Debit Authorization – (Preferred)**
  - ◆ Complete form and attach a voided check
- 9. 8038G IRS Form**
  - ◆ Please read 8038 Review Form
  - ◆ In Box 2, type Employer Identification Number
  - ◆ Sign and print name and title

**II. Additional Documentation Required**

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1. First payment check as stated on attached invoice
2. Insurance Certificate as stated on the Insurance Requirements Form
3. Vendor Invoice for the amount to finance listing applicable SN/VIN, down payment, trade, etc.
4. Front and back copies of MSO or title listing "KS StateBank AOIA" as first lien holder

**III. Condition to Funding**

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If, for any reason: (i) the required documentation is not returned by April 5, 2015, is incomplete, or has unresolved issues relating thereto, or (ii) on, or prior to the return of the documentation, there is a change of circumstance which adversely affects the expectations, rights or security of the Obligee or its assignees; then Obligee or its assignees reserve the right to adjust the quoted interest rate or withdraw/void its offer to fund this transaction in its entirety.

**All documentation should be returned to:**

KS StateBank  
1680 Charles Place  
Manhattan, Kansas 66502

## GOVERNMENT OBLIGATION CONTRACT

### Obligor

Chaves County, New Mexico  
1 St. Mary's Place  
Roswell, New Mexico 88203

### Obligee

KS StateBank  
1010 Westloop; P.O. Box 69  
Manhattan, Kansas 66505-0069

**Dated as of March 5, 2015**

This Government Obligation Contract dated as of the date listed above is between Obligee and Obligor listed directly above. Obligee desires to finance the purchase of the Equipment described in Exhibit A to Obligor and Obligor desires to have Obligee finance the purchase of the Equipment subject to the terms and conditions of this Contract which are set forth below.

#### I. Definitions

Section 1.01 Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Additional Schedule" refers to the proper execution of additional schedules to Exhibit A and Exhibit B, as well as other exhibits or documents that may be required by the Obligee all of which relate to the financing of additional Equipment.

"Budget Year" means the Obligor's fiscal year.

"Commencement Date" is the date when Obligor's obligation to pay Contract Payments begins.

"Contract" means this Government Obligation Contract and all Exhibits attached hereto, all addenda, modifications, schedules, refinancings, guarantees and all documents relied upon by Obligee prior to execution of this Contract.

"Contract Payments" means the payments Obligor is required to make under this Contract as set forth on Exhibit B.

"Contract Term" means the Original Term and all Renewal Terms.

"Exhibit" includes the Exhibits attached hereto, and any "Additional Schedule", whether now existing or subsequently created.

"Equipment" means all of the items of Equipment listed on Exhibit A and any Additional Schedule, whether now existing or subsequently created, and all replacements, restorations, modifications and improvements.

"Government" as used in the title hereof means a State or a political subdivision of the State within the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended ("Code"), or a constituted authority or district authorized to issue obligations on behalf of the State or political subdivision of the State within the meaning of Treasury Regulation 1.103-1(b), or a qualified volunteer fire company within the meaning of section 150(e)(1) of the Code.

"Obligee" means the entity originally listed above as Obligee or any of its assignees.

"Obligor" means the entity listed above as Obligor and which is financing the Equipment through Obligee under the provisions of this Contract.

"Original Term" means the period from the Commencement Date until the end of the Budget Year of Obligor.

"Renewal Term" means the annual term which begins at the end of the Original Term and which is simultaneous with Obligor's Budget Year and each succeeding Budget Year for the number of Budget Years necessary to comprise the Contract Term.

"State" means the state in which Obligor is located.

#### II. Obligor Warranties

Section 2.01 Obligor represents, warrants and covenants as follows for the benefit of Obligee or its assignees:

- (a) Obligor is an "issuer of tax exempt obligations" because Obligor is the State or a political subdivision of the State within the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended, (the "Code") or because Obligor is a constituted authority or district authorized to issue obligations on behalf of the State or political subdivision of the State within the meaning of Treasury Regulation 1.103-1(b), or a qualified volunteer fire company within the meaning of section 150(e)(1) of the Code.
- (b) Obligor has complied with any requirement for a referendum and/or competitive bidding.
- (c) Obligor has complied with all statutory laws and regulations that may be applicable to the execution of this Contract; Obligor, and its officer executing this Contract, are authorized under the Constitution and laws of the State to enter into this Contract and have used and followed all proper procedures of its governing body in executing and delivering this Contract. The officer of Obligor executing this Contract has the authority to execute and deliver this Contract. This Contract constitutes a legal, valid, binding and enforceable obligation of the Obligor in accordance with its terms.
- (d) Obligor shall use the Equipment only for essential, traditional government purposes.
- (e) Should the IRS disallow the tax-exempt status of the interest portion of the Contract Payments as a result of the failure of the Obligor to use the Equipment for governmental purposes, or should the Obligor cease to be an issuer of tax exempt obligations, or should the obligation of Obligor created under this Contract cease to be a tax exempt obligation for any reason, then Obligor shall be required to pay additional sums to the Obligee or its assignees so as to bring the after tax yield on this Contract to the same level as the Obligee or its assignees would attain if the transaction continued to be tax-exempt.
- (f) Obligor has never non-appropriated funds under a contract similar to this Contract.
- (g) Obligor will submit to the Secretary of the Treasury an information reporting statement as required by the Code.
- (h) Upon request by Obligee, Obligor will provide Obligee with current financial statements, reports, budgets or other relevant fiscal information.
- (i) Obligor shall retain the Equipment free of any hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. as amended and supplemented.
- (j) Obligor hereby warrants the Road Fund ("Special Fund") of the Obligor is the primary source of funds from which the Contract Payments will be made.
- (k) Obligor presently intends to continue this Contract for the Original Term and all Renewal Terms as set forth on Exhibit B hereto. The official of Obligor responsible for budget preparation will include in the budget request for each Budget Year the Contract Payments to become due in such Budget Year, and will use all reasonable and lawful means available to secure the appropriation of money for such Budget Year sufficient to pay the Contract Payments coming due therein. Obligor reasonably believes that moneys can and will lawfully be appropriated and made available for this purpose.
- (l) Obligor has selected both the Equipment and the vendor(s) from whom the Equipment is to be purchased upon its own judgment and without reliance on any manufacturer, merchant, vendor or distributor, or agent thereof, of such equipment to the public.
- (m) Obligor owns free and clear of any liens any additional collateral pledged, subject only to the lien described herein; Obligor has not and will not, during the Contract Term, create, permit, incur or assume any levies, liens or encumbrances of any kind with respect to the Equipment and any additional collateral except those created by this Contract.

Section 2.02 Escrow Agreement. In the event both Obligee and Obligor mutually agree to utilize an Escrow Account, then immediately following the execution and delivery of this Contract, Obligee and Obligor agree to execute and deliver and to cause Escrow Agent to execute and deliver the Escrow Agreement. This Contract shall take effect only upon execution and delivery of the Escrow Agreement by the parties thereto. Obligee shall deposit or cause to be deposited with the Escrow Agent for credit to the Equipment Acquisition Fund the sum of N/A, which shall be held, invested and disbursed in accordance with the Escrow Agreement.

#### III. Acquisition of Equipment, Contract Payments and the Purchase Option Price

Section 3.01 Acquisition and Acceptance. Obligor shall be solely responsible for the ordering of the Equipment and for the delivery and installation of the Equipment. Execution of the Certificate of Acceptance or, alternatively, Payment Request and Equipment Acceptance Form, by a duly authorized representative of Obligor, shall constitute acceptance of the Equipment on behalf of the Obligor.

Section 3.02 Contract Payments. Obligor shall pay Contract Payments exclusively to Obligee or its assignees in lawful, legally available money of the United States of America. The Contract Payments shall be sent to the location specified by the Obligee or its assignees. The Contract Payments shall constitute a current expense of the Obligor and shall not constitute an indebtedness of the Obligor. The Contract Payments, payable without notice or demand, are due as set forth on Exhibit B. Obligee shall have the option to charge interest at the highest lawful rate on any Contract Payment received later than the due date for the number of days that the Contract Payment(s) were late, plus any additional accrual on the outstanding balance for the number of days that the Contract Payment(s) were late. Obligee shall also have the option, on monthly payments only, to charge a late fee of up to 10% of the monthly Contract Payment that is past due. Furthermore, Obligor agrees to pay any fees associated with the use of a payment system other than check, wire transfer, or ACH. Obligor will use funds to make the Contract Payments for this Contract from a Special Fund designated by Obligor in accordance with New Mexico law. Once all amounts due Obligee hereunder have been received, Obligee will release any and all of its rights, title and interest in the Equipment.

**SECTION 3.03 Contract Payments Unconditional.** Except as provided under Section 4.01, THE OBLIGATIONS OF OBLIGOR TO MAKE CONTRACT PAYMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS CONTAINED IN THIS CONTRACT SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF, OR SUBJECT TO DEFENSE OR COUNTERCLAIM.

**Section 3.04 Purchase Option Price.** Upon thirty (30) days written notice, Obligor shall have the option to pay, in addition to the Contract Payment, the corresponding Purchase Option Price which is listed on the same line on Exhibit B. This option is only available to the Obligor on the Contract Payment date and no partial prepayments are allowed. If Obligor chooses this option and pays the Purchase Option Price to Oblige then Oblige will transfer any and all of its rights, title and interest in the Equipment to Obligor.

**Section 3.05 Contract Term.** The Contract Term shall be the Original Term and all Renewal Terms until all the Contract Payments are paid as set forth on Exhibit B except as provided under Section 4.01 and Section 9.01 below. If, after the end of the budgeting process which occurs at the end of the Original Term or any Renewal Term, Obligor has not non-appropriated as provided for in this Contract then the Contract Term shall be extended into the next Renewal Term and the Obligor shall be obligated to make all the Contract Payments that come due during such Renewal Term.

**Section 3.06 Disclaimer of Warranties.** OBLIGEE MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER WARRANTY WITH RESPECT TO THE EQUIPMENT. OBLIGEE IS NOT A MANUFACTURER, VENDOR OR DISTRIBUTOR, OR AGENT THEREOF, OF SUCH EQUIPMENT; NOR IS OBLIGEE A MERCHANT OR IN THE BUSINESS OF DISTRIBUTING SUCH EQUIPMENT TO THE PUBLIC. OBLIGEE SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE ARISING OUT OF THE INSTALLATION, OPERATION, POSSESSION, STORAGE OR USE OF THE EQUIPMENT BY OBLIGOR.

#### **IV. Non-Appropriation**

**Section 4.01 Non-Appropriation.** If insufficient funds are available in Obligor's budget for the next Budget Year to make the Contract Payments for the next Renewal Term and the funds to make such Contract Payments are otherwise unavailable by any lawful means whatsoever, then Obligor may non-appropriate the funds to pay the Contract Payments for the next Renewal Term. Such non-appropriation shall be evidenced by the passage of an ordinance or resolution by the governing body of Obligor specifically prohibiting Obligor from performing its obligations under this Contract and from using any moneys to pay the Contract Payments due under this Contract for a designated Budget Year and all subsequent Budget Years. If Obligor non-appropriates, then all obligations of the Obligor under this Contract regarding Contract Payments for all remaining Renewal Terms shall be terminated at the end of the then current Original Term or Renewal Term without penalty or liability to the Obligor of any kind provided that if Obligor has not delivered possession of the Equipment to Oblige as provided herein and conveyed to Oblige or released its interest in the Equipment by the end of the last Budget Year for which Contract Payments were paid, the termination shall nevertheless be effective but Obligor shall be responsible for the payment of damages in an amount equal to the amount of the Contract Payments thereafter coming due under Exhibit B which are attributable to the number of days after such Budget Year during which Obligor fails to take such actions and for any other loss suffered by Oblige as a result of Obligor's failure to take such actions as required. Obligor shall immediately notify the Oblige as soon as the decision to non-appropriate is made. If such non-appropriation occurs, then Obligor shall deliver the Equipment to Oblige as provided below in Section 9.04. Obligor shall be liable for all damage to the Equipment other than normal wear and tear. If Obligor fails to deliver the Equipment to Oblige, then Oblige may enter the premises where the Equipment is located and take possession of the Equipment and charge Obligor for costs incurred.

#### **V. Insurance, Damage, Insufficiency of Proceeds**

**Section 5.01 Insurance.** Obligor shall maintain both property insurance and liability insurance at its own expense with respect to the Equipment. Obligor shall be solely responsible for selecting the insurer(s) and for making all premium payments and ensuring that all policies are continuously kept in effect during the period when Obligor is required to make Contract Payments. Obligor shall provide Oblige with a Certificate of Insurance which lists the Oblige and/or assigns as a loss payee and an additional insured on the policies with respect to the Equipment.

- (a) Obligor shall insure the Equipment against any loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Oblige in an amount at least equal to the then applicable Purchase Option Price of the Equipment. Alternatively, Obligor may insure the Equipment under a blanket insurance policy or policies.
- (b) The liability insurance shall insure Oblige from liability and property damage in any form and amount satisfactory to Oblige.
- (c) Obligor may self-insure against the casualty risks and liability risks described above. If Obligor chooses this option, Obligor must furnish Oblige with a certificate and/or other documents which evidences such coverage.
- (d) All insurance policies issued or affected by this Section shall be so written or endorsed such that the Oblige and its assignees are named additional insureds and loss payees and that all losses are payable to Obligor and Oblige or its assignees as their interests may appear. Each policy issued or affected by this Section shall contain a provision that the insurance company shall not cancel or materially modify the policy without first giving thirty (30) days advance notice to Oblige or its assignees. Obligor shall furnish to Oblige certificates evidencing such coverage throughout the Contract Term.

**Section 5.02 Damage to or Destruction of Equipment.** Obligor assumes the risk of loss or damage to the Equipment. If the Equipment or any portion thereof is lost, stolen, damaged, or destroyed by fire or other casualty, Obligor will immediately report all such losses to all possible insurers and take the proper procedures to obtain all insurance proceeds. At the option of Oblige, Obligor shall either (1) apply the Net Proceeds to replace, repair or restore the Equipment or (2) apply the Net Proceeds to the applicable Purchase Option Price. For purposes of this Section and Section 5.03, the term Net Proceeds shall mean the amount of insurance proceeds collected from all applicable insurance policies after deducting all expenses incurred in the collection thereof.

**Section 5.03 Insufficiency of Net Proceeds.** If there are no Net Proceeds for whatever reason or if the Net Proceeds are insufficient to pay in full the cost of any replacement, repair, restoration, modification or improvement of the Equipment, then Obligor shall, at the option of Oblige, either (1) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds or (2) apply the Net Proceeds to the Purchase Option Price and pay the deficiency, if any, to the Oblige.

**Section 5.04 Obligor Negligence.** Obligor assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Equipment and for injury to or death of any person or damage to any property whether such injury or death be with respect to agents or employees of Obligor or of third parties, and whether such property damage be to Obligor's property or the property of others (including, without limitation, liabilities for loss or damage related to the release or threatened release of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act or similar or successor law or any State or local equivalent now existing or hereinafter enacted which in any manner arise out of or are incident to any possession, use, operation, condition or storage of any Equipment by Obligor), which is proximately caused by the negligent conduct of Obligor, its officers, employees and agents.

**Section 5.05 Indemnification.** Obligor hereby assumes responsibility for and agrees to reimburse Oblige for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, imposed on, incurred by or asserted against Oblige that in any way relate to or arise out of a claim, suit or proceeding, based in whole or in part upon the negligent conduct of Obligor, its officers, employees and agents, or arose out of installation, operation, possession, storage or use of any item of the Equipment, to the maximum extent permitted by law.

#### **VI. Title and Security Interest**

**Section 6.01 Title.** Title to the Equipment shall vest in Obligor when Obligor acquires and accepts the Equipment. Title to the Equipment will automatically transfer to the Oblige in the event Obligor non-appropriates under Section 4.01 or in the event Obligor defaults under Section 9.01. In such event, Obligor shall execute and deliver to Oblige such documents as Oblige may request to evidence the passage of legal title to the Equipment to Oblige.

**Section 6.02 Security Interest.** To secure the payment of all Obligor's obligations under this Contract, as well as all other obligations, debts and liabilities, plus interest thereon, whether now existing or subsequently created, Obligor hereby grants to Oblige a security interest under the Uniform Commercial Code constituting a first lien on the Equipment described more fully on Exhibit A, including any and all additional collateral listed on any other Exhibit A. The security interest established by this section includes not only all additions, attachments, repairs and replacements to the Equipment but also all proceeds therefrom. Obligor authorizes Oblige to prepare and record any Financing Statement required under the Uniform Commercial Code to perfect the security interest created hereunder. Obligor agrees that any Equipment listed on Exhibit A is and will remain personal property and will not be considered a fixture even if attached to real property.

#### **VII. Assignment**

**Section 7.01 Assignment by Oblige.** All of Oblige's rights, title and/or interest in and to this Contract may be assigned and reassigned in whole or in part to one or more assignees or sub-assignees by Oblige at any time without the consent of Obligor. No such assignment shall be effective as against Obligor until the assignor shall have filed with Obligor written notice of assignment identifying the assignee. Obligor shall pay all Contract Payments due hereunder relating to such Equipment to or at the direction of Oblige or the assignee named in the notice of assignment. Obligor shall keep a complete and accurate record of all such assignments.

**Section 7.02 Assignment by Obligor.** None of Obligor's right, title and interest under this Contract and in the Equipment may be assigned by Obligor unless Oblige approves of such assignment in writing before such assignment occurs and only after Obligor first obtains an opinion from nationally recognized counsel stating that such assignment will not jeopardize the tax-exempt status of the obligation.

#### **VIII. Maintenance of Equipment**

**Section 8.01 Equipment.** Obligor shall keep the Equipment in good repair and working order, and as required by manufacturer's and warranty specifications. If Equipment consists of copiers, Obligor is required to enter into a copier maintenance/service agreement. Oblige shall have no obligation to inspect, test, service, maintain, repair or make improvements or additions to the Equipment under any circumstances. Obligor will be liable for all damage to the Equipment, other than normal wear and tear, caused by Obligor, its employees or its agents.

Obligor shall pay for and obtain all permits, licenses and taxes related to the ownership, installation, operation, possession, storage or use of the Equipment. If the Equipment includes any titled vehicle(s), then Obligor is responsible for obtaining such title(s) from the State and also for ensuring that Obligee is listed as First Lienholder on all of the title(s). Obligor shall not use the Equipment to haul, convey or transport hazardous waste as defined in the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. Obligor agrees that Obligee or its Assignee may execute any additional documents including financing statements, affidavits, notices, and similar instruments, for and on behalf of Obligor which Obligee deems necessary or appropriate to protect Obligee's interest in the Equipment and in this Contract. Obligor shall allow Obligee to examine and inspect the Equipment at all reasonable times.

#### **IX. Default**

Section 9.01 Events of Default defined. The following events shall constitute an "Event of Default" under this Contract:

- (a) Failure by Obligor to pay any Contract Payment listed on Exhibit B for fifteen (15) days after such payment is due according to the Payment Date listed on Exhibit B.
- (b) Failure to pay any other payment required to be paid under this Contract at the time specified herein and a continuation of said failure for a period of fifteen (15) days after written notice by Obligee that such payment must be made. If Obligor continues to fail to pay any payment after such period, then Obligee may, but will not be obligated to, make such payments and charge Obligor for all costs incurred plus interest at the highest lawful rate.
- (c) Failure by Obligor to observe and perform any warranty, covenant, condition, promise or duty under this Contract for a period of thirty (30) days after written notice specifying such failure is given to Obligor by Obligee, unless Obligee agrees in writing to an extension of time. Obligee will not unreasonably withhold its consent to an extension of time if corrective action is instituted by Obligor. Subsection (c) does not apply to Contract Payments and other payments discussed above.
- (d) Any statement, material omission, representation or warranty made by Obligor in or pursuant to this Contract which proves to be false, incorrect or misleading on the date when made regardless of Obligor's intent and which materially adversely affects the rights or security of Obligee under this Contract.
- (e) Any provision of this Contract which ceases to be valid for whatever reason and the loss of such provision would materially adversely affect the rights or security of Obligee.
- (f) Except as provided in Section 4.01 above, Obligor admits in writing its inability to pay its obligations.
- (g) Obligor defaults on one or more of its other obligations.
- (h) Obligor becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies for or consents to the appointment of a receiver, trustee, conservator, custodian, or liquidator of Obligor, or all or substantially all of its assets, or a petition for relief is filed by Obligor under federal bankruptcy, insolvency or similar laws, or is filed against Obligor and is not dismissed within thirty (30) days thereafter.

Section 9.02 Remedies on Default. Whenever any Event of Default exists, Obligee shall have the right to take one or any combination of the following remedial steps:

- (a) With or without terminating this Contract, Obligee may declare all Contract Payments and other amounts payable by Obligor hereunder to the end of the then current Budget Year to be immediately due and payable.
- (b) With or without terminating this Contract, Obligee may require Obligor at Obligor's expense to redeliver any or all of the Equipment and any additional collateral to Obligee as provided below in Section 9.04. Such delivery shall take place within fifteen (15) days after the Event of Default occurs. If Obligor fails to deliver the Equipment and any additional collateral, Obligee may enter the premises where the Equipment and any additional collateral is located and take possession of the Equipment and any additional collateral and charge Obligor for costs incurred. Notwithstanding that Obligee has taken possession of the Equipment and any additional collateral, Obligor shall still be obligated to pay the remaining Contract Payments due up until the end of the then current Original Term or Renewal Term. Obligor will be liable for any damage to the Equipment and any additional collateral caused by Obligor or its employees or agents.
- (c) Obligee may take whatever action at law or in equity that may appear necessary or desirable to enforce its rights. Obligor shall be responsible to Obligee for all costs incurred by Obligee in the enforcement of its rights under this Contract including, but not limited to, reasonable attorney fees.

Section 9.03 No Remedy Exclusive. No remedy herein conferred upon or reserved to Obligee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Contract now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or shall be construed to be a waiver thereof.

Section 9.04 Return of Equipment and Storage.

- (a) **Surrender:** The Obligor shall, at its own expense, surrender the Equipment, any Additional Collateral and all required documentation to evidence transfer of title from Obligor to the Obligee in the event of a default or a non-appropriation by delivering the Equipment and any Additional Collateral to the Obligee to a location accessible by common carrier and designated by Obligee. In the case that any of the Equipment and any Additional Collateral consists of software, Obligor shall destroy all intangible items constituting such software and shall deliver to Obligee all tangible items constituting such software. At Obligee's request, Obligor shall also certify in a form acceptable to Obligee that Obligor has complied with the above software return provisions and that they will immediately cease using the software and that they shall permit Obligee and/or the vendor of the software to inspect Obligor's locations to verify compliance with the terms hereto.
- (b) **Delivery:** The Equipment and any Additional Collateral shall be delivered to the location designated by the Obligee by a common carrier unless the Obligee agrees in writing that a common carrier is not needed. When the Equipment and any Additional Collateral is delivered into the custody of a common carrier, the Obligor shall arrange for the shipping of the item and its insurance in transit in accordance with the Obligee's instructions and at the Obligor's sole expense. Obligor at its expense shall completely sever and disconnect the Equipment and any Additional Collateral or its component parts from the Obligor's property all without liability to the Obligee. Obligor shall pack or crate the Equipment and any Additional Collateral and all of the component parts of the Equipment and any Additional Collateral carefully and in accordance with any recommendations of the manufacturer. The Obligor shall deliver to the Obligee the plans, specifications, operation manuals or other warranties and documents furnished by the manufacturer or vendor on the Equipment and any Additional Collateral and such other documents in the Obligor's possession relating to the maintenance and methods of operation of such Equipment and any Additional Collateral.
- (c) **Condition:** When the Equipment is surrendered to the Obligee it shall be in the condition and repair required to be maintained under this Contract. It will also meet all legal regulatory conditions necessary for the Obligee to sell or lease it to a third party and be free of all liens. If Obligee reasonably determines that the Equipment or an item of the Equipment, once it is returned, is not in the condition required hereby, Obligee may cause the repair, service, upgrade, modification or overhaul of the Equipment or an item of the Equipment to achieve such condition and upon demand, Obligor shall promptly reimburse Obligee for all amounts reasonably expended in connection with the foregoing.
- (d) **Storage:** Upon written request by the Obligee, the Obligor shall provide free storage for the Equipment and any additional collateral for a period not to exceed 60 days after the expiration of the Contract Term before returning it to the Obligee. The Obligor shall arrange for the insurance described to continue in full force and effect with respect to such item during its storage period and the Obligee shall reimburse the Obligor on demand for the incremental premium cost of providing such insurance.

#### **X. Miscellaneous**

Section 10.01 Notices. All notices shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business as first set forth herein or as the parties shall designate hereafter in writing.

Section 10.02 Binding Effect. Obligor acknowledges this Contract is not binding upon the Obligee or its assignees unless the Conditions to Funding listed on the Documentation Instructions have been met to Obligee's satisfaction, and Obligee has executed the Contract. Thereafter, this Contract shall inure to the benefit of and shall be binding upon Obligee and Obligor and their respective successors and assigns.

Section 10.03 Severability. In the event any provision of this Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.04 Amendments, Addenda, Changes or Modifications. This Contract may be amended, added to, changed or modified by written agreement duly executed by Obligee and Obligor. Furthermore, Obligee reserves the right to directly charge or amortize into the remaining balance due from Obligor, a reasonable fee, to be determined at that time, as compensation to Obligee for the additional administrative expense resulting from such amendment, addenda, change or modification requested by Obligor.

Section 10.05 Execution in Counterparts. This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.06 Captions. The captions or headings in this Contract do not define, limit or describe the scope or intent of any provisions or sections of this Contract.

Section 10.07 Master Contract. This Contract can be utilized as a Master Contract. This means that the Obligee and the Obligor may agree to the financing of additional Equipment under this Contract at some point in the future by executing one or more Additional Schedules to Exhibit A and Exhibit B, as well as other exhibits or documents that may be required by Obligee. Additional Schedules will be consecutively numbered on each of the exhibits which make up the Additional Schedule and all the terms and conditions of the Contract shall govern each Additional Schedule.

Section 10.08 Entire Writing. This Contract constitutes the entire writing between Obligee and Obligor. No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations, conditions, or warranties, express or implied, which are not specified herein regarding this Contract, the Equipment or any additional collateral, financed hereunder. Any terms and conditions of any purchase order or other documents submitted by Obligor in connection with this Contract which are in addition to or inconsistent with the terms and conditions of this Contract will not be binding on Obligee and will not apply to this Contract.



Obligee and Obligor have caused this Contract to be executed in their names by their duly authorized representatives listed below.

**Chaves County, New Mexico**

**KS StateBank**

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Signature

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Signature

**Marsha Jarvis, Senior Vice President**

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Printed Name and Title

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Printed Name and Title

**EXHIBIT A**

**DESCRIPTION OF EQUIPMENT**

**RE: Government Obligation Contract dated as of March 5, 2015, between KS StateBank (Obligee) and Chaves County, New Mexico (Obligor)**

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Below is a detailed description of all the items of Equipment including quantity, model number and serial number where applicable:

One (1) 2015 Volvo L90G Wheel Loader, SN: L90GV617757

Physical Address of Equipment after Delivery : 1505 E. Brasher Road, Roswell, NM 88203

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## EXHIBIT B

## PAYMENT SCHEDULE

RE: Government Obligation Contract dated as of March 5, 2015, between KS StateBank (Obligee) and Chaves County, New Mexico (Obligor)

Date of First Payment:	At Closing
Original Balance:	\$166,789.00
Total Number of Payments:	Sixty-One (61)
Number of Payments Per Year:	Twelve (12)

Pmt No.	Due Date	Contract Payment	Applied to Interest	Applied to Principal	*Purchase Option Price
1	At Closing	\$1,410.42	\$0.00	\$1,410.42	Not Available
2	05-Apr-15	\$1,410.42	\$395.54	\$1,014.88	Not Available
3	05-May-15	\$1,410.42	\$393.11	\$1,017.31	\$166,085.43
4	05-Jun-15	\$1,410.42	\$390.68	\$1,019.74	\$165,009.95
5	05-Jul-15	\$1,410.42	\$388.24	\$1,022.18	\$163,932.30
6	05-Aug-15	\$1,410.42	\$385.79	\$1,024.63	\$162,852.48
7	05-Sep-15	\$1,410.42	\$383.34	\$1,027.08	\$161,770.48
8	05-Oct-15	\$1,410.42	\$380.88	\$1,029.54	\$160,686.30
9	05-Nov-15	\$1,410.42	\$378.42	\$1,032.00	\$159,599.93
10	05-Dec-15	\$1,410.42	\$375.95	\$1,034.47	\$158,511.37
11	05-Jan-16	\$1,410.42	\$373.48	\$1,036.94	\$157,420.61
12	05-Feb-16	\$1,410.42	\$371.00	\$1,039.42	\$156,327.65
13	05-Mar-16	\$1,410.42	\$368.51	\$1,041.91	\$155,232.49
14	05-Apr-16	\$1,410.42	\$366.02	\$1,044.40	\$154,135.12
15	05-May-16	\$1,410.42	\$363.52	\$1,046.90	\$153,035.54
16	05-Jun-16	\$1,410.42	\$361.02	\$1,049.40	\$151,933.74
17	05-Jul-16	\$1,410.42	\$358.51	\$1,051.91	\$150,829.72
18	05-Aug-16	\$1,410.42	\$355.99	\$1,054.43	\$149,723.47
19	05-Sep-16	\$1,410.42	\$353.47	\$1,056.95	\$148,614.99
20	05-Oct-16	\$1,410.42	\$350.94	\$1,059.48	\$147,504.28
21	05-Nov-16	\$1,410.42	\$348.41	\$1,062.01	\$146,391.33
22	05-Dec-16	\$1,410.42	\$345.87	\$1,064.55	\$145,276.13
23	05-Jan-17	\$1,410.42	\$343.32	\$1,067.10	\$144,158.68
24	05-Feb-17	\$1,410.42	\$340.77	\$1,069.65	\$143,038.98
25	05-Mar-17	\$1,410.42	\$338.21	\$1,072.21	\$141,917.02
26	05-Apr-17	\$1,410.42	\$335.65	\$1,074.77	\$140,792.80
27	05-May-17	\$1,410.42	\$333.08	\$1,077.34	\$139,666.31
28	05-Jun-17	\$1,410.42	\$330.50	\$1,079.92	\$138,537.55
29	05-Jul-17	\$1,410.42	\$327.92	\$1,082.50	\$137,406.51
30	05-Aug-17	\$1,410.42	\$325.33	\$1,085.09	\$136,273.19
31	05-Sep-17	\$1,410.42	\$322.74	\$1,087.68	\$135,137.59
32	05-Oct-17	\$1,410.42	\$320.13	\$1,090.29	\$133,999.70
33	05-Nov-17	\$1,410.42	\$317.53	\$1,092.89	\$132,859.51
34	05-Dec-17	\$1,410.42	\$314.91	\$1,095.51	\$131,717.02
35	05-Jan-18	\$1,410.42	\$312.29	\$1,098.13	\$130,572.23
36	05-Feb-18	\$1,410.42	\$309.67	\$1,100.75	\$129,425.13

## EXHIBIT B - CONTINUED

## PAYMENT SCHEDULE

RE: Government Obligation Contract dated as of March 5, 2015, between KS StateBank (Obligee) and Chaves County, New Mexico (Obligor)

Pmt No.	Due Date	Contract Payment	Applied to Interest	Applied to Principal	*Purchase Option Price
37	05-Mar-18	\$1,410.42	\$307.03	\$1,103.39	\$128,275.72
38	05-Apr-18	\$1,410.42	\$304.39	\$1,106.03	\$127,123.99
39	05-May-18	\$1,410.42	\$301.75	\$1,108.67	\$125,969.94
40	05-Jun-18	\$1,410.42	\$299.10	\$1,111.32	\$124,813.56
41	05-Jul-18	\$1,410.42	\$296.44	\$1,113.98	\$123,654.85
42	05-Aug-18	\$1,410.42	\$293.78	\$1,116.64	\$122,493.80
43	05-Sep-18	\$1,410.42	\$291.10	\$1,119.32	\$121,330.41
44	05-Oct-18	\$1,410.42	\$288.43	\$1,121.99	\$120,164.67
45	05-Nov-18	\$1,410.42	\$285.74	\$1,124.68	\$118,996.58
46	05-Dec-18	\$1,410.42	\$283.05	\$1,127.37	\$117,826.14
47	05-Jan-19	\$1,410.42	\$280.36	\$1,130.06	\$116,653.34
48	05-Feb-19	\$1,410.42	\$277.65	\$1,132.77	\$115,478.17
49	05-Mar-19	\$1,410.42	\$274.95	\$1,135.47	\$114,300.63
50	05-Apr-19	\$1,410.42	\$272.23	\$1,138.19	\$113,120.72
51	05-May-19	\$1,410.42	\$269.51	\$1,140.91	\$111,938.43
52	05-Jun-19	\$1,410.42	\$266.78	\$1,143.64	\$110,753.75
53	05-Jul-19	\$1,410.42	\$264.04	\$1,146.38	\$109,566.68
54	05-Aug-19	\$1,410.42	\$261.30	\$1,149.12	\$108,377.22
55	05-Sep-19	\$1,410.42	\$258.55	\$1,151.87	\$107,185.36
56	05-Oct-19	\$1,410.42	\$255.80	\$1,154.62	\$105,991.10
57	05-Nov-19	\$1,410.42	\$253.04	\$1,157.38	\$104,794.43
58	05-Dec-19	\$1,410.42	\$250.27	\$1,160.15	\$103,595.35
59	05-Jan-20	\$1,410.42	\$247.49	\$1,162.93	\$102,393.85
60	05-Feb-20	\$1,410.42	\$244.71	\$1,165.71	\$101,189.92
61	05-Mar-20	\$101,394.00	\$241.97	\$101,152.03	\$0.00

## Chaves County, New Mexico

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 Signature

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 Printed Name and Title

\*Assumes all Contract Payments due to date are paid

**EXHIBIT C**

**CERTIFICATE OF ACCEPTANCE**

**RE: Government Obligation Contract dated as of March 5, 2015, between KS StateBank (Obligee) and Chaves County, New Mexico (Obligor)**

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I, the undersigned, hereby certify that I am a duly qualified representative of Obligor and that I have been given the authority by the Governing Body of Obligor to sign this Certificate of Acceptance with respect to the above referenced Contract. I hereby certify that:

1. The Equipment described on Exhibit A has been delivered and installed in accordance with Obligor's specifications.
2. Obligor has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
3. Obligor has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Contract Payments required to be paid under the Contract during the current Budget Year of Obligor, and such moneys will be applied in payment of all Contract Payments due and payable during such current Budget Year.
4. Obligor has obtained insurance coverage as required under the Contract from an insurer qualified to do business in the State.
5. No event or condition that constitutes or would constitute an Event of Default exists as of the date hereof.
6. The governing body of Obligor has approved the authorization, execution and delivery of this Contract on its behalf by the authorized representative of Obligor who signed the Contract.
7. Please list the Source of Funds (Fund Item in Budget) for the Contract Payments that come due under Exhibit B of this Contract.

Source of Funds : Road Fund

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**Chaves County, New Mexico**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

EXHIBIT D  
OBLIGOR RESOLUTION

RE: Government Obligation Contract dated as of March 5, 2015, between KS StateBank (Obligee) and Chaves County, New Mexico (Obligor)

---

At a duly called meeting of the Governing Body of the Obligor (as defined in the Contract) held on \_\_\_\_\_ the following resolution was introduced and adopted:

BE IT RESOLVED by the Governing Body of Obligor as follows:

- Determination of Need.** The Governing Body of Obligor has determined that a true and very real need exists for the acquisition of the Equipment described on Exhibit A of the Government Obligation Contract dated as of March 5, 2015, between Chaves County, New Mexico (Obligor) and KS StateBank (Obligee).
- Approval and Authorization.** The Governing Body of Obligor has determined that the Contract, substantially in the form presented to this meeting, is in the best interests of the Obligor for the acquisition of such Equipment, and the Governing Body hereby approves the entering into of the Contract by the Obligor and hereby designates and authorizes the following person(s) to execute and deliver the Contract on Obligor’s behalf with such changes thereto as such person(s) deem(s) appropriate, and any related documents, including any Escrow Agreement, necessary to the consummation of the transaction contemplated by the Contract.

Authorized Individual(s):

\_\_\_\_\_  
(Printed or Printed Name and Title of individual(s) authorized to execute the Contract)

- Adoption of Resolution.** The signatures below from the designated individuals from the Governing Body of the Obligor evidence the adoption by the Governing Body of this Resolution.

Signature:

\_\_\_\_\_  
(Signature of Secretary, Board Chairman or other member of the Governing Body)

Printed Name & Title:

\_\_\_\_\_  
(Printed Name and Title of individual who signed directly above)

Attested By:

\_\_\_\_\_  
(Signature of one additional person who can witness the passage of this Resolution)

Printed Name & Title:

\_\_\_\_\_  
(Printed Name of individual who signed directly above)

EXHIBIT E

BANK QUALIFIED CERTIFICATE

**RE: Government Obligation Contract dated as of March 5, 2015, between KS StateBank (Obligee) and Chaves County, New Mexico (Obligor)**

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Whereas, Obligor hereby represents that it is a "Bank Qualified" Issuer for the calendar year in which this Contract is executed by making the following designations with respect to Section 265 of the Internal Revenue Code. (A "Bank Qualified Issuer" is an issuer that issues less than ten million (\$10,000,000) dollars of tax-exempt obligations during the calendar year).

Now, therefor, Obligor hereby designates this Contract as follows:

- 1. Designation as Qualified Tax-Exempt Obligation.** Pursuant to Section 265(b)(3)(B)(i) of the Internal Revenue Code of 1986 as amended (the "Code"), the Obligor hereby specifically designates the Contract as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code. In compliance with Section 265(b)(3)(D) of the Code, the Obligor hereby represents that the Obligor will not designate more than \$10,000,000 of obligations issued by the Obligor in the calendar year during which the Contract is executed and delivered as such "qualified tax-exempt obligations".
- 2. Issuance Limitation.** In compliance with the requirements of Section 265(b)(3)(C) of the Code, the Obligor hereby represents that the Obligor (including all subordinate entities of the Obligor within the meaning of Section 265(b)(3)(E) of the Code) reasonably anticipates not to issue in the calendar year during which the Contract is executed and delivered, obligations bearing interest exempt from federal income taxation under Section 103 of the Code (other than "private activity bonds" as defined in Section 141 of the Code) in an amount greater than \$10,000,000.

**Chaves County, New Mexico**

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Signature

---

Printed Name and Title

## ASSIGNMENT

This Assignment, dated March 5, 2015, is hereby given by KS StateBank, ("Assignor"), to KS StateBank ("Assignee"), whose mailing address is 1010 Westloop, P.O. Box 69, Manhattan, Kansas 66505-0069.

### WITNESSETH:

WHEREAS, Assignor has entered into a Government Obligation Contract dated as of March 5, 2015, (the "Contract"), with Chaves County, New Mexico (the "Obligor") pursuant to which the equipment more particularly described therein (the "Equipment") is being sold to Obligor under the terms stated in the Contract;

WHEREAS, Assignor desires to sell, assign and transfer to Assignee, Assignor's right, title and interest in the Contract Payments coming due under the Contract upon the terms and conditions stated below:

WHEREAS, to secure the payment of the amounts stated in the previous paragraph, Assignor hereby grants to Assignee a security interest under the Uniform Commercial Code constituting a first lien on the Equipment, including all additions, repairs and replacements to the Equipment and all proceeds thereof:

NOW, THEREFORE, in consideration of the premises, the covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor hereby sells, transfers, delivers and assigns to Assignee, its successors and assigns, without recourse, all of its right, title and interest in, to and under the following items:

All Contract Payments due and to become due from the Obligor under the Contract including, without limitation, the present value of any prepayment of Contract Payments, or early termination of the Equipment obligations under the Contract or the use of any Equipment under the Contract, purchase agreement payments, or any insurance proceeds received pursuant to the terms of the Contract or any amounts owed due to late payment under the Contract, (collectively the "Contract Payments"),

Assignor is not assigning any of its obligations to Obligor under the foregoing to Assignee, and Assignee shall not be deemed to have assumed any of those obligations by virtue of this Assignment.

Assignor hereby grants to Assignee a security interest under the Uniform Commercial Code constituting a first lien on the Equipment described more fully on Exhibit A. The security interest established by this section includes not only all additions, attachments, repairs and replacements to the Equipment but also all proceeds therefrom.

Assignor irrevocably constitutes and appoints Assignee and any present or future officer or agent of Assignee, or the successors or assigns of Assignee, as its lawful attorney with full power of substitution and re-substitution, and in the name of Assignor or otherwise, to collect and to sue in any court for payments due or to become due under the Contract, or any part thereof, to withdraw or settle any claims, suits or proceedings pertaining to or arising out of the Contract upon such terms as Assignee in its discretion may deem to be in its best interest, all without notice to or consent of Assignor, and, further, to take possession and to endorse in the name of Assignor any instrument for the payment of money received on account of the payments due under the Contract.

Assignor hereby represents, warrants and covenants to and with Assignee as follows:

- (1) The Contract and the Equipment are free and clear of all claims, liens, security interests and encumbrances of any kind or character, except the rights of the Obligor under the Contract and except as contemplated in the Contract. The Contract and the Equipment shall remain free of all claims, liens, security interests and encumbrances arising through any act or omission of Assignor.
- (2) Assignor has and will comply with and perform all obligations of Obligor under the Contract and all related documents and instruments.
- (3) The Contract delivered to Assignee herewith is an original and constitutes the entire writing, obligation and agreement between the Assignor and the Obligor. Assignor has not made any representations, oral or written, to Obligor that in any way conflict with any of the terms of the Contract. Assignor has not received any fees or any other form of compensation from Obligor that have not been fully disclosed to Assignee in writing prior to the execution of this Assignment.
- (4) Assignor hereby represents and warrants that Assignor has made and will make no sale or assignment of the Assignee's interest in the Contract except to the Assignee, and has made and will make no sale or assignment of Assignor's interest in the Contract to a third party without the prior written approval of Assignee.
- (5) Assignor will pay, or cause the Obligor to pay, any fees associated with the use of a payment system other than check, wire transfer, or ACH.
- (6) Assignor will indemnify, defend and hold Assignee harmless from and against all claims, losses, costs and expenses (including, without limitation, attorneys' fees) arising from or growing out of the failure of Assignor to keep or perform any of the warranties, covenants or agreements contained in this Assignment.

At the request of the Assignee, including but not limited to Events of Default or non-appropriation by Obligor, or repossession or other civil action by Assignee, Assignor from time to time shall execute and deliver such further acknowledgments, agreements, and instruments of assignment, transfer and assurance, including bills of sale for the Equipment, and do all such further acts and things as may be necessary or appropriate in the reasonable opinion of Assignee to give effect to the provisions hereof, to effectuate Assignee's remedies, and to more perfectly confirm the rights, titles and interests assigned and transferred to Assignee.

This Assignment (including without limitation all representations, warranties and covenants) shall be binding on Assignor and its successors and assigns, and will inure to the benefit of Assignee and its successors and assigns (including without limitation any subsequent assignees of any right, title or interest assigned hereby.)

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the date first above written.

**KS StateBank**

**KS StateBank**

Signature

Marsha Jarvis, Senior Vice President

Printed Name and Title

Signature

Marsha Jarvis, Senior Vice President

Printed Name and Title



**NOTICE OF ASSIGNMENT**

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**MARCH 5, 2015**

KS StateBank (Obligee/Assignor) hereby gives notice of an Assignment between Obligee/Assignor and KS StateBank (Assignee) of the Government Obligation Contract (Contract) between Obligee/Assignor and Chaves County, New Mexico, dated as of March 5, 2015.

All Contract Payments coming due pursuant to the Contract shall be made to:

KS StateBank  
1010 Westloop, P.O. Box 69  
Manhattan, Kansas 66505-0069

**KS StateBank, Obligee/Assignor**

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Signature

Marsha Jarvis, Senior Vice President

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Printed Name and Title

**ACKNOWLEDGEMENT OF AND CONSENT TO ASSIGNMENT**

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Chaves County, New Mexico (Obligor) as party to a Government Obligation Contract dated as of March 5, 2015 between Obligor and KS StateBank (Obligee), hereby acknowledges receipt of a Notice of Assignment dated March 5, 2015 whereby Obligee gave notice of its assignment to KS StateBank of its right to receive all Contract Payments due from Obligor under the Contract and hereby consents to that Assignment. Pursuant to the Notice of Assignment from Obligee, Obligor agrees to deliver all Contract Payments coming due under the Contract to:

KS StateBank  
1010 Westloop, P.O. Box 69  
Manhattan, Kansas 66505-0069

**Chaves County, New Mexico**

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Signature

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Printed Name and Title

# INSURANCE REQUIREMENTS

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Pursuant to Article V of the Government Obligation Contract, you have agreed to provide us evidence of insurance covering the Equipment.

A Certificate of Insurance listing the information stated below should be sent to us no later than the date on which the equipment is delivered.

**Insured:**

Chaves County, New Mexico  
1 St. Mary's Place  
Roswell, New Mexico 88203

**Certificate Holder:**

KS StateBank  
1010 Westloop, P.O. Box 69  
Manhattan, Kansas 66505-0069

**1. Equipment Description**

- ◆ One (1) 2015 Volvo L90G Wheel Loader, SN: L90GV617757
- ◆ Please include all applicable VIN's, serial numbers, etc.

**2. Physical Damage**

- ◆ All risk coverage to guarantee proceeds of at least \$166,789.00.

**3. Liability**

- ◆ Minimum Combined Single Limit of \$1,000,000.00 on bodily injury and property damage.

**4. Additional Insured and Loss Payee**

- ◆ KS StateBank and/or Its Assigns MUST be listed as additional insured and loss payee.

**Please forward certificate as soon as possible to:**

Fax: (785) 587-4016

or

Email: [kkuckelman@ksstatebank.com](mailto:kkuckelman@ksstatebank.com)

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**Please complete the information below and return this form along with the Contract.**

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**Chaves County, New Mexico**

Insurance Company: \_\_\_\_\_

Agent's Name: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

Address: \_\_\_\_\_

City, State Zip: \_\_\_\_\_

Email: \_\_\_\_\_

**\*PREFERRED\***

\*As an additional payment option for Obligor, we are now providing the option of ACH (Automatic Clearing House). By completing this form, Obligor is authorizing Obligee to withdraw said payment amount on said date.

**DEBIT AUTHORIZATION**

I hereby authorize KS StateBank Government Finance Department to initiate debit entries, and, if necessary, to reinstate returned entries up to two additional times, to the account indicated below at the financial institution named below and to debit the same to such account for:

<b>Contract Number</b> 3347498	<b>Payment Amount</b> 1-60 @ \$1,410.42	<b>Frequency of Payments</b> Monthly
<b>Beginning</b> _____ Month                      Year	<b>Day of Month</b> 5th	

I acknowledge that the origination of ACH transactions to this account must comply with the provisions of U.S. law.

<b>Financial Institution Name</b>		<b>Branch</b>	
<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>
<b>Routing Number</b>		<b>Account Number</b>	

**Type of Account**             Checking             Savings

This authority is to remain in full force and effect until KS StateBank has received written notification from any authorized signer of the account of its termination in such time and manner as to afford KS StateBank a reasonable opportunity to act on it.

<b>Obligor Name on Contract</b> Chaves County, New Mexico	
<b>Signature</b>	<b>Printed Name and Title</b>
<b>Tax ID Number</b> 85-6000206	<b>Date</b>

**PLEASE ATTACH COPY OF A VOIDED CHECK TO THIS FORM!**

**USA Patriot Act**  
USA Patriot Act requires identity verification for all new accounts. This means that we may require information from you to allow us to make a proper identification.

# INVOICE

DATE SENT: 02-05-2015

**BILL TO:**

CHAVES COUNTY, NEW MEXICO  
ATTN: ACCOUNTS PAYABLE  
1 ST. MARY'S PLACE  
ROSWELL, NEW MEXICO 88203

**REMIT TO:**

KS STATEBANK  
GOVERNMENT FINANCE DEPARTMENT  
PO BOX 69  
MANHATTAN, KS 66505-0069  
FOR INQUIRIES: (877) 587-4054

ACCOUNT NUMBER	PAYMENT DATE	PAYMENT DUE DATE	TOTAL AMOUNT DUE
3347498	At Closing	At Closing	\$1,410.42

DESCRIPTION	AMOUNT
GOVERNMENT OBLIGATION CONTRACT DATED AS OF MARCH 5, 2015	PAYMENT AMOUNT: \$1,410.42
ONE (1) 2015 VOLVO L90G WHEEL LOADER, SN: L90GV617757	
<i>Additional interest will be assessed on any payment received after the due date.</i>	
	\$1,410.42
	<b>TOTAL DUE</b>

# INVOICE

DATE SENT: 02-05-2015

**BILL TO:**

CHAVES COUNTY, NEW MEXICO  
ATTN: ACCOUNTS PAYABLE  
1 ST. MARY'S PLACE  
ROSWELL, NEW MEXICO 88203

**REMIT TO:**

KS STATEBANK  
GOVERNMENT FINANCE DEPARTMENT  
PO BOX 69  
MANHATTAN, KS 66505-0069  
FOR INQUIRIES: (877) 587-4054

ACCOUNT NUMBER	PAYMENT DATE	PAYMENT DUE DATE	TOTAL AMOUNT DUE
3347498	04-05-2015	04-05-2015	\$1,410.42

DESCRIPTION	AMOUNT
GOVERNMENT OBLIGATION CONTRACT DATED AS OF MARCH 5, 2015	PAYMENT AMOUNT: \$1,410.42
ONE (1) 2015 VOLVO L90G WHEEL LOADER, SN: L90GV617757	
<i>Additional interest will be assessed on any payment received after the due date.</i>	
	\$1,410.42
	<b>TOTAL DUE</b>

## 8038 REVIEW FORM

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The 8038 form attached hereto is an important part of the documentation package and must be properly filled out and submitted to the Department of the Treasury in order for you to receive the lower tax-exempt rate. Unless you instruct us otherwise, we have engaged a Paid Preparer to assist in the filling out of this form. The Paid Preparer has filled out the relevant portions of this form based on the current understanding of what is required by the Department of the Treasury. The responses on this 8038 form are based on the dates and amounts which you have requested (structure of the transaction) and which are on the Payment Schedule.

1. Please review our responses for accuracy. If anything is inaccurate, please contact our office so that we can make proper revisions.
2. If the information provided to you on this form is accurate, please sign where indicated and return with the document package.
3. If there are any changes to the structure of the transaction that occur prior to funding which require a change to the 8038 form, we will make such changes and provide notification to you.
4. We will return to you a copy of the 8038 form that was mailed to the Department of the Treasury.

### **Important Note:**

The IRS is now requesting information regarding tax-exempt issuers' and borrowers' written policies and procedures designed to monitor post-issuance compliance with the federal tax rules applicable to tax-exempt obligations (boxes 43 and 44). Do not check items 43 and 44 on the 8038 form unless you have established written procedures in accordance with the instructions referenced directly below. If you choose to "check" items 43 and/or 44, please be prepared to provide copies of such written procedures to the Paid Preparer or any representatives of the IRS upon request. Written procedures should contain certain key characteristics, including making provisions for:

- Due diligence review at regular intervals;
- Identifying the official or employee responsible for review;
- Training of the responsible official/employee;
- Retention of adequate records to substantiate compliance (e.g., records relating to expenditure of proceeds);
- Procedures reasonably expected to timely identify noncompliance; and
- Procedures ensuring that the issuer will take steps to timely correct noncompliance.

For additional guidance on this 8038 form, you can refer to the Documentation Instructions located on the following government website: <http://www.irs.gov/app/picklist/list/formsInstructions.html>, or contact your local IRS office.

# Information Return for Tax-Exempt Governmental Obligations

Department of the Treasury  
Internal Revenue Service

► Under Internal Revenue Code section 149(e)  
► See separate instructions.  
**Caution: If the issue price is under \$100,000, use Form 8038-GC.**

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name <b>Chaves County, New Mexico</b>		2 Issuer's employer identification number (EIN) <b>85-6000206</b>	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a	
4 Number and street (or P.O. box if mail is not delivered to street address) Room/suite <b>1 St. Mary's Place</b>		5 Report number (For IRS Use Only) 3	
6 City, town, or post office, state, and ZIP code <b>Roswell, New Mexico 88203</b>		7 Date of issue <b>03/05/2015</b>	
8 Name of issue <b>Government Obligation Contract</b>		9 CUSIP number <b>None</b>	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions)		10b Telephone number of officer or other employee shown on 10a	

**Part II Type of Issue (enter the issue price).** See the instructions and attach schedule.

11 Education	11		
12 Health and hospital	12		
13 Transportation	13		
14 Public safety	14		
15 Environment (including sewage bonds)	15		
16 Housing	16		
17 Utilities	17		
18 Other. Describe ► One (1) 2015 Volvo L90G Wheel Loader, SN: L90GV617757	18	166,789	00
19 If obligations are TANs or RANs, check only box 19a			<input type="checkbox"/>
If obligations are BANs, check only box 19b			<input type="checkbox"/>
20 If obligations are in the form of a lease or installment sale, check box			<input checked="" type="checkbox"/>

**Part III Description of Obligations.** Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	03/05/2020	\$ 166,789.00	\$ N/A	5.000 years	2.870 %

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

22 Proceeds used for accrued interest	22		
23 Issue price of entire issue (enter amount from line 21, column (b))	23		
24 Proceeds used for bond issuance costs (including underwriters' discount)	24		
25 Proceeds used for credit enhancement	25		
26 Proceeds allocated to reasonably required reserve or replacement fund	26		
27 Proceeds used to currently refund prior issues	27		
28 Proceeds used to advance refund prior issues	28		
29 Total (add lines 24 through 28)	29		
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30		

**Part V Description of Refunded Bonds.** Complete this part only for refunding bonds.

31 Enter the remaining weighted average maturity of the bonds to be currently refunded	►	_____ years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	►	_____ years
33 Enter the last date on which the refunded bonds will be called (MM/DD/YYYY)	►	_____
34 Enter the date(s) the refunded bonds were issued (MM/DD/YYYY)	►	_____

**Part VI Miscellaneous**

<b>35</b> Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . .	<b>35</b>		
<b>36a</b> Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . . . .	<b>36a</b>		
<b>b</b> Enter the final maturity date of the GIC ▶ _____			
<b>c</b> Enter the name of the GIC provider ▶ _____			
<b>37</b> Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . .	<b>37</b>		
<b>38a</b> If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the following information:			
<b>b</b> Enter the date of the master pool obligation ▶ _____			
<b>c</b> Enter the EIN of the issuer of the master pool obligation ▶ _____			
<b>d</b> Enter the name of the issuer of the master pool obligation ▶ _____			
<b>39</b> If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . .			<input checked="" type="checkbox"/>
<b>40</b> If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . .			<input type="checkbox"/>
<b>41a</b> If the issuer has identified a hedge, check here <input type="checkbox"/> and enter the following information:			
<b>b</b> Name of hedge provider ▶ _____			
<b>c</b> Type of hedge ▶ _____			
<b>d</b> Term of hedge ▶ _____			
<b>42</b> If the issuer has superintegrated the hedge, check box . . . . .			<input type="checkbox"/>
<b>43</b> If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . .			<input type="checkbox"/>
<b>44</b> If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . .			<input type="checkbox"/>
<b>45a</b> If some portion of the proceeds was used to reimburse expenditures, check here <input type="checkbox"/> and enter the amount of reimbursement. . . . . ▶ _____			
<b>b</b> Enter the date the official intent was adopted ▶ _____			

<b>Signature and Consent</b>	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.			
	▶ _____ ▶	▶ _____ ▶		
	Signature of issuer's authorized representative	Date	Type or print name and title	
<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed
	<b>H. Evan Howe</b>		<b>02/05/2015</b>	<b>P01438994</b>
	Firm's Name ▶ <b>Baystone Financial LLC</b>	Firm's EIN ▶ <b>48-1223987</b>		
Firm's Address ▶ <b>5350 College Blvd., Overland Park, KS 66211</b>	Phone no. <b>(800) 752-3562</b>			



**AGENDA ITEM:** 8

Resolution R-15-003

**MEETING DATE:** February 19, 2015

Approval of Budget Adjustments

**STAFF SUMMARY REPORT**

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**ACTION REQUESTED BY:** Anabel Barraza, Senior Accountant

**ACTION REQUESTED:**  
Approval of Resolution R-15-003

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**ITEM SUMMARY:**

The Finance Department did a mid-year review and are requesting BAR, (Budget Adjustment Request), as per the attached exhibit.

Staff recommends approval.

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**SUPPORT DOCUMENTS:**

Resolution R-15-003  
DFA Worksheet

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**SUMMARY BY:** Anabel Barraza

**TITLE:** Senior Accountant

**RESOLUTION R-15-003**

**BUDGET ADJUSTMENTS REQUEST**

**WHEREAS**, at a regular meeting of the Board of Chaves County Commissioners held on February 19, 2015, the following was among the proceedings:

**WHEREAS**, the budget must be adjusted for fiscal year 2014-2015 expenditures and transfers; and,

**WHEREAS**, there are sufficient funds available for the budget adjustments; and,

**WHEREAS**, budget adjustments are necessary to ensure positive budget balances; and,

**WHEREAS**, the Board of Chaves County Commissioners deems it necessary to adjust the FY 14-15 Final Budget as designated in Exhibit 'A', attached.

**NOW, THEREFORE, BE IT RESOLVED, THAT THE BOARD OF COUNTY COMMISSIONERS, CHAVES COUNTY, STATE OF NEW MEXICO**, hereby approves the line item changes and requests approval from DFA Local Government Division for budget adjustments.

**Done at Roswell, New Mexico, this 19th day of February 2015.**

**BOARD OF CHAVES COUNTY  
COMMISSIONERS**

\_\_\_\_\_  
James W. Duffey, Chairman

\_\_\_\_\_  
Robert Corn, Vice-Chairman

\_\_\_\_\_  
Kyle D. "Smiley" Wooton, Member

\_\_\_\_\_  
Kim Chesser, Member

\_\_\_\_\_  
Will Cavin, Member

**ATTEST:**

\_\_\_\_\_  
Dave Kunko  
County Clerk

**EXHIBIT 'A'**

<b>DFA</b>	<b>Description</b>	<b>ACCOUNT</b>		<b>AMOUNT</b>
204	Reimbursement Private	602-4-405-734-000	Increase	< \$3.70>
402	Tax Interest	563-4-401-732-000	Increase	< \$160.50>
226	Tax Interest	650-4-400-732-000	Increase	<\$1,600.00>
203	Dues & Other Fees	628-7-733-253-000	Increase	\$65.00
101	Professional Services	401-6-619-260-000	Increase	\$15,000.00
101	Property Admin Fee	401-6-619-277-000	Increase	\$87,000.00
101	Unemployment Claims	401-6-619-317-000	Increase	\$38,000.00
101	Tort Liability & Claims	401-6-619-313-000	Increase	\$28,000.00
101	USDA- Animal Control	401-6-671-480-000	Increase	\$25,736.60
226	Tort Liability Insurance	650-6-684-313-000	Increase	\$28,000.00
226	Property Insurance	650-6-684-314-000	Increase	\$12,150.00
101	Permanent Transfer	605-4-404-781-000	Increase	\$50,000.00
101	Permanent Transfer	401-408-781-000	Increase	\$50,000.00
600	Lease Purchase Payment	670-6-671-375-000	Increase	\$26,120.40
223	Contractual Leases	432-7-766-267-000	Increase	\$24,000.00
209	Employee Training	412-8-820-224-000	Increase	\$3,000.00
209	Per Diem	412-8-820-225-000	Increase	\$2,000.00



AGENDA ITEM: \_\_\_\_\_9\_\_\_\_\_ RESOLUTION R-15-005 Appointment to the County Board of Registration

MEETING DATE: February 19, 2015

### **STAFF SUMMARY REPORT**

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ACTION REQUESTED BY: Dave Kunko, County Clerk

ACTION REQUESTED: Approve Resolution

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#### ITEM SUMMARY:

In Accordance with State Statute, at the first meeting in February in each odd numbered year, the Board of Commissioners must appoint members to the County Board of Registration. The Democrat and Republican parties have submitted a list of individuals which they desire to be appointed to the Board. The Board consists of three members, of which only two can be from the same party. In addition, the Commission is required to appoint two alternates, one from each party.

Staff recommends approval.

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SUPPORT DOCUMENTS: Resolution R-15-005

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SUMMARY BY: Cindy Fuller

TITLE: Bureau of Elections Chief

**RESOLUTION R-15-005**  
**APPOINTMENT TO THE COUNTY BOARD OF REGISTRATION**

WHEREAS, the Chaves County Board of Commissioners is required by State Law, NMSA 1978 Section 1-4-34 (1995), to appoint members to the County Board of Registration, and

WHEREAS, these members shall be selected from the list submitted by the two major parties, and

WHEREAS, the Board consists of three members, of which, only two can be from the same party, and

WHEREAS, two alternates shall also be appointed, each from separate parties, and

WHEREAS, the County proposes that the Board of Registration be the following: Dorothy Hellums, O.L. Adcock, and Tim Raftery, with the alternates being Janna Wooley and Fred Moran.

NOW THEREFORE BE IT RESOLVED by the Board of Chaves County Commissioners that Dorothy Hellums, O.L. Adcock, and Tim Raftery are hereby appointed as members of the County Board of Registration.

BE IT FURTHER RESOLVED that Janna Wooley and Fred Moran are hereby appointed as alternates to the County Board of Registration.

DONE this 19<sup>th</sup> day of February 2015.

CHAVES COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
James W. Duffey, Chairman

\_\_\_\_\_  
Robert Corn, Vice Chairman

\_\_\_\_\_  
Kyle D. "Smiley" Wooton, Member

ATTEST:

\_\_\_\_\_  
Kim Chesser, Member

\_\_\_\_\_  
Dave Kunko  
County Clerk

\_\_\_\_\_  
William E. Cavin, Member

**AGENDA ITEM:** \_\_\_\_\_ 10 \_\_\_\_\_

DWI Grant & Distribution  
Application for FY16 Local DWI  
Grant Fund

**MEETING DATE:** 02/19/2015

**STAFF SUMMARY REPORT**

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**Action Requested by:** Charlotte Andrade, DWI Coordinator

**Action Requested:** Approval of FY16 Local DWI Grant Fund Application

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**Item Summary:**

Chaves County is applying for funding under the FY16 Local DWI Grant Fund. As outlined under the 2016 Application, the Local DWI Grant Fund is established to support programs, services, or activities to prevent or reduce the incidence of DWI. Two sources of program funding are available: distribution and/or grants. The competitive grant portion of the funding will support the treatment component area. The goal of this grant program is to decrease the number of injuries and fatalities in New Mexico caused by alcohol impaired drivers.

The application will fund the project year July 1, 2015 through June 30, 2016.

Required application documents include the following:

- Resolution R-15-006 – Authorizing grant submission.
- Estimated Budget – Based on FY16 distribution projections
- Memorandum of Understanding
- Statement of Assurances
- Department of Health Assurances and Cooperative Agreement

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**SUPPORT DOCUMENTS:** Grant Application Documents

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Summary by: Charlotte Andrade

Title: DWI Coordinator

**Grant/Distribution Funding Application Cover Sheet  
Local DWI Grant Program  
Local Government Division - DFA**

County/Municipality: \_\_\_\_\_

Application Date: \_\_\_\_\_

**Project Contact Person:**

**Name:** Charlotte Andrade  
**Address:** #1 St. Mary's Place  
**City, Zip:** Roswell, NM 88203  
**Telephone:** 575-624-6559  
**E-Mail:** [ccgrants@co.chaves.nm.us](mailto:ccgrants@co.chaves.nm.us)  
**Fax:** 575-624-6576

**Fiscal Agent:**

**Contact Person:** Joe Sedillo  
**Mailing Address:** #1 St. Mary's Place  
**City, Zip:** Roswell, NM 88203  
**Telephone:** 575-624-6620  
**E-Mail:** [sedilloj@co.chaves.nm.us](mailto:sedilloj@co.chaves.nm.us)  
**Fax:** 575-624-6576

**Categories of Program Areas to be Addressed by Proposed Project**

[Indicate amounts budgeted for each program area.]

	<u>Grant</u>	<u>Distribution</u>	<u>Component Total</u>
Prevention	6,000.00	66,951.00	72,951.00
Enforcement	-	60,642.96	60,642.96
Screening	-	33,150.00	33,150.00
Domestic Abuse	-	54,000.00	54,000.00
Treatment	64,000.00	-	64,000.00
Compl. Mtr./track	-	37,400.00	37,400.00
Coord/Plan& Eval.	-	52,200.00	52,200.00
Alt. Sentencing	-	60,000.00	60,000.00
HB16 funding	██████████	52,049.00	52,049.00
<b>Total</b>	<b>70,000.00</b>	<b>416,392.96</b>	<b>486,392.96</b>
	<b>Total Grant Request</b>	<b>Total Distrib. Request</b>	<b>Total Program Request</b>

**Certification:**

The attached resolution adopted by the governing body of Chaves County on February 19, 2015  
(Applicant) (Date)  
 authorizes the applicant to file this application for assistance from the State of New Mexico.

To the best of my knowledge, the information presented in this application is true and correct.

\_\_\_\_\_  
 Signature of County Commission Chairperson



**RESOLUTION R-15-006**

**AUTHORIZING CHAVES COUNTY TO SUBMIT AN APPLICATION TO THE DEPARTMENT OF FINANCE AND ADMINISTRATION, LOCAL GOVERNMENT DIVISION TO PARTICIPATE IN THE FY16 LOCAL DWI GRANT AND DISTRIBUTION PROGRAM.**

**WHEREAS**, the Legislature enacted Section 11-6A-1 through 11-6A-6 NMSA (1978) as amended to address the serious problems of Driving While Intoxicated in the State; and

**WHEREAS**, a program is established to make grant and distribution funding available to counties and municipalities for new, innovative or model programs, services or activities to prevent or reduce the incidence of DWI, alcoholism and alcohol abuse; and

**WHEREAS**, the Chaves County DWI Planning Council and other governmental entities approval must be received in order to apply for grant and distribution funding; and

**WHEREAS**, Chaves County along with participating agencies is making application to the Department of Finance and Administration, Local Government Division for program funding.

**NOW, THEREFORE, BE IT RESOLVED** by the governing body of Chaves County that the Chairperson, on behalf of the County and all participating entities, is authorized to submit an application under the FY16 Local DWI Grant Fund.

**APPROVED AND ADOPTED** by the governing body at its meeting of February 19, 2015.

ATTEST:

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Dave Kunko  
County Clerk

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County Commission Chairman

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DWI Planning Council Representative

**STATEMENT OF ASSURANCES**  
**Local DWI Grant and Distribution Program**  
**Project Year 15: July 1, 2015 – June 30, 2016**

The applicant hereby assures and certifies compliance with the following statutes, rules, regulations, and guidelines associated with the acceptance and use of funds under the New Mexico Local DWI Grant and Distribution Program:

1. Compliance with the provisions of the New Mexico Local DWI Grant Program Act, Sections 11-6A-1 through 11-6A-6 NMSA 1978 as amended, the regulations, and the approved LDWI Guidelines.
2. The applicant has the responsibility and legal authority to receive and expend funds as described in the grant and distribution project description, as well as to finance the grantee share (if any) of costs of the project, including all project overruns.
3. Compliance with the State Procurement Code, with the exception of Home Ruled Governments, and submission of all related procurement documents to the Local Government Division for administrative review and approval, prior to execution, including, but not limited to: requests for professional services (RFPs); advertisements; minutes of pertinent meetings; contract selection and award criteria. All project-related services, activities or programs done through a service provider must be implemented through a professional services contract. Any project-related contract, subcontract, or agreement and related amendments, providing services to the grant or distribution program, must be submitted for administrative review by the Division prior to execution.
4. Adherence to all financial, accounting, and reporting requirements of the Department of Finance and Administration. Distribution programs will include with each quarterly narrative progress report the Grant Fund Agreement Exhibit F, The Local DWI Distribution Program Financial Status Report. Grant programs will include with each quarterly narrative progress report the Local DWI Program Request for Payment/Financial Status Report, Exhibit D. The said reports shall contain narrative and/or bulleted highlights of accomplishments and/or problems and delays encountered to date, a detailed budget breakdown of expenditures to date, a summary of any fees collected and/or expended, the Managerial Data Set, Planning Council meeting agendas and minutes, and such other information following the objectives of the county's evaluation as may be of assistance to the Division in its evaluation.
5. Compliance with the requirement to not budget, nor expend, any of the grant amount awarded or the amount distributed for **indirect administrative costs** incurred during the grant or distribution fiscal period. Requests for payment or financial status reports shall document all direct program administrative expenditures and in-kind/match administrative expenditures.

6. Compliance with the requirement to not budget, nor expend, greater than **ten percent** of the grant amount awarded or the amount distributed for **capital outlay** incurred during the grant or distribution fiscal period. Requests for payment or financial status reports shall specify all capital outlay expenditures. **The ten percent cap for capital outlay does not exist with detoxification funding grants.**
  7. Compliance with all required reports, including but not limited to: the first quarter narrative and fiscal reports due on the last working day of October; the second quarter narrative and fiscal reports due on the last working day of January; and the third quarter narrative and fiscal reports due on the last working day of April; the fourth and the final quarter narrative and fiscal reports for the fiscal year due the 15<sup>th</sup> of July; required screening, treatment, and compliance monitoring protocols; required evaluation plans; required fiscal reports; required screening and tracking managerial data reports; and required annual reports.
  8. Compliance with the current Local DWI Grant Program Screening Guidelines. To avoid any conflict of interest, or appearance of conflict of interest, screeners should not be affiliated with any contracted treatment agency. Clients will be given options for treatment and will not be *mandated* to treatment with the same agency that does the screening.
  9. If applicable to the applicant, compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Department of Health and Human Services regulation entitled "Standards for Privacy of Individually Identifiable Health Information", 45 CFR Parts 160 and 164, applicable to entities covered by HIPAA; (the HIPAA Regulations).
  10. Any distribution program under run amount for the fiscal year must be returned to the Local DWI Grant Fund by September 30 of the following fiscal year. Failure to remit an under run to the Local DWI Grant Fund will cause suspension of grant reimbursements and/or future distributions until the remittance is made.
  11. Grant program under runs revert to the Local DWI Grant Fund.
  12. Compliance with all applicable conditions and requirements prescribed by the Division in relation to receipt/accountability of state General Funds.
  13. The grant applicant will follow the scope of work for the grant program, as negotiated with the Local Government Division, and in accordance with the local planning council's approved plan. The applicant will submit any proposed modifications/amendments to the scope of work to the Division for its approval, prior to execution.
  14. The distribution program applicant will follow the local planning council's application as approved by DWI Grant Council in the application review process. The applicant
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will submit any proposed modifications/amendments to this proposal to the Division for its written approval, prior to execution of changes to programs.

15. Compliance with conflict of interest prohibitions whereby no member, officer, or employee of the grant or the distribution program, or its designee or agents, no voting member of the local planning council or of the governing body of the locality in which the program is situated, and no other public official of such locality who exercises any functions or responsibilities with respect to the program during his/her tenure (or for one year thereafter) shall have any interest, direct or indirect, in any contract or subcontract for work to be performed in the program. The grant and/or the distribution program shall incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purposes of these stated provisions.
16. Compliance with the maintenance of records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the grant or distribution agreement period, the purpose of undertaking for which such funds were used and the amount and nature of all contributions from other sources, and such other records as the Division shall prescribe. Such records shall be preserved for a period of not less than six (6) years following completion of all the conditions of the grant agreement and the distribution program administrative guidelines.
17. The applicant will provide access to authorized State officials and representatives of all books, accounts, records, reports, files, and other papers, things, or property pertaining to the project in order to make audits, examinations, excerpts and transcripts.
18. The applicant will provide DFA's auditor and evaluator timely access to all program records and information. Additionally, the applicant will assure that records of subcontractors working for the applicant are retained and made available to DFA's auditor and evaluator.

JAMES W. DUFFEY

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County Commission Chairperson

(Please Type)

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Signature

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Date

## MEMORANDUM OF UNDERSTANDING

The **Chaves County DWI Program** (hereinafter referred to as the “Program”) and the New Mexico Department of Finance and Administration/Local Government Division/Driving While Intoxicated Program (hereinafter referred to as “Agency”) hereby exchange the following assurances and enter into the following Memorandum of Understanding (MOU):

The Agency assures:

1. That Agency is in full compliance with the provisions concerning research activities in Section 2.52 of the Federal Confidentiality of Alcohol & Drug Abuse Patient Records regulations, 42 CFR Part 2, including Section 2.16.
2. That client identifying information will not be re-disclosed except back to the Program from which the information was obtained, or according to the terms of this MOU.
3. That in receiving, storing, processing, or otherwise dealing with any information from the Program about the clients in the Program, the Agency acknowledges it is bound by the provisions of the Federal Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 CFR Part 2.
4. That the Agency shall undertake to resist any effort to obtain access to information pertaining to patients otherwise than as expressly provided for in the Federal Confidentiality of Alcohol & Drug Abuse Patient Records regulations, 42 CFR Part 2.
5. That the Agency is not a “covered entity” as defined by the Department of Health and Human Services Regulations entitled “Standards for Privacy of Individually Identifiable Health Information”, 45 CFR Parts 160 and 164, implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA); (the HIPAA Regulations).
6. That the Agency shall never possess treatment or maintain any “individually identifiable health information” or transmit “protected health information” as defined by the HIPAA Regulations and in the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act).

The Program agrees to:

1. Upon request, provide the Agency or other parties authorized with client records for those clients provided services through the Local Government

Division DWI Grant Program, for the purpose of conducting outcome monitoring research activities, and evaluation of LDWI Program interventions.

2. If applicable, comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act) and the Department of Health and Human Services Regulation entitled "Standards for Privacy of Individually Identifiable Health Information", 45 CFR Parts 160 and 164, applicable to entities covered by HIPAA; (the HIPAA Regulations).
3. Report or transmit data to the Agency that deletes and contains no "individually identifiable health information" or "protected health information" as defined by the HIPAA Regulations and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act).

Executed this 19th day of February 2015.

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Rick Lopez, Director  
Department of Finance & Administration  
Local Government Division  
DWI Program  
Bataan Memorial Building, Suite 203  
Santa Fe, New Mexico 87501

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County Commissioner

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Date

## DOH ASSURANCES AND COOPERATIVE AGREEMENT

The **Chaves County DWI Program** referred to as the "Program" and the New Mexico Department of Health (DOH), Epidemiology and Response Division hereby receives the following assurances and enters into the following cooperative agreement, to carry out the requirements of the evaluation MOU between DOH and DFA:

The DOH:

1. Acknowledges that it is in full compliance with the provisions concerning research activities in Section 2.52 of Federal confidentiality regulations, 42 CFR Part 2, including:
  - a. That a research protocol is maintained in accordance with the security requirements of § 2.16 of 42 CFR Part 2; and
  - b. That client identifying information will not be re-disclosed except back to the Program from which the information was obtained; and no individual client will be identified in any report resulting from any epidemiologic research; and
  - c. That the Epidemiology and Response Division has provided a satisfactory written statement that a group of three or more individuals who are independent of the research project has reviewed the protocol and determined that:
    - (i) The rights and welfare of clients will be adequately protected; and
    - (ii) The risks in disclosing client identifying information are outweighed by the potential benefits of the research.
2. Acknowledges that in receiving, storing, processing, or otherwise dealing with any information from the Program about the clients in the Program, the Epidemiology and Response Division is fully bound by the provisions of the Federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2: and
3. Undertakes to resist in judicial proceedings any effort to obtain access to information pertaining to patients otherwise than as expressly provided for in the Federal confidentiality regulations, 42 CFR Part 2.

The Program:

1. Agrees to allow the Epidemiology and Response Division access to client records from the web based client screening and tracking system for those clients provided services through the Local Government Division DWI Grant

Program, for the purpose of conducting outcome monitoring research activities.

This agreement will become effective on July 1, 2015.

This agreement will expire on June 30, 2016.

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Michael Landen, MD, MPH,  
State Epidemiologist and  
Director Epidemiology and Response Division  
New Mexico Department of Health  
Harold Runnels Building  
1190 St. Francis Drive  
Santa Fe, NM 87502

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Commission Chairman