

QUAY COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS
ORDINANCE NO. 50

AUTHORIZING THE ISSUANCE AND SALE OF QUAY COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (CAPROCK SOLAR 1 LLC AND CAPROCK SOLAR 2 LLC PROJECTS) SERIES 2016A AND SERIES 2016B IN THE MAXIMUM PRINCIPAL AMOUNT OF \$116,500,000 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, Quay 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, as amended; and

WHEREAS, pursuant to New Mexico Statutes Annotated, Sections 4-59-1 through 4-59-16 NMSA 1978, as amended (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, Caprock Solar 1 LLC and Caprock Solar 2 LLC (together, the “Companies”) are Delaware limited liability companies, authorized to do business in New Mexico; and

WHEREAS, the Companies have presented to the Quay County Board of County Commissioners (the “Commission”) a proposal whereby the County would (a) issue its Taxable Industrial Revenue Bonds (Caprock Solar 1 LLC Project), Series 2016A (the “Series 2016A Bonds”), (b) issue its Taxable Industrial Revenue Bonds (Caprock Solar 2 LLC Project), Series 2016B (the “Series 2016B Bonds” and together with the Series 2016A Bonds, the “Bonds”), and (c) acquire solar photovoltaic electric generating facilities, including conversion equipment, solar tracking hardware and software, photovoltaic panels and inverters, support structures and related equipment used to generate electricity from solar energy and land leases related to the Projects (collectively, the “Project Property”), located within a part of the County which is outside the corporate limits of any municipality in the County, to be used by the Companies for the

generation and transportation of electricity via an interconnection directly to a substation through a generation tie line that has already been constructed; and

WHEREAS, the Companies have requested that the County issue industrial revenue bonds for the purpose of providing funds to finance the acquisition, construction, installation, and equipping of solar photovoltaic electric generating facilities for the purpose of generating electricity (the "Projects"). The County has been advised by the Companies that neither location approval nor a certificate of convenience and necessity are required prior to commencing construction or operation of the facility pursuant to the laws of the State; and

WHEREAS, under the Companies' proposal, the County would enter into Indentures of Trust (the "Indentures") with Caprock Solar Holdings 1, LLC and Caprock Solar Holdings 2, LLC, Delaware limited liability companies, authorized to do business in New Mexico and subsidiaries of the Companies (the "Purchasers") and BOKF, N.A. (the "Depository"), pursuant to which and together with this ordinance (the "Bond Ordinance"), the County would issue the Bonds; and

WHEREAS, under the Company's proposal, the County and the Companies would enter into Leases (the "Leases"), pursuant to which the Companies will lease the Project Property from the County and the Companies will make payments sufficient to pay the principal of and interest on the Bonds and to pay all other obligations incurred pursuant to the provisions of the Leases and the Bond Ordinance; and

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

WHEREAS, the Series 2016A Bonds in a principal amount not to exceed \$55,000,000 and the Series 2016B Bonds in a principal amount not to exceed \$61,500,000, will be issued, sold and delivered by the County in a private sale to the Purchaser pursuant to bond purchase agreements to be dated as of the initial date of delivery of the Bonds among the County, the Purchaser and the Companies (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, defined below, and other documents related thereto; and

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

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 Companies’ 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 *Quay County Sun*, 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 acquisition of the Project Property has been approved by the Tucumcari Public School District; and

WHEREAS, the Commission adopted Ordinance No. 49 on December 22, 2014, authorizing issuance of the County’s (a) Taxable Industrial Revenue Bonds (Caprock Solar 1 LLC Project), Series 2015A (the “Series 2015A Bonds”) and (b) Taxable Industrial Revenue Bonds (Caprock Solar 2 LLC Project), Series 2015B (the “Series 2015B Bonds” and together with the Series 2015A Bonds, the “Series 2015 Bonds”); and

WHEREAS, the Series 2015 Bonds have not and will not be issued, and the Commission desires to repeal Ordinance No. 49.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF QUAY 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 \$116,500,000.
- (3) The developers of the Project Property are the Companies.
- (4) The Project Property is located in the County approximately twelve (12) miles south-southeast of Tucumcari and outside the corporate limits of any municipality located in the County.

Section 3. BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Bonds in a principal amount not to collectively exceed \$116,500,000 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 \$116,500,000 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 \$116,500,000, 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.

E. Issuance. The Bonds shall be issued on or before December 31, 2018. If the Series 2016A Bonds have been issued and construction has begun on the Caprock Solar 1 LLC Project on or before December 31, 2018, the issuance of the Series 2016B Bonds may be delayed on request of the Company until December 31, 2020.

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The Leases shall include a provision that the Companies 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 Tucumcari Public School District. The Leases shall also include a “claw back” provision which requires the Companies to pay the County a percentage of the amount of abated ad valorem property taxes less the amount of the PILOT payments paid to the County if the Projects are abandoned or decommissioned within a time period determined by the Commission.

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 Purchaser. 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 2016A Bonds, assuming issuance of the Series 2016A Bonds as of January 15, 2016, in the maximum aggregate principal amount of \$55,000,000 and bearing an interest rate of Five and No/100 percent (5.0%), is as follows:

<u>Year</u>	<u>Total Debt Service</u>	<u>Principal</u>	<u>Interest</u>
2017	\$2,750,000	\$-0-	\$2,750,000
2018	\$2,750,000	\$-0-	\$2,750,000
2019	\$2,750,000	\$-0-	\$2,750,000
2020	\$2,750,000	\$-0-	\$2,750,000
2021	\$2,750,000	\$-0-	\$2,750,000
2022	\$2,750,000	\$-0-	\$2,750,000
2023	\$2,750,000	\$-0-	\$2,750,000
2024	\$2,750,000	\$-0-	\$2,750,000
2025	\$2,750,000	\$-0-	\$2,750,000
2026	\$2,750,000	\$-0-	\$2,750,000
2027	\$2,750,000	\$-0-	\$2,750,000
2028	\$2,750,000	\$-0-	\$2,750,000
2029	\$2,750,000	\$-0-	\$2,750,000
2030	\$2,750,000	\$-0-	\$2,750,000
2031	\$2,750,000	\$-0-	\$2,750,000
2032	\$2,750,000	\$-0-	\$2,750,000
2033	\$2,750,000	\$-0-	\$2,750,000
2034	\$2,750,000	\$-0-	\$2,750,000
2035	\$2,750,000	\$-0-	\$2,750,000
2036	\$2,750,000	\$-0-	\$2,750,000
2037	\$2,750,000	\$-0-	\$2,750,000
2038	\$2,750,000	\$-0-	\$2,750,000
2039	\$2,750,000	\$-0-	\$2,750,000
2040	\$2,750,000	\$-0-	\$2,750,000
2041	\$2,750,000	\$-0-	\$2,750,000
2042	\$2,750,000	\$-0-	\$2,750,000
2043	\$2,750,000	\$-0-	\$2,750,000
2044	\$2,750,000	\$-0-	\$2,750,000
2045	\$2,750,000	\$-0-	\$2,750,000
2046	\$57,750,000	\$55,000,000	\$2,750,000

B. The maximum amount necessary in each year to pay the principal of and interest on the Series 2016B Bonds, assuming issuance of the Series 2016B Bonds as of January 15, 2016, in the maximum aggregate principal amount of \$61,500,000 and bearing an interest rate of 5.0%, is as follows:

<u>Year</u>	<u>Total Debt Service</u>	<u>Principal</u>	<u>Interest</u>
2017	\$3,075,000	\$-0-	\$3,075,000
2018	\$3,075,000	\$-0-	\$3,075,000
2019	\$3,075,000	\$-0-	\$3,075,000
2020	\$3,075,000	\$-0-	\$3,075,000
2021	\$3,075,000	\$-0-	\$3,075,000
2022	\$3,075,000	\$-0-	\$3,075,000
2023	\$3,075,000	\$-0-	\$3,075,000
2024	\$3,075,000	\$-0-	\$3,075,000
2025	\$3,075,000	\$-0-	\$3,075,000
2026	\$3,075,000	\$-0-	\$3,075,000
2027	\$3,075,000	\$-0-	\$3,075,000
2028	\$3,075,000	\$-0-	\$3,075,000
2029	\$3,075,000	\$-0-	\$3,075,000
2030	\$3,075,000	\$-0-	\$3,075,000
2031	\$3,075,000	\$-0-	\$3,075,000
2032	\$3,075,000	\$-0-	\$3,075,000
2033	\$3,075,000	\$-0-	\$3,075,000
2034	\$3,075,000	\$-0-	\$3,075,000
2035	\$3,075,000	\$-0-	\$3,075,000
2036	\$3,075,000	\$-0-	\$3,075,000
2037	\$3,075,000	\$-0-	\$3,075,000
2038	\$3,075,000	\$-0-	\$3,075,000
2039	\$3,075,000	\$-0-	\$3,075,000
2040	\$3,075,000	\$-0-	\$3,075,000
2041	\$3,075,000	\$-0-	\$3,075,000
2042	\$3,075,000	\$-0-	\$3,075,000
2043	\$3,075,000	\$-0-	\$3,075,000
2044	\$3,075,000	\$-0-	\$3,075,000
2045	\$3,075,000	\$-0-	\$3,075,000
2046	\$64,575,000	\$64,000,000	\$3,075,000

C. The Bonds will bear interest at the Annual Long-Term Applicable Federal Rate for the month in which the Bonds are issued for purposes of Section 1288(b) of the Internal Revenue Code.

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

E. 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.

F. The Leases require that the Companies 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.

G. The Leases require the Companies 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.

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 Companies to the County as described in the Indenture and any other property or interest of the County specifically pledged under the Indenture and shall never constitute a debt or indebtedness of the County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing contained in 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 Companies shall indemnify and hold harmless the County and its Board of County Commissioners, officials, employees and agents against liability to the Companies, 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 Companies, except to the extent New Mexico Statutes Annotated Section 56-7-1, NMSA 1978, would preclude such indemnity, and except claims for any loss or damage to the extent caused by the gross negligence or willful misconduct of the County or its 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 irrepealable until the Bonds, including interest, are 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. County Ordinance No. 49 is hereby repealed in its entirety. 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 23rd day of November, 2015.

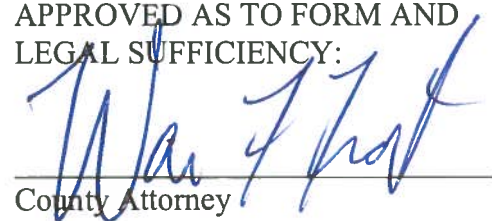
ATTEST:

QUAY COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS


County Clerk

By 
Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:


County Attorney