COLFAX COUNTY, NEW MEXICO

BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. 2010-01

AUTHORIZING THE ISSUANCE AND SALE OF COLFAX COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BOND (CIMARRON PROJECT) SERIES 2010 IN THE MAXIMUM PRINCIPAL AMOUNT OF $110,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A SOLAR POWER GENERATION FACILITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, BOND, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BOND AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

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

WHEREAS, pursuant to Sections 4-59-1 through 4-59-16, New Mexico Statutes Annotated, 1978 Compilation, as amended (the "Act"), 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 agriculture and industry and developing trade or other economic activity to secure and maintain a balanced and stable economy in the county to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, First Solar Cimarron I, LLC ("First Solar") has requested that the County consider the issuance of an industrial revenue bond for the purpose of providing funds to finance the acquisition, construction and equipping of a solar power generation facility (the "Project") for which both location approval and a certificate of convenience and necessity are not required prior to commencing construction or operation of the facility pursuant to the laws of the State; and

WHEREAS, on February 9, 2010, the Commission indicated its intent to proceed with the issuance of the Bond for the financing of the Project by adopting Resolution No. 2010-11 (the "Inducement Resolution"); and

WHEREAS, the Inducement Resolution identified First Solar and its successors and assigns, as the developer of the Project;

WHEREAS, the Inducement Resolution acknowledged First Solar's right to assign its rights, title, interest and obligations under the Project to one or more parties designated as assignees;

WHEREAS, subsequent to the adoption of the Inducement Resolution, First Solar advised the County that it assigned its rights to develop the Project to Southern Turner Cimarron I, LLC (the "Developer"),

WHEREAS, the Developer is a limited liability company organized under the laws of the State of Delaware and is duly registered as a foreign limited liability company in the State of New Mexico; and

WHEREAS, the Developer has presented to the County's Board of County Commissioners (the "Commission") a proposal whereby the County would (a) issue its Taxable Industrial Revenue Bond (Cimarron Project), Series 2010 (the "Bond"), and (b) acquire certain supporting property, equipment, buildings. improvements, and real property (collectively, the "Project Property"), located within that part of the County which is outside the corporate limits of any municipality in the County, to be used by the Developer for the generation, transmission and delivery of electricity; and

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

WHEREAS, under the Developer's proposal the County and the Developer would enter into the Lease, pursuant to which the Developer will lease the Project Property from the County and the Developer will make payments sufficient to pay the principal of, redemption premium, if any, and interest on the Bond and to pay all other obligations incurred pursuant to the provisions of the Lease and the Bond Ordinance; and

WHEREAS, the County is authorized to enter into the Bond Documents and to issue the Bond pursuant to the Act and the Bond Ordinance; and

WHEREAS, the Bond in an aggregate principal amount not to exceed $110,000,000 will be issued, sold and delivered by the County, in a private sale to Southern Turner Cimarron Capital, LLC (the "Purchaser"), pursuant to a bond purchase agreement to be dated as of the initial date of delivery of the Bond among the County, the Purchaser and the Developer (the "Bond Purchase Agreement"); and

WHEREAS, the proceeds of the Bond shall be applied to pay the costs of the Project and to pay certain costs associated with the transaction; and

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

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

1. Lease
2. Indenture
3. Bond Purchase Agreement
4. Bond

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

WHEREAS, the County is authorized to issue the Bond under the Act and after having considered the Developer's proposal, has concluded that it is desirable at this time to authorize the issuance of the Bond to finance the Project and that the County's issuance of the Bond 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 Bond is being sold in a private sale without participation of an underwriter; and

WHEREAS, the County has advised the County Assessor and the Mayor of the City of Raton of the County's intent to consider issuance of the Bond; and

WHEREAS, the County has apprised the Board of Springer Municipal District No. 24 (the "School District") of its intent to consider issuance of the Bond; and

WHEREAS, there has been published in the *Raton Range,* 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 Project and the amount of the Bond to be issued to finance the Project, which notice was published at least fourteen (14) days prior to final action upon this Bond Ordinance; and

WHEREAS, the acquisition of the Project Property has been approved by the School District.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF COLFAX 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 Bond be approved and the same hereby are ratified, approved and confirmed.

Section 2. FINDINGS.

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

B. The Commission finds that:

(1) The Bond will be issued for the purpose of financing the Project.

(2) The aggregate maximum face amount of obligations to be issued with respect to financing the Project is $110,000,000.

(3) The Developer of the Project Property is Southern Turner Cimarron I, LLC

(4) The Project Property is located in that portion of the County which is outside the corporate limits of any municipality located in the County.

Section 3. BOND - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Bond in an aggregate principal amount not to exceed $110,000,000 and the use of the proceeds of the Bond to finance the cost of the Project including payment of expenses related thereto are hereby approved and confirmed.

The sale of the Bond at par and purchase price not to exceed $110,000,000 is approved.

B. Form and Terms.

Subject to the limitations set forth in this Bond Ordinance, the Bond shall (i) be in the form and denominations and shall be numbered and dated as set forth in the Indenture, (ii) be payable as to principal and interest and subject to optional and mandatory redemption and defeasance in the amounts, upon the conditions and at the times and prices set forth in the Indenture; and (iii) issued in an aggregate principal amount not to exceed $110,000,000, bearing interest at the rates and maturing on the dates set forth in the Indenture.

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

D. Interest Rate. The interest rate on the Bond shall be 5% per annum.

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

The presiding officer of the Board of County Commissioners of the County is authorized 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 with such changes therein as are not inconsistent with this Bond Ordinance.

The Chair of the Board of County Commissioners is further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including security agreements, and to do such other acts and things, either prior to or after the date of delivery of the Bond, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents.

The officers of the County shall take such action as is necessary to effectuate the provisions of the Indenture and shall take such action as is necessary in conformity with the Act to finance the costs of the Project and for carrying out other transactions as contemplated by this Ordinance, and the Bond Documents, including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Bond.

Section 5. DELIVERY OF BOND. Upon the execution of the Bond Documents, the satisfaction of the conditions set forth in the Bond Documents and upon receipt of the purchase price for the Bond, the Bond shall be executed, authenticated and delivered to the Purchaser. No Bond shall be valid for any purpose until such Bond has been properly authenticated as set forth in the Indenture.

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

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

A. The maximum amount necessary in each year to pay the principal of and interest on the Bond, assuming issuance of the Bond as of July 1, 2010, in the maximum aggregate principal amount of up to $110,000,000 and bearing a maximum rate of 5%, as follows:

Year	Total Debt Service	Principal Payments Requirements in such Period	Maximum Interest for such Period
2011	5,500,000	- 0 -	5,500,000
2012	5,500,000	- 0 -	5,500,000
2013	5,500,000	- 0 -	5,500,000
2014	5,500,000	- 0 -	5,500,000
2015	5,500,000	- 0 -	5,500,000
2016	5,500,000	- 0 -	5,500,000
2017	5,500,000	- 0 -	5,500,000
2018	5,500,000	- 0 -	5,500,000
2019	5,500,000	- 0 -	5,500,000
2020	5,500,000	- 0 -	5,500,000
2021	5,500,000	- 0 -	5,500,000
2022	5,500,000	- 0 -	5,500,000
2023	5,500,000	- 0 -	5,500,000
2024	5,500,000	- 0 -	5,500,000
2025	5,500,000	- 0 -	5,500,000
2026	5,500,000	- 0 -	5,500,000
2027	5,500,000	- 0 -	5,500,000
2028	5,500,000	- 0 -	5,500,000
2029	5,500,000	- 0 -	5,500,000
2030	5,500,000	- 0 -	5,500,000
2031	5,500,000	-0-	5,500,000
2032	5,500,000	- 0 -	5,500,000
2033	5,500,000	- 0 -	5,500,000
2034	5,500,000	- 0 -	5,500,000
2035	$115,500,000	$110,000,000	5,500,000

B. The Bond may be redeemed in whole or in part at any time without premium.

C. 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.

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

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

Section 8. LIMITED OBLIGATIONS. The Bond shall be a special limited obligation of the County, payable solely from the Basic Rent derived from the Lease, and payable by the Developer 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 instrument 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 Bond, 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 Bond or any other instrument be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bond, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of 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 approves the provisions of the Lease relating to indemnification which provide that the Developer shall indemnify and hold harmless the County and its Board of County Commissioners, officials, members, officers, employees and agents against liability to the Developer, 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 Bond and arising from the condition of the Project Property or the acquisition, construction and operation of the Project Property by the Developer, except to the extent Section 56-7-1 New Mexico Statutes Annotated, 1978 Compilation, applies, and except claims for any loss or damage arising out of or resulting from the gross negligence or willful misconduct of the County or any member, officer, employee or agent of the County.

Section 10. ACKNOWLEDGMENT OF AGENCY. The County acknowledges that the Developer, as successor to First Solar, is authorized to act as agent for the County and consistent with Taxation and Revenue Department Regulation 3.2.212.22 NMAC Renumbered, will acquire the Project in such capacity.

Section 11. BOND ORDINANCE IRREPEALABLE. After the Bond is issued, the Bond Ordinance shall be and remain irrepealable until the Bond, including interest, is fully paid, canceled and discharged or there has been defeasance of the Bond in accordance with the Indenture.

Section 12. 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 13. 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 14. RECORDING; AUTHENTICATION; EFFECTIVE DATE; PUBLICATION.

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 25th day of May, 2010.

ATTEST:

Rayetta M. Trujillo
County Clerk

COLFAX COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS

By Jim Maldonado
Chair