

# CITY of ALBUQUERQUE TWENTY-FOURTH COUNCIL

COUNCIL BILL NO. F/S O-21-58 ENACTMENT NO. 0-2021-009

SPONSORED BY: Brook Bassan, by request

1 ORDINANCE  
2 AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE,  
3 NEW MEXICO INDUSTRIAL REVENUE BOND (AFFORDABLE SOLAR PROJECT)  
4 SERIES 2021 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$7,578,000 TO  
5 PROVIDE FUNDS TO FINANCE THE ACQUISITION, RENOVATION,  
6 DEVELOPMENT, IMPROVEMENT AND EQUIPPING OF A FACILITY FOR A  
7 RENEWABLE ENERGY PRODUCTION AND STORAGE TECHNOLOGY  
8 RESEARCH AND DEVELOPMENT COMPANY; AUTHORIZING THE EXECUTION  
9 AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE  
10 AGREEMENT, BOND, AND OTHER DOCUMENTS IN CONNECTION WITH THE  
11 ISSUANCE OF THE BOND AND THE PROJECT; MAKING CERTAIN  
12 DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE  
13 PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND  
14 REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

15 WHEREAS, the City of Albuquerque (the "City") is a legally and regularly created,  
16 established, organized, and existing municipal corporation of the State of New  
17 Mexico (the "State"); and

18 WHEREAS, pursuant to Sections 3-32-1 through 3-32-16, New Mexico Statutes  
19 Annotated, 1978 Compilation, as amended (the "Act"), the City is authorized to  
20 acquire industrial revenue projects located within the corporate limits of the  
21 municipality for the purpose of promoting industry and trade by inducing commercial  
22 enterprises to locate or expand in the State of New Mexico; and

23 WHEREAS, pursuant to the Act, the City is authorized to issue revenue bonds for  
24 the purpose of defraying the cost of acquiring any project and to secure the payment  
25 of such bonds, all as provided in the Act; and

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1 WHEREAS, Zia Energy Real Estate, LLC (the "Company") is a Limited Liability  
2 Company organized under the laws of the State of New Mexico and is authorized to  
3 do business in New Mexico; and

4 WHEREAS, the Company has requested that the City issue its industrial revenue  
5 bond pursuant to the Act for the purpose of providing funds to finance the  
6 acquisition, improvement and equipping of facilities within the corporate limits of the  
7 City (the "Project"); and

8 WHEREAS, the City Council of the City of Albuquerque (the "Council") has  
9 adopted an ordinance establishing the Albuquerque Development Commission (the  
10 "Commission") to review projects proposed to be financed with an industrial revenue  
11 bond pursuant to City Resolution No. 16-1985, as amended; and

12 WHEREAS, the Company has presented to the City and the Commission a  
13 proposal (the "Project Plan") whereby the City shall, pursuant to the Act, acquire  
14 certain property and equipment (the "Project Property") for the purpose of operating  
15 facilities at 3900 Singer Blvd., NE, covering at least 3.522 acres including a 29,560  
16 square foot building, for a renewable energy production and storage technology  
17 research and development company, within the boundaries of the City, and pursuant  
18 to which the City would issue its taxable industrial revenue bond in order to finance  
19 the Project; and

20 WHEREAS, the Commission has reviewed the Project Plan, and on April 8,  
21 2021, has determined that the Company has complied with City Resolution No. 16-  
22 1985, and has recommended approval of the Project Plan by the Council; and

23 WHEREAS, under the Company's Project Plan, the City would enter into an  
24 Indenture dated as of May 1, 2021 (the "Indenture") between the City and a  
25 corporate depository satisfactory to the City to be designated at a later date, as  
26 depository (the "Depository"), pursuant to which, together with this ordinance (the  
27 "Bond Ordinance"), the City would issue its bond designated as the City of  
28 Albuquerque, New Mexico Taxable Industrial Revenue Bond (Affordable Solar  
29 Project), Series 2021 (the "Bond"); and

30 WHEREAS, under the Company's Project Plan, the City and the Company would  
31 enter into a Lease Agreement dated as of May 1, 2021 (the "Lease"), pursuant to  
32 which the Company will lease the Project Property from the City and will make  
33 payments to the Depository sufficient to pay the principal of, redemption premium, if

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1 any, and interest on the Bond, and to pay all other obligations incurred pursuant to  
2 the provisions of the Lease and the Bond Ordinance; and  
3 WHEREAS, under the Company's Project Plan, the Lease will provide that the  
4 Company shall maintain the Project and carry all proper insurance with respect  
5 thereto; and  
6 WHEREAS, the proceeds of the Bond shall be used for the purpose of financing  
7 the acquisition, improvement and equipping of the Project (the "Financing"); and  
8 WHEREAS, the City is authorized to enter into the Lease, the Indenture, and  
9 other related documents and to issue the Bond pursuant to the Act and the Bond  
10 Ordinance; and  
11 WHEREAS, the Bond in an aggregate principal amount not to exceed  
12 \$7,578,000 will be issued, sold, and delivered by the City in a private sale to an  
13 affiliate of the Company (the "Purchaser") pursuant to a bond purchase agreement  
14 (the "Bond Purchase Agreement") among the City, the Company, and the  
15 Purchaser; and  
16 WHEREAS, the proceeds of the Bond shall be applied to pay the costs of the  
17 Project and to pay certain costs associated with the transaction; and  
18 WHEREAS, after having considered the provisions of the Project Plan and the  
19 Financing, the Council has concluded that it is in the best interest of the City to  
20 authorize the issuance of the Bond to finance the Project, and that the City's  
21 issuance of the Bond shall constitute a valid public purpose under the Act; and  
22 WHEREAS, the Council has been advised by the Company that the disclosure  
23 provisions of Rule 15c2-12 of the Securities and Exchange Commission are not  
24 applicable to this transaction inasmuch as the Bond is being sold to the Purchaser,  
25 which is an affiliate of the Company, in a private sale without the participation of an  
26 underwriter; and  
27 WHEREAS, there has been published in the Albuquerque Journal, a newspaper  
28 of general circulation in the City, public notice of the Council's intention to adopt this  
29 Bond Ordinance, which notice contained certain information concerning the  
30 ownership, purpose, location, and size of the Project and the Project Property, and  
31 the amount of the Bond to be issued to finance the Project, which notice was  
32 published at least fourteen (14) days prior to hearing and final action on this Bond  
33 Ordinance; and

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1 WHEREAS, the proposed forms of the following documents have been filed with  
2 the City Clerk and presented to the Council: (1) Project Plan; (2) Lease; (3)  
3 Indenture; and, (4) Bond Purchase Agreement (collectively the "Bond Documents");  
4 and

5 WHEREAS, the City has delivered notice to the County of Bernalillo, State of  
6 New Mexico, of its intent to consider issuance of the Bond, which notice was given  
7 at least thirty (30) days prior to the meeting at which final action is to be taken on this  
8 Bond Ordinance as required by Section 3-32-6.1, New Mexico Statutes Annotated,  
9 1978 Compilation, as amended.

10 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
11 ALBUQUERQUE:

12 Section 1. RATIFICATION. All actions not inconsistent with the provisions of  
13 this Bond Ordinance previously taken by the Council and the officials of the City  
14 directed toward approval of the issuance and sale of the Bond be approved and the  
15 same hereby are ratified, approved and confirmed.

16 Section 2. THE PROJECT PLAN. The Project to be financed with the Bond  
17 consists of the acquisition, improvement and equipping of facilities for a renewable  
18 energy production and storage technology research and development company.  
19 The Company may use additional available money to accomplish the Project. The  
20 Project Plan is hereby approved in all respects.

21 Section 3. FINDINGS.

22 (A) General. The Council hereby declares that it has considered all relevant  
23 information presented to it relating to the Bond and the Project and hereby finds and  
24 determines that the issuance of the Bond pursuant to the Bond Ordinance and the  
25 Act to provide funds for the Project is necessary and advisable and in the interest of  
26 the public, and will promote the public health, safety, morals, convenience,  
27 economy, and welfare of the City and the residents of the City.

28 (B) The Council finds that:

- 29 (1) The Bond will be issued for the purpose of financing the Project;
- 30 (2) The aggregate face amount of obligations to be issued for the  
31 purpose of financing the Project is \$7,578,000;
- 32 (3) The developer and operator of the Project is the Company; and,
- 33 (4) The Project Property is located in the City.

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1 Section 4. AUTHORIZATION AND APPROVAL OF THE BOND. To finance  
2 the cost of acquiring the Project Property, the City hereby authorizes and approves  
3 the issuance and sale of its industrial revenue bond to be designated "City of  
4 Albuquerque, New Mexico Taxable Industrial Revenue Bond (Affordable Solar  
5 Project), Series 2021" in a principal amount not to exceed \$7,578,000 and the use of  
6 the proceeds of the Bond to finance the cost of the Project and to pay expenses  
7 relating thereto.

8 Section 5. SALE OF THE BOND. The sale of the Bond to the Purchaser at a  
9 purchase price equal to the par amount of the Bond is hereby authorized and  
10 approved.

11 Section 6. FORM AND TERM OF THE BOND. Subject to the limitations set  
12 forth in this Bond Ordinance, the Bond shall be: (i) in the form and shall be  
13 numbered and dated all as set forth in the Indenture; (ii) payable as to principal and  
14 interest, and subject to optional and mandatory redemption and defeasance in the  
15 amounts, upon the conditions and at the times and prices set forth in the Indenture;  
16 and, (iii) issued in a principal amount not to exceed \$7,578,000, bearing interest at  
17 the rates and maturing on the dates set forth in the Indenture. The interest rate on  
18 the Bond shall not exceed 12% per annum. The Mayor or the Chief Administrative  
19 Officer of the City shall sign the Bond.

20 Section 7. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.  
21 The form, terms, and provisions of the Bond Documents in the form on deposit in the  
22 office of the City Clerk are in all respects approved, authorized, and confirmed, and  
23 the City shall enter into such Bond Documents substantially in the form of each such  
24 document on deposit with the City Clerk, with only such changes as are not  
25 inconsistent with this Bond Ordinance or such other changes as may be approved  
26 by supplemental resolution of the Council.

27 (A) The Council authorizes the Mayor or the Chief Administrative Officer of the  
28 City to execute and deliver the Bond Documents in the name and on behalf of the  
29 City, and the Council authorizes the City Clerk or Deputy City Clerk to attest to, as  
30 necessary, the Bond Documents and the Bond with such changes therein as are not  
31 inconsistent with this Bond Ordinance.

32 (B) The Mayor, Chief Administrative Officer, Chief Financial Officer, City  
33 Treasurer, and City Clerk are further authorized to execute, authenticate, and deliver

1 such certifications, instruments, documents, letters, and other agreements, including  
2 security agreements, and to do such other acts and things, either prior to or after the  
3 date of delivery of the Bond, as are necessary or appropriate to consummate the  
4 transactions contemplated by the Bond Documents.

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

12 Section 8. DELIVERY OF THE BOND. Upon the execution of the Bond  
13 Documents and the satisfaction of the conditions set forth in the Bond Documents,  
14 the Bond shall be executed, authenticated, and delivered to the Purchaser. No  
15 Bond shall be valid for any purpose until such Bond has been properly authenticated  
16 as set forth in the Indenture.

17 Section 9. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND  
18 INTEREST AND OTHER MATTERS. The Council makes the following  
19 determinations and findings in accordance with the Act:

20 (A) The maximum amount necessary in each year to pay the principal of and  
21 interest on the Bond, assuming issuance of the Bond on or about May 25, 2021 in  
22 the amount of \$7,578,000 and bearing interest at the rate of 3% is as follows:

23	<u>Year Ended</u>	<u>Maturing Principal</u>	<u>Interest Amount</u>	<u>Total Debt Service</u>
24	12/31/22	\$0	\$336,219	\$336,219
25	12/31/23	\$0	504,329	504,329
26	12/31/24	\$0	504,329	504,329
27	12/31/25	\$0	504,329	504,329
28	12/31/26	\$0	504,329	504,329
29	12/31/27	\$0	504,329	504,329
30	12/31/28	\$0	504,329	504,329
31	12/31/29	\$0	504,329	504,329
32	12/31/30	\$0	504,329	504,329
33	12/31/31	\$0	504,329	504,329

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1	12/31/32	\$0	504,329	504,329
2	12/31/33	\$0	504,329	504,329
3	12/31/34	\$0	504,329	504,329
4	12/31/35	\$0	504,329	504,329
5	12/31/36	\$0	504,329	504,329
6	12/31/37	\$0	504,329	504,329
7	12/31/38	\$0	504,329	504,329
8	12/31/39	\$0	504,329	504,329
9	12/31/40	\$0	504,329	504,329
10	12/31/41	\$7,578,000	\$504,329	\$7,586,101

11 (B) The terms under which the Project Property is leased provide that the  
12 Company shall maintain the Project Property and carry all proper insurance (or self-  
13 insure) with respect to the Project Property.

14 (C) The lease rentals payable under the Lease shall be at least sufficient to  
15 pay the principal and interest payments on the Bond set forth in Paragraph (A) of  
16 this Section 9 when due and otherwise render the financing of the acquisition of the  
17 Project Property entirely self-liquidating. There shall be no payments to any reserve  
18 fund or sinking fund installment payments.

19 Section 10. NONTAXABLE TRANSACTION CERTIFICATES. The Company,  
20 as agent for the City, will acquire the Project. The City will cooperate with the  
21 Company to obtain and allow use of Type 9 Nontaxable Transaction Certificates  
22 ("Certificates") that have been properly executed for acquisition of tangible personal  
23 property relating to the Project as applicable under the New Mexico Gross Receipts  
24 and Compensating Tax Act. The Company shall not use the Certificates other than  
25 for such things as may be permitted by law, if any, nor shall the Company use such  
26 Certificates after the completion of the Project. No costs, expenses or other  
27 monetary relief will be recoverable from the City by vendors of equipment.

28 Section 11. LIMITED OBLIGATIONS. The Bond shall be a special limited  
29 obligation of the City payable solely from the revenues derived from the Lease and  
30 payable by the Company as described in the Indenture, and shall never constitute a  
31 debt or indebtedness of the City or the State or any political subdivision thereof  
32 within the meaning of any provision or limitation of the State Constitution, statutes, or  
33 home-rule charter of the City, and shall not constitute or give rise to a pecuniary

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1 liability of the City or a charge against its general credit or taxing power. Nothing  
2 contained in the Bond Ordinance or the Bond Documents, or any other instrument,  
3 shall be construed as obligating the City (except with respect to the Project Property  
4 and the application of the revenues therefrom and the proceeds of the Bond, all as  
5 provided in the Bond Documents), nor as incurring a pecuniary liability or charge  
6 upon the general credit of the City or against its taxing power, nor shall the breach of  
7 any agreement contained in the Bond Ordinance, the Bond Documents, the Bonds,  
8 or any other instrument be construed as obligating the City (except with respect to  
9 the Project Property and the application of revenues therefrom and the proceeds of  
10 the Bond all as provided in the Bond Documents) nor as incurring a pecuniary  
11 liability or a charge upon the general credit of the City or against its taxing power, the  
12 City having no power to pay out of its general funds, or otherwise contribute any part  
13 of the costs of acquiring the Project Property, nor power to operate the Project as a  
14 business or in any manner except as lessor and seller of the Project Property.

15 Section 12. APPROVAL OF INDEMNIFICATION. The Council specifically  
16 approves the provisions of the Lease relating to indemnification which provide that  
17 the Company shall indemnify and hold harmless the City and its City Councilors,  
18 officials, members, officers, employees, and agents against liability to the Company  
19 or to any third parties that may be asserted against the City, its City Councilors,  
20 officials, members, officers, employees, and agents with respect to the City's  
21 ownership of the Project Property or the issuance of the Bond and arising from the  
22 condition of the Project Property or the acquisition or operation of the Project  
23 Property by the Company, except to the extent that Section 56-7-1, New Mexico  
24 Statutes Annotated, 1978 Compilation, as amended, applies, and except claims for  
25 any loss or damage arising out of or resulting from the gross negligence or willful  
26 misconduct of the City or any official, member, officer, employee, or agent of the  
27 City.

28 Section 13. BOND ORDINANCE IRREPEALABLE. After the Bond is issued,  
29 this Bond Ordinance shall be and remain irrevocable until the Bond, including all  
30 interest thereon, is fully paid, cancelled, and discharged, or until there has been  
31 defeasance of the Bond in accordance with the Indenture.

32 Section 14. SEVERABILITY. If any section, paragraph, clause or provision of  
33 this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the



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1 invalidity or unenforceability of that section, paragraph, clause, or provision shall not  
2 affect any of the remaining provisions of this Bond Ordinance.

3 Section 15. REPEALER. All by-laws, ordinances, resolutions, and orders, or  
4 parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond  
5 Ordinance but only to the extent of that inconsistency. This repealer shall not be  
6 construed to revive any by-law, ordinance, resolution, or order, or part thereof,  
7 previously repealed.

8 Section 16. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE  
9 DATE. This Bond Ordinance, immediately upon its final passage and approval, shall  
10 be recorded in the ordinance book of the City, kept for that purpose, and shall be  
11 there authenticated by the signature of the Mayor and the presiding officer of the  
12 City Council, and by the signature of the City Clerk or any Deputy City Clerk, and  
13 notice of adoption thereof shall be published once in a newspaper that maintains an  
14 office in, and is of general circulation in, the City, and shall be in full force and effect  
15 five (5) days following such publication

16 Section 17. GENERAL SUMMARY FOR PUBLICATION. The title and general  
17 summary of the subject contained in the Bond Ordinance shall be published in  
18 substantially the following form:

CITY OF ALBUQUERQUE, NEW MEXICO  
NOTICE OF ADOPTION OF ORDINANCE

21 Notice is hereby given of the title and of a general summary of the subject matter  
22 contained in City Ordinance No. O-21-58 (the "Ordinance"), duly adopted and  
23 approved by the City Council of the City of Albuquerque, New Mexico, on April 19,  
24 2021. Complete copies of the Ordinance are available for public inspection during  
25 the normal and regular business hours of the City Clerk in the office of the City  
26 Clerk, Albuquerque/Bernalillo County Government Center, One Civic Plaza, N.W.,  
27 Albuquerque, New Mexico.

28 The title of the Ordinance is:  
29 AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE,  
30 NEW MEXICO INDUSTRIAL REVENUE BOND (AFFORDABLE SOLAR PROJECT)  
31 SERIES 2021 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$7,578,000 TO  
32 PROVIDE FUNDS TO FINANCE THE ACQUISITION, RENOVATION,  
33 DEVELOPMENT, IMPROVEMENT AND EQUIPPING OF A FACILITY FOR A

1 RENEWABLE ENERGY PRODUCTION AND STORAGE TECHNOLOGY  
2 RESEARCH AND DEVELOPMENT COMPANY; AUTHORIZING THE EXECUTION  
3 AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE  
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6 DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE  
7 PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND  
8 REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

9 The title sets forth a general summary of the subject matter contained in the  
10 Ordinance.

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1 PASSED AND ADOPTED THIS 19th DAY OF April, 2021  
2 BY A VOTE OF: 8 FOR 0 AGAINST.

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Excused: Benton

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Cynthia D. Borrego, President

City Council

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APPROVED THIS 27 DAY OF April, 2021

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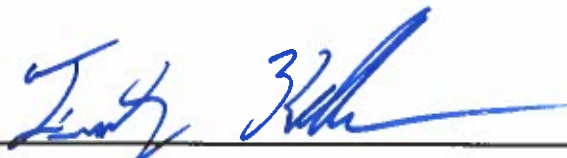
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Bill No. F/S O-21-58

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Timothy M. Keller, Mayor

City of Albuquerque

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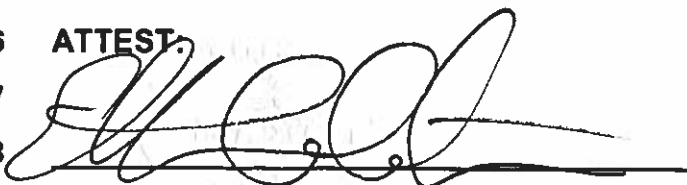
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ATTEST:

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Ethan Watson, City Clerk

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