CITY of ALBUQUERQUE
TWENTY FOURTH COUNCIL

COUNCIL BILL NO. F/S O-21-74 ENACTMENT NO. 0-2021-020

SPONSORED BY: Isaac Benton, by request

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ORDINANCE

2 AMENDING ORDINANCE NO. F/S O-21-65 RELATING TO THE AUTHORIZATION,
3 ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO
4 INDUSTRIAL REVENUE BOND (EL ENCANTO, INC. PROJECT) TAX-EXEMPT
5 SERIES 2021 (THE "BOND") AND PROVIDING FOR THE ISSUANCE OF THE
6 BOND AS A TAXABLE BOND.

7 WHEREAS, on June 7, 2021, the Albuquerque City Council (the "Council")
8 adopted Ordinance No. F/S O-21-65 (the "Original Ordinance") authorizing the
9 issuance and sale of an industrial revenue bond to be designated "City of
10 Albuquerque, New Mexico Industrial Revenue Bond (El Encanto, Inc. Project), Tax-
11 Exempt Series 2021"; the proceeds of which would be used to finance the
12 construction and equipping of a manufacturing facility within the corporate limits of
13 the City (the "Project") for the benefit of El Encanto, Inc., d/b/a Bueno Foods (the
14 "Company"), a corporation organized under the laws of the State of New Mexico;

15 WHEREAS, at the time the Original Ordinance was adopted, Wells Fargo Bank,
16 National Association (the "Purchaser") anticipated purchasing the Bond in a
17 maximum principal amount of up to $10,000,000 at a private sale pursuant to a
18 Continuing Covenant Agreement to be entered between the Company and the
19 Purchaser;

20 WHEREAS, the Company and Purchaser had initially anticipated that the Bond
21 would be issued as a federally "tax-exempt" bond, with the interest on the Bond
22 being excludable from gross income for federal tax purposes under Section 103(a)
23 of the Code (as defined in the Original Ordinance);

24 WHEREAS, in order to ensure that the Bond would qualify as a federally tax-
25 exempt bond, the Original Ordinance (i) authorized the City to execute a Tax
26 Regulatory Agreement (as defined in the Original Ordinance), which contained
certain provisions ensuring compliance with provisions of the Code relating to tax-
exempt bonds, (ii) contained an election under Section 144(a)(4)(A) of the Code in
Section 13 of the Original Ordinance pertaining to certain limitations applicable to
tax-exempt bonds, and (iii) approved of a form of a Lease Agreement between the
Company and the City (the “Lease”) and a form of Trust Indenture between the City
and Wells Fargo, National Association, as Trustee pursuant to which the City would
issue the Bond (the “Indenture” and together with the Lease, the “Bond
Documents”), which Bond Documents contained certain provisions contemplating
that the Bond would be issued as a tax-exempt industrial revenue bond;

WHEREAS, subsequent to the adoption of the Original Ordinance, the Company
and the Purchaser have elected to structure the bond as a “taxable” bond (with
interest on the bond being included as gross income for federal income tax
purposes) and have requested that that the maximum principal amount of the Bond
be amended to $6,249,000;

WHEREAS, there has been filed with the City Clerk and presented to the Council
a revised form of Lease (such Lease as revised, the “Taxable IRB Lease”) and
Indenture (such Indenture as revised, the “Taxable IRB Indenture”) contemplating
the issuance of the Bond as a taxable industrial revenue bond;

WHEREAS, the Company has requested that the City amend certain terms of the
Original Ordinance in order to provide for the issuance of the Bond as a taxable
Bond as described herein.

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

Section 1. RATIFICATION.

(A) Amendment to Designation of Bonds. All references in the Original
Ordinance to the “City of Albuquerque, New Mexico Industrial Revenue Bond (El
Encanto, Inc. Project), Tax-Exempt Series 2021” are hereby replaced by references
to “City of Albuquerque, New Mexico Industrial Revenue Bond (El Encanto, Inc.
Project), Taxable Series 2021”.

(B) Amendment to Principal Amount of Bonds. All references in the Original
Ordinance to the “$10,000,000” principal amount of the Bond are hereby deleted and
replaced by references to “$6,249,000”, being the amended maximum principal
amount of the Bond.
(C) Amendment to Definitions of Bond Documents. All references to the Tax
Regulatory Agreement are hereby deleted from the Original Ordinance. All
references the term "Lease" in the Original Ordinance are hereby deleted and
replaced by references to the term "Taxable IRB Lease". All references to the term
"Indenture" in the Original Ordinance are hereby replaced by references to the term
"Taxable IRB Indenture." All references to the term "Bond Documents" in the
Original Ordinance shall mean collectively, the Project Plan, the Taxable IRB Lease
and the Taxable IRB Indenture.

(D) Amendment to Section 3(B)(2). Section 3(B)(2) of the Original Ordinance
is hereby deleted in its entirety and replaced by the following Section 3(B)(2):

"(2) The maximum aggregate face amount of obligations to be issued
for the purpose of financing the Project is $6,249,000 and the maximum
face amount of "qualified private activity bonds" within the meaning of
the Code to be issued with respect to the Project Property is
$40,000,000;"

(E) Amendment to Section 9(A). Section 9(A) of the Original Ordinance is
hereby deleted in its entirety and replaced by the following Section 9(A):

(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
August 26, 2021, an annual payment date of August 15 of each year,
beginning on August 15, 2022, a principal amount of $6,249,000 and
bearing interest at the rate of 3% and assuming interest only
payments and a bullet principal payment at maturity, will be as
follows: interest payments will be due in the amount of $187,470 in
each of the years 2022 through 2040 and the full principal plus
interest thereon shall be due at maturity on August 15, 2041 in the
amount of $6,436,470.

(F) Deletion of Section 13 of Original Ordinance. Section 13 of the Original
Ordinance captioned "Election Under Internal Revenue Code Section 144(a)" is
hereby deleted in its entirety.

(G) Amendment to Definition of Bond Ordinance. The term "Bond Ordinance"
as used in the Original Ordinance shall, after the effective date of this Ordinance

Section 2. SEVERABILITY. If any section, paragraph, clause or provision of this Amending 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 this Amending Ordinance.

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

Section 4. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Amending Ordinance, immediately upon its final passage and approval, shall be recorded in the ordinance book of the City, kept for that purpose, and shall be there authenticated by the signature of the Mayor and the presiding officer of the City Council, and by the signature of the City Clerk or any Deputy City Clerk, and notice of adoption thereof shall be published once in a newspaper that maintains an office in, and is of general circulation in, the City, and shall be in full force and effect five (5) days following such publication.

Section 5. GENERAL SUMMARY FOR PUBLICATION. The title and general summary of the subject contained in this Amending Ordinance shall be published in substantially the following form:

CITY OF ALBUQUERQUE, NEW MEXICO

NOTICE OF ADOPTION OF ORDINANCE

Notice is hereby given of the title and of a general summary of the subject matter contained in City Ordinance __________ (the “Ordinance”), duly adopted and approved by the City Council of the City of Albuquerque, New Mexico, on August 16, 2021. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk in the office of the City Clerk, Plaza del Sol, 600 2nd Street N.W. 7th Floor, Albuquerque, New Mexico.

The title of the Ordinance is:

AMENDING ORDINANCE NO. F/S O-21-65 RELATING TO THE AUTHORIZATION, ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO
INDUSTRIAL REVENUE BOND (EL ENCANTO, INC. PROJECT) TAX-EXEMPT
SERIES 2021 (THE "BOND") AND PROVIDING FOR THE ISSUANCE OF THE
BOND AS A TAXABLE BOND.

The title sets forth a general summary of the subject matter contained in the
Ordinance.
PASSED AND ADOPTED THIS 16th DAY OF August, 2021
BY A VOTE OF: 8 FOR 0 AGAINST.

Excused: Harris

Cynthia D. Borrego, President
City Council

APPROVED THIS 24 DAY OF August, 2021

Timothy M. Keller, Mayor
City of Albuquerque

ATTEST:

Ethan Watson, City Clerk