

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

1 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

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 certain provisions ensuring compliance with provisions of the Code relating to tax-
2 exempt bonds, (ii) contained an election under Section 144(a)((4)(A) of the Code in
3 Section 13 of the Original Ordinance pertaining to certain limitations applicable to
4 tax-exempt bonds, and (iii) approved of a form of a Lease Agreement between the
5 Company and the City (the "Lease") and a form of Trust Indenture between the City
6 and Wells Fargo, National Association, as Trustee pursuant to which the City would
7 issue the Bond (the "Indenture" and together with the Lease, the "Bond
8 Documents"), which Bond Documents contained certain provisions contemplating
9 that the Bond would be issued as a tax-exempt industrial revenue bond;

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

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

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

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

24 Section 1. RATIFICATION.

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

30 (B) Amendment to Principal Amount of Bonds. All references in the Original
31 Ordinance to the "\$10,000,000" principal amount of the Bond are hereby deleted and
32 replaced by references to "\$6,249,000", being the amended maximum principal
33 amount of the Bond.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (C) Amendment to Definitions of Bond Documents. All references to the Tax
2 Regulatory Agreement are hereby deleted from the Original Ordinance. All
3 references the term "Lease" In the Original Ordinance are hereby deleted and
4 replaced by references to the term "Taxable IRB Lease". All references to the term
5 "Indenture" in the Original Ordinance are hereby replaced by references to the term
6 "Taxable IRB Indenture." All references to the term "Bond Documents" in the
7 Original Ordinance shall mean collectively, the Project Plan, the Taxable IRB Lease
8 and the Taxable IRB Indenture.

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

11 "(2) The maximum aggregate face amount of obligations to be issued
12 for the purpose of financing the Project is \$6,249,000 ~~and the maximum~~
13 ~~face amount of "qualified private activity bonds" within the meaning of~~
14 ~~the Code to be issued with respect to the Project Property is~~
15 \$10,000,000;

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

18 (A) The maximum amount necessary in each year to pay the principal of
19 and interest on the Bond, assuming issuance of the Bond as of
20 August 26, 2021, an annual payment date of August 15 of each year,
21 beginning on August 15, 2022, a principal amount of \$6,249,000 and
22 bearing interest at the rate of 3% and assuming interest only
23 payments and a bullet principal payment at maturity, will be as
24 follows: interest payments will be due in the amount of \$187,470 in
25 each of the years 2022 through 2040 and the full principal plus
26 interest thereon shall be due at maturity on August 15, 2041 in the
27 amount of \$6,436,470.

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

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

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (this "Amending Ordinance"), mean the Bond Ordinance as amended by this
2 Amending Ordinance.

3 Section 2. SEVERABILITY. If any section, paragraph, clause or provision of
4 this Amending Ordinance shall for any reason be held to be invalid or unenforceable,
5 the invalidity or unenforceability of that section, paragraph, clause, or provision shall
6 not affect any of the remaining provisions of this Amending Ordinance.

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

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

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

23 CITY OF ALBUQUERQUE, NEW MEXICO
24 NOTICE OF ADOPTION OF ORDINANCE

25 Notice is hereby given of the title and of a general summary of the subject matter
26 contained in City Ordinance _____ (the "Ordinance"), duly adopted and
27 approved by the City Council of the City of Albuquerque, New Mexico, on August
28 16, 2021. Complete copies of the Ordinance are available for public inspection
29 during the normal and regular business hours of the City Clerk in the office of the
30 City Clerk, Plaza del Sol, 600 2nd Street N.W. 7th Floor, Albuquerque, New Mexico.

31 The title of the Ordinance is:
32 AMENDING ORDINANCE NO. F/S O-21-65 RELATING TO THE AUTHORIZATION,
33 ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO

1 INDUSTRIAL REVENUE BOND (EL ENCANTO, INC. PROJECT) TAX-EXEMPT
2 SERIES 2021 (THE "BOND") AND PROVIDING FOR THE ISSUANCE OF THE
3 BOND AS A TAXABLE BOND.

4 The title sets forth a general summary of the subject matter contained in the
5 Ordinance.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 PASSED AND ADOPTED THIS 16th DAY OF August, 2021
2 BY A VOTE OF: 8 FOR 0 AGAINST.

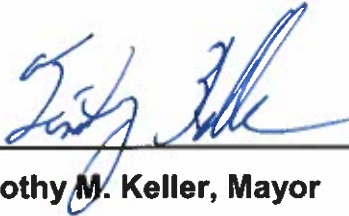
3
4 Excused: Harris

5
6
7
8 
9

10 Cynthia D. Borrego, President
11 City Council

12
13
14 APPROVED THIS 24 DAY OF August, 2021

15
16
17
18 Bill No. F/S O-21-74

19
20
21 
22

23 Timothy M. Keller, Mayor
24 City of Albuquerque

25
26
27
28 ATTEST:

29 
30

31 Ethan Watson, City Clerk

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion