

CITY of ALBUQUERQUE
TWENTY-FOURTH COUNCIL

COUNCIL BILL NO. F/S O-21-85 ENACTMENT NO. _____

SPONSORED BY: Brook Bassan, by request

ORDINANCE

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AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO TAX EXEMPT INDUSTRIAL REVENUE BONDS (HOPE CHRISTIAN SCHOOLS, INC. PROJECT), SERIES 2022 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$8,500,000 TO (i) REFINANCE THE ACQUISITION, CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF AN EDUCATIONAL FACILITY (ii) FUND ANY REQUIRED RESERVE FUNDS, AND (iii) PAY EXPENSES RELATED TO ISSUANCE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT, BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, the City of Albuquerque (the "City") is a legally and regularly created, established, organized and existing municipality of the State of New Mexico (the "State") created pursuant to the laws of the State, as amended; and

WHEREAS, pursuant to New Mexico Statutes Annotated, Sections 3-32-1 through 3-32-16 NMSA 1978, as amended (the "Act"), the City is authorized to issue industrial revenue bonds and to use the proceeds thereof to finance or refinance a 501(c)(3) corporation project located within the City to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, Hope Christian Schools, Inc. (the "Company"), is a non-profit corporation organized pursuant to the laws of the State and has been determined to be

1 a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of
2 1986, as amended (the "Code"); and

3 WHEREAS, the Company has presented to the City of Albuquerque Council (the
4 "City Council") a proposal whereby the City would issue, deliver and sell not-to-exceed
5 \$8,500,000 in aggregate principal amount of its Tax-Exempt Industrial Revenue Bonds
6 (Hope Christian Schools, Inc. Project), Series 2022 (the "Bonds") and make the
7 proceeds thereof available to the Company for the purpose of (i) refinancing the
8 acquisition, construction, improvement and equipping of existing school facilities located
9 at 8001 and 8005 Louisiana Avenue NE, and 6721, 6731 and 6800 Palomas Avenue
10 NE in the City (collectively, the "Premises"), (ii) funding any required reserves for the
11 proposed bonds, and (iii) paying certain costs of issuing the Bonds (collectively, the
12 "Project"); and

13 WHEREAS, the Bonds will be issued in one or more series pursuant to this
14 ordinance (this "Bond Ordinance") and a Financing Agreement, to be dated the date of
15 the initial issuance of the Bonds (the "Financing Agreement"), among the City, the
16 Company, and PNC Mortgage Corporation or an affiliate thereof (the "Bank"); and

17 WHEREAS, the Bonds will be payable solely from revenues derived by the City
18 pursuant to the Financing Agreement and the Company will make payments sufficient to
19 pay the principal of and interest on the Bonds and to pay all other obligations incurred
20 pursuant to the provisions of this Bond Ordinance and the Financing Agreement; and

21 WHEREAS, payment of the Bonds will be secured pursuant to the terms of one
22 or more mortgages, to be dated the date of the initial issuance of the Bonds, from the
23 Company to the Bank; and

24 WHEREAS, the Bonds in a principal amount not to exceed \$8,500,000 will be
25 issued, sold and delivered by the City in a private sale to the Bank pursuant to the
26 Financing Agreement; and

27 WHEREAS, the proceeds of the Bond shall be applied to pay the costs of the
28 Project; and

29 WHEREAS, in furtherance of the issuance of the Bonds, the City will enter into a
30 Tax Certificate and Agreement (the "Tax Agreement") in customary form with the
31 Company; and

1 WHEREAS, the City Council has determined that it is in the best interest of the
2 City to issue the Bonds and to execute and deliver the following documents in
3 connection with the issuance of the Bonds and all other documents, certificates related
4 thereto (collectively, the “Bond Documents”):

- 5 1. Financing Agreement
- 6 2. Bonds
- 7 3. Tax Agreement

8 WHEREAS, the City is authorized to issue the Bonds under the Act and after
9 having considered the Company’s proposal, has concluded that it is desirable at this
10 time to authorize the issuance of the Bonds to refinance the Project and that the City’s
11 issuance of the Bonds will constitute and be a valid public purpose; and

12 WHEREAS, the City Council has been advised by Bond Counsel that the
13 because the Bonds are being directly purchased by the Bank the disclosure provisions
14 of Rule 15c2-12 of the Securities and Exchange Commission are not applicable to this
15 transaction; and

16 WHEREAS, pursuant to Section 147(f) of the Code, the approval of the City
17 Council as the “applicable elected representative” is required prior to the issuance of the
18 Bonds; and

19 WHEREAS, there has been published in the *Albuquerque Journal*, a newspaper
20 of general circulation in the City, public notice of the City’s intention to adopt this Bond
21 Ordinance, which notice contained certain information concerning the ownership,
22 purpose, location and size of the Project and the amount of the Bonds to be issued to
23 finance and refinance the Project, which notice was published at least fourteen (14)
24 days prior to final action upon this Bond Ordinance; and

25 BE IT ORDAINED BY THE CITY OF ALBUQUERQUE CITY COUNCIL, THE
26 GOVERNING BODY OF THE CITY OF ALBUQUERQUE, NEW MEXICO:

27 Section 1. RATIFICATION. All actions not inconsistent with the provisions of
28 this Bond Ordinance previously taken by the City Council and the officials of the City
29 directed toward approval of the issuance and sale of the Bonds be approved and the
30 same hereby are ratified, approved and confirmed.

1 Section 2. FINDINGS.

2 A. General.

3 The City Council hereby declares that it has considered all relevant information
4 presented to it relating to the Bonds and the Project and hereby finds and determines
5 that the issuance of the Bonds pursuant to this Bond Ordinance and the Financing
6 Agreement to provide funds for the Project is necessary and advisable and in the
7 interest of and will promote public health, welfare, safety, convenience and prosperity.

8 B. Specific Findings.

9 The City Council finds that:

10 (1) The Bonds will be issued for the purpose of refinancing the
11 Premises.

12 (2) The face amount of the Bonds is not to exceed \$8,500,000.

13 (3) The owner and operator of the Premises is the Company.

14 (4) The Premises is located in Albuquerque, New Mexico.

15 Section 3. BOND - APPROVAL, AUTHORIZATION AND DETAIL.

16 A. Approval and Sale.

17 The issuance of the Bonds in a principal amount not to exceed \$8,500,000 and
18 the use of the proceeds of the Bonds to finance or refinance the cost of the Project
19 including payment of transaction expenses related thereto are hereby approved and
20 confirmed. The sale of the Bonds to the Bank at a purchase price not to exceed the par
21 amount of the Bonds is approved.

22 B. Form and Terms; Interest Rate.

23 The Bonds are hereby authorized to be issued in one or more series, in fully
24 registered form without coupons in an aggregate principal amount of not to exceed
25 \$8,500,000 bearing interest at a variable rate of interest not to exceed ten percent
26 (10%) per annum (except in the event of default or taxability) and dated, maturing, and
27 in such form and denominations, payable as to interest and principal on such dates, and
28 having such other terms and conditions as may be provided in the Financing
29 Agreement, with such additions, deletions, and modifications therein as may be
30 consistent with this Ordinance.

31 C. Execution.

1 The Mayor is authorized to execute and deliver in the name and on behalf of the
2 City, and the City Clerk is authorized to attest, if necessary, the Bonds with such
3 changes therein as are not inconsistent with this Bond Ordinance.

4 Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS;
5 ACTIONS TO BE TAKEN. The Bond Documents in the substantial form presented to
6 the City Council are hereby approved, authorized and confirmed with such additions,
7 deletions, and modifications as shall be approved by the Mayor, the execution and
8 delivery or acceptance, as the case may be, thereof being conclusive evidence of such
9 approval. The Mayor is authorized to execute and deliver in the name and on behalf of
10 the City, and the City Clerk is authorized to attest, as necessary, the Bond Documents
11 with such changes therein as are not inconsistent with this Bond Ordinance.

12 The City Chief Administrative Officer and City Clerk are further authorized to
13 execute, authenticate and deliver such certifications, instruments, documents, letters
14 and other agreements, including security agreements, and to do such other acts and
15 things, either prior to or after the date of delivery of the Bonds, as are necessary or
16 appropriate to consummate the transactions contemplated by the Bond Documents.

17 The Mayor, Chief Administrative Officer, City Clerk, and other officers of the City
18 shall take such action as is necessary to effectuate the provisions of the Financing
19 Agreement and shall take such action as is necessary in conformity with the Act to
20 finance the costs of the Project and for carrying out other transactions as contemplated
21 by this Ordinance, and the Bond Documents, including, without limitation, the execution
22 and delivery of any closing documents to be delivered in connection with the sale and
23 delivery of the Bonds.

24 Section 5. DELIVERY OF BONDS. Upon the execution of the Bond
25 Documents, the satisfaction of the conditions set forth in the Bond Documents and upon
26 receipt of the purchase price for the Bonds, the Bonds shall be executed and delivered
27 to the Bank.

28 Section 6. FUNDS AND ACCOUNTS. There is established in the Financing
29 Agreement, and on and after the date on which the Bonds are issued there shall be
30 maintained, the funds and accounts as set forth in the Financing Agreement. Other

1 funds and accounts may be established as are necessary under the Financing
2 Agreement.

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

5 A. The Bonds will mature not more than ten years from the date of the
6 original issuance of the Bonds and will be amortized over a period not to exceed 30
7 years from the date of issuance.

8 B. Principal and interest of the Bonds will be paid on a monthly basis
9 with all amounts due and payable upon maturity.

10 C. The Bonds will bear interest at a variable rate not to exceed ten
11 percent (10%) per annum (except in the event of default or taxability) but the Company
12 intends to pay a fixed rate of interest pursuant to an interest rate swap agreement at a
13 rate not to exceed ten percent (10%) per annum (except in the event of default or
14 taxability).

15 D. The Bonds may be redeemed at any time subject to the payment of
16 any swap termination payment.

17 E. The Bonds will be secured by one or more mortgages creating a
18 lien on the Premises.

19 F. It shall not be necessary to deposit any amount in a repair and
20 replacement reserve fund for the maintenance of the Premises.

21 G. The Financing Agreement requires the Company to make
22 payments in an amount sufficient to pay the principal of and interest on the Bonds as
23 principal and interest become due and to pay all related costs.

24 H. The Bond shall be issued on or before February 28, 2022.

25 Section 8. LIMITED OBLIGATIONS. The Bonds shall be special, limited
26 obligations of the City, payable solely from the payments paid by the Company to the
27 City as described in the Financing Agreement and as specifically pledged under the
28 Financing Agreement and shall never constitute a debt or indebtedness of the City or
29 the State or any political subdivision thereof within the meaning of any provision or
30 limitation of the State Constitution or statutes, and shall not constitute or give rise to a
31 pecuniary liability of the City or a charge against its general credit or taxing power.

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

13 Section 9. APPROVAL OF INDEMNIFICATION. The City Council specifically
14 requires that the Financing Agreement contain provisions relating to indemnification
15 which provide that the Company shall indemnify and hold harmless the City and its City
16 Council, officials, employees and agents against liability to the Company, or to any third
17 parties, that may be asserted against the City or its City Council, officials, members,
18 officers, employees or agents with respect to the Premises or the issuance and sale of
19 the Bonds, except to the extent New Mexico Statutes Annotated Section 56-7-1, 1978
20 Compilation, would preclude such indemnity, and except claims for any loss or damage
21 arising out of or resulting from the gross negligence or willful misconduct of the City or
22 its City council, or any official, employee or agent of the City.

23 Section 10. BOND ORDINANCE IRREPEALABLE. After the Bonds are issued,
24 this Bond Ordinance shall be and remain ir repealable until the Bonds, including interest,
25 are fully paid, canceled and discharged or there has been defeasance of the Bonds in
26 accordance with the Financing Agreement.

27 Section 11. REPEALER. All bylaws, orders, resolutions and ordinances, or
28 parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond
29 Ordinance but only to the extent of that inconsistency. This repealer shall not be

1 construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously
2 repealed.

3 Section 12. SEVERABILITY. If any section, paragraph, clause or provision of
4 this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the
5 invalidity or unenforceability of that section, paragraph, clause or provision shall not
6 affect any of the remaining provisions of this Bond Ordinance.

7 Section 13. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE
8 DATE. This Ordinance, immediately upon its final passage and approval, shall be
9 authenticated by the signature of the Mayor, and by the signature of the City Clerk, and
10 shall be recorded in the Ordinance book of the City, kept for that purpose, and shall be
11 in full force and effect thereafter in accordance with the laws of the State, and notice of
12 adoption thereof shall be published once in a newspaper which maintains an office in,
13 and is of general circulation in the City.

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