

# CITY of ALBUQUERQUE

## TWENTY-FOURTH COUNCIL

COUNCIL BILL NO. F/S O-20-2 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: COUNCILOR BENTON, by request

### ORDINANCE

RELATING TO THE REDEVELOPMENT, LEASING AND SALE OF A METROPOLITAN REDEVELOPMENT PROJECT AND THE ISSUANCE OF METROPOLITAN REDEVELOPMENT REVENUE BONDS PAYABLE FROM RENTAL PAYMENTS THEREFOR; APPROVING THE METROPOLITAN REDEVELOPMENT APPLICATION ENTITLED "1716 CENTRAL AVENUE, LLC METROPOLITAN REDEVELOPMENT BOND APPLICATION"; AUTHORIZING THE ACQUISITION OF LAND AND EXISTING IMPROVEMENTS AND CONSTRUCTION OF A BUILDING WITHIN THE HISTORIC CENTRAL METROPOLITAN REDEVELOPMENT AREA; AUTHORIZING THE DISPOSITION BY LEASE AND SALE OF THE CITY'S INTEREST IN SUCH PROJECT TO 1716 CENTRAL AVENUE, LLC, ITS SUCCESSORS AND ASSIGNS; AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO METROPOLITAN REDEVELOPMENT REVENUE BONDS (THE FRANZ PROJECT), SERIES 2020 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$10,000,000 TO PROVIDE FUNDS TO FINANCE A PORTION OF THE COSTS OF THE CONSTRUCTION OF THE PROJECT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE AGREEMENT, THE 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 municipal corporation of the State of New Mexico (the "State"); and

1 WHEREAS, the City desires to promote redevelopment in areas designated  
2 as blighted areas so as to promote neighborhood stabilization by providing  
3 affordable housing, convenient services, creating new jobs, upgrading area  
4 buildings, infrastructure and housing for such areas and to promote public health  
5 welfare, safety convenience and prosperity; and

6 WHEREAS, pursuant to the Metropolitan Redevelopment Code, Sections 3-  
7 60A-1 through 3-60A-13 and Sections 3-60A-14 through 3-60A-48, New Mexico  
8 Statutes Annotated, 1978 Compilation, as amended (the "Act"), the City is  
9 authorized to acquire, whether by construction, purchase, gift or lease, and to  
10 finance, sell, lease, or otherwise dispose of, projects as defined in the Act, and to  
11 issue revenue bonds for the purpose of financing such projects; and

12 WHEREAS, the City Council (the "Council") has adopted an ordinance  
13 establishing the Albuquerque Development Commission (the "Development  
14 Commission") to review projects proposed to be financed with metropolitan  
15 redevelopment revenue bonds pursuant to City Resolution No. 16-1985, as  
16 amended; and

17 WHEREAS, 1716 Central Avenue, LLC, a New Mexico limited liability  
18 company (together with its successors and assigns, the "Company") has  
19 presented to the Development Commission and the Council a proposed  
20 metropolitan redevelopment project application (the "Plan") whereby the City will,  
21 pursuant to the Act, acquire from the Company land and existing improvements  
22 located within the City and within the Historic Central Metropolitan  
23 Redevelopment Area for redevelopment by the lessee/purchaser thereof for a  
24 multi-family project (the "Project"), and pursuant to which the City would issue its  
25 metropolitan redevelopment revenue bonds in order to finance construction of  
26 the Project; and

27 WHEREAS, under the Company's proposal, the City would enter into an  
28 Indenture (the "Indenture") with the Purchaser (defined below) and a bank  
29 exercising trust powers, as trust depository (the "Depository"), pursuant to  
30 which, together with this ordinance (this "Ordinance"), the City will issue its  
31 bonds designated as the City of Albuquerque, New Mexico Metropolitan  
32 Redevelopment Revenue Bonds (The Franz Project), Series 2020 (the "Bonds");  
33 and

1 WHEREAS, under the Company's proposal, the City and the Company will  
2 enter into a Lease Agreement (the "Lease"), pursuant to which the Company will  
3 lease and agree to purchase the land and improvements comprising the Project  
4 from the City, and the Company shall make payments to the purchaser of the  
5 Bonds (the "Purchaser") sufficient to pay the principal of, redemption premium, if  
6 any, and interest on the Bonds and to pay all other obligations incurred pursuant  
7 to the provisions of the Lease and this Ordinance; and

8 WHEREAS, the Bonds, in an aggregate principal amount not to exceed  
9 \$10,000,000, will be issued, sold and delivered by the City pursuant to a bond  
10 purchase agreement (the "Bond Purchase Agreement") among the City, the  
11 Purchaser and the Company; and

12 WHEREAS, the proceeds of the Bonds shall be applied to pay a portion of  
13 the costs of the Project and to pay certain costs associated with the issuance of  
14 the Bonds; and

15 WHEREAS, the Albuquerque Development Commission has reviewed the  
16 Plan, has held a public hearing on the Plan and the Bonds, has determined that  
17 the Company has complied with Resolution No. 16-1985, as amended, and has  
18 recommended approval of the Plan and the Bonds by the Council; and

19 WHEREAS, the Council has adopted Resolution No. R-20-15 on February  
20 19, 2020, indicating its intent to take all necessary and advisable steps to effect  
21 the issuance of the Bonds subject to full review of the documents to which the  
22 City is a party and authorization by the Council of the issuance of the Bonds; and

23 WHEREAS, the Council has held a public hearing on the Plan and the  
24 Bonds, after proper notice; and

25 WHEREAS, the Plan meets the objectives of the Act and will benefit the  
26 City's efforts to revitalize the Historic Central Metropolitan Redevelopment Area  
27 of the City; and

28 WHEREAS, the Plan has been filed with the City Clerk and presented to the  
29 Council; and

30 WHEREAS, there have been filed with the City Clerk and presented to the  
31 Council the forms of the following documents:

- 32 1. Lease Agreement

1                   2.     Indenture

2                   3.     Bond Purchase Agreement

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

5             WHEREAS, the Council has determined that it is in the best interest of the  
6     City: (i) to issue the Bonds; and (ii) to execute and deliver the Bond Documents,  
7     and other documents related thereto; and

8             WHEREAS, the City is authorized to issue the Bonds under the Act and this  
9     Ordinance, and has concluded that it is desirable at this time to authorize the  
10    issuance of the Bonds to finance the Project and that the City's issuance of the  
11    Bonds will constitute and be a valid public purpose; and

12            WHEREAS, there has been published in The Albuquerque Journal, a  
13    newspaper of general circulation in the City, public notice of the Council's  
14    intention to adopt this Ordinance, which notice contained certain information  
15    concerning the Plan and the ownership, purpose, location and size of the Project  
16    and the maximum amount of the Bonds to be issued to finance the Project, which  
17    notice was published at least fourteen days prior to final action upon this  
18    Ordinance.

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

21            Section 1. RATIFICATION.       All actions not inconsistent with the  
22    provisions of this Ordinance previously taken by the Council and the officials of  
23    the City directed toward approval of the Plan and the issuance and sale of the  
24    Bonds should be approved and the same hereby are ratified, approved and  
25    confirmed.

26            Section 2. FINDINGS. The Council, after a public hearing held upon proper  
27    notice, hereby declares that it has considered all relevant information presented  
28    to it relating to the Plan and the Bonds and hereby finds and determines that  
29    approval of the Plan and the issuance of the Bonds pursuant to this Ordinance to  
30    provide funds for the Project are necessary and advisable and in the interest of  
31    and will promote the public health, safety, morals, convenience, education,  
32    economy and welfare of the City and the residents of the City. The Council finds  
33    that:

- (1) The Plan and the proposed activities under the Plan aid in the elimination or prevention of slum or blight; and
- (2) The Plan conforms to the general plan for the City as a whole;
- (3) The Plan affords maximum opportunity consistent with the needs of the community for the rehabilitation or redevelopment of the area by private enterprise or persons, and the objectives of the Plan justify the proposed activities as public purposes and needs;
- (4) The Bonds will be issued for the purpose of financing the Project;
- (5) The aggregate face amount of obligations to be issued with respect to financing the Project is not to exceed \$10,000,000;
- (6) The developer of the Project property is the Company; and
- (7) The Project property comprises of 1716 Central Avenue SW Albuquerque, New Mexico, all within the Historic Central Metropolitan Redevelopment Area.

Section 3. THE PROJECT. The City shall acquire the Project for the purposes hereinabove described, and the Project shall be located at all times within the corporate limits of the City and within the Historic Central Metropolitan Redevelopment Area.

Section 4. THE PLAN-APPROVAL. The Plan in the form on deposit in the office of the City Clerk is hereby approved in all respects.

**Section 5. BONDS - APPROVAL, AUTHORIZATION AND DETAIL.**

A. Approval and Sale. The issuance of the Bonds in an aggregate principal amount not to exceed \$10,000,000 and the use of the proceeds of the Bonds to finance a portion of the costs of the Project, including payment of expenses relating thereto, are hereby approved and confirmed. The Bonds shall be issued no later than December, 2020.

B. Form and Terms. Subject to the limitations set forth in this Ordinance, the Bonds 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

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1 and interest as set forth in the Indenture; and (iii) bear interest at the rates and  
2 maturing on the date set forth in the Indenture.

3 C. Execution. The Bonds shall be signed by the Mayor or Chief  
4 Administrative Officer of the City of Albuquerque, New Mexico.

5 D. The interest rate and net effective interest rate on the Bonds  
6 shall not exceed 5% per annum.

7 Section 6. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS;  
8 ACTIONS TO BE TAKEN.

9 A. The form, terms and provisions of the Bond Documents in the  
10 form on deposit in the office of the City Clerk are in all respects approved,  
11 authorized and confirmed.

12 B. The Mayor or Chief Administrative Officer of the City is  
13 authorized to execute and deliver in the name and on behalf of the City, and the  
14 City Clerk or Deputy City Clerk is hereby authorized to attest, as necessary, the  
15 Bond Documents and the Bonds with such changes therein as are not  
16 inconsistent with this Ordinance.

17 C. The Mayor, Chief Administrative Officer, Treasurer and City  
18 Clerk are further authorized to execute, authenticate and deliver such  
19 certifications, instruments, documents, letters and other agreements and to do  
20 such other acts and things, either prior to or after the date of delivery of the  
21 Bonds, as are necessary or appropriate to consummate the transactions  
22 contemplated by the Bond Documents and the Plan.

23 D. The officers of the City shall take such action as is necessary  
24 to effectuate the provisions of the Indenture and shall take such action as is  
25 necessary in conformity with the Act to finance the costs of the Project and for  
26 carrying out other transactions as contemplated by this Ordinance, the Indenture,  
27 the Lease, and the Bond Purchase Agreement, including, without limitation, the  
28 execution and delivery of any closing documents to be delivered in connection  
29 with the sale and delivery of the Bonds.

30 Section 7. DELIVERY OF BONDS. Upon the execution of the Bond  
31 Documents, the satisfaction of the conditions set forth in the Bond Documents  
32 and upon receipt of the purchase price for the Bonds, the Bonds shall be  
33 executed, authenticated and delivered to the Purchaser. No Bond shall be valid

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1 for any purpose until such Bond has been properly authenticated as set forth in  
2 the Indenture.

3 Section 8. FUNDS AND ACCOUNTS. There are established in the Indenture,  
4 and on and after the date on which the Bonds are issued there shall be  
5 maintained, the funds and accounts as set forth in the Indenture. Other funds and  
6 accounts may be established as are necessary under the Indenture.

7 Section 9. LEASE TERM. The Lease term shall not exceed seven years.

8 Section 10. FINDINGS REGARDING PROPERTY TAX ABATEMENT;  
9 PAYMENT OF INTEREST AND PRINCIPAL AND OTHER MATTERS. The Council  
10 makes the following determinations and findings in accordance with Sections 3-  
11 60A-39 and 3-60A-40 of the Act:

12 A. It shall not be necessary to deposit any amount in a debt  
13 service reserve fund or a repair and replacement reserve fund for the  
14 maintenance of the Project property.

15 B. The Lease requires that the Company maintain the Project  
16 property in good repair and condition (excepting reasonable wear and tear) and  
17 carry all proper insurance with respect to the Project property.

18 C. The Lease requires the Company to make payments sufficient  
19 to pay the principal of, premium, if any, and interest on the Bonds as principal  
20 and interest become due and to make all payments of or relating to the Project  
21 property as they become due.

22 D. In accordance with Section 7-36-3.1, NMSA 1978, as amended  
23 and supplemented, the Project property shall be exempt from property taxation  
24 on the improvements financed by the Bonds for the shorter of the period of time  
25 the Bonds remain outstanding or December 31 of the year in which the seventh  
26 anniversary of the acquisition of the Project property by the City will occur (i.e.,  
27 December 31, 2027 if the Bonds are issued in 2020).

28 E. The maximum amount necessary in each year to pay the  
29 principal of and interest on the Bonds, assuming issuance of the Bonds as of  
30 December, 2020, in the maximum principal amount of \$10,000,000 and bearing  
31 interest at a maximum rate of 5%, is as follows:

32	Combined Total
33	Principal and
34	<u>Interest Payment</u>
	<u>Year Ending</u>

1	December 31, 2021	\$1,696,069
2	December 31, 2022	\$1,696,069
3	December 31, 2023	\$1,696,069
4	December 31, 2024	\$1,696,069
5	December 31, 2025	\$1,696,069
6	December 31, 2026	\$1,696,069
7	December 31, 2027	\$1,696,069

8           **Section 11. LIMITED OBLIGATIONS.** The Bonds shall be special limited  
9 obligations of the City, payable solely from the revenues derived from the Lease  
10 and payable by the Company as described in the Indenture and any other  
11 property or interest of the City specifically pledged under the Indenture, and shall  
12 never constitute a debt or indebtedness of the City or the State or any political  
13 subdivision thereof within the meaning of any provision or limitation of the State  
14 Constitution, statutes or home-rule charter of the City, and shall not constitute or  
15 give rise to a pecuniary liability of the City or a charge against its general credit  
16 or taxing power. Nothing contained in the Ordinance or in the Bond Documents  
17 or any other instrument shall be construed as obligating the City (except with  
18 respect to the Project property and the application of the revenues therefrom and  
19 the proceeds of the Bonds, all as provided in the Bond Documents), nor as  
20 incurring a pecuniary liability or a charge upon the general credit of the City or  
21 against its taxing power, nor shall the breach of any agreement contained in the  
22 Ordinance, the Bond Documents, the Bonds or any other instrument be  
23 construed as obligating the City (ssssexcept with respect to the Project property  
24 and the application of the revenues therefrom and the proceeds of the Bonds, all  
25 as provided in the Bond Documents), nor as incurring a pecuniary liability or a  
26 charge upon the general credit of the City or against its taxing power, the City  
27 having no power to pay out of its general funds, or otherwise contribute any part  
28 of the costs of constructing or furnishing the Project property.

29           **Section 12. APPROVAL OF INDEMNIFICATION.** The Council specifically  
30 approves the provisions of the Lease relating to indemnification which provide  
31 that the Company shall indemnify and hold harmless the City and its City

1 Councilors, officials, members, officers, employees and agents against liability to  
2 the Company, or to any third parties that may be asserted against the City or its  
3 City Councilors, officials, members, officers, employees or agents with respect to  
4 the City's ownership of the Project property or the issuance of the Bonds and  
5 arising from the condition of the Project property or the acquisition, construction  
6 and operation of the Project property by the Company, except to the extent  
7 Section 56-7-1, New Mexico Statutes Annotated, 1978 Compilation, applies, and  
8 except claims for any loss or damage arising out of or resulting from the gross  
9 negligence or willful misconduct of the City or any member, officer, employee or  
10 agent of the City.

11 Section 13. ORDINANCE IRREPEALABLE. After any of the Bonds are  
12 issued, this Ordinance shall be and remain irrepealable until the Bonds, including  
13 interest, are fully paid, canceled and discharged.

14 Section 14. REPEALER. All bylaws, orders, resolutions and ordinances, or  
15 parts thereof, inconsistent with this Ordinance are repealed by this Ordinance but  
16 only to the extent of that inconsistency. This repealer shall not be construed to  
17 revive any bylaw, order, resolution or ordinance, or part thereof, previously  
18 repealed.

19 Section 15. SEVERABILITY. If any section, paragraph, clause or provision  
20 of this Ordinance shall for any reason be held to be invalid or unenforceable, the  
21 invalidity or unenforceability of that section, paragraph, clause or provision shall  
22 not affect any of the remaining provisions of this Ordinance.

23 Section 16. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE  
24 DATE. This Ordinance, immediately upon its final passage and approval, shall be  
25 recorded in the Ordinance book of the City, kept for that purpose, and shall be  
26 there authenticated by the signature of the Mayor and the presiding officer of the  
27 Council, and by the signature of the City Clerk or any Deputy City Clerk, and  
28 notice of adoption thereof shall be published once in a newspaper which  
29 maintains an office in, and is of general circulation in, the City, and shall be in full  
30 force and effect five days following such publication  
31