

# CITY of ALBUQUERQUE

## TWENTY FOURTH COUNCIL

COUNCIL BILL NO. F/S R-21-149 ENACTMENT NO. 3-2021-019

SPONSORED BY: Isaac Benton

1 RESOLUTION

2 A RESOLUTION DECLARING THE INTENT OF THE CITY OF ALBUQUERQUE, NEW  
3 MEXICO TO ISSUE INDUSTRIAL REVENUE BONDS ENTITLED CITY OF  
4 ALBUQUERQUE, NEW MEXICO INDUSTRIAL REVENUE BONDS (EL ENCANTO, INC.  
5 PROJECT), TAX-EXEMPT SERIES 2021, IN AN AGGREGATE PRINCIPAL AMOUNT UP  
6 TO \$10,000,000 IN CONNECTION WITH A PROPOSED PROJECT LOCATED IN THE CITY  
7 OF ALBUQUERQUE, NEW MEXICO, FOR THE PURPOSE OF INDUCING EL ENCANTO,  
8 INC. OR ITS SUCCESSORS OR ASSIGNS, TO ACQUIRE, CONSTRUCT AND EQUIP THE  
9 PROJECT AND TO REIMBURSE TEMPORARY ADVANCES MADE FOR CAPITAL  
10 EXPENDITURES FROM PROCEEDS OF THE BONDS AND RELATED MATTERS.

11 WHEREAS, the New Mexico legislature has passed the "Industrial Revenue Bond Act"  
12 (the "Act"). Sections 3-32-1 to 3-32-16 inclusive et seq., NMSA 1978 as amended, which  
13 authorizes the City of Albuquerque, New Mexico (the "City") to issue industrial development  
14 bonds and to acquire projects as defined in the Act; and

15 WHEREAS, the City desires to promote industry and develop trade or other economic  
16 activity to secure and maintain a balanced and stable economy in the City and to promote  
17 public health, welfare, safety, convenience and prosperity; and

18 WHEREAS, El Encanto, Inc., a New Mexico corporation (together with its successors and  
19 assigns, the "Company"), has made a proposal to the City (the "Proposal") whereby the City  
20 will acquire land, buildings and equipment located in the City, which will constitute an industrial  
21 development project (the "Project"); and

22 WHEREAS, the issuance of its industrial revenue bonds (the "Bonds") by the City to  
23 finance all or a part of the Project, will constitute one of the inducements whereby the  
24 Company will determine to acquire land and acquire, construct and equip a facility in the City;  
25 and

26 WHEREAS, the City Council (the "Council") of the City constitutes the governing body of  
27 the City within the meaning of the Act; and

28 WHEREAS, the Project has been considered by the Council and it has been concluded  
29 that the Proposal and Project will promote the local health, general welfare, safety,

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1 convenience and prosperity of the inhabitants of the City, and the Council desires to indicate  
2 its intent to proceed with the issuance of the Bonds for the financing of the Project; and

3 WHEREAS, concurrently with the issuance of the Bonds, the Company will enter into a  
4 leasing or other financing agreement with the City providing for the payment of lease rentals  
5 or other payments on the Project sufficient to pay the debt service on the Bonds, subject to  
6 the prior adoption by the Council of an ordinance (the "Bond Ordinance"); and

7 WHEREAS, pursuant to Section 1.150-2 of the Treasury Regulations (the "Regulations",  
8 promulgated under the Internal Revenue Code of 1986, as amended (the "Code")), the issuer  
9 of "private activity bonds," within the meaning of the Code, may make a declaration of official  
10 intent with respect to expenditures relating to a project to be financed with tax-exempt private  
11 activity bonds under the Code, thereby allowing a borrower such as the Company to reimburse  
12 itself out of the proceeds from the sale of tax-exempt private activity bonds for expenditures  
13 made within sixty (60) days prior to the declaration of official intent; and

14 WHEREAS, in order for the Bonds to be issued as tax-exempt private activity bonds, the  
15 City must apply for and receive from the New Mexico State Board of Finance an allocation of  
16 "private activity bond volume cap" in an amount equal to the par amount of the Bonds to be  
17 issued as tax exempt private activity bonds; and

18 WHEREAS, the New Mexico State Board of Finance requires that an application for  
19 volume cap be accompanied by a copy of an inducement resolution, certified by an official of  
20 the City; and

21 WHEREAS, this resolution, as it expresses the intent of the City to issue the Bonds, is  
22 intended to be the inducement resolution required to be submitted to the New Mexico State  
23 Board of Finance; and

24 WHEREAS, the City and the Company understand that the adoption of this Resolution  
25 shall not obligate the City to issue the Bonds except in full compliance with the terms of the  
26 Bond Ordinance adopted by the City prior to the issuance of the Bonds and related bond  
27 documents in form satisfactory to the City.

28 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
29 ALBUQUERQUE:

30 Section 1. All actions (not inconsistent with the provisions hereof) heretofore taken by the  
31 Council and the officers and employees of the City, related to the Proposal, the acquisition,  
32 construction and improvement of the Project, and the sale and issuance of the Bonds  
33 therefore, be and the same hereby are ratified, approved and confirmed.

34 Section 2. The Council understands the following:

35 A. The Project will consist of the construction and improvement of a 25,000 square foot  
36 freezer on approximately 26.3 acres of land.

1 B. The maximum aggregate face amount of obligations to be issued with respect to the  
2 Project is \$10,000.000.

3 C. The initial developer of the land and buildings for the Project will be the Company.

4 D. The initial operator of the Project will be the Company.

5 E. The location of the Project is at 2001 4<sup>th</sup> Street SW in Albuquerque, New Mexico.

6 Section 3. In order to promote the local health and general welfare, safety, convenience  
7 and prosperity of the inhabitants of the City, it is the Council's intent to take all necessary and  
8 advisable steps to effect the issuance of the Bonds in an aggregate principal amount up to  
9 \$10,000,000 in order to defray part or all of the costs of the Project. The Bonds, in one or  
10 more series, are to be entitled substantially as follows "City of Albuquerque, New Mexico  
11 Industrial Revenue Bonds (El Encanto, Inc. Project), Tax-Exempt Series 2021." The Company  
12 intends that the Bonds to be used to finance the Project are to be "qualified private activity  
13 bonds" within the meaning of the Code, the interest on which is to be excludable from gross  
14 income for federal income tax purposes under Section 103 of the Code. This expression of  
15 the Council's intent is conditioned upon the issuance of the Bonds on or before one year from  
16 the date of the adoption of this Resolution.

17 Section 4. The City hereby declares its intent to reimburse, or to cause the Company to  
18 reimburse from the proceeds of the Bonds, all "original expenditures," within the meaning of  
19 Section 1.150-2(c) (1) of the Regulations, made by or on behalf of the Company. Subject to  
20 the provisions of Section 9 below with regard to the adoption of the Bond Ordinance, the City  
21 hereby finds that its expectations of making, or of having the Company make, a  
22 "reimbursement allocation," within the meaning of Section 1.150-2(c) (1) of the Regulations,  
23 with respect to all original expenditures made by or on behalf of the Company with respect to  
24 the Project, are reasonable in that it has received assurances from the Company that the  
25 Project has been developed and approved by the Company, plans and specifications are  
26 under preparation and the Company has already made significant expenditures with respect  
27 to the Project, and that the Company presently intends and reasonably expects to participate  
28 in a taxable or tax-exempt borrowing within 18 months of the date of the expenditure of  
29 moneys on the Project or the date upon which the Project is placed in service or abandoned  
30 (but in no event more than three years after the date of the original expenditure of such  
31 moneys), and to allocate a portion of the proceeds thereof to reimburse the Company for its  
32 actual expenditures in connection with the Project. The Council has been advised that all of  
33 the capital expenditures covered by this Resolution were made not earlier than 60 days prior  
34 to the date of this Resolution or will be made after the date of this Resolution but prior to the  
35 issuance of the Bonds.

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1 Section 5. The Council, with the assistance of the Company and bond counsel, will cause  
2 a public hearing to be conducted on the issuance of the Bonds after reasonable public notice  
3 in accordance with Section 147(f) of the Code. The City hereby designates as "hearing  
4 officer," within the meaning of Section 5f.103-2 at the Regulations anyone or more of (i) the  
5 members of the Council sitting and present at a meeting called for the purpose of holding a  
6 public hearing for such purpose, or (ii) the City's Chief Administrative Officer, to conduct a  
7 "public hearing," within the meaning of that Section, with respect to the Project, and bond  
8 counsel is hereby authorized and directed to take all such actions as may be reasonable or  
9 necessary to schedule and cause the public hearing to be conducted. Additionally, upon  
10 request of the Company and bond counsel, the City will assist the Company in making an  
11 application for an appropriate allocation of the "private activity bond volume cap," within the  
12 meaning of and as required by Section 146 of the Code, as such allocations are governed by  
13 Section 6-20-1 et seq., NMSA 1978, as amended, and regulations of the New Mexico State  
14 Board of Finance.

15 Section 6. The Bonds issued for the acquisition, construction and improvement of the  
16 Project shall be payable from the revenues of the Project or other moneys payable by the  
17 Company, with respect thereto, and shall not constitute a debt or indebtedness of the City  
18 within the meaning of any provision or limitation of the Constitution or statutes of the State of  
19 New Mexico. In addition, if the Bonds are issued, the Company shall indemnify and hold  
20 harmless the City, the Council and their respective officers, employees, designated  
21 representatives and agents (collectively, the "Indemnified Persons") from and against any  
22 liability to the Company, or to any third parties that may be asserted against the City with  
23 respect to the City's ownership of or leasehold interest in the Project or the issuance of the  
24 Bonds. Nothing contained in this Resolution or in any other instrument shall be considered as  
25 obligating the City to any pecuniary liability or a charge upon the general credit of the City or  
26 against its taxing power, it being understood that no costs are to be borne by the City and that  
27 all costs incurred by the City in connection with the Bonds are to be promptly reimbursed by  
28 the Company. The City's adoption of this Resolution shall not be deemed a conclusion or  
29 expression of approval by the City or any Indemnified Person of the Company or the Project.

30 Section 7. The Company as agent for the City and consistent with Taxation and Revenue  
31 Department Regulation 3.2.212.22 NMAC Renumbered, will acquire the Project. The  
32 Company will, as agent for the City, consistent with New Mexico State Law, request delivery  
33 of Type 9 Nontaxable Transaction Certificates ("Certificates") from the Taxation and Revenue  
34 Department. The Company will deliver a Certificate to each person selling tangible personal  
35 property to the Company for the Project as applicable under the New Mexico Gross Receipts  
36 and Compensating Tax Act. For this purpose, by adoption of this Resolution, the City

1 authorizes the Company to act as agent for the City. The Company shall not use the  
2 Certificates other than for the purchase of capital equipment and other tangible personal  
3 property, nor shall the Company use such Certificates after the completion of the Project. Prior  
4 to the use of such Certificates by the Company as agent for the City, the City Chief  
5 Administrative Officer and the Company will agree to certain procedures regarding the use of  
6 the Certificates and protection of the City from any unfunded tax liability.

7 Section 8. The City intends to enter into an agreement with the Company pursuant to  
8 which the Company will pay to the City certain annual payments in lieu of ad valorem taxes  
9 levied on the Project property (such annual payments to be based upon the cost of the Project  
10 and the mill levies established from time to time), and such agreement shall be included in a  
11 lease to be entered into by the City and the Company.

12 Section 9. The City Councilors and other appropriate City officials and employees are  
13 hereby authorized and empowered to take such steps and to do such things as may be  
14 necessary to achieve the purposes of this Resolution; provided, however, the issuance of the  
15 Bonds and the execution and delivery of any documents to which the City is a party in  
16 connection therewith shall be subject to the approval and authorization of the Council pursuant  
17 to the Bond Ordinance, to be adopted following public notice of the Council's intent to adopt  
18 such Ordinance at least fourteen (14) days prior to the consideration of the Ordinance by the  
19 Council at a public meeting, such public notice to specify the time, date and place of the  
20 Council's meeting. In particular, no provision of this Resolution shall in any way obligate the  
21 City or any other person to issue the Bonds, any other bonds or in any way finance the Project;  
22 and the City retains full and complete discretion with respect thereto.

23 Section 10. This Resolution shall not give rise to a pecuniary liability of the City and shall  
24 not give rise to a charge against its general credit or taxing powers.

25 Section 11. The issuance of the Bonds and the execution and delivery of any documents  
26 to which the City is a party in connection therewith shall be subject to the approval and  
27 authorization by the Council pursuant to the Bond Ordinance following reasonable public  
28 notice of the time, date and place of the public hearing to be held on the proposed adoption  
29 of the Bond Ordinance. In connection with this Resolution, the Council understands that the  
30 Company is not obligated to proceed with the Project, and, additionally, the Council has been  
31 informed that a failure or refusal of the Council, however arising, to adopt the Bond Ordinance  
32 will have the effect of voiding any benefits to the Company under the Act, including revoking  
33 the authority of the Company to act as agent for the City in connection with the solicitation of  
34 nontaxable transaction certificates for the Project from Taxation and Revenue, voiding the  
35 nontaxable transaction certificates issued to the Company for Project purchases and making  
36 such purchases subject to whatever tax would be due if such certificates had not been issued.

1       Section 12. If any section, paragraph, clause or provision of this Resolution shall for any  
2 reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section,  
3 paragraph, clause or provision shall not affect any of the remaining provisions of this  
4 Resolution.

5       Section 13. All orders and resolutions, or parts thereof in conflict with this Resolution are  
6 hereby repealed; this repealer shall not be construed to revive any order, resolution or part  
7 thereof, heretofore repealed.

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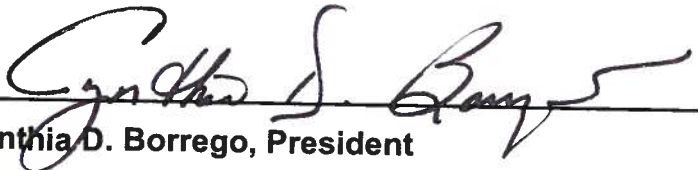
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1 PASSED AND ADOPTED THIS 19<sup>th</sup> DAY OF April, 2021  
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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9 Cynthia D. Borrego, President  
10 City Council  
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13  
14 APPROVED THIS 24<sup>th</sup> DAY OF April, 2021  
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17 Bill No. F/S R-21-149

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23 Timothy M. Keller, Mayor  
24 City of Albuquerque  
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28 ATTEST:

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31 Ethan Watson, City Clerk  
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