

CITY of ALBUQUERQUE

TWENTY FOURTH COUNCIL

COUNCIL BILL NO. O-21-56

ENACTMENT NO. O-2021-008

SPONSORED BY: Isaac Benton

ORDINANCE

APPROVING A PROJECT INVOLVING EL ENCANTO, INC., D/B/A BUENO FOODS, PURSUANT TO THE LOCAL ECONOMIC DEVELOPMENT ACT AND CITY ORDINANCE F/S O-04-10, THE CITY'S IMPLEMENTING LEGISLATION FOR THAT ACT, TO SUPPORT THE CONSTRUCTION AND IMPROVEMENT OF A FREEZER WAREHOUSE FOR A FOOD PRODUCTION COMPANY LOCATED IN ALBUQUERQUE, NEW MEXICO; AUTHORIZING THE EXECUTION OF A PROJECT PARTICIPATION AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO 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

WHEREAS, pursuant to Sections 5-10-1 through 5-10-13 NMSA 1978, as amended (the "Act"), the City is authorized to provide economic development assistance to eligible entities for certain projects located within the corporate limits of the municipality; and

WHEREAS, pursuant to the Act, the City has adopted Ordinance No. F/S 04-10 (the "LEDA Ordinance"), approving an economic development plan for the City and authorizing the City to assist economic development projects in any legally permissible manner, subject to the terms of the LEDA Ordinance; and

WHEREAS, pursuant to the LEDA Ordinance, El Encanto, Inc., d/b/a Bueno Foods (the "Company"), has submitted to the Council and the Albuquerque Development Commission (the "Commission") an application (the "Application") requesting certain economic development assistance for the construction and

1 improvement of a freezer warehouse for the Company's food production business within
2 the City (the "Project"); and

3 WHEREAS, the Act and the LEDA Ordinance require that the City and the
4 Company enter into a project participation agreement meeting the requirements of the
5 Act and the LEDA Ordinance; and

6 WHEREAS, City staff has worked with the Company to prepare, and has
7 negotiated the terms of, a project participation agreement and related documents that
8 will govern the relationship between the City and the Company with respect to the
9 Project (the "Agreement"); and

10 WHEREAS, the form of the proposed Agreement has been filed with the City
11 Clerk and presented to the Council; and

12 WHEREAS, the proposed Agreement contains the provisions required by the Act
13 and the LEDA Ordinance and, among other things, provides that the Company will grant
14 to the City a security instrument to secure the Company's obligations under the
15 Agreement; and

16 WHEREAS, the City has received a cost-benefit analysis with respect to the
17 Project on the basis of information provided by the Company, which cost-benefit
18 analysis shows that the City will recoup the value of its contribution within ten (10)
19 years; and

20 WHEREAS, the Application, together with the cost-benefit analysis,
21 demonstrates the benefits that will accrue to the community as a result of the donation
22 of public resources and demonstrates that the Company, by completing the Project, will
23 be making a substantive contribution to the community, as required by the LEDA
24 Ordinance; and

25 WHEREAS, the Commission has considered the Project and the proposed
26 Agreement and has recommended that the Council approve the Company's proposal;
27 and

28 WHEREAS, the total amount of public money expended and the value of credit
29 pledged in each fiscal year in which money is expended by the City for the Project (and
30 any other approved projects) pursuant to the Act does not and will not exceed ten
31 percent of the general fund expenditures of the City in such fiscal year; and

1 WHEREAS, the City is permitted under the Act to serve as fiscal agent for the
2 State to oversee and administer State local economic development funds committed to
3 qualified entities located within the corporate limits of the City; and

4 WHEREAS, the City anticipates that the State will transfer to it, for subsequent
5 transfer to or on behalf of the Company pursuant to an intergovernmental agreement
6 between the City and the State, certain funds of the State that are available for the
7 Project; and

8 WHEREAS, after having considered the Application and the Agreement, the
9 Council has concluded that the economic and other benefits of the Project to the City
10 will be substantial, that it is desirable and necessary at this time to authorize the City to
11 enter into the Agreement, and that the City's provision of the assistance contemplated
12 by the Agreement will constitute a valid public purpose under the Act; and

13 WHEREAS, there has been published in The Albuquerque Journal, a newspaper
14 of general circulation in the City, public notice of the Council's intention to adopt this
15 Ordinance, which notice was published at least fourteen (14) days prior to hearing and
16 final action on this Ordinance.

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

19 Section 1. RATIFICATION. All actions not inconsistent with the provisions of
20 this Ordinance previously taken by the Council and the officials of the City directed
21 toward the provision of economic development assistance in connection with the Project
22 be approved and the same hereby are ratified, approved and confirmed.

23 Section 2. GOALS AND OBJECTIVES. The goals and objectives of the
24 Project are, as set forth in the Agreement, to create and support an economic
25 development project that fosters, promotes and enhances local economic development
26 efforts and that provides job growth and career opportunities for Albuquerque-area
27 residents and otherwise makes a substantive contribution to the community.

28 Section 3. THE PROJECT. The Project will consist of the construction and
29 improvement of a freezer warehouse for the Company's food production business within
30 the City for a minimum of ten years.

31 Section 4. FINDINGS. The Council hereby declares that it has considered all
32 relevant information presented to it relating to the Project and the Agreement and
33 hereby finds and determines that the provision of economic development assistance for

1 the Project is necessary and advisable and in the interest of the public and will promote
2 the public health, safety, morals, convenience, economy, and welfare of the City and its
3 residents.

4 Section 5. AUTHORIZATION AND APPROVAL OF THE PROJECT AND THE
5 AGREEMENT; APPROPRIATION OF FUNDS. The City hereby approves the Project
6 and the Agreement, which provides, among other things, that the City will administer
7 and disburse to the Company funds totaling up to \$500,000 received by the City from
8 the State Economic Development Department in exchange for which the Company will
9 complete the Project as specified in the Agreement. There is hereby appropriated for
10 the Project up to \$500,000 of funds received from the State Economic Development
11 Department.

12 Section 6. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.

13 (A) The form, terms, and provisions of the Agreement in the form
14 presented to the Council with this Ordinance are in all respects approved, authorized,
15 and confirmed, and the City is authorized to enter into the Agreement in substantially
16 the form thereof, with only such changes as are not inconsistent with this Ordinance or
17 such other changes as may be approved by supplemental resolution of the Council.

18 (B) The Council authorizes the Mayor or the Chief Administrative
19 Officer of the City to execute and deliver the Agreement in the name and on behalf of
20 the City, with only such changes therein as are not inconsistent with this Ordinance or
21 such changes as may be approved by supplemental resolution of the Council.

22 (C) The Mayor, Chief Administrative Officer, City Treasurer and City
23 Clerk are further authorized to execute, authenticate and deliver such certifications,
24 instruments, documents, letters and other agreements, including an intergovernmental
25 agreement with the State Economic Development Department and any appropriate
26 security agreements, and to do such other acts and things, either prior to or after the
27 date of delivery of the executed Agreement, as are necessary or appropriate to
28 consummate the transactions contemplated by the Agreement.

29 (D) City officials shall take such action as is necessary in conformity
30 with the Act, the LEDA Ordinance and this Ordinance to effectuate the provisions of the
31 Agreement and carry out the transactions as contemplated by this Ordinance and the
32 Agreement, including, without limitation, the execution and delivery of any documents
33 deemed necessary or appropriate in connection therewith.

1 Section 7. SEVERABILITY. If any section, paragraph, clause or provision of
2 this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity
3 or unenforceability of that section, paragraph, clause, or provision shall not affect any of
4 the remaining provisions of this Ordinance.

5 Section 8. REPEALER. All bylaws, ordinances, resolutions, and orders, or
6 parts thereof, inconsistent with this Ordinance are repealed by this Ordinance but only
7 to the extent of that inconsistency. This repealer shall not be construed to revive any
8 bylaw, ordinance, resolution, or order, or part thereof, previously repealed.

9 Section 9. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE
10 DATE. This Ordinance, immediately upon its final passage and approval, shall be
11 recorded in the ordinance book of the City, kept for that purpose, and shall be there
12 authenticated by the signature of the Mayor and the presiding officer of the City Council,
13 and by the signature of the City Clerk or any Deputy City Clerk, and notice of adoption
14 thereof shall be published once in a newspaper that maintains an office in, and is of
15 general circulation in, the City, and shall be in full force and effect five (5) days following
16 such publication.

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

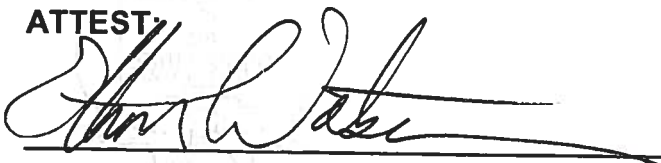
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8 Cynthia D. Borrego, President
9 City Council

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13 APPROVED THIS 27 DAY OF April, 2021
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16 Bill No. O-21-56

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

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31 Ethan Watson, City Clerk
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