# CITY of ALBUQUERQUE
## TWENTY-FOURTH COUNCIL

**COUNCIL BILL NO.** F/S O-21-65 **ENACTMENT NO.** O-2021-017

**SPONSORED BY: Benton, by request**

ORDINANCE

AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO INDUSTRIAL REVENUE BOND (EL ENCANTO, INC. PROJECT), TAX-EXEMPT SERIES 2021 IN THE MAXIMUM PRINCIPAL AMOUNT OF $10,000,000 TO PROVIDE FUNDS TO FINANCE THE CONSTRUCTION AND EQUIPPING OF A MANUFACTURING FACILITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND, TAX REGULATORY AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BOND AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BOND 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

WHEREAS, pursuant to Sections 3-32-1 through 3-32-16, New Mexico Statutes Annotated, 1978 Compilation, as amended (the "Act"), the City is authorized to acquire industrial revenue projects located within the corporate limits of the City for the purpose of promoting industry and trade by inducing commercial enterprises to locate or expand in the State; and

WHEREAS, pursuant to the Act, the City is authorized to issue revenue bonds for the purpose of defraying the cost of acquiring any project and to secure the payment of such bonds, all as provided in the Act; and

WHEREAS, El Encanto, Inc., d/b/a Bueno Foods (the "Company") is a corporation organized under the laws of the State of New Mexico; and

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WHEREAS, the Company has requested that the City issue its industrial revenue bond pursuant to the Act for the purpose of providing funds to finance the construction and equipping of a manufacturing facility within the corporate limits of the City (the "Project"); and

WHEREAS, the City Council of the City of Albuquerque (the "Council") has adopted an ordinance establishing the Albuquerque Development Commission (the "Commission") to review projects proposed to be financed with an industrial revenue bond pursuant to the Act pursuant to City Resolution No. 16-1985, as amended; and

WHEREAS, the Company has presented to the City and the Commission a proposal (the "Project Plan") whereby the City shall, pursuant to the Act, acquire land, buildings and certain equipment (the "Project Property") for the purpose of constructing and equipping a 25,000 square foot freezer for the Company's manufacturing operations, within the boundaries of the City, and pursuant to which the City would issue its industrial revenue bond in order to finance the Project; and

WHEREAS, the Commission has reviewed the Project Plan, and on April 8, 2021, has determined that the Company has complied with City Resolution No. 16-1985, and has recommended approval of the Project Plan by the Council; and

WHEREAS, the Council has adopted Resolution No. F/S R-21-149, on April 19, 2021, declaring, among other matters, the Council's intent to take all necessary and advisable steps to effect the issuance of the Bonds; and

WHEREAS, under the Company's Project Plan, the City would enter into an Indenture of Trust dated as of July 1, 2021 (the "Indenture") between the City and Wells Fargo Bank, National Association, as trustee (the "Trustee"), pursuant to which, together with this ordinance (the "Bond Ordinance"), the City would issue its bond designated as the City of Albuquerque, New Mexico Industrial Revenue Bond (El Encanto, Inc. Project), Tax-Exempt Series 2021 (the "Bond"); and

WHEREAS, under the Company's Project Plan, the City and the Company would enter into a Lease Agreement dated as of July 1, 2021 (the "Lease"), pursuant to which the Company will lease the Project Property from the City and will make payments to the Trustee sufficient to pay the principal of, redemption premium, if any, and interest on the Bond, and to pay all other obligations incurred pursuant to the provisions of the Lease, the Indenture and the Bond Ordinance; and

WHEREAS, under the Company's Project Plan, the Lease will provide that the Company shall maintain and operate the Project and carry all proper insurance with respect thereto; and

WHEREAS, the proceeds of the Bond shall be used for the purpose of financing the construction and equipping of the Project (the "Financing"); and

WHEREAS, the City is authorized to enter into the Lease, the Indenture, the Tax Regulatory Agreement and other related documents and to issue the Bond pursuant to the Act and the Bond Ordinance; and

WHEREAS, Wells Fargo Bank, National Association (the "Purchaser") is expected to offer to purchase the Bonds at a private sale pursuant to a Continuing Covenant Agreement to be entered between the Company and the Purchaser; and

WHEREAS, the proceeds of the Bond shall be applied to pay the costs of the Project and to pay certain costs associated with the transaction; and

WHEREAS, after having considered the provisions of the Project Plan and the Financing, the Council has concluded that it is in the best interest of the City to authorize the issuance of the Bond to finance the Project, and that the City's issuance of the Bond shall constitute a valid public purpose under the Act; and

WHEREAS, the Council has been advised by the Company that the disclosure provisions of Rule 15c2-12 of the Securities and Exchange Commission are not applicable to this transaction inasmuch as the Bond is

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being sold to the Purchaser in a private sale without the participation of an underwriter; and

WHEREAS, there has been published in the Albuquerque Journal, a newspaper of general circulation in the City, public notice of the Council's intention to adopt this Bond Ordinance, which notice contained certain information concerning the ownership, purpose, location and size of the Project and the Project Property, and the amount of the Bond to be issued to finance the Project, which notice was published at least fourteen (14) days prior to hearing and final action on this Bond Ordinance; and

WHEREAS, the proposed forms of the following documents have been filed with the City Clerk and presented to the Council: (1) Project Plan; (2) Lease; (3) Indenture; and (4) Tax Regulatory Agreement among the Company, the City and the Trustee (collectively the "Bond Documents"); and

WHEREAS, the City has delivered notice to the County of Bernalillo, State of New Mexico, of its intent to consider issuance of the Bond, which notice was given at least thirty (30) days prior to the meeting at which final action is to be taken on this Bond Ordinance as required by Section 3-32-6.1, New Mexico Statutes Annotated, 1978 Compilation, as amended.

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

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Bond Ordinance previously taken by the Council and the officials of the City directed toward approval of the issuance and sale of the Bond and the acquisition and lease of the Project Property, including without limitation, the publication of notice as set forth above, and the submittal to the State Board of Finance of an application for an allocation of private activity volume cap for the purpose of qualifying the Bonds as "qualified small issue bonds" under Section 144(a) of the Internal Revenue Code of 1986, as amended and Treasury Regulations promulgated thereunder (collectively, the "Code") are hereby ratified, approved and confirmed.

Section 2. THE PROJECT PLAN. The Project to be financed with the Bond consists of the construction and equipping of a 25,000 square foot freezer to be used at the Company's facility. The Company may use additional available money to accomplish the Project. The Project Plan is hereby approved in all respects.

Section 3. FINDINGS.

(A) General. The Council hereby declares that it has considered all relevant information presented to it relating to the Bond and the Project and hereby finds and determines that the issuance of the Bond pursuant to this Bond Ordinance and the Act to provide funds for the Project is necessary and advisable and in the interest of the public, and will promote the public health, safety, morals, convenience, economy, and welfare of the City and the residents of the City.

(B) The Council, after having conducted a public hearing, after reasonable notice in accordance with Section 147(f) of the Code, finds that:

(1) The Bond will be issued for the purpose of financing the Project;

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

(3) The developer and operator of the Project is the Company; and,

(4) The Project Property is located in the City at 2001 4th Street SW in Albuquerque, New Mexico.

Section 4. AUTHORIZATION AND APPROVAL OF THE BOND. To finance the cost to construct and equip the Project Property, the City hereby authorizes and approves the issuance and sale of its industrial revenue bond to be designated "City of Albuquerque, New Mexico Industrial Revenue Bond (El Encanto, Inc. Project), Tax-Exempt Series 2021" in one or more series in the principal amount of

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$10,000,000 and the use of the proceeds of the Bond to finance the cost of the Project and to pay expenses relating thereto.

Section 5. SALE OF THE BOND. The sale of the Bond to the Purchaser at a purchase price equal to the par amount of the Bond is hereby authorized and approved.

Section 6. FORM AND TERM OF THE BOND. Subject to the limitations set forth in this Bond Ordinance, the Bond shall be: (i) in the form and shall be numbered and dated all as set forth in the Indenture; (ii) payable as to principal and interest, and subject to optional and mandatory redemption and defeasance in the amounts, upon the conditions and at the times and prices set forth in the Indenture; and, (iii) issued in the principal amount of up to $10,000,000, bearing interest at the rates and maturing on the dates set forth in the Indenture. The interest rate on the Bond shall not exceed 3% per annum. The Mayor or the Chief Administrative Officer of the City shall sign the Bond.

Section 7. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS. The form, terms, and provisions of the Bond Documents in the form on deposit in the office of the City Clerk are in all respects approved, authorized, and confirmed, and the City shall enter into such Bond Documents substantially in the form of each such document on deposit with the City Clerk, with only such changes as are not inconsistent with this Bond Ordinance or such other changes as may be approved by an authorized officer of the City or by supplemental resolution of the Council.

(A) The Council authorizes the Mayor or the Chief Administrative Officer of the City to execute and deliver the Bond Documents in the name and on behalf of the City, and the Council authorizes the City Clerk or Deputy City Clerk to attest to, as necessary, the Bond Documents and the Bond with such changes therein as are not inconsistent with this Bond Ordinance.

(B) The Mayor, Chief Administrative Officer, Chief Financial Officer, City Treasurer, City Attorney and City Clerk are further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including security agreements as may be presented by the Purchaser and/or the Trustee or other lenders, and to do such other acts and things, either prior to or after the date of delivery of the Bond, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents.

(C) The officers of the City shall take such action as is necessary to effectuate the provisions of the Indenture and shall take such action as is necessary in conformity with the Act and this Bond Ordinance to finance the costs of the Project and for carrying out other transactions as contemplated by this Bond Ordinance and the Bond Documents including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Bond. Wells Fargo Bank, National Association is hereby appointed Trustee as further provided in the Indenture.

Section 8. DELIVERY OF THE BOND. Upon the execution of the Bond Documents and the satisfaction of the conditions set forth in the Bond Documents, the Bond shall be executed, authenticated, and delivered to the Purchaser. No Bond shall be valid for any purpose until such Bond has been properly authenticated as set forth in the Indenture.

Section 9. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND INTEREST AND OTHER MATTERS. The Council makes the following determinations and findings in accordance with the Act:

(A) The maximum amount necessary in each year to pay the principal of and interest on the Bond, assuming issuance of the Bond as of July 14, 2021, an annual payment date of July 1 of each year, beginning on July 1, 2022, in the amount of $10,000,000 and bearing interest at the rate of no more than 2.17% is as follows:

| Payment Date | Maturing Principal | Interest Amount | Total Debt Service |
|---|---|---|---|
| 7/1/22 | -$0- | $217,000 | $217,000 |
| 7/1/23 | -$0- | $217,000 | $217,000 |
| 7/1/24 | -$0- | $217,000 | $217,000 |
| 7/1/25 | -$0- | $217,000 | $217,000 |
| 7/1/26 | -$0- | $217,000 | $217,000 |
| 7/1/27 | -$0- | $217,000 | $217,000 |

| | | | |
|---|---|---|---|
| 7/1/28 | -$0- | $217,000 | $217,000 |
| 7/1/29 | -$0- | $217,000 | $217,000 |
| 7/1/30 | -$0- | $217,000 | $217,000 |
| 7/1/31 | -$0- | $217,000 | $217,000 |
| 7/1/32 | -$0- | $217,000 | $217,000 |
| 7/1/33 | -$0- | $217,000 | $217,000 |
| 7/1/34 | -$0- | $217,000 | $217,000 |
| 7/1/35 | -$0- | $217,000 | $217,000 |
| 7/1/36 | -$0- | $217,000 | $217,000 |
| 7/1/37 | -$0- | $217,000 | $217,000 |
| 7/1/38 | -$0- | $217,000 | $217,000 |
| 7/1/39 | -$0 | $217,000 | $217,000 |
| 7/1/40 | -$0- | $217,000 | $217,000 |
| 7/1/41 | $10,000,000 | $217,000 | $10,217,000 |

(B) The terms under which the Project Property is leased provide that the Company shall maintain and operate the Project Property and carry all proper insurance (or self-insure) with respect to the Project Property.

(C) The lease rentals payable under the Lease shall be at least sufficient to pay the principal and interest payments on the Bond set forth in Paragraph (A) of this Section 9 when due and otherwise render the financing of the acquisition of the Project Property entirely self-liquidating.

There shall be no payments to any reserve fund or sinking fund installment payments.

Section 10. NON TAXABLE TRANSACTION CERTIFICATES. The Company, as agent for the City, will construct and equip the Project. The City will cooperate with the Company to obtain and allow use of Type 9 Nontaxable Transaction Certificates ("Certificates") that have been properly executed for acquisition of tangible personal property relating to the Project as applicable under the New Mexico Gross Receipts and Compensating Tax Act. The Company shall not use the Certificates other than for such things as may be permitted by law, if any, nor shall the Company use such Certificates after the completion of the Project. No costs, expenses or other monetary relief will be recoverable from the City by vendors of equipment.

Section 11. LIMITED OBLIGATIONS. The Bond shall be a special limited obligation of the City payable solely from the revenues derived from the Lease and payable by the Company as described in the Indenture, and shall never constitute a debt or indebtedness of the City or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution, statutes, or home-rule charter of the City, and shall not constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing power. Nothing contained in this Bond Ordinance or the Bond Documents, or any other instrument, shall be construed as obligating the City (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bond, all as provided in the Bond Documents), nor as incurring a pecuniary liability or charge upon the general credit of the City or against its taxing power, nor shall the breach of any agreement contained in this Bond Ordinance, the Bond Documents, the Bonds, or any other instrument be construed as obligating the City (except with respect to the Project Property and the application of revenues therefrom and the proceeds of the Bond all as provided in the Bond Documents) nor as incurring a pecuniary liability or a charge upon the general credit of the City or against its taxing power, the City having no power to pay out of its general funds, or otherwise contribute any part of the costs of constructing and equipping the Project Property, nor power to operate the Project as a business or in any manner except as lessor and seller of the Project Property.

Section 12. APPROVAL OF INDEMNIFICATION. The Council specifically approves the provisions of the Lease relating to indemnification which provide that the Company shall indemnify and hold harmless the City and its City Councilors, officials, members, officers, employees, and agents against liability to the Company or to any third parties that may be asserted against the City, its City Councilors, officials, members, officers, employees, and agents with respect to the City's ownership of the Project Property or the issuance of the Bond and arising from the condition of the Project Property or the acquisition, construction, equipping or operation of the Project Property by the Company, except to the extent that Section 56-7-1, New Mexico Statutes Annotated, 1978 Compilation, as amended, applies, and except claims for any loss or damage arising out of or resulting from the gross negligence or willful misconduct of the City or any official, member, officer, employee, or agent of the City.

Section 13. ELECTION UNDER INTERNAL REVENUE CODE SECTION 144(a). The City hereby makes the election provided in Section 144(a)(4)(A) of the Code to have the $10,000,000 limitation in that Section apply to the Bonds. The City shall submit an appropriate statement and any necessary supplemental statement to the Internal Revenue Service setting forth the information required by Section 149(e)(2) of the Code, which statement shall be prepared by or on behalf of the Company and based solely on the relevant information provided by the Company.

Section 14. BOND ORDINANCE IRREPEALABLE. After the Bond is issued, this Bond Ordinance shall be and remain irrepealable until the Bond, including all interest thereon, is fully paid, cancelled, and discharged, or until there has been defeasance of the Bond in accordance with the Indenture.

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

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

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

Section 18. GENERAL SUMMARY FOR PUBLICATION. The title and general summary of the subject contained in this Bond Ordinance shall be published in substantially the following form:

CITY OF ALBUQUERQUE, NEW MEXICO

NOTICE OF ADOPTION OF ORDINANCE

Notice is hereby given of the title and of a general summary of the subject matter contained in City Ordinance F/S O-21-65 (the "Ordinance"), duly adopted and approved by the City Council of the City of Albuquerque, New Mexico, on June 7, 2021. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk in the office of the City Clerk, Albuquerque/Bernalillo County Government Center, One Civic Plaza, N.W., Albuquerque, New Mexico.

The title of the Ordinance is:

AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO INDUSTRIAL REVENUE BOND (EL ENCANTO, INC. PROJECT), TAX-EXEMPT SERIES 2021 IN THE MAXIMUM PRINCIPAL AMOUNT OF $10,000,000 TO PROVIDE FUNDS TO FINANCE THE CONSTRUCTION AND EQUIPPING OF A MANUFACTURING FACILITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND, TAX REGULATORY AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BOND AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

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

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PASSED AND ADOPTED THIS ___7th___ DAY OF ___June__, 2021
BY A VOTE OF:_____8_______ FOR_____0________AGAINST.

Excused: Bassan

Cynthia D. Borrego, President
City Council

APPROVED THIS __14__ DAY OF __June__________, 2021

<u>Bill No. F/S O-21-65</u>

Timothy M. Keller, Mayor
City of Albuquerque

ATTEST:

Ethan Watson, City Clerk

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