

# CITY of ALBUQUERQUE

## TWENTY-FOURTH COUNCIL

COUNCIL BILL NO. R-21-211 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Pat Davis, by request

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### RESOLUTION

PROVIDING FOR THE AUTHORIZATION, EXECUTION AND DELIVERY OF THE AMENDMENT OF THAT CERTAIN LEASE BETWEEN THE CITY OF ALBUQUERQUE, NEW MEXICO AND KAIROS POWER LLC IN CONNECTION WITH THE PREVIOUSLY ISSUED CITY OF ALBUQUERQUE, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (KAIROS POWER PROJECT) SERIES 2020 IN THE AMOUNT OF \$125,000,000 TO REVISE THE DESCRIPTION OF THE PROJECT SITE BASED ON THE TERMINATION OF A CERTAIN CONDOMINIUM; AUTHORIZING THE TERMINATION OF A CERTAIN CONDOMINIUM; AUTHORIZING THE TAKING OF OTHER ACTION IN CONNECTION WITH THE AMENDMENT AND TERMINATION OF A CERTAIN CONDOMINIUM; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS RESOLUTION.

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 municipality for the purpose of promoting industry and trade by inducing commercial enterprises to locate or expand in the State of New Mexico; and

WHEREAS, pursuant to Ordinance No. O-2020-004 (the "Bond Ordinance"), the City Council of the City (the "Council") issued its Taxable Industrial

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1 Revenue Bonds (Kairos Power Project) Series 2020 (the "Bonds") in the  
2 aggregate principal amount of \$125,000,000 for Kairos Power, LLC (the  
3 "Company") to finance all or part of the costs of the acquisition, improvement  
4 and equipping of a facility for an advanced energy technology research and  
5 development company (the "Project"); and

6 WHEREAS, the Project Site (as defined in the Agreement) currently includes  
7 Unit A of GMI Condominium (the "Condominium") as more specifically set  
8 forth in Exhibit A of that certain Lease Agreement dated as of March 1, 2020, as  
9 recorded on May 19, 2020 as Document No. 2020044119, recorded of the  
10 Bernalillo County Clerk, between the City and the Company (the "Agreement");  
11 and

12 WHEREAS, the Company has recently purchased Unit B of the  
13 Condominium (the "Additional Parcel"), which comprises the remaining 7.41%  
14 of the Condominium; and

15 WHEREAS, the Company has informed the Council that the Company  
16 desires to incorporate the Additional Parcel into the Project Site and terminate  
17 the Condominium, resulting in the Project Site containing the fee simple  
18 interest in all the real estate currently subject to the Condominium; and

19 WHEREAS, the Council and the Company desire to amend the Agreement  
20 to incorporate the Additional Parcel into the Project Site and terminate the  
21 Condominium; and

22 WHEREAS, a form of First Amendment to Lease Agreement (the  
23 "Amendment") has been presented to the Council with this Resolution; and

24 WHEREAS, there has been published in the Albuquerque Journal, a  
25 newspaper of general circulation in the City, public notice of the Council's  
26 intention to adopt this Resolution, which notice contained certain information  
27 concerning the Amendment and termination of the Condominium, and which  
28 notice was published at least fourteen (14) days prior to hearing and final  
29 action on this Resolution; and

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1 WHEREAS, the proposed form of the Amendment has been filed with the  
2 City Clerk and presented to the Council; and

3 WHEREAS, the Council desires to approve the execution of the Amendment  
4 and termination of the Condominium.

5 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
6 ALBUQUERQUE:

7 Section 1. RATIFICATION. All actions not inconsistent with the provisions of  
8 this Resolution previously taken by the Council and the officials of the City directed  
9 toward approval of the Amendment and termination of the Condominium are ratified,  
10 approved and confirmed.

11 Section 2. APPROVAL AND AUTHORIZATION OF THE AMENDMENT AND  
12 THE CONDOMINIUM TERMINATION. The Amendment, substantially in the form  
13 presented herewith, with such changes, insertions, deletions and modifications as  
14 may be approved by the Mayor or the Chief Administrative Officer and as may be  
15 recommended by Bond Counsel, is hereby authorized, ratified and approved. All  
16 such changes, insertions, deletions and modifications shall be deemed to have been  
17 approved and authorized by the City upon execution and delivery of the  
18 Amendment, such execution and delivery to be conclusive evidence of such  
19 approval. The Mayor or the Chief Administrative Officer of the City are hereby  
20 authorized and directed to execute and deliver the Amendment on behalf of the City  
21 and the City Clerk or a deputy Clerk acting in his absence is hereby authorized and  
22 directed to attest the Amendment. The Mayor or the Chief Administrative Officer of  
23 the City are further authorized and directed to take all steps necessary, proper or  
24 convenient to terminate the Condominium, and the City Clerk or a deputy Clerk  
25 acting in his absence is hereby authorized and directed to attest any documents  
26 used to terminate the Condominium.

27 Section 3. GENERAL AUTHORIZATION. The Council hereby authorizes,  
28 empowers and directs each of the officers (including the Council officers) and  
29 employees of the City, and its counsel, to execute, carry out or cause to be carried  
30 out, and to perform, such obligations of the City and such other actions as they, in  
31 consultation with Bond Counsel and advisors to the City in connection with the

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1 authorization, execution and delivery by the City of the Amendment and termination  
2 of the Condominium, shall consider necessary or advisable in connection with this  
3 Resolution, including but not limited to the obligations of the City contained in the  
4 documents necessary to terminate the Condominium and approve the Amendment  
5 and such other documents and any amendments, from time to time, thereto,  
6 deemed necessary, and for the authorization, execution and delivery of the  
7 Amendment and such documents necessary to terminate the Condominium.

8 Section 4. SEVERABILITY. If any section, paragraph, clause or provision of  
9 this Resolution shall for any reason be held to be invalid or unenforceable, the  
10 invalidity or unenforceability of that section, paragraph, clause, or provision shall not  
11 affect any of the remaining provisions of this Resolution.

12 Section 5. REPEALER. All by-laws, ordinances, resolutions, and orders, or  
13 parts thereof, inconsistent with this Resolution are repealed by this Resolution but  
14 only to the extent of that inconsistency. This repealer shall not be construed to  
15 revive any by-law, ordinance, resolution, or order, or part thereof, previously  
16 repealed.

17 Section 6. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE  
18 DATE. This Resolution, immediately upon its final passage and approval, shall be  
19 recorded in the book of the City kept for that purpose and shall be there  
20 authenticated by the signature of the Mayor and the presiding officer of the City  
21 Council, and by the signature of the City Clerk or any Deputy City Clerk, and notice  
22 of adoption thereof shall be published once in a newspaper that maintains an office  
23 in, and is of general circulation in, the City, and shall be in full force and effect five  
24 (5) days following such publication.

25 Section 7. GENERAL SUMMARY FOR PUBLICATION. The title and general  
26 summary of the subject contained in the Resolution shall be published in  
27 substantially the following form:

28 CITY OF ALBUQUERQUE, NEW MEXICO  
29 NOTICE OF ADOPTION OF RESOLUTION

30 Notice is hereby given of the title and of a general summary of the subject matter  
31 contained in City Resolution No. R-21-\_\_\_\_ (the "Resolution"), duly adopted and approved  
32 by the City Council of the City of Albuquerque, New Mexico, on [November 15, 2021].

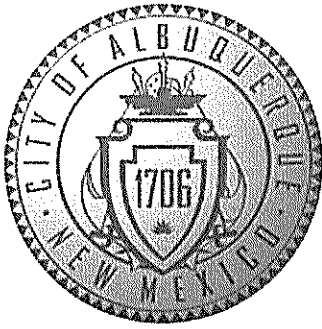
1 Complete copies of the Resolution are available for public inspection during the normal and  
2 regular business hours of the City Clerk in the office of the City Clerk,  
3 Albuquerque/Bernalillo County Government Center, One Civic Plaza, N.W., Albuquerque,  
4 New Mexico.

5 The title of the Resolution is:

6 PROVIDING FOR THE AUTHORIZATION, EXECUTION AND DELIVERY OF THE  
7 AMENDMENT OF THAT CERTAIN LEASE BETWEEN THE CITY OF  
8 ALBUQUERQUE, NEW MEXICO AND KAIROS POWER LLC IN CONNECTION  
9 WITH THE PREVIOUSLY ISSUED CITY OF ALBUQUERQUE, NEW MEXICO  
10 TAXABLE INDUSTRIAL REVENUE BONDS (KAIROS POWER PROJECT) SERIES  
11 2020 IN THE AMOUNT OF \$125,000,000 TO REVISE THE DESCRIPTION OF THE  
12 PROJECT SITE BASED ON THE TERMINATION OF A CERTAIN CONDOMINIUM;  
13 AUTHORIZING THE TERMINATION OF A CERTAIN CONDOMINIUM;  
14 AUTHORIZING THE TAKING OF OTHER ACTION IN CONNECTION WITH THE  
15 AMENDMENT AND TERMINATION OF A CERTAIN CONDOMINIUM; RATIFYING  
16 CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS  
17 INCONSISTENT WITH THIS RESOLUTION.

18 The title sets forth a general summary of the subject matter contained in the  
19 Resolution.  
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**CITY OF ALBUQUERQUE**  
**Albuquerque, New Mexico**  
**Office of the Mayor**

Mayor Timothy M. Keller

**INTER-OFFICE MEMORANDUM**

October 28, 2021

**TO:** Cynthia Borrego, President, City Council


**FROM:** Timothy M. Keller, Mayor 

**SUBJECT:** Approving a Resolution to amend the industrial revenue bond lease agreement for Kairos Power LLC


Attached is a Resolution for your consideration and approval that amends the Lease Agreement associated with the industrial revenue bond transaction for Kairos Power LLC (the "Company"). The industrial revenue bond transaction closed in March 2020 for the acquisition and improvement of the Schott Solar facility in Mesa del Sol to be used for clean, safe and innovate energy technology. At the time of acquisition, a small portion of the facility was unavailable for purchase with the Company's intention to purchase the remaining portion when it became available. The Company has now acquired the last portion of the facility and wants to include it within the industrial revenue bond structure. The amendment of the IRB to include the remaining portion is consistent with the Company's intentions when they first approached the City for an industrial revenue bond. The proposed resolution approves the proposed structural changes to the industrial revenue bonds.

As a reminder, the project represents approximately \$125 million in private sector investment by the end of 2022. The Company will create 67 high-paying economic base jobs, and occupy a building that has been vacant off and on since Schott Solar left. The project will be focused on different stages of the research and development and testing operations associated with coolant technology.


Approved:

  
\_\_\_\_\_  
Sarita Nair                      Date  
Chief Administrative Officer                      10/27/21

Approved as to Legal Form:

DocuSigned by:  
  
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Esteban A. Aguilar, Jr.                      Date  
City Attorney                      10/16/2021 | 10:30 AM MDT  
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Recommended:

  
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Damian Lara                      Date  
Acting Director                      10/26/2021 | 10:12 AM MDT  
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## **Cover Analysis**

### **1. What is it?**

On June 7, 2021, the City Council (the “Council”) adopted Ordinance No. F/S O-19-91 (the “Bond Ordinance”) authorizing the issuance and sale of an industrial revenue bond to be designated “City of Albuquerque, New Mexico Taxable Industrial Revenue Bond (Kairos Power Project), Series 2021”; the proceeds of which were used to finance all or part of the costs of the acquisition, improvement and equipping of a facility for an advanced energy technology research and development company within the corporate limits of the City (the “Project”) for the benefit of Kairos Power LLC (the “Company”). The Company acquired the former Schott Solar facility in Mesa del Sol consistent with the terms of the industrial revenue bond. At the time of acquisition, a small portion of the facility was unavailable for purchase with the Company’s intention to purchase the remaining portion when it became available. The Company has now acquired the last portion of the facility and wants to include it within the industrial revenue bond structure. The amendment of the IRB to include the remaining portion is consistent with the Company’s intentions when they first approached the City for an industrial revenue bond.

### **2. What will this piece of legislation do?**

The proposed resolution will amend the Lease Agreement related to the industrial revenue bond to expand the definition of the Project Site to include the final portion of the facility.

### **3. Why is this project needed?**

The proposed resolution will allow the industrial revenue bond transaction to include all of the property acquired by the Company at Mesa del Sol consistent with the IRB’s scope of project and purpose.

### **4. How much will it cost and what is the funding source?**

There is no cost to the City.

### **5. Is there a revenue source associated with this contract? If so, what level of income is projected?**

No. There is no direct revenue to the City.

### **6. What will happen if the project is not approved?**

If not approved, the remaining portion of the facility will not be included within the industrial revenue bond transaction.

### **7. Is this service already provided by another entity?**

No.