



Legislation Text

File #: O-21-85, Version: 3

CITY of ALBUQUERQUE
TWENTY-FOURTH COUNCIL

COUNCIL BILL NO. F/S O-21-85 ENACTMENT NO. _____

SPONSORED BY: Brook Bassan, by request

ORDINANCE

F/S Authorizing The Issuance And Sale Of The City Of Albuquerque, New Mexico Tax Exempt Industrial Revenue Bonds (Hope Christian Schools, Inc. Project), Series 2022 In The Maximum Principal Amount Of \$8,500,000 To (i) Refinance The Acquisition, Construction, Improvement And Equipping Of An Educational Facility (ii) Fund Any Required Reserve Funds, And (iii) Pay Expenses Related To Issuance Of The Bonds; Authorizing The Execution And Delivery Of A Financing Agreement, 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 (Bassan, by request)

AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO TAX EXEMPT INDUSTRIAL REVENUE BONDS (HOPE CHRISTIAN SCHOOLS, INC. PROJECT), SERIES 2022 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$8,500,000 TO (i) REFINANCE THE ACQUISITION, CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF AN EDUCATIONAL FACILITY (ii) FUND ANY REQUIRED RESERVE FUNDS, AND (iii) PAY EXPENSES RELATED TO ISSUANCE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT, 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 municipality of the State of New Mexico (the “State”) created pursuant to the laws of the State, as amended; and

WHEREAS, pursuant to New Mexico Statutes Annotated, Sections 3-32-1 through 3-32-16 NMSA 1978, as amended (the “Act”), the City is authorized to issue industrial revenue bonds and to use the proceeds thereof to finance or refinance a 501(c)(3) corporation project located within the City to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, Hope Christian Schools, Inc. (the “Company”), is a non-profit corporation organized pursuant to the laws of the State and has been determined to be a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, the Company has presented to the City of Albuquerque Council (the “City Council”) a proposal whereby the City would issue, deliver and sell not-to-exceed \$8,500,000 in aggregate principal amount of its Tax-Exempt Industrial Revenue Bonds (Hope Christian Schools, Inc. Project), Series 2022 (the “Bonds”) and make the proceeds thereof available to the Company for the purpose of (i) refinancing the acquisition, construction, improvement and equipping of existing school facilities located at 8001 and 8005 Louisiana Avenue NE, and 6721, 6731 and 6800 Palomas Avenue NE in the City (collectively, the “Premises”), (ii) funding any required reserves for the proposed bonds, and (iii) paying certain costs of issuing the Bonds (collectively, the “Project”); and

WHEREAS, the Bonds will be issued in one or more series pursuant to this ordinance (this “Bond Ordinance”) and a Financing Agreement, to be dated the date of the initial issuance of the Bonds (the “Financing Agreement”), among the City, the Company, and PNC Mortgage Corporation or an affiliate thereof (the “Bank”); and

WHEREAS, the Bonds will be payable solely from revenues derived by the City pursuant to the Financing Agreement and the Company will make payments sufficient to pay the principal of and interest on the Bonds and to pay all other obligations incurred pursuant to the provisions of this Bond Ordinance and the Financing Agreement; and

WHEREAS, payment of the Bonds will be secured pursuant to the terms of one or more mortgages, to be dated the date of the initial issuance of the Bonds, from the Company to the Bank; and

WHEREAS, the Bonds in a principal amount not to exceed \$8,500,000 will be issued, sold and delivered by the City in a private sale to the Bank pursuant to the Financing Agreement; and

WHEREAS, the proceeds of the Bond shall be applied to pay the costs of the Project; and

WHEREAS, in furtherance of the issuance of the Bonds, the City will enter into a Tax Certificate and Agreement (the "Tax Agreement") in customary form with the Company; and

WHEREAS, the City Council has determined that it is in the best interest of the City to issue the Bonds and to execute and deliver the following documents in connection with the issuance of the Bonds and all other documents, certificates related thereto (collectively, the "Bond Documents"):

1. Financing Agreement
2. Bonds
3. Tax Agreement

WHEREAS, the City is authorized to issue the Bonds under the Act and after having considered the Company's proposal, has concluded that it is desirable at this time to authorize the issuance of the Bonds to refinance the Project and that the City's issuance of the Bonds will constitute and be a valid public purpose; and

WHEREAS, the City Council has been advised by Bond Counsel that the because the Bonds are being directly purchased by the Bank the disclosure provisions of Rule 15c2-12 of the Securities and Exchange Commission are not applicable to this transaction; and

WHEREAS, pursuant to Section 147(f) of the Code, the approval of the City Council as the "applicable elected representative" is required prior to the issuance of the Bonds; and

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

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

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

Section 2. FINDINGS.

A. General.

The City Council hereby declares that it has considered all relevant information presented to it relating to the Bonds and the Project and hereby finds and determines that the issuance of the Bonds pursuant to this Bond Ordinance and the Financing Agreement to provide funds for the Project is necessary and advisable and in the interest of and will promote public health, welfare, safety, convenience and prosperity.

B. Specific Findings.

The City Council finds that:

- (1) The Bonds will be issued for the purpose of refinancing the Premises.
- (2) The face amount of the Bonds is not to exceed \$8,500,000.
- (3) The owner and operator of the Premises is the Company.
- (4) The Premises is located in Albuquerque, New Mexico.

Section 3. BOND - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Bonds in a principal amount not to exceed \$8,500,000 and the use of the proceeds of the Bonds to finance or refinance the cost of the Project including payment of transaction expenses related thereto are hereby approved and confirmed. The sale of the Bonds to the Bank at a purchase price not to exceed the par amount of the Bonds is approved.

B. Form and Terms; Interest Rate.

The Bonds are hereby authorized to be issued in one or more series, in fully registered form without coupons in an aggregate principal amount of not to exceed \$8,500,000 bearing interest at a variable rate of interest not to exceed ten percent (10%) per annum (except in the event of default or taxability) and dated, maturing, and in such form and denominations, payable as to interest and principal on such dates, and having such other terms and conditions as may be provided in the Financing Agreement, with such additions, deletions, and modifications therein as may be consistent with this Ordinance.

C. Execution.

The Mayor is authorized to execute and deliver in the name and on behalf of the City, and the City Clerk is authorized to attest, if necessary, the Bonds with such changes therein as are not inconsistent with this Bond Ordinance.

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The Bond Documents in the substantial form presented to the City Council are hereby approved, authorized and confirmed with such additions, deletions, and modifications as shall

be approved by the Mayor, the execution and delivery or acceptance, as the case may be, thereof being conclusive evidence of such approval. The Mayor is authorized to execute and deliver in the name and on behalf of the City, and the City Clerk is authorized to attest, as necessary, the Bond Documents with such changes therein as are not inconsistent with this Bond Ordinance.

The City Chief Administrative Officer and City Clerk are further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including security agreements, and to do such other acts and things, either prior to or after the date of delivery of the Bonds, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents.

The Mayor, Chief Administrative Officer, City Clerk, and other officers of the City shall take such action as is necessary to effectuate the provisions of the Financing Agreement and shall take such action as is necessary in conformity with the Act to finance the costs of the Project and for carrying out other transactions as contemplated by this 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 Bonds.

Section 5. DELIVERY OF BONDS. Upon the execution of the Bond Documents, the satisfaction of the conditions set forth in the Bond Documents and upon receipt of the purchase price for the Bonds, the Bonds shall be executed and delivered to the Bank.

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

Section 7. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER MATTERS. The following determinations are made:

A. The Bonds will mature not more than ten years from the date of the original issuance of the Bonds and will be amortized over a period not to exceed 30 years from the date of issuance.

B. Principal and interest of the Bonds will be paid on a monthly basis with all amounts due and payable upon maturity.

C. The Bonds will bear interest at a variable rate not to exceed ten percent (10%) per annum (except in the event of default or taxability) but the Company intends to pay a fixed rate of interest pursuant to an interest rate swap agreement at a rate not to exceed ten percent (10%) per

annum (except in the event of default or taxability).

D. The Bonds may be redeemed at any time subject to the payment of any swap termination payment.

E. The Bonds will be secured by one or more mortgages creating a lien on the Premises.

F. It shall not be necessary to deposit any amount in a repair and replacement reserve fund for the maintenance of the Premises.

G. The Financing Agreement requires the Company to make payments in an amount sufficient to pay the principal of and interest on the Bonds as principal and interest become due and to pay all related costs.

H. The Bond shall be issued on or before February 28, 2022.

Section 8. LIMITED OBLIGATIONS. The Bonds shall be special, limited obligations of the City, payable solely from the payments paid by the Company to the City as described in the Financing Agreement and as specifically pledged under the Financing Agreement 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 or statutes, 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 in the Bond Documents or any other instrument shall be construed as obligating the City (except with respect to the application of the revenues from the Financing Agreement and the proceeds of the Bonds 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 powers, 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 application of the revenues from the Financing Agreement and the proceeds of the Bonds 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 the Project, nor power to operate the Premises as a business.

Section 9. APPROVAL OF INDEMNIFICATION. The City Council specifically requires that the Financing Agreement contain provisions relating to indemnification which provide that the Company shall indemnify and hold harmless the City and its City Council, officials, employees and

agents against liability to the Company, or to any third parties, that may be asserted against the City or its City Council, officials, members, officers, employees or agents with respect to the Premises or the issuance and sale of the Bonds, except to the extent New Mexico Statutes Annotated Section 56-7-1, 1978 Compilation, would preclude such indemnity, and except claims for any loss or damage arising out of or resulting from the gross negligence or willful misconduct of the City or its City council, or any official, employee or agent of the City.

Section 10. BOND ORDINANCE IRREPEALABLE. After the Bonds are issued, this Bond Ordinance shall be and remain irrevocable until the Bonds, including interest, are fully paid, canceled and discharged or there has been defeasance of the Bonds in accordance with the Financing Agreement.

Section 11. REPEALER. All bylaws, orders, resolutions and ordinances, 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 bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 12. 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 13. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the Mayor, and by the signature of the City Clerk, and shall be recorded in the Ordinance book of the City, kept for that purpose, and shall be in full force and effect thereafter in accordance with the laws of the State, and notice of adoption thereof shall be published once in a newspaper which maintains an office in, and is of general circulation in the City.

X:\CL\SHARE\CL-Staff_Legislative Staff\Legislation\24 Council\O-85 FSfinal.doc