



Legislation Text

File #: O-19-73, Version: 2

ORDINANCE

Relating To The Redevelopment, Leasing And Sale Of A Metropolitan Redevelopment Project And The Issuance Of Metropolitan Redevelopment Revenue Bonds Payable From Rental Payments Therefor; Approving The Metropolitan Redevelopment Application Entitled "Broadstone Nob Hill Metropolitan Redevelopment Bond Application"; Authorizing The Acquisition Of Land And Existing Improvements And Construction Of A Building Within The Central/ Highland/ Upper Nob Hill Metropolitan Redevelopment Area; Authorizing The Disposition By Lease And Sale Of The City's Interest In Such Project To Broadstone Nob Hill, LLC, Its Successors And Assigns; Authorizing The Issuance And Sale Of The City Of Albuquerque, New Mexico Metropolitan Redevelopment Revenue Bonds Series 2020 In The Maximum Principal Amount Of \$21,500,000 To Provide Funds To Finance A Portion Of The Costs Of The Construction Of The Project (Davis, by request)

RELATING TO THE REDEVELOPMENT, LEASING AND SALE OF A METROPOLITAN REDEVELOPMENT PROJECT AND THE ISSUANCE OF METROPOLITAN REDEVELOPMENT REVENUE BONDS PAYABLE FROM RENTAL PAYMENTS THEREFOR; APPROVING THE METROPOLITAN REDEVELOPMENT APPLICATION ENTITLED "BROADSTONE NOB HILL METROPOLITAN REDEVELOPMENT BOND APPLICATION"; AUTHORIZING THE ACQUISITION OF LAND AND EXISTING IMPROVEMENTS AND CONSTRUCTION OF A BUILDING WITHIN THE CENTRAL/ HIGHLAND/ UPPER NOB HILL METROPOLITAN REDEVELOPMENT AREA; AUTHORIZING THE DISPOSITION BY LEASE AND SALE OF THE CITY'S INTEREST IN SUCH PROJECT TO BROADSTONE NOB HILL, LLC, ITS SUCCESSORS AND ASSIGNS; AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO METROPOLITAN REDEVELOPMENT REVENUE BONDS (BROADSTONE NOB HILL PROJECT) SERIES 2020 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$21,500,000 TO PROVIDE FUNDS TO FINANCE A PORTION OF THE COSTS OF THE CONSTRUCTION OF THE PROJECT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE AGREEMENT, THE 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 municipal corporation of the State of New Mexico (the "State"); and

WHEREAS, the City desires to promote redevelopment in areas designated as blighted areas so as to promote neighborhood stabilization by providing affordable housing, convenient services, creating new jobs, upgrading area buildings, infrastructure and housing for such areas and to promote public health welfare, safety convenience and prosperity; and

WHEREAS, pursuant to the Metropolitan Redevelopment Code, Sections 3-60A-1 through 3-60A-13 and Sections 3-60A-14 through 3-60A-48, New Mexico Statutes Annotated, 1978 Compilation, as amended (the "Act"), the City is authorized to acquire, whether by construction, purchase, gift or lease, and to finance, sell, lease, or otherwise dispose of, projects as defined in the Act, and to issue revenue bonds for the purpose of financing such projects; and

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

WHEREAS, Broadstone Nob Hill, LLC, a Delaware limited liability company (together with its successors and assigns, the "Company") has presented to the Development Commission and the Council a proposed metropolitan redevelopment project application (the "Plan") whereby the City will, pursuant to the Act, acquire from the Company land and existing improvements located within the City and within the Central/ Highland/ Upper Nob Hill Metropolitan Redevelopment Area for redevelopment by the lessee/purchaser thereof for a multi-family project (the "Project"), and pursuant to which the City would issue its metropolitan redevelopment revenue bonds in order to finance construction of the Project; and

WHEREAS, under the Company's proposal, the City would enter into an Indenture (the

"Indenture") with the Purchaser (defined below) and a bank exercising trust powers, as trust depositary (the "Depositary"), pursuant to which, together with this ordinance (this "Ordinance"), the City will issue its bonds designated as the City of Albuquerque, New Mexico Metropolitan Redevelopment Revenue Bonds (Broadstone Nob Hill Project), Series 2020 (the "Bonds"); and

WHEREAS, under the Company's proposal, the City and the Company will enter into a Lease Agreement (the "Lease"), pursuant to which the Company will lease and agree to purchase the land and improvements comprising the Project from the City, and the Company shall make payments to the purchaser of the Bonds (the "Purchaser") sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds and to pay all other obligations incurred pursuant to the provisions of the Lease and this Ordinance; and

WHEREAS, the Bonds, in an aggregate principal amount not to exceed \$21,500,000, will be issued, sold and delivered by the City pursuant to a bond purchase agreement (the "Bond Purchase Agreement") among the City, the Purchaser and the Company; and

WHEREAS, the proceeds of the Bonds shall be applied to pay a portion of the costs of the Project and to pay certain costs associated with the issuance of the Bonds; and

WHEREAS, the Albuquerque Development Commission has reviewed the Plan, has held a public hearing on the Plan and the Bonds, has determined that the Company has complied with Resolution No. 16-1985, as amended, and has recommended approval of the Plan and the Bonds by the Council; and

WHEREAS, the Council has adopted Resolution No. R-19-133, Enactment No. R-2019-026, indicating its intent to take all necessary and advisable steps to effect the issuance of the Bonds subject to full review of the documents to which the City is a party and authorization by the Council of the issuance of the Bonds; and

WHEREAS, the Council has held a public hearing on the Plan and the Bonds, after proper notice; and

WHEREAS, the Plan meets the objectives of the Act and will benefit the City's efforts to revitalize the Central/ Highland/ Upper Nob Hill Metropolitan Redevelopment Area of the City; and

WHEREAS, the Plan has been filed with the City Clerk and presented to the Council; and

WHEREAS, there have been filed with the City Clerk and presented to the Council the forms of the following documents:

- 1. Lease Agreement**
- 2. Indenture**
- 3. Bond Purchase Agreement**

The Lease, Indenture, and Bond Purchase Agreement are collectively referred to in the Ordinance as the "Bond Documents"; and

WHEREAS, the Council has determined that it is in the best interest of the City: (i) to issue the Bonds; and (ii) to execute and deliver the Bond Documents, and other documents related thereto; and

WHEREAS, the City is authorized to issue the Bonds under the Act and this Ordinance, and has concluded that it is desirable at this time to authorize the issuance of the Bonds to finance the Project and that the City's issuance of the Bonds will constitute and be a valid public purpose; 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 Ordinance, which notice contained certain information concerning the Plan and the ownership, purpose, location and size of the Project and the maximum amount of the Bonds to be issued to finance the Project, which notice was published at least fourteen days prior to final action upon this Ordinance.

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 Ordinance previously taken by the Council and the officials of the City directed toward approval of the Plan and the issuance and sale of the Bonds should be approved and the same hereby are ratified, approved and confirmed.

Section 2. FINDINGS. The Council, after a public hearing held upon proper notice, hereby declares that it has considered all relevant information presented to it relating to the Plan and the Bonds and hereby finds and determines that approval of the Plan and the issuance of the Bonds pursuant to this Ordinance to provide funds for the Project are necessary and advisable and in the interest of and will promote the public health, safety,

morals, convenience, education, economy and welfare of the City and the residents of the City. The Council finds that: (1) The Plan and the proposed activities under the Plan aid in the elimination or prevention of slum or blight; and

(2) The Plan conforms to the general plan for the City as a whole;

(3) The Plan affords maximum opportunity consistent with the needs of the community for the rehabilitation or redevelopment of the area by private enterprise or persons, and the objectives of the Plan justify the proposed activities as public purposes and needs;

(4) The Bonds will be issued for the purpose of financing the Project;

(5) The aggregate face amount of obligations to be issued with respect to financing the Project is not to exceed \$21,500,000;

(6) The developer of the Project property is the Company; and

(7) The Project property comprises of 4101 Central Ave. NE Albuquerque, NM 87108, all within the Central/ Highland/ Upper Nob Hill Metropolitan Redevelopment Area.

Section 3. THE PROJECT. The City shall acquire the Project for the purposes hereinabove described, and the Project shall be located at all times within the corporate limits of the City and within the Central/ Highland/ Upper Nob Hill Metropolitan Redevelopment Area.

Section 4. THE PLAN-APPROVAL. The Plan in the form on deposit in the office of the City Clerk is hereby approved in all respects.

Section 6. BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale. The issuance of the Bonds in an aggregate principal amount not to exceed \$21,500,000 and the use of the proceeds of the Bonds to finance a portion of the costs of the Project, including payment of expenses relating thereto, are hereby approved and confirmed. The Bonds shall be issued no later than December, 2020.

B. Form and Terms. Subject to the limitations set forth in this Ordinance, the Bonds shall (i) be in the form and denominations and shall be numbered and dated as set forth in the Indenture; (ii) be payable as to principal and interest as set forth in the Indenture; and (iii) bear interest at the rates and maturing on the date set forth in the Indenture.

C. Execution. The Bonds shall be signed by the Mayor or Chief Administrative Officer of the City of Albuquerque, New Mexico.

D. The interest rate and net effective interest rate on the Bonds shall not exceed 5% per annum.

Section 7. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN.

A. 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.

B. The Mayor or Chief Administrative Officer of the City is authorized to execute and deliver in the name and on behalf of the City, and the City Clerk or Deputy City Clerk is hereby authorized to attest, as necessary, the Bond Documents and the Bonds with such changes therein as are not inconsistent with this Ordinance.

C. The Mayor, Chief Administrative Officer, Treasurer and City Clerk are further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other 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 and the Plan.

D. 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 to finance the costs of the Project and for carrying out other transactions as contemplated by this Ordinance, the Indenture, the Lease, and the Bond Purchase Agreement, 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 8. 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, 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. FUNDS AND ACCOUNTS. There are established in the Indenture, 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 Indenture. Other funds and accounts may be established as are necessary under the Indenture.

Section 10. LEASE TERM. The Lease term shall not exceed seven years.

Section 11. FINDINGS REGARDING PROPERTY TAX ABATEMENT; PAYMENT OF INTEREST AND PRINCIPAL AND OTHER MATTERS. The Council makes the following determinations and findings in accordance with Sections 3-60A-39 and 3-60A-40 of the Act:

A. It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund for the maintenance of the Project property.

B. The Lease requires that the Company maintain the Project property in good repair and condition (excepting reasonable wear and tear) and carry all proper insurance with respect to the Project property.

C. The Lease requires the Company to make payments sufficient to pay the principal of, premium, if any, and interest on the Bonds as principal and interest become due and to make all payments of or relating to the Project property as they become due.

D. In accordance with Section 7-36-3.1, NMSA 1978, as amended and supplemented, the Project property shall be exempt from property taxation on the improvements financed by the Bonds for the shorter of the period of time the Bonds remain outstanding or December 31 of the year in which the seventh anniversary of the acquisition of the Project property by the City will occur (i.e., December 31, 2026 if the Bonds are issued in 2019, and December 31, 2027 if the Bonds are issued in 2020).

E. The maximum amount necessary in each year to pay the principal of and interest on the Bonds, assuming issuance of the Bonds as of December, 2020, in the maximum principal amount of \$21,500,000 and bearing interest at a maximum rate of 5%, is as follows:

<u>Year Ending</u>	<u>Combined Total Principal and Interest Payment</u>
December 31, 2021	\$ 1,075,000.00
December 31, 2022	\$ 1,075,000.00
December 31, 2023	\$ 1,075,000.00
December 31, 2024	\$ 1,075,000.00
December 31, 2025	\$ 1,075,000.00
December 31, 2026	\$ 1,075,000.00
December 31, 2027	\$ 22,575,000.00

Section 12. LIMITED OBLIGATIONS. The Bonds shall be special limited obligations of

the City, payable solely from the revenues derived from the Lease and payable by the Company as described in the Indenture and any other property or interest of the City specifically pledged under 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 the Ordinance or in 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 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, nor shall the breach of any agreement contained in the 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 the revenues therefrom 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 constructing or furnishing the Project property.

Section 13. 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 or its City Councilors, officials, members, officers, employees or agents with respect to the City's ownership of the Project property or the issuance of the Bonds and arising from the condition of the Project property or the acquisition, construction and operation of the Project property by the Company, except to the extent Section 56-7-1, New Mexico Statutes Annotated, 1978 Compilation, 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 member, officer, employee or agent of the City.

Section 14. ORDINANCE IRREPEALABLE. After any of the Bonds are issued, this Ordinance shall be and remain irrepealable until the Bonds, including interest, are fully paid, canceled and discharged.

Section 15. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Ordinance are repealed by this 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 16. SEVERABILITY. If any section, paragraph, clause or provision of this 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 Ordinance.

Section 17. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This 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 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 which maintains an office in, and is of general circulation in, the City, and shall be in full force and effect five days following such publication.