

CITY of ALBUQUERQUE TWENTY-FIFTH COUNCIL

COUNCIL BILL NO. F/S O-23-90

ENACTMENT NO. 0-2023-032

SPONSORED BY: Pat Davis, by request

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ORDINANCE

AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BOND (MAXEON PROJECT), SERIES 2024 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$2,400,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION, DEVELOPMENT, EQUIPPING, AND IMPROVEMENT OF A SOLAR CELL AND SOLAR PANEL MANUFACTURING FACILITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE AGREEMENT, BOND, 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, NMSA, 1978, 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; 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

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1 WHEREAS, Maxeon New Mexico Holdings, LLC (together with its successors,
2 assigns and affiliates, the "Company") is a limited liability company organized under
3 the laws of the State of Delaware and is authorized to do business in New Mexico;
4 and

5 WHEREAS, the Company has requested that the City issue its industrial revenue
6 bond pursuant to the Act for the purpose of providing funds to finance the
7 acquisition, construction, development, equipping, and improvement of a solar cell
8 and solar panel manufacturing facility within the corporate limits of the City (the
9 "Project"); and

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

14 WHEREAS, the Company has presented to the City and the Commission a
15 proposal (the "Project Plan") whereby the City shall, pursuant to the Act, acquire and
16 improve certain property and equipment (the "Project Property") for the purpose of
17 operating facilities at Mesa Del Sol for solar cell and solar panel manufacturing,
18 within the boundaries of the City, and pursuant to which the City would issue its
19 taxable industrial revenue bond in order to finance the Project; and

20 WHEREAS, the Commission has reviewed the Project Plan, and on October 19,
21 2023, has determined that the Company has complied with City Resolution No. R-
22 16-1985, and has recommended approval of the Project Plan by the Council; and

23 WHEREAS, under the Company's Project Plan, the City would enter into an
24 Indenture (the "Indenture") between the City and a corporate depository satisfactory
25 to the City to be designated at a later date, as depository (the "Depository"),
26 pursuant to which, together with this ordinance (the "Bond Ordinance"), the City
27 would issue its bond designated as the City of Albuquerque, New Mexico Taxable
28 Industrial Revenue Bond (Maxeon Project), Series 2024 (the "Bond"); and

29 WHEREAS, under the Company's Project Plan, the City and the Company would
30 enter into a Lease Agreement (the "Lease"), pursuant to which the Company will
31 lease the Project Property from the City and will make payments to the Depository

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1 sufficient to pay the principal of, redemption premium, if any, and interest on the
2 Bond, and to pay all other obligations incurred pursuant to the provisions of the
3 Lease and the Bond Ordinance; and

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

7 WHEREAS, the proceeds of the Bond shall be used for the purpose of financing
8 the acquisition, construction, development, improvement and equipping of the
9 Project (the "Financing"); and

10 WHEREAS, the City is authorized to enter into the Lease, the Indenture, and
11 other related documents and to issue the Bond pursuant to the Act and the Bond
12 Ordinance; and

13 WHEREAS, the Bond in an aggregate principal amount not to exceed
14 \$2,400,000,000 will be issued, sold, and delivered by the City in a private sale to an
15 affiliate of the Company (the "Purchaser") pursuant to a bond purchase agreement
16 (the "Bond Purchase Agreement") among the City, the Company, and the
17 Purchaser; and

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

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

24 WHEREAS, the Council has been advised by the Company that the disclosure
25 provisions of Rule 15c2-12 of the Securities and Exchange Commission are not
26 applicable to this transaction inasmuch as the Bond is being sold to the Purchaser,
27 which is an affiliate of the Company, in a private sale without the participation of an
28 underwriter; and

29 WHEREAS, there has been published in the Albuquerque Journal, a newspaper
30 of general circulation in the City, public notice of the Council's intention to adopt this
31 Bond Ordinance, which notice contained certain information concerning the

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1 ownership, purpose, location, and size of the Project and the Project Property, and
2 the amount of the Bond to be issued to finance the Project, which notice was
3 published at least fourteen (14) days prior to hearing and final action on this Bond
4 Ordinance; and

5 WHEREAS, the proposed forms of the following documents have been filed with
6 the City Clerk and presented to the Council: (1) Project Plan; (2) Lease; (3)
7 Indenture; and, (4) Bond Purchase Agreement (collectively the "Bond Documents");
8 and

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

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

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

19 Section 2. THE PROJECT PLAN. The Project to be financed with the Bond
20 consists of the acquisition, construction, development, improvement and equipping
21 of a solar cell and solar panel manufacturing facility. The Company may use
22 additional available money to accomplish the Project. The Project Plan is hereby
23 approved in all respects.

24 Section 3. FINDINGS.

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

31 (B) The Council finds that:

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- 1 (1) The Bond will be issued for the purpose of financing the Project;
- 2 (2) The aggregate face amount of obligations to be issued for the
- 3 purpose of financing the Project is \$2,400,000,000;
- 4 (3) The developer and operator of the Project is the Company; and
- 5 (4) The Project Property is located in the City.

6 Section 4. AUTHORIZATION AND APPROVAL OF THE BOND. To finance
7 the cost of acquiring, constructing, developing, improving and equipping the Project
8 Property, the City hereby authorizes and approves the issuance and sale of its
9 industrial revenue bond to be designated "City of Albuquerque, New Mexico Taxable
10 Industrial Revenue Bond (Maxeon Project), Series 2024" in a principal amount not to
11 exceed \$2,400,000,000 and the use of the proceeds of the Bond to finance the cost
12 of the Project and to pay expenses relating thereto.

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

16 Section 6. FORM AND TERM OF THE BOND. Subject to the limitations set
17 forth in this Bond Ordinance, the Bond shall be: (i) in the form and shall be
18 numbered and dated all as set forth in the Indenture; (ii) payable as to principal and
19 interest, and subject to optional and mandatory redemption and defeasance in the
20 amounts, upon the conditions and at the times and prices set forth in the Indenture;
21 and, (iii) issued in a principal amount not to exceed \$2,400,000,000, bearing interest
22 at the rates and maturing on the dates set forth in the Indenture. The interest rate
23 on the Bond shall not exceed 12% per annum. The Mayor or the Chief
24 Administrative Officer of the City shall sign the Bond.

25 Section 7. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.
26 The form, terms, and provisions of the Bond Documents in the form on deposit in the
27 office of the City Clerk are in all respects approved, authorized, and confirmed, and
28 the City shall enter into such Bond Documents substantially in the form of each such
29 document on deposit with the City Clerk, with only: (i) such changes as are not
30 inconsistent with this Ordinance; (ii) such changes as shall be approved by the
31 Mayor or the Chief Administrative Officer upon consultation with the City's bond

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1 counsel, with the execution of such document by the Mayor or the Chief
2 Administrative Officer constituting conclusive evidence of such approval; or (iii) such
3 other changes as may be approved by supplemental resolution of the Council.

4 (A) The Council authorizes the Mayor or the Chief Administrative Officer of the
5 City to execute and deliver the Bond Documents in the name and on behalf of the
6 City, and the Council authorizes the City Clerk or Deputy City Clerk to attest to, as
7 necessary, the Bond Documents and the Bond with only: (i) such changes as are not
8 inconsistent with this Ordinance; (ii) such changes as shall be approved by the
9 Mayor or the Chief Administrative Officer upon consultation with the City's bond
10 counsel, with the execution of such document by the Mayor or the Chief
11 Administrative Officer constituting conclusive evidence of such approval; or (iii) such
12 other changes as may be approved by supplemental resolution of the Council.

13 (B) The Mayor, Chief Administrative Officer, Chief Financial Officer, City
14 Treasurer, and City Clerk are further authorized to execute, authenticate, and deliver
15 such certifications, instruments, documents, letters, and other agreements, including
16 security agreements, and to do such other acts and things, either prior to or after the
17 date of delivery of the Bond, as are necessary or appropriate to consummate the
18 transactions contemplated by the Bond Documents.

19 (C) The officers of the City shall take such action as is necessary to effectuate
20 the provisions of the Indenture and shall take such action as is necessary in
21 conformity with the Act and this Bond Ordinance to finance the costs of the Project
22 and for carrying out other transactions as contemplated by this Bond Ordinance and
23 the Bond Documents including, without limitation, the execution and delivery of any
24 closing documents to be delivered in connection with the sale and delivery of the
25 Bond.

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

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

4 (A) The maximum amount necessary in each year to pay the principal of and
 5 interest on the Bond, assuming issuance of the Bond on or about February 1, 2024
 6 in the amount of \$2,400,000,000 and bearing interest at the rate of 3.00%, or as
 7 otherwise provided in the Indenture, is as follows:

8	<u>Year Ended</u>	<u>Maturing Principal</u>	<u>Interest Amount</u>	<u>Total Debt Service</u>
9	12/31/25	\$0	\$72,000,000	\$72,000,000
10	12/31/26	\$0	\$72,000,000	\$72,000,000
11	12/31/27	\$0	\$72,000,000	\$72,000,000
12	12/31/28	\$0	\$72,000,000	\$72,000,000
13	12/31/29	\$0	\$72,000,000	\$72,000,000
14	12/31/30	\$0	\$72,000,000	\$72,000,000
15	12/31/31	\$0	\$72,000,000	\$72,000,000
16	12/31/32	\$0	\$72,000,000	\$72,000,000
17	12/31/33	\$0	\$72,000,000	\$72,000,000
18	12/31/34	\$0	\$72,000,000	\$72,000,000
19	12/31/35	\$0	\$72,000,000	\$72,000,000
20	12/31/36	\$0	\$72,000,000	\$72,000,000
21	12/31/37	\$0	\$72,000,000	\$72,000,000
22	12/31/38	\$0	\$72,000,000	\$72,000,000
23	12/31/39	\$0	\$72,000,000	\$72,000,000
24	12/31/40	\$0	\$72,000,000	\$72,000,000
25	12/31/41	\$0	\$72,000,000	\$72,000,000
26	12/31/42	\$0	\$72,000,000	\$72,000,000
27	12/31/43	\$0	\$72,000,000	\$72,000,000
28	12/31/44	\$2,400,000,000	\$72,000,000	\$2,472,000,000

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

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1 (C) The lease rentals payable under the Lease shall be at least sufficient to
2 pay the principal and interest payments on the Bond set forth in Paragraph (A) of
3 this Section 9 when due and otherwise render the financing of the acquisition of the
4 Project Property entirely self-liquidating. There shall be no payments to any reserve
5 fund or sinking fund installment payments.

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

15 Section 11. LIMITED OBLIGATIONS. The Bond shall be a special limited
16 obligation of the City payable solely from the revenues derived from the Lease and
17 payable by the Company as described in the Indenture, and shall never constitute a
18 debt or indebtedness of the City or the State or any political subdivision thereof
19 within the meaning of any provision or limitation of the State Constitution, statutes, or
20 home-rule charter of the City, and shall not constitute or give rise to a pecuniary
21 liability of the City or a charge against its general credit or taxing power. Nothing
22 contained in the Bond Ordinance or the Bond Documents, or any other instrument,
23 shall be construed as obligating the City (except with respect to the Project Property
24 and the application of the revenues therefrom and the proceeds of the Bond, all as
25 provided in the Bond Documents), nor as incurring a pecuniary liability or charge
26 upon the general credit of the City or against its taxing power, nor shall the breach of
27 any agreement contained in the Bond Ordinance, the Bond Documents, the Bonds,
28 or any other instrument be construed as obligating the City (except with respect to
29 the Project Property and the application of revenues therefrom and the proceeds of
30 the Bond all as provided in the Bond Documents) nor as incurring a pecuniary
31 liability or a charge upon the general credit of the City or against its taxing power, the

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1 City having no power to pay out of its general funds, or otherwise contribute any part
2 of the costs of acquiring the Project Property, nor power to operate the Project as a
3 business or in any manner except as lessor and seller of the Project Property.

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

16 Section 13. BOND ORDINANCE IRREPEALABLE. After the Bond is issued,
17 this Bond Ordinance shall be and remain irrepealable until the Bond, including all
18 interest thereon, is fully paid, cancelled, and discharged, or until there has been
19 defeasance of the Bond in accordance with the Indenture.

20 Section 14. SEVERABILITY. If any section, paragraph, clause or provision of
21 this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the
22 invalidity or unenforceability of that section, paragraph, clause, or provision shall not
23 affect any of the remaining provisions of this Bond Ordinance.

24 Section 15. REPEALER. All by-laws, ordinances, resolutions, and orders, or
25 parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond
26 Ordinance but only to the extent of that inconsistency. This repealer shall not be
27 construed to revive any by-law, ordinance, resolution, or order, or part thereof,
28 previously repealed.

29 Section 16. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE
30 DATE. This Bond Ordinance, immediately upon its final passage and approval, shall
31 be recorded in the ordinance book of the City, kept for that purpose, and shall be

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1 there authenticated by the signature of the Mayor and the presiding officer of the
2 City Council, and by the signature of the City Clerk or any Deputy City Clerk, and
3 notice of adoption thereof shall be published once in a newspaper that maintains an
4 office in, and is of general circulation in, the City, and shall be in full force and effect
5 five (5) days following such publication.

6 Section 17. GENERAL SUMMARY FOR PUBLICATION. The title and general
7 summary of the subject contained in the Bond Ordinance shall be published in
8 substantially the following form:

9 CITY OF ALBUQUERQUE, NEW MEXICO
10 NOTICE OF ADOPTION OF ORDINANCE

11 Notice is hereby given of the title and of a general summary of the subject matter
12 contained in City Ordinance No. F/S O-23-90 (the "Ordinance"), duly adopted and
13 approved by the City Council of the City of Albuquerque, New Mexico, on
14 November 20, 2023. Complete copies of the Ordinance are available for public
15 inspection during the normal and regular business hours of the City Clerk in the
16 office of the City Clerk, Albuquerque, New Mexico.

17 The title of the Ordinance is:

18 AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE,
19 NEW MEXICO TAXABLE INDUSTRIAL REVENUE BOND (MAXEON PROJECT),
20 SERIES 2024 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$2,400,000,000 TO
21 PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION,
22 DEVELOPMENT, EQUIPPING, AND IMPROVEMENT OF A SOLAR CELL AND
23 SOLAR PANEL MANUFACTURING FACILITY; AUTHORIZING THE EXECUTION
24 AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE
25 AGREEMENT, BOND, AND OTHER DOCUMENTS IN CONNECTION WITH THE
26 ISSUANCE OF THE BOND AND THE PROJECT; MAKING CERTAIN
27 DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE
28 PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND
29 REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

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

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1 PASSED AND ADOPTED THIS 20th DAY OF November, 2023
2 BY A VOTE OF: 9 FOR 0 AGAINST.

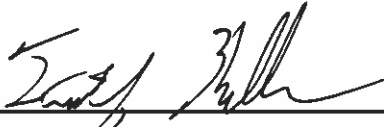
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Pat Davis, President
City Council

APPROVED THIS 5 DAY OF December, 2023

Bill No. F/S O-23-90



Timothy M. Keller, Mayor
City of Albuquerque

ATTEST:



Ethan Watson, City Clerk

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