

CITY of ALBUQUERQUE TWENTY SIXTH COUNCIL

COUNCIL BILL NO. O-24-45

ENACTMENT NO. 0-2024-032

SPONSORED BY: Nichole Rogers, by request

ORDINANCE

1
2 AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE,
3 NEW MEXICO TAXABLE INDUSTRIAL REVENUE BOND (PROJECT MAIA)
4 SERIES 2024 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$300,000,000 TO
5 PROVIDE FUNDS TO FINANCE THE ACQUISITION, RENOVATION,
6 DEVELOPMENT, EXPANSION, IMPROVEMENT AND EQUIPPING OF
7 ADVANCED ENERGY TECHNOLOGY RESEARCH AND DEVELOPMENT
8 FACILITIES; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED
9 AND RESTATED INDENTURE, AMENDED AND RESTATED LEASE
10 AGREEMENT, BOND PURCHASE AGREEMENT, BOND, AND OTHER
11 DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BOND AND THE
12 PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO
13 THE BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN
14 PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS
15 ORDINANCE.

16 WHEREAS, the City of Albuquerque (the "City") is a legally and regularly created,
17 established, organized, and existing municipal corporation of the State of New
18 Mexico (the "State"); and

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

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

4 WHEREAS, Kairos Power LLC (the "Company") is a limited liability company
5 organized under the laws of the State of Delaware and is authorized to do business
6 in New Mexico; and

7 WHEREAS, the City has previously issued its City of Albuquerque, New Mexico
8 Taxable Industrial Revenue Bond (Kairos Power Project) Series 2020 in the
9 aggregate principal amount of \$125,000,000 for the Company to finance all or part of
10 the costs of the acquisition, improvement and equipping of an advanced energy
11 technology research facility for the Company (the "Original Project"); and

12 WHEREAS, the Company has requested that the City issue its industrial revenue
13 bond pursuant to the Act for the purpose of providing funds to finance the
14 acquisition, improvement, development and expansion of the Original Project,
15 including development of a salt production facility and two fuel development lab
16 facilities within the corporate limits of the City (the "Project"); and

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

21 WHEREAS, the Company has presented to the City and the Commission a
22 proposal (the "Project Plan") whereby the City shall, pursuant to the Act, acquire
23 certain property and equipment (the "Project Property") for the purpose of operating
24 facilities at Mesa del Sol for advanced energy technology research and development
25 within the boundaries of the City, and pursuant to which the City would issue its
26 taxable industrial revenue bond in order to finance the Project; and

27 WHEREAS, the Commission has reviewed the Project Plan, and on August 15,
28 2024, has determined that the Company has complied with City Resolution No. 16-
29 1985, and has recommended approval of the Project Plan by the Council; and

30 WHEREAS, under the Company's Project Plan, the City would enter into an
31 Amended and Restated Indenture (the "Indenture") between the City and a
32 corporate depository satisfactory to the City to be designated at a later date, as

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1 depository (the "Depository"), pursuant to which, together with this ordinance (the
2 "Bond Ordinance"), the City would issue its bond designated as the City of
3 Albuquerque, New Mexico Taxable Industrial Revenue Bond (Project Maia) Series
4 2024 (the "Bond"); and

5 WHEREAS, under the Company's Project Plan, the City and the Company would
6 enter into an Amended and Restated Lease Agreement (the "Lease"), pursuant to
7 which the Company will lease the Project Property from the City and will make
8 payments to the Depository sufficient to pay the principal of, redemption premium, if
9 any, and interest on the Bond, and to pay all other obligations incurred pursuant to
10 the provisions of the Lease and the Bond Ordinance; and

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

14 WHEREAS, the proceeds of the Bond shall be used for the purpose of financing
15 the acquisition, renovation, development, expansion, improvement and equipping of
16 the Project (the "Financing"); and

17 WHEREAS, the City is authorized to enter into the Lease, the Indenture, and
18 other related documents and to issue the Bond pursuant to the Act and the Bond
19 Ordinance; and

20 WHEREAS, the Bond in an aggregate principal amount not to exceed
21 \$300,000,000 will be issued, sold, and delivered by the City in a private sale to an
22 affiliate of the Company (the "Purchaser") pursuant to a bond purchase agreement
23 (the "Bond Purchase Agreement") among the City, the Company, and the
24 Purchaser; and

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

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

31 WHEREAS, the Council has been advised by the Company that the disclosure
32 provisions of Rule 15c2-12 of the Securities and Exchange Commission are not

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1 applicable to this transaction inasmuch as the Bond is being sold to the Purchaser,
2 which is an affiliate of the Company, in a private sale without the participation of an
3 underwriter; and

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

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

15 WHEREAS, the City has delivered notice to the County of Bernalillo, State of
16 New Mexico, of its intent to consider issuance of the Bond, which notice was given
17 at least thirty (30) days prior to the meeting at which final action is to be taken on this
18 Bond Ordinance as required by Section 3-32-6.1, New Mexico Statutes Annotated,
19 1978 Compilation, as amended.

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

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

26 Section 2. THE PROJECT PLAN. The Project to be financed with the Bond
27 consists of the acquisition, renovation, development, expansion, improvement and
28 equipping of facilities for the Company. The Company may use additional available
29 money to accomplish the Project. The Project Plan is hereby approved in all
30 respects.

31 Section 3. FINDINGS.

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

7 (A) The Council finds that:

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

9 (2) The aggregate face amount of obligations to be issued for the
10 purpose of financing the Project is \$300,000,000;

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

12 (4) The Project Property is located in the City.

13 Section 4. AUTHORIZATION AND APPROVAL OF THE BOND. To finance
14 the cost of acquiring the Project Property, the City hereby authorizes and approves
15 the issuance and sale of its industrial revenue bond to be designated "City of
16 Albuquerque, New Mexico Taxable Industrial Revenue Bond (Project Maia) Series
17 2024" in the principal amount of \$300,000,000 and the use of the proceeds of the
18 Bond to finance the cost of the Project and to pay expenses relating thereto.

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

22 Section 6. FORM AND TERM OF THE BOND. Subject to the limitations set
23 forth in this Bond Ordinance, the Bond shall be: (i) in the form and shall be
24 numbered and dated all as set forth in the Indenture; (ii) payable as to principal and
25 interest, and subject to optional and mandatory redemption and defeasance in the
26 amounts, upon the conditions and at the times and prices set forth in the Indenture;
27 and, (iii) issued in the principal amount of \$300,000,000, bearing interest at the rates
28 and maturing on the dates set forth in the Indenture. The interest rate on the Bond
29 shall not exceed 12% per annum. The Mayor or the Chief Administrative Officer of
30 the City shall sign the Bond.

31 Section 7. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.

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1 The form, terms, and provisions of the Bond Documents in the form on deposit in the
2 office of the City Clerk are in all respects approved, authorized, and confirmed, and
3 the City shall enter into such Bond Documents substantially in the form of each such
4 document on deposit with the City Clerk, with only such changes as are not
5 inconsistent with this Bond Ordinance or such other changes as may be approved
6 by supplemental resolution of the Council.

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

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

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

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

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

1 (A) The maximum amount necessary in each year to pay the principal of and
 2 interest on the Bond, assuming issuance of the Bond as of October __, 2024 in the
 3 amount of \$300,000,000 and bearing interest at the rate of 3% is as follows:

4	<u>Year Ended</u>	<u>Maturing Principal</u>	<u>Interest Amount</u>	<u>Total Debt Service</u>
5	12/31/25	\$0	\$9,000,000	\$9,000,000
6	12/31/26	\$0	\$9,000,000	\$9,000,000
7	12/31/27	\$0	\$9,000,000	\$9,000,000
8	12/31/28	\$0	\$9,000,000	\$9,000,000
9	12/31/29	\$0	\$9,000,000	\$9,000,000
10	12/31/30	\$0	\$9,000,000	\$9,000,000
11	12/31/31	\$0	\$9,000,000	\$9,000,000
12	12/31/32	\$0	\$9,000,000	\$9,000,000
13	12/31/33	\$0	\$9,000,000	\$9,000,000
14	12/31/34	\$0	\$9,000,000	\$9,000,000
15	12/31/35	\$0	\$9,000,000	\$9,000,000
16	12/31/36	\$0	\$9,000,000	\$9,000,000
17	12/31/37	\$0	\$9,000,000	\$9,000,000
18	12/31/38	\$0	\$9,000,000	\$9,000,000
19	12/31/39	\$0	\$9,000,000	\$9,000,000
20	12/31/40	\$0	\$9,000,000	\$9,000,000
21	12/31/41	\$0	\$9,000,000	\$9,000,000
22	12/31/42	\$0	\$9,000,000	\$9,000,000
23	12/31/43	\$0	\$9,000,000	\$9,000,000
24	12/31/44	\$300,000,000	\$9,000,000	\$309,000,000

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

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

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

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

30 Section 12. APPROVAL OF INDEMNIFICATION. The Council specifically
31 approves the provisions of the Lease relating to indemnification which provide that
32 the Company shall indemnify and hold harmless the City and its City Councilors,

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1 officials, members, officers, employees, and agents against liability to the Company
2 or to any third parties that may be asserted against the City, its City Councilors,
3 officials, members, officers, employees, and agents with respect to the City's
4 ownership of the Project Property or the issuance of the Bond and arising from the
5 condition of the Project Property or the acquisition or operation of the Project
6 Property by the Company, except to the extent that Section 56-7-1, New Mexico
7 Statutes Annotated, 1978 Compilation, as amended, applies, and except claims for
8 any loss or damage arising out of or resulting from the gross negligence or willful
9 misconduct of the City or any official, member, officer, employee, or agent of the
10 City.

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

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

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

24 Section 16. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE
25 DATE. This Bond Ordinance, immediately upon its final passage and approval, shall
26 be recorded in the ordinance book of the City, kept for that purpose, and shall be
27 there authenticated by the signature of the Mayor and the presiding officer of the
28 City Council, and by the signature of the City Clerk or any Deputy City Clerk, and
29 notice of adoption thereof shall be published once in a newspaper that maintains an
30 office in, and is of general circulation in, the City, and shall be in full force and effect
31 five (5) days following such publication.

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

4 CITY OF ALBUQUERQUE, NEW MEXICO
5 NOTICE OF ADOPTION OF ORDINANCE

6 Notice is hereby given of the title and of a general summary of the subject matter
7 contained in City Ordinance No. O-24-____ (the "Ordinance"), duly adopted and
8 approved by the City Council of the City of Albuquerque, New Mexico, on
9 September 4, 2024. Complete copies of the Ordinance are available for public
10 inspection during the normal and regular business hours of the City Clerk in the
11 office of the City Clerk, Albuquerque/Bernalillo County Government Center, One
12 Civic Plaza, N.W., Albuquerque, New Mexico.

13 The title of the Ordinance is:

14 ORDINANCE

15 AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE,
16 NEW MEXICO TAXABLE INDUSTRIAL REVENUE BOND (PROJECT MAIA)
17 SERIES 2024 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$300,000,000 TO
18 PROVIDE FUNDS TO FINANCE THE ACQUISITION, RENOVATION,
19 DEVELOPMENT, EXPANSION, IMPROVEMENT AND EQUIPPING OF
20 ADVANCED ENERGY TECHNOLOGY RESEARCH AND DEVELOPMENT
21 FACILITIES; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED
22 AND RESTATED INDENTURE, AMENDED AND RESTATED LEASE
23 AGREEMENT, BOND PURCHASE AGREEMENT, BOND, AND OTHER
24 DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BOND AND THE
25 PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO
26 THE BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN
27 PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS
28 ORDINANCE.

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

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1 PASSED AND ADOPTED THIS 16th DAY OF September, 2024
2 BY A VOTE OF: 8 FOR 1 AGAINST.

3
4 For: Baca, Bassan, Champine, Grout, Lewis, Peña, Rogers, Sanchez
5 Against: Fiebelkorn
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10 Dan Lewis, President
11 City Council

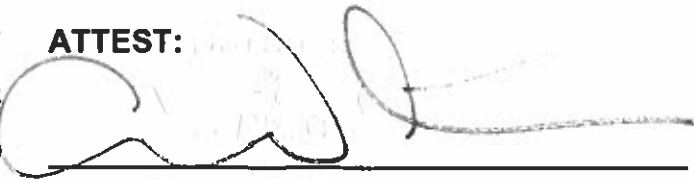
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14 APPROVED THIS 26 DAY OF September, 2024
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18 Bill No. O-24-45

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23 Timothy M. Keller, Mayor
24 City of Albuquerque
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27 ATTEST:

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29
30 Ethan Watson, City Clerk
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