

**CITY of ALBUQUERQUE
TWENTY SIXTH COUNCIL**

COUNCIL BILL NO. O-24-65 ENACTMENT NO. 0.2025.002

SPONSORED BY: Renée Grout, by request

ORDINANCE

AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BOND (SOLAERO TECHNOLOGIES PROJECT), SERIES 2025 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$72,600,000 TO PROVIDE FUNDS TO EXPAND AND MODERNIZE SPACE-GRADE SOLAR CELL MANUFACTURING CAPABILITIES; 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, 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 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, SolAero Technologies Corporation (the "Company") is a corporation
2 organized under the laws of the State of Delaware and is authorized to do business
3 in New Mexico; and

4 WHEREAS, the Company has requested that the City issue its industrial revenue
5 bond pursuant to the Act for the purpose of providing funds to expand and
6 modernize space-grade solar cell manufacturing capabilities within the corporate
7 limits of the City (the "Project"); and

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

12 WHEREAS, the Company has presented to the City and the Commission a
13 proposal (the "Project Plan") whereby the Company shall, pursuant to the Act,
14 expand and modernize manufacturing capability; keep operations co-located in order
15 to maximize technical, operational and industrial efficiency; mitigate cost and
16 schedule risks by minimizing new construction and leveraging existing facility
17 systems; and acquire equipment and other property to accomplish these objectives
18 and effect the Project (the "Project Property"), within the boundaries of the City, and
19 pursuant to which the City would issue its taxable industrial revenue bond in order to
20 finance the Project; and

21 WHEREAS, the Commission has reviewed the Project Plan, and on November
22 21, 2024, has determined that the Company has complied with City Resolution No.
23 16-1985, and has recommended approval of the Project Plan by the Council; and

24 WHEREAS, under the Company's Project Plan, the City would enter into an
25 Indenture dated as of February 1, 2025 (the "Indenture") between the City and
26 BOKF, NA or other corporate depository satisfactory to the City to be designated at
27 a later date, as depository (the "Depository"), pursuant to which, together with this
28 ordinance (the "Bond Ordinance"), the City would issue its bond designated as the
29 City of Albuquerque, New Mexico Taxable Industrial Revenue Bond (SolAero
30 Technologies Project), Series 2025 (the "Bond"); and

31 WHEREAS, under the Company's Project Plan, the City and the Company would
32 enter into a Lease Agreement dated as of February 1, 2025 (the "Lease"), pursuant
33 to which the Company will lease the Project Property from the City and will make

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1 payments to the Depository sufficient to pay the principal of, redemption premium, if
2 any, and interest on the Bond, and to pay all other obligations incurred pursuant to
3 the provisions of the 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, renovation and equipping of the Project (the
9 "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 \$72,600,000 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 in as much 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
32 ownership, purpose, location and size of the Project and the Project Property, and
33 the amount of the Bond to be issued to finance the Project, which notice was

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1 published at least fourteen (14) days prior to hearing and final action on this Bond
2 Ordinance; and

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

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

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

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

18 Section 2. THE PROJECT PLAN. The Project to be financed with the Bond is
19 to expand and modernize manufacturing capability, keep operations co-located in
20 order to maximize technical, operational and industrial efficiency, and mitigate cost
21 and schedule risks by minimizing new construction and leveraging existing facility
22 systems. The Company may use additional available money to accomplish the
23 Project. The Project Plan is hereby 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:

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

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1 (2) The aggregate face amount of obligations to be issued for the
2 purpose of financing the Project is \$72,600,000;

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

4 (4) The Project Property is located in the City at 10420 Research Road
5 SE, and 1600 Eubank Boulevard SE, Albuquerque, New Mexico 87123.

6 Section 4. AUTHORIZATION AND APPROVAL OF THE BOND. To finance
7 the cost of acquiring, constructing and renovating the Project Property, the City
8 hereby authorizes and approves the issuance and sale of its industrial revenue bond
9 to be designated "City of Albuquerque, New Mexico Taxable Industrial Revenue
10 Bond (SolAero Technologies Project), Series 2025" in the principal amount of
11 \$72,600,000 and the use of the proceeds of the Bond to finance the cost of the
12 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 the principal amount of \$72,600,000, bearing interest at the rates
22 and maturing on the dates set forth in the Indenture. The interest rate on the Bond
23 shall not exceed 12% per annum. The Mayor or the Chief Administrative Officer of
24 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 such changes as are not
30 inconsistent with this Bond Ordinance or such other changes as may be approved
31 by supplemental resolution of the Council.

32 (A) The Council authorizes the Mayor or the Chief Administrative Officer of the
33 City to execute and deliver the Bond Documents in the name and on behalf of the

1 City, and the Council authorizes the City Clerk or Deputy City Clerk to attest to, as
2 necessary, the Bond Documents and the Bond with such changes therein as are not
3 inconsistent with this Bond Ordinance.

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

10 (C) The officers of the City shall take such action as is necessary to effectuate
11 the provisions of the Indenture and shall take such action as is necessary in
12 conformity with the Act and this Bond Ordinance to finance the costs of the Project
13 and for carrying out other transactions as contemplated by this Bond Ordinance and
14 the Bond Documents including, without limitation, the execution and delivery of any
15 closing documents to be delivered in connection with the sale and delivery of the
16 Bond.

17 Section 8. DELIVERY OF THE BOND. Upon the execution of the Bond
18 Documents and the satisfaction of the conditions set forth in the Bond Documents,
19 the Bond shall be executed, authenticated, and delivered to the Purchaser. No
20 Bond shall be valid for any purpose until such Bond has been properly authenticated
21 as set forth in the Indenture.

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

25 (A) The maximum amount necessary in each year to pay the principal of and
26 interest on the Bond, assuming issuance of the Bond as of February 1, 2025 in the
27 amount of \$72,600,000 and bearing interest at the rate of 4% and the first Bond
28 payment occurring on February 1, 2026, is as follows:

<u>Year Ended</u>	<u>Maturing Principal</u>	<u>Interest Amount</u>	<u>Total Debt Service</u>
29 2/1/26	- \$0-	\$2,904,000	\$2,904,000
30 2/1/27	- \$0-	\$2,904,000	\$2,904,000
31 2/1/28	- \$0-	\$2,904,000	\$2,904,000
32 2/1/29	- \$0-	\$2,904,000	\$2,904,000

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1	2/1/30	-\$0-	\$2,904,000	\$2,904,000
2	2/1/31	-\$0-	\$2,904,000	\$2,904,000
3	2/1/32	-\$0-	\$2,904,000	\$2,904,000
4	2/1/33	-\$0-	\$2,904,000	\$2,904,000
5	2/1/34	-\$0-	\$2,904,000	\$2,904,000
6	2/1/35	-\$0-	\$2,904,000	\$2,904,000
7	2/1/36	-\$0-	\$2,904,000	\$2,904,000
8	2/1/37	-\$0-	\$2,904,000	\$2,904,000
9	2/1/38	-\$0-	\$2,904,000	\$2,904,000
10	2/1/39	-\$0-	\$2,904,000	\$2,904,000
11	2/1/40	-\$0-	\$2,904,000	\$2,904,000
12	2/1/41	-\$0-	\$2,904,000	\$2,904,000
13	2/1/42	-\$0-	\$2,904,000	\$2,904,000
14	2/1/43	-\$0-	\$2,904,000	\$2,904,000
15	2/1/44	-\$0-	\$2,904,000	\$2,904,000
16	2/1/45	\$72,600,000	\$2,904,000	\$75,504,000

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

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

Section 10. NON TAXABLE TRANSACTION CERTIFICATES. The Company, as agent for the City, will acquire the Project. The City will cooperate with the Company to obtain and allow use of Type 9 Nontaxable Transaction Certificates ("Certificates") that have been properly executed for acquisition of tangible personal property relating to the Project as applicable under the New Mexico Gross Receipts and Compensating Tax Act. The Company shall not use the Certificates other than for such things as may be permitted by law, if any, nor shall the Company use such

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1 Certificates after the completion of the Project. No costs, expenses or other
2 monetary relief will be recoverable from the City by vendors of equipment.

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

23 Section 12. APPROVAL OF INDEMNIFICATION. The Council specifically
24 approves the provisions of the Lease relating to indemnification which provide that
25 the Company shall indemnify and hold harmless the City and its City Councilors,
26 officials, members, officers, employees, and agents against liability to the Company
27 or to any third parties that may be asserted against the City, its City Councilors,
28 officials, members, officers, employees, and agents with respect to the City's
29 ownership of the Project Property or the issuance of the Bond and arising from the
30 condition of the Project Property or the acquisition or operation of the Project
31 Property by the Company, except to the extent that Section 56-7-1, New Mexico
32 Statutes Annotated, 1978 Compilation, as amended, applies, and except claims for
33 any loss or damage arising out of or resulting from the gross negligence or willful

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1 misconduct of the City or any official, member, officer, employee, or agent of the
2 City.

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

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

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

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

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

27 CITY OF ALBUQUERQUE, NEW MEXICO
28 NOTICE OF ADOPTION OF ORDINANCE

29 Notice is hereby given of the title and of a general summary of the subject matter
30 contained in a City Ordinance (the "Ordinance"), duly adopted and approved by the
31 City Council of the City of Albuquerque, New Mexico, on December 16, 2024.
32 Complete copies of the Ordinance are available for public inspection during the
33 normal and regular business hours of the City Clerk City Clerk in the office of the

1 City Clerk, Albuquerque, New Mexico.

2 The title of the Ordinance is:

3 AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE,
4 NEW MEXICO TAXABLE INDUSTRIAL REVENUE BOND (SOLAERO
5 TECHNOLOGIES PROJECT) SERIES 2025 IN THE MAXIMUM PRINCIPAL
6 AMOUNT OF \$72,600,000 TO PROVIDE FUNDS TO EXPAND AND MODERNIZE
7 SPACE-GRADE SOLAR CELL MANUFACTURING CAPABILITIES; AUTHORIZING
8 THE EXECUTION AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT,
9 BOND PURCHASE AGREEMENT, BOND, AND OTHER DOCUMENTS IN
10 CONNECTION WITH THE ISSUANCE OF THE BOND AND THE PROJECT;
11 MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE
12 BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN
13 PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS
14 ORDINANCE.

15 The title sets forth a general summary of the subject matter contained in the
16 Ordinance.

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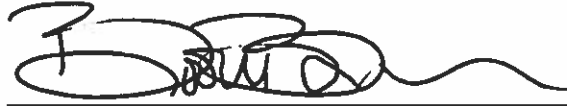
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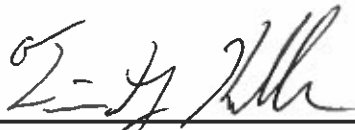
1 PASSED AND ADOPTED THIS 6th DAY OF January, 2025
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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8 **Brook Bassan, President**
9 **City Council**

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12 APPROVED THIS 14 DAY OF 2025, 2025

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16 **Bill No. O-24-65**

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21 **Timothy M. Keller, Mayor**
22 **City of Albuquerque**

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26 **ATTEST:**

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29 **Ethan Watson, City Clerk**

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