

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2019-23

INTRODUCED BY:

Councilor Carol Romero-Wirth

Mayor Alan M. Webber

Councilor Peter N. Ives

Councilor Signe I. Lindell

AN ORDINANCE

**OF THE CITY OF SANTA FE, NEW MEXICO AUTHORIZING AND PROVIDING FOR
THE ISSUANCE AND SALE OF ITS TAXABLE INDUSTRIAL REVENUE BONDS FOR
THE BENEFIT OF NEW MEXICO FRESH FOODS, LLC, IN AN AGGREGATE
PRINCIPAL AMOUNT NOT TO EXCEED EIGHTEEN MILLION DOLLARS
(\$18,000,000) FOR THE PURPOSE OF FINANCING THE ACQUISITION,
CONSTRUCTION, RENOVATION, INSTALLATION, AND EQUIPPING OF A HIGH
PRESSURE PROCESSING FACILITY IN SANTA FE, NEW MEXICO, AUTHORIZING
THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT BETWEEN THE CITY
AND NEW MEXICO FRESH FOODS, LLC, AN INDENTURE SECURING SAID BONDS,
A BOND PURCHASE AGREEMENT, CLOSING DOCUMENTS, AND SUCH BONDS IN
CONNECTION THEREWITH; PROVIDING FOR THE TERMS OF THE SERIES 2019
BONDS AND MAKING DETERMINATIONS AS TO THE SUFFICIENCY OF THE
LEASE PAYMENTS AND OTHER MATTERS RELATED TO THE PROJECT;
AUTHORIZING THE SALE OF SAID BONDS AND ANY ANCILLARY AGREEMENTS
IN CONNECTION THEREWITH; AND AUTHORIZING OTHER MATTERS**

1 **PERTAINING TO THE ISSUANCE OF SAID BONDS.**

2
3 **WHEREAS**, the City of Santa Fe, New Mexico (the "City") is authorized by Sections 3-
4 32-1 through 3-32-16 NMSA 1978, as amended (the "Act") to issue industrial revenue bonds for
5 the purposes set forth in the Act and to permit the expenditure of the proceeds thereof to defray,
6 among other things, the cost of acquisition, construction, renovation, installation, and equipping of
7 certain facilities constituting a project (as defined under the Act) and for the purposes of financing
8 in accordance with Section 3-32-6 NMSA 1978; and

9 **WHEREAS**, pursuant to Section 3-32-3 NMSA 1978, of the Act, "project" also means any
10 land and building or other improvements thereon and all real and personal property deemed
11 necessary in connection therewith whether or not now in existence which shall be within the
12 meaning of the Section; and

13 **WHEREAS**, the City's procedures set forth in Resolution 2012-4 which adopted the City
14 of Santa Fe Industrial Revenue Bond Policy have been substantially complied with; and

15 **WHEREAS**, New Mexico Fresh Foods, LLC, a New Mexico limited liability company
16 ("NMFF"), has requested the City to issue a series of bonds in an amount sufficient, together with
17 other moneys available therefor, to finance certain capital costs, including acquiring, constructing,
18 renovating, installing, and equipping a high pressure processing facility to be located in Santa Fe,
19 New Mexico (the "Project"), and to pay for certain costs of issuance of such bonds; and

20 **WHEREAS**, in furtherance of the purposes set forth in the Act, the City agrees to finance
21 the Project by the sale and issuance of a series of its industrial revenue bonds and intends to
22 authorize such actions as might be required to implement the financing of the Project; and

23 **WHEREAS**, pursuant to and in accordance with the provisions of the Act, the Project is
24 suitable for use by NMFF and will be leased by the City to NMFF pursuant to a Lease Agreement
25 (the "Agreement"); and

1 **WHEREAS**, NMFF has proposed that the City fund the acquisition, construction,
2 renovation, installation, and equipping of the Project as an authorized project under the Act and to
3 finance all or a portion of the cost thereof by the issuance of a series of industrial revenue bonds of
4 the City under an indenture (the "Indenture") among the City; NMFF; [], a [] (the "Depository");
5 and an entity affiliated with NMFF (the "Purchaser"); and

6 **WHEREAS**, pursuant to and in accordance with provisions of the Act, the City is now
7 prepared to proceed with financing the costs of the Project by the issuance and sale of its industrial
8 revenue bonds entitled City of Santa Fe, New Mexico Taxable Industrial Taxable Industrial
9 Revenue Bonds (New Mexico Fresh Foods Project) Series 2019 (the "Bonds"), such Bonds to be
10 secured by the Indenture; and

11 **WHEREAS**, the Purchaser has offered to purchase the Bonds on the terms set forth in the
12 Indenture and pursuant to a Bond Purchase Agreement among the City, NMFF and the Purchaser
13 (the "Bond Purchase Agreement"); and

14 **WHEREAS**, there has been presented to the City Council at such meeting: (1) the
15 proposed form of Agreement; (2) the proposed form of Indenture; and (3) the proposed form of a
16 Bond Purchase Agreement;

17 **BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

18 **Section 1.** The words and terms used in this Ordinance shall have the meanings set
19 forth in the recitals of this Ordinance unless the context clearly indicates another or different
20 meaning or intent.

21 **Section 2.** All action (not inconsistent with the provisions of this Ordinance)
22 heretofore taken by the Santa Fe City Council (the "Governing Body") and the officials of the City
23 directed toward the Project and the sale and issuance of industrial revenue bonds therefor be and
24 the same is hereby ratified, approved and confirmed.

25 **Section 3.** Pursuant to the Act, the Governing Body does hereby authorize the

1 financing of the Project in accordance with the terms of the Agreement and does hereby determine
2 it is in furtherance of the public purposes set forth in the Act; that the Project promotes the local
3 economy, creates and maintains jobs and improves local health and the general welfare by inducing
4 a high pressure processing facility to locate and expand in the City; and that, therefore, providing
5 financing for the Project through the issuance and sale of the Bonds is in the public interest. The
6 Governing Body further determines that the procedures set forth in Resolution 2012-4, Industrial
7 Revenue Bond Policy have been substantially complied with.

8 **Section 4.** To finance the costs of the Project, to establish a debt service reserve fund
9 and to pay certain costs of issuance of the Bonds, the City does hereby authorize the issuance of
10 industrial revenue bonds of the City under the Act, to be designated as set forth in the recitals of
11 this Ordinance, in an aggregate principal amount not to exceed Eighteen Million Dollars
12 (\$18,000,000); provided, that the year identified in the series designation of the Bonds shall be as
13 provided in the Indenture. The Bonds shall bear interest at a rate not to exceed the maximum rate
14 permitted by law and shall have a final stated maturity of not more than 30 years.

15 The Bonds shall be dated and numbered and shall be in the form as provided in the
16 Indenture and shall be otherwise subject to redemption prior to maturity upon the terms and
17 conditions set forth in the Indenture. The Bonds shall be sold to the Purchaser at the purchase price
18 specified in the Bond Purchase Agreement. Interest on the Bonds shall be payable at the times
19 specified in Article IV of the Indenture.

20 **Section 5.** The Governing Body does hereby find, declare and determine that (i) it is
21 not deemed advisable to establish any reserve funds in connection with the retirement of the Bonds
22 or the maintenance of the Project, (ii) pursuant to the Agreement, NMFF is obligated to maintain
23 the Project and to carry all proper insurance with respect to the Project, and (iii) pursuant to the
24 Agreement, NMFF is obligated to pay lease payments sufficient to pay the principal of and interest
25 on the Bonds in each year the Bonds are outstanding and to fund any deficiencies in the debt service

1 reserve fund provided in the Indenture.

2 In connection with the issuance of the Bonds, the following determinations and findings
3 are hereby made pursuant to Section 3-32-9 of the Act:

4 It is hereby determined and found that the maximum amount that may be necessary in each
5 year to pay the principal of and interest on the Bonds, assuming no Event of Default occurs or is
6 continuing, is as follows:

Period Ending <u>November 1</u>	Maximum Principal <u>Debt Service</u>	Maximum Interest <u>for such Period</u>	Maximum Annual <u>Debt Service</u>
2020	\$-0-	\$900,000	\$900,000
2021	\$-0-	\$900,000	\$900,000
2022	\$-0-	\$900,000	\$900,000
2023	\$-0-	\$900,000	\$900,000
2024	\$-0-	\$900,000	\$900,000
2025	\$-0-	\$900,000	\$900,000
2026	\$-0-	\$900,000	\$900,000
2027	\$-0-	\$900,000	\$900,000
2028	\$-0-	\$900,000	\$900,000
2029	\$-0-	\$900,000	\$900,000
2030	\$-0-	\$900,000	\$900,000
2031	\$-0-	\$900,000	\$900,000
2032	\$-0-	\$900,000	\$900,000
2033	\$-0-	\$900,000	\$900,000
2034	\$-0-	\$900,000	\$900,000

2035	\$-0-	\$900,000	\$900,000
2036	\$-0-	\$900,000	\$900,000
2037	\$-0-	\$900,000	\$900,000
2038	\$-0-	\$900,000	\$900,000
2039	\$-0-	\$900,000	\$900,000
2040	\$-0-	\$900,000	\$900,000
2041	\$-0-	\$900,000	\$900,000
2042	\$-0-	\$900,000	\$900,000
2043	\$-0-	\$900,000	\$900,000
2044	\$-0-	\$900,000	\$900,000
2045	\$-0-	\$900,000	\$900,000
2046	\$-0-	\$900,000	\$900,000
2047	\$-0-	\$900,000	\$900,000
2048	\$-0-	\$900,000	\$900,000
2049	\$18,000,000	\$900,000	\$18,900,000

It is hereby determined that payments into any reserve fund shall not be necessary in connection with the retirement of the proposed bonds and the maintenance of the Project.

Section 6. The Bonds shall be executed on behalf of the City with the manual or facsimile signature of the Mayor of the City. The Bonds shall be countersigned by the manual or facsimile signature of the Finance Director of the City, and shall be attested by the manual or facsimile signature of the City Clerk and shall have impressed or imprinted thereon the official seal of the City. If any of the officers who shall have signed or sealed any of said Bonds shall cease to be such officer of the City before the Bonds so signed and sealed shall have been actually authenticated and delivered by the City, such Bonds nevertheless may be authenticated, issued, and

1 delivered with the same force and effect as though the person or persons who signed or sealed such
2 Bonds had not ceased to be such officer or officers of the City; and also any such Bonds may be
3 signed and sealed on behalf of the City by those persons who, on the actual date of the execution
4 of such Bonds, shall be the proper officers of the City, although at the nominal date of such Bonds
5 any such person shall not have been such officer of the City.

6 **Section 7.** The Bonds shall be limited obligations of the City and, except to the extent
7 payable from Bond proceeds or moneys from the investment thereof, shall be payable solely from
8 the revenues received by or on behalf of the City pursuant to the Agreement and otherwise as
9 provided therein and in the Indenture. The Bonds and interest thereon shall never constitute an
10 indebtedness of the City within the meaning of any constitutional or statutory limitation and shall
11 never constitute nor give rise to a pecuniary liability of the City or a charge against its general credit
12 or taxing powers, and such fact shall be plainly stated on the face of each Bond. The City shall
13 have no obligation with respect to the Project, and all costs, expenses, taxes, governmental charges
14 and fees and charges with respect to the Project shall be paid by NMFF.

15 **Section 8.** The Indenture is hereby approved in substantially the form submitted to
16 this meeting, and the Mayor of the City (or in the event of his unavailability, the Mayor Pro Tem)
17 is hereby authorized and directed to execute, acknowledge and deliver the Indenture with such
18 changes therein as shall be approved by the Mayor (or in the event of his unavailability, the Mayor
19 Pro Tem), including establishment of the final principal amount and interest rate for the Bonds, not
20 to exceed the maximums set forth in this Ordinance. The execution of such document by the Mayor
21 (or, in the event of his unavailability, the Mayor Pro Tem) shall constitute conclusive evidence of
22 such approval, and the City Clerk is hereby authorized and directed to attest to the Indenture and
23 to affix to the Indenture the official seal of the City.

24 **Section 9.** The Agreement between the City and NMFF is hereby approved in
25 substantially the form submitted to this meeting, and the Mayor of the City (or, in the event of his

1 unavailability, the Mayor Pro Tem) is hereby authorized and directed to execute, acknowledge, and
2 deliver the Agreement with such changes therein as shall be approved by the Mayor (or, in the
3 event of his unavailability, the Mayor Pro Tem), the execution of such document by the Mayor (or,
4 in the event of his unavailability, the Mayor Pro Tem) to constitute conclusive evidence of such
5 approval, and the City Clerk is hereby authorized and directed to attest to the Agreement and to
6 affix to such document the official seal of the City.

7 **Section 10.** The Bond Purchase Agreement is hereby approved in substantially the
8 form submitted to this meeting, and the Mayor of the City (or in the event of his unavailability, the
9 Mayor Pro Tem) is hereby authorized to complete such Bond Purchase Agreement and to execute
10 and deliver said Bond Purchase Agreement on behalf of the City in substantially the form presented
11 to this meeting with such changes therein as shall be approved by the Mayor (or, in the event of his
12 unavailability, the Mayor Pro Tem), the execution of such document by the Mayor (or, in the event
13 of his unavailability, the Mayor Pro Tem) to constitute conclusive evidence of such approval.

14 **Section 11.** Each of the Mayor (or, in the event of his unavailability, the Mayor Pro
15 Tem), the City Clerk and the Finance Director of the City are hereby empowered and directed to
16 execute and deliver the Bonds and all documents, tax agreements, and certificates and other
17 instruments which may be required under the terms of the Indenture, the Agreement, the Bond
18 Purchase Agreement and this Ordinance.

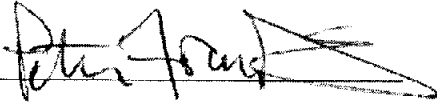
19 **Section 12.** The provisions of this Ordinance are hereby declared to be separable, and
20 if any section, phrase, or provision shall for any reason be declared to be invalid, such declaration
21 shall not affect the validity of the remainder of the sections, phrases and provisions.

22 **Section 13.** All ordinances, orders, resolutions, and parts thereof in conflict herewith
23 are hereby repealed to the extent of such conflict.

24 **Section 14.** Immediately after its final passage and approval, this Ordinance shall be
25 signed and authenticated by the signatures of the City Attorney, Mayor, and City Clerk, the seal of

1 the City shall be affixed hereto, and this Ordinance shall be published by title and summary in the
2 Santa Fe New Mexican, a newspaper which maintains an office in, and is of general circulation in
3 the City. This Ordinance shall become effective five (5) days after such publication and shall be
4 recorded in a book kept for that purpose.

5 APPROVED AS TO FORM:

6
7 A handwritten signature in black ink, appearing to read "Peter Franklin", is written over a horizontal line.

8 PETER FRANKLIN on behalf of

9 ERIN K. McSHERRY, CITY ATTORNEY