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**CITY OF SANTA FE, NEW MEXICO**

**RESOLUTION NO. 2019-43**

**INTRODUCED BY:**

Councilor Carol Romero-Wirth	Mayor Alan M. Webber
Councilor Peter N. Ives	Councilor Signe I. Lindell
Councilor Mike Harris	Councilor Renee D. Villarreal

**A RESOLUTION**

**DECLARING THE INTENT OF THE CITY OF SANTA FE TO ISSUE [TAXABLE] INDUSTRIAL REVENUE BONDS IN A PRINCIPAL AMOUNT UP TO EIGHTEEN MILLION DOLLARS (\$18,000,000) TO FINANCE THE ACQUISITION, CONSTRUCTION, RENOVATION, INSTALLATION, AND EQUIPPING OF A HIGH PRESSURE PROCESSING FACILITY IN SANTA FE, NEW MEXICO, FOR THE PURPOSE OF INDUCING NEW MEXICO FRESH FOODS, LLC OR ITS SUCCESSORS OR ASSIGNS TO UNDERTAKE THE ACQUISITION, CONSTRUCTION, RENOVATION, EQUIPPING, AND INSTALLATION OF SUCH PROJECT, AND AUTHORIZING THE GIVING AND PUBLICATION OF NOTICES IN CONNECTION WITH SUCH BONDS.**

**WHEREAS**, the Industrial Revenue Bond Act, Sections 3-32-1 through 3-32-16 NMSA 1978, as amended (the "Act"), authorizes the City of Santa Fe, New Mexico (the "City") to issue industrial revenue bonds (the "Bonds") and to acquire projects as defined in the Act; and

**WHEREAS**, the City desires to promote industry and develop trade or other economic

1 activity to secure and maintain a balanced and stable economy in the City and to promote public  
2 health, welfare, safety, convenience, and prosperity; and

3 **WHEREAS**, New Mexico Fresh Foods, LLC, a New Mexico limited liability company  
4 ("NMFF"), proposes to acquire, construct, renovate, install, and equip a new high pressure  
5 processing facility (the "Project"), which constitutes a "project," as defined in the Act; and

6 **WHEREAS**, the Project has been considered by the Santa Fe City Council (the  
7 "Governing Body") and the Governing Body has concluded that the Project will promote the  
8 local health, general welfare, safety, convenience, and prosperity of the inhabitants of the City,  
9 and the Governing Body desires to indicate its intent to proceed with the issuance of the Bond  
10 for the financing of the Project; and

11 **WHEREAS**, the issuance of the Bonds by the City to finance the Project will constitute  
12 one of the inducements for NMFF to proceed with the Project; and

13 **WHEREAS**, concurrently with the issuance of the Bonds, NMFF will enter into a lease  
14 agreement with the City providing for the payment of lease payments or other payments with  
15 respect to the Project sufficient to pay the debt service on the Bonds, subject to the prior  
16 approval of the Governing Body; and

17 **WHEREAS**, the Governing Body intends to consider an ordinance (the "Bond  
18 Ordinance") approving the issuance of Bonds to finance the Project at its regular meeting on  
19 [September, 11] 2019; and

20 **WHEREAS**, pursuant to Section 3-17-3 NMSA 1978, the City is required to publish  
21 notice of the title and subject matter of any ordinance proposed for adoption by the Governing  
22 Body not less than two (2) weeks before consideration by the Governing Body of final action  
23 thereon; and

24 **WHEREAS**, pursuant to Section 3-32-6.1 of the Act, before adopting an ordinance  
25 issuing a Bond, the City is required to give notice to the Board of County Commissioners and

1 the Santa Fe County Assessor of its intent to consider the matter, which notice is to be given at  
2 least thirty (30) days prior to the meeting at which final action is to be taken.

3 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
4 **CITY OF SANTA FE:**

5 **Section 1.** All action (not inconsistent with the provisions of this resolution)  
6 heretofore taken by the Governing Body and the officers and employees of the City, related to  
7 the acquisition, construction, renovation, installation and equipping of the Project, and the sale  
8 and issuance of the Bonds therefore, be and the same hereby is ratified, approved, and  
9 confirmed.

10 **Section 2.** The Governing Body finds that:

11 A. The Project will involve the acquisition, construction, renovation, installation,  
12 and equipping of a high pressure processing facility.

13 B. The maximum aggregate face amount of obligations to be issued with respect to  
14 the Project is Eighteen Million Dollars (\$18,000,000).

15 C. The initial developer and operator of the Project will be NMFF or its assignee or  
16 assignees.

17 D. The location of the Project is 1549 Sixth Street in Santa Fe, New Mexico.

18 **Section 3.** In order to promote the local health and general welfare, safety,  
19 convenience, and prosperity of the inhabitants of the City, it is the Governing Body's intent to  
20 consider for adoption an ordinance authorizing the issuance of Bonds in a principal amount up to  
21 Eighteen Million Dollars (\$18,000,000) in order to defray part or all of the costs of the Project.

22 **Section 4.** If issued, the Bonds will be payable from the revenues of the Project and  
23 by NMFF and will not constitute a debt or indebtedness of the City within the meaning of any  
24 provision or limitation of the Constitution or statutes of the State of New Mexico. Nothing  
25 contained in this resolution or in any other instrument will be considered as obligating the City

1 to any pecuniary liability or a charge upon the general credit of the City or against its taxing  
2 power, it being understood that no costs are to be borne by the City and that all costs incurred by  
3 the City in connection with the Bonds are to be promptly reimbursed by NMFF.

4 **Section 5.** NMFF agrees to make certain payments in lieu of taxes, as specifically  
5 set forth in its application for industrial revenue bonds and Project Plan with the specific  
6 amounts to be confirmed in the lease agreement, to the extent that the Project would otherwise  
7 be subject to property taxes under New Mexico law if the Project was not the subject of  
8 financing with the proceeds of the Bonds. In addition, if the Bonds are issued, NMFF shall  
9 indemnify and hold harmless the City, the Governing Body and their respective officers,  
10 employees, designated representatives and agents (collectively, the "Indemnified Persons") from  
11 and against any liability to NMFF, or to any third parties that may be asserted against the City  
12 with respect to the City's ownership of or leasehold interest in the Project or the issuance of the  
13 Bonds. The City's adoption of this resolution shall not be deemed a conclusion or expression of  
14 approval of the Bonds or a legal obligation to issue the Bonds by the City or by any Indemnified  
15 Person of NMFF or the Project.

16 **Section 6.** NMFF as agent for the City and consistent with Taxation and Revenue  
17 Department Regulation 3.2.212.22 NMAC Renumbered, will acquire the Project. To the extent  
18 necessary and as otherwise may be unavailable to NMFF as a 501(c)(3) organization, the City  
19 will, consistent with New Mexico State Law, deliver to NMFF Type 9 Nontaxable Transaction  
20 Certificates ("Certificates") that have been issued to the City by the Taxation and Revenue  
21 Department. NMFF will deliver a Certificate to each person selling tangible personal property to  
22 the City (or NMFF on behalf of the City) for the Project as applicable under the New Mexico  
23 Gross Receipts Tax and Compensating Tax Act. For this purpose, by adoption of this  
24 Resolution, the City authorizes NMFF to act as agent for the City. NMFF shall not use the  
25 Certificates other than for the purpose of capital equipment and other tangible personal property,

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nor shall NMFF use such Certificates after completion of the Project. Prior to the use of such Certificates by NMFF, as agent for the City, the City Manager and NMFF will agree to certain procedures regarding the use of the Certificates and protection of the City from any unfunded tax liability. In the event that the Bonds are not issued, NMFF will be responsible for the payment of any gross receipts tax or compensating tax which was avoided as a result of the City's delivery of any Certificate pursuant to this Resolution.

**Section 7.** The Governing Body directs that notice, substantially in the following form, be published one time in the Santa Fe New Mexican, a newspaper of general circulation in the City, as soon as is practicable following the adoption of this resolution and, in any event, not later than August 26, 2019, subject to the provisions of Section 9 of this Resolution.

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1 (Form of Notice to be Published)

2 **NOTICE OF CONSIDERATION OF ORDINANCE**

3 **AND PUBLIC HEARING**

4 **CITY OF SANTA FE, NEW MEXICO**

5 NOTICE IS GIVEN that the Governing Body of the City of Santa Fe, New Mexico (the  
6 "City"), will consider the adoption of an ordinance (the "Ordinance") authorizing the issuance of  
7 industrial revenue bonds in a principal amount not to exceed Eighteen Million Dollars  
8 (\$18,000,000) (the "Bonds") to finance the acquisition, construction renovation, installation, and  
9 equipping of a high pressure processing facility to be located in Santa Fe, New Mexico and to be  
10 owned and operated by New Mexico Fresh Foods, LLC (the "Project"), and all costs incidental  
11 to the foregoing and the issuance of the Bonds, and otherwise relating to the Project, at a regular  
12 meeting of the Governing Body on September 25, 2019 at 7:00 p.m. or as soon thereafter as the  
13 matter may be heard, in the City Hall Council Chambers, City Hall, 200 Lincoln Avenue, Santa  
14 Fe, New Mexico, in the City, being the regular meeting place of the Governing Body. The title  
15 and subject matter of the Ordinance are as follows:

16 **AN ORDINANCE OF THE CITY OF SANTA FE, NEW MEXICO**  
17 **AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND SALE OF ITS**  
18 **TAXABLE INDUSTRIAL REVENUE BONDS FOR THE BENEFIT OF NEW**  
19 **MEXICO FRESH FOODS, LLC, IN AN AGGREGATE PRINCIPAL AMOUNT**  
20 **NOT TO EXCEED EIGHTEEN MILLION DOLLARS (\$18,000,000) FOR THE**  
21 **PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION,**  
22 **RENOVATION, INSTALLATION, AND EQUIPPING OF A HIGH PRESSURE**  
23 **PROCESSING FACILITY IN SANTA FE, NEW MEXICO, AUTHORIZING THE**  
24 **EXECUTION AND DELIVERY OF A LEASE AGREEMENT BETWEEN THE**  
25 **CITY AND NEW MEXICO FRESH FOODS, LLC, AN INDENTURE SECURING**

1 SAID BONDS, A BOND PURCHASE AGREEMENT, CLOSING DOCUMENTS,  
2 AND SUCH BONDS IN CONNECTION THEREWITH; PROVIDING FOR THE  
3 TERMS OF THE SERIES 2019 BONDS AND MAKING DETERMINATIONS AS  
4 TO THE SUFFICIENCY OF THE LEASE PAYMENTS AND OTHER MATTERS  
5 RELATED TO THE PROJECT; AUTHORIZING THE SALE OF SAID BONDS  
6 AND ANY ANCILLARY AGREEMENTS IN CONNECTION THEREWITH;  
7 AND AUTHORIZING OTHER MATTERS PERTAINING TO THE ISSUANCE  
8 OF SAID BONDS.

9 The principal of, interest on and redemption price, if any, of the Bonds will never  
10 constitute an indebtedness of the City within the meaning of the provision or limitation of the  
11 Constitution or laws of the State of New Mexico. The Bonds will never constitute nor give rise  
12 to pecuniary liability of the City or a charge against its general credit or taxing powers. The  
13 Bonds will mature, bear interest and be subject to prior redemption all in accordance with the  
14 Ordinance. A copy of the Ordinance is on file and available for inspection during normal  
15 business hours at the office of the City Clerk at City Hall, 200 E. Lincoln Avenue, Santa Fe,  
16 New Mexico.

17 Dated: \_\_\_\_\_

18 Yolanda Y. Vigil

19 City Clerk

20 City of Santa Fe, New Mexico

21 **(End of Form of Notice to be Published)**

22 **Section 8.** Subject to the provisions of Section 9 hereon, the Governing Body  
23 directs that a notice in substantially the following form be mailed by registered or certified mail,  
24 return receipt requested, to the Santa Fe County Commission and the Santa Fe County Assessor,  
25 as soon as is practicable following the adoption of this resolution and, in any event, not later than

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August 26, 2019:

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**(Form of Notice to be Mailed)**

[CITY OF SANTA FE LETTERHEAD]

\_\_\_\_\_ DATE

REGISTERED MAIL

RETURN RECEIPT REQUESTED

Board of County Commissioners  
Santa Fe County  
c/o \_\_\_\_\_, County Manager  
102 Grant Avenue  
Santa Fe, New Mexico 87504

\_\_\_\_\_  
Santa Fe County Assessor  
102 Grant Avenue  
Santa Fe, New Mexico 87504

Ladies and Gentlemen:

Pursuant to Section 3-32-6.1 NMSA 1978, we write to give you notice that the City of Santa Fe, New Mexico (the "City") intends to consider the issuance of industrial revenue bonds in a principal amount not to exceed Eighteen Million Dollars (\$18,000,000) (the "Bonds") to defray the cost of acquiring, constructing, renovating, installing, and equipping a high pressure

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processing facility to be located at 1549 Sixth Street in Santa Fe, New Mexico and to be owned and operated by New Mexico Fresh Foods, LLC (the "Project"). The ordinance under which the Bonds will be considered by the Governing Body of the City on or after September 25, 2019, which is at least thirty days after the date of this letter. You may forward your comments and concerns with respect to the Bonds or the Project to the Governing Body, but no approval of the Bonds is required from you and you do not have a veto over the proposed issuance of the Bonds.

Very truly yours,  
CITY OF SANTA FE, NEW MEXICO

By \_\_\_\_\_  
Erik Litzenberg  
City Manager

**(End of Form of Notice to be Mailed)**

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1           **Section 9.**       The provisions of Sections 7 and 8 of this Resolution are subject to  
2 determination by the City Manager or designee that the form of the ordinance and all documents  
3 approved as to form thereby shall be in satisfactory form and sufficiently complete by such date  
4 to make those documents available for public inspection in the Office of the City Clerk.

5           **Section 10.**     The City hereby authorizes NMFF and any purchaser of the Bonds to  
6 distribute an offering document with respect to the public offering of the Bonds, provided that the  
7 City takes no responsibility for such offering document other than the description of the City  
8 therein.

9           **Section 11.**     The Mayor and the City Manager or Acting City Manager are each  
10 authorized and empowered to take such steps and to do such things as may be necessary to  
11 achieve the purposes of this resolution; provided, however, the issuance of the Bonds and the  
12 execution and delivery of any documents to which the City is a party in connection therewith are  
13 subject to the approval and authorization by ordinance of the Governing Body.

14           **Section 12.**     If any section, paragraph, clause or provision of this resolution is, for any  
15 reason, held to be invalid or unenforceable, the invalidity or unenforceability of such section,  
16 paragraph, clause, or provision will not affect any of the remaining provisions of this resolution.


17           **Section 13.**     All resolutions, or parts thereof, in conflict with this resolution, are  
18 repealed; this repealer is not to be construed to revive any order, resolution or part thereof,  
19 heretofore repealed.

20           PASSED, APPROVED, and ADOPTED this 14<sup>th</sup> day of August, 2019.

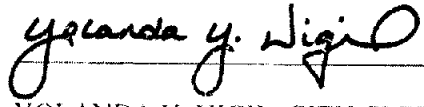
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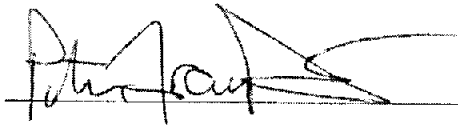
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ALAN M. WEBBER, MAYOR

ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

  
PETER FRANKLIN on behalf of  
ERIN K. McSHERRY, CITY ATTORNEY