

City of Anthony
County of Doña Ana
RESOLUTION NO. 2022-028

A RESOLUTION DECLARING THE INTENT OF THE CITY OF ANTHONY, NEW MEXICO TO ISSUE INDUSTRIAL REVENUE BONDS ENTITLED CITY OF ANTHONY, NEW MEXICO INDUSTRIAL REVENUE BONDS (LOUISIANA PEPPER EXCHANGE, LLC PROJECT) SERIES 2022, IN AN AGGREGATE PRINCIPAL AMOUNT OF UP TO \$25,000,000 IN ONE OR MORE SERIES IN CONNECTION WITH A PROPOSED PROJECT TO BE LOCATED WITHIN FIFTEEN MILES OF THE CORPORATE LIMITS OF THE CITY OF ANTHONY, NEW MEXICO FOR THE PURPOSE OF INDUCING LOUISIANA PEPPER EXCHANGE, LLC OR ITS SUCCESSORS OR ASSIGNS, TO ACQUIRE, CONSTRUCT, RENOVATE AND EQUIP THE PROJECT AND TO REIMBURSE TEMPORARY ADVANCES MADE FOR CAPITAL EXPENDITURES FROM PROCEEDS OF THE BONDS AND RELATED MATTERS.

WHEREAS, the New Mexico legislature has passed the “Industrial Revenue Bond Act” (the “**Act**”), Sections 3-32-1 to 3-32-16 inclusive, NMSA 1978, as amended, which authorizes the City of Anthony, New Mexico (the “**City**”) to issue industrial development bonds and to acquire projects as defined in the Act; and

WHEREAS, the City desires to promote industry and develop trade or other economic activity to secure and maintain a balanced and stable economy in the City and to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, Louisiana Pepper exchange, LLC (together with its successors and assigns, the “**Company**”) has made a proposal to the City (the “**Proposal**”) whereby the City would acquire land, buildings and equipment located within fifteen miles of the corporate limits of the City for use by the Company for its pepper mash manufacturing operations (the “**Project**”); and

WHEREAS, the Company has requested that the Project be considered by the Board and that the Board indicate its intent to proceed with the issuance of taxable industrial revenue bonds (the "**Bonds**") for the financing of the Project by adopting an Inducement Resolution; and

WHEREAS, the Proposal requests the issuance of Bonds in an amount of up to \$25,000,000; and

WHEREAS, the issuance of Bonds in one or more series by the City to finance all or a part of the Project, will constitute one of the inducements whereby the Company will determine to acquire land and acquire, construct and equip a facility in the City; and

WHEREAS, the Board of Trustees of the City (the "**Board**") constitutes the governing body of the City within the meaning of the Act; and

WHEREAS, the Project has been considered by the Board and it has been determined by the Board that the Proposal and Project will promote the local health, general welfare, safety, convenience and prosperity of the inhabitants of the City, and the Board desires to indicate its intent to proceed with the issuance of the Bonds for the financing of the Project; and

WHEREAS, concurrently with the issuance of the Bonds, the Company will enter into a leasing or other financing agreement with the City (the "**Lease**") providing for the payment of lease rentals or other payments on the Project sufficient to pay the debt service on the Bonds, subject to the prior adoption by the Board of an ordinance approving such agreement and authorizing issuance of the Bonds (the "**Bond Ordinance**"); and

WHEREAS, the City and the Company understand that the adoption of this Resolution shall not obligate the City to issue the Bonds or obligate the Company to proceed with the Project, except pursuant to the terms of a Bond Ordinance to be adopted by the City and related bond documents in form and substance satisfactory to the City prior to the issuance of the Bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE CITY OF ANTHONY, NEW MEXICO THE GOVERNING BODY OF THE CITY OF ANTHONY, NEW MEXICO:

Section 1. All actions (not inconsistent with the provisions hereof) heretofore taken by the Board and the officers and employees of the City, related to the Proposal, the acquisition of the Project, and the sale and issuance of the Bonds therefor, be and the same hereby are ratified, approved and confirmed.

Section 2. The Board has been informed by the Company that:

(A) The Project will consist of land, a facility and equipment to be used by the Company for its pepper mash manufacturing operations.

(B) The maximum aggregate face amount of obligations to be issued with respect to the Project is \$25,000,000.

(C) The initial developer of the land and buildings for the Project will be the Company.

(D) The initial operator of the Project will be the Company.

(E) The location of the Project is Lot 4 & Lot 5, Block 3, Santa Teresa Intermodal Park, Dona Ana County, New Mexico in unincorporated Dona Ana County, within 15 miles of the corporate limits of the City.

Section 3. In order to promote the local health and general welfare, safety, convenience and prosperity of the inhabitants of the City, it is the Board's intent to take all necessary and advisable steps to effect the issuance of the Bonds in an aggregate principal amount up to \$25,000,000 in one or more series in order to defray part or all of the costs of the Project. The Bonds are to be entitled substantially as follows "City of Anthony, New Mexico Industrial

Revenue Bonds (Louisiana Pepper exchange, LLC Project) Series 2022.” This expression of the Board’s intent is conditioned upon the issuance of the Bonds on or before one year from the date of the adoption of this Resolution.

Section 4. The Bonds shall be payable from the revenues of the Project or other moneys payable by the Company, with respect thereto, and shall not constitute a debt or indebtedness of the City within the meaning of any provision or limitation of the Constitution or statutes of the State of New Mexico. In addition, if the Bonds are issued, the Company shall indemnify and hold harmless the City, the Board and their respective officers, employees, designated representatives and agents (collectively, the “**Indemnified Persons**”) from and against any liability to the Company, or to any third parties that may be asserted against the City with respect to the City’s ownership of or leasehold interest in the Project or the issuance of the Bonds. Nothing contained in this Resolution or in any other instrument shall be considered as obligating the City to any pecuniary liability or a charge upon the general credit of the City or against its taxing power, it being understood that no costs are to be borne by the City and that all costs incurred by the City in connection with the Bonds are to be promptly paid or reimbursed by the Company. The City’s adoption of this Resolution shall not be deemed a conclusion or expression of approval by the City or any Indemnified Person of the Company or the Project.

Section 5. The Company as agent for the City and consistent with Taxation and Revenue Department Regulation 3.2.212.22 NMAC Renumbered, will acquire the Project. The Company will as agent for the City, consistent with New Mexico State Law, request delivery of Type 9 Nontaxable Transaction Certificates (“Certificates”) for the Project from the Taxation and Revenue Department. The Company will deliver a Certificate to each person selling tangible personal property to the Company for the Project as applicable under the New Mexico Gross

Receipts and Compensating Tax Act. For this purpose, by adoption of this Resolution, the City authorizes the Company to act as agent for the City. The Company shall not use the Certificates other than for the purchase of capital equipment and other tangible personal property, nor shall the Company use such Certificates after the completion of the Project. Prior to the use of such Certificates by the Company as agent for the City, the mayor of the City and the Company will agree to certain procedures regarding the use of the Certificates and protection of the City from any unfunded tax liability.

Section 6. The City intends to enter into an agreement with the Company pursuant to which the Company will pay to the City certain annual payments in lieu of ad valorem taxes levied on the Project property and such agreement shall be included in the Lease to be entered into by the City and the Company.

Section 7. The Board and other appropriate City officials and employees are hereby authorized and empowered to take such steps and to do such things as may be necessary to achieve the purposes of this Resolution; provided, however, the issuance of the Bonds and the execution and delivery of any documents to which the City is a party in connection therewith shall be subject to the approval and authorization of the Board pursuant to the Bond Ordinance, to be adopted following public notice of the Board's intent to adopt such Ordinance at fourteen (14) days prior to the consideration of the Ordinance by the Board at a public meeting, such public notice to specify the time, date and place of the Board's meeting. In particular, no provision of this Resolution shall in any way obligate the City or any other person to issue the Bonds, any other bonds or in any way finance the Project; and the City retains full and complete discretion with respect thereto.

Section 8. This Resolution shall not give rise to a pecuniary liability of the City and shall not give rise to a charge against its general credit or taxing powers.

Section 9. The issuance of the Bonds and the execution and delivery of any documents to which the City is a party in connection therewith shall be subject to the approval and authorization by the Board pursuant to the Bond Ordinance following reasonable public notice of the time, date and place of the public hearing to be held on the proposed adoption of the Bond Ordinance. The City Clerk is hereby authorized to publish notice of the title and a general summary of the subject matter of the Bond Ordinance, in substantially the form attached hereto as Exhibit A, at least two weeks before the meeting of the Board at which the Bond Ordinance is to be adopted. In connection with this Resolution, the Board understands that the Company is not obligated to proceed with the Project and additionally, the Board has been informed that a failure or refusal of the Board, however arising, to adopt the Bond Ordinance will have the effect of voiding any benefits to the Company under the Act, including revoking the authority of the Company to act as agent for the City in connection with the solicitation of nontaxable transaction certificates for the Project from Taxation and Revenue, voiding the nontaxable transaction certificates issued to the Company for Project purchases and making such purchases subject to whatever tax would be due if such certificates had not been issued.

Section 10. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 11. All orders and resolutions, or parts thereof, in conflict with this Resolution are hereby repealed; this repealer shall not be construed to revive any order, resolution or part thereof, heretofore repealed.

PASSED, ADOPTED, SIGNED AND APPROVED this 19th day of October, 2022.

{SEAL}




Diana Murillo, Mayor

Attest:



Karla Oropeza, City Clerk

BOARD OF TRUSTEES OF THE CITY OF ANTHONY, NEW MEXICO

MPT Elva Flores

YES NO



Trustee Javier Silva

YES NO



Trustee Daniel Barreras

YES NO



Trustee Gabriel I. Holguin

YES NO

