

CITY of ALBUQUERQUE

TWENTY FOURTH COUNCIL

COUNCIL BILL NO. 0-20-44 ENACTMENT NO. 0-2020-043

SPONSORED BY: Pat Davis

1 **ORDINANCE**

2 **APPROVING A PROJECT INVOLVING A MULTINATIONAL COMPANY, NETFLIX**
3 **STUDIOS LLC, PURSUANT TO THE LOCAL ECONOMIC DEVELOPMENT ACT AND**
4 **CITY ORDINANCE F/S 0-04-10, THE CITY'S IMPLEMENTING LEGISLATION FOR**
5 **THAT ACT, TO SUPPORT THE ACQUISITION, CONSTRUCTION, IMPROVEMENT**
6 **AND REHABILITATION OF ENTERTAINMENT PRODUCTION FACILITIES AND**
7 **RELATED REAL PROPERTY LOCATED IN ALBUQUERQUE, NEW MEXICO;**
8 **AUTHORIZING THE EXECUTION OF A PROJECT PARTICIPATION AGREEMENT**
9 **AND OTHER DOCUMENTS IN CONNECTION WITH THE PROJECT INCLUDING**
10 **THE INCORPORATION OF THE COMPANY'S EXISTING PROJECT**
11 **PARTICIPATION AGREEMENT INTO THE NEW AGREEMENT; MAKING CERTAIN**
12 **DETERMINATIONS AND FINDINGS RELATING TO THE PROJECT; RATIFYING**
13 **CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS**
14 **INCONSISTENT WITH THIS ORDINANCE.**

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

18 WHEREAS, pursuant to Sections 5-10-1 through 5-10-13 NMSA 1978, as
19 amended (the "Act"), the City is authorized to provide economic development
20 assistance to eligible entities for certain projects located within the corporate limits of
21 the municipality; and

22 WHEREAS, pursuant to the Act, the City has adopted Ordinance No. F/S 04-10
23 (the "LEDA Ordinance"), approving an economic development plan for the City and
24 authorizing the City to assist economic development projects in any legally permissible
25 manner, subject to the terms of the LEDA Ordinance; and

26 WHEREAS, pursuant to the LEDA Ordinance, Netflix Studios LLC (the
27 "Company"), has submitted to the Council and the Albuquerque Development

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1 Commission (the "Commission") an application (the "2020 Application") requesting
2 certain economic development assistance for the acquisition, construction, improvement
3 and rehabilitation of entertainment production facilities and related real property within
4 the City (the "Project"); and

5 WHEREAS, the Company is a qualifying entity under the LEDA Ordinance and
6 the Act; and

7 WHEREAS, the City and the Company previously entered into a Project
8 Participation Agreement, effective January 4, 2019 (the "2019 PPA"), pursuant to a prior
9 LEDA application, wherein the Company agreed to acquire and improve facilities
10 located on approximately 28 acres of real property at Mesa del Sol in Albuquerque,
11 formerly known as ABQ Studios (the "Existing Facilities"), and to operate the facility to
12 serve as a production base for various film, television and media productions and
13 related activities for its own content and to lease the facility to third-parties for
14 production of film, television and media content; and

15 WHEREAS, pursuant to the 2019 PPA, the City committed \$4,500,000 in City
16 LEDA funds and the State of New Mexico (the "State") committed \$10,000,000 in State
17 LEDA funds to the Company upon the satisfaction of certain conditions set forth in the
18 2019 PPA; and

19 WHEREAS, as of the date hereof, the City has distributed \$3,000,000 of its
20 \$4,500,000 commitment to the Company, and the State has distributed \$6,000,000 of
21 its \$10,000,000 commitment to the Company, under the terms of the 2019 PPA, both
22 related to Company's successful acquisition of the Existing Facilities; and

23 WHEREAS, the remainder of the City's LEDA funds committed to Company
24 under the 2019 PPA, totaling \$1,500,000, and the remainder of the State's LEDA funds
25 committed to Company under the 2019 PPA, totaling \$4,000,000, are contingent upon
26 the Company undertaking certain capital improvements at the Existing Facilities and
27 achieving certain production and expenditure requirements; and

28 WHEREAS, in response to the 2020 Application, the City proposes a
29 commitment of \$1,000,000 in LEDA funds and \$6,000,000 of in-kind contributions to the
30 Company for the Project; and

31 WHEREAS, the City anticipates that the State will transfer to it, for subsequent
32 transfer to or on behalf of the Company pursuant to an intergovernmental agreement

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1 between the City and the State, certain funds up to \$17,000,000 of the State that are
2 available for the Project, and for which the City will act as Fiscal Agent; and
3 WHEREAS, the Commission considered the Company's 2020 Application on
4 November 23, 2020 and recommends approval of the 2020 Application; and
5 WHEREAS, the Act and the LEDA Ordinance require that the City and the
6 Company enter into a project participation agreement meeting the requirements of the
7 Act and the LEDA Ordinance; and
8 WHEREAS, City staff has worked with the Company to prepare, and has
9 negotiated the terms of, a project participation agreement and related documents that
10 will govern the relationship between the City and the Company with respect to the
11 Project (the "2020 PPA"); and
12 WHEREAS, in addition to the new commitments to the Company, the 2020 PPA
13 incorporates the outstanding responsibilities and obligations of the City, State and
14 Company from the 2019 PPA resulting in the 2020 PPA being the comprehensive
15 agreement between the relevant parties upon execution of the 2020 PPA and
16 termination of the 2019 PPA; and
17 WHEREAS, the form of the proposed 2020 PPA has been filed with the City
18 Clerk and presented to the Council; and
19 WHEREAS, the proposed 2020 PPA contains the provisions required by the Act
20 and the LEDA Ordinance and, among other things, provides that the Company will grant
21 to the City a security instrument to secure the Company's performance of its obligations
22 under the 2020 PPA, including those related to the State contributions, and "clawback"
23 provisions for recovery of benefits by the City in the event that the economic benefits to
24 the City to be conferred by the Project are not realized; and
25 WHEREAS, the City has obtained a cost-benefit analysis with respect to the
26 Project on the basis of information provided to the City by the Company, which cost-
27 benefit analysis shows that the City will recoup the value of its contribution within ten
28 (10) years; and
29 WHEREAS, the 2020 Application, together with the cost-benefit analysis,
30 demonstrates the benefits that will accrue to the community as a result of the donation
31 of public resources and demonstrates that the Company, by completing the Project, will
32 be making a substantive contribution to the community, as required by the LEDA
33 Ordinance; and

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1 WHEREAS, the Commission has considered the Project and the proposed 2020
2 PPA and has recommended that the Council approve the Company's proposal; and

3 WHEREAS, the total amount of public money expended and the value of credit
4 pledged in each fiscal year in which money is expended by the City for the Project (and
5 any other approved projects) pursuant to the Act does not and will not exceed ten
6 percent of the general fund expenditures of the City in such fiscal year; and

7 WHEREAS, after having considered the 2020 Application and the form of 2020
8 PPA, the Council has concluded that the economic and other benefits of the Project to
9 the City will be substantial, that it is desirable and necessary at this time to authorize the
10 City to enter into the 2020 PPA in substantially the form presented in connection with
11 this Ordinance, and that the City's provision of the assistance contemplated by the 2020
12 PPA will constitute a valid public purpose under the Act; and

13 WHEREAS, there has been published in The Albuquerque Journal, a newspaper
14 of general circulation in the City, public notice of the Council's intention to adopt this
15 Ordinance, which notice was published at least fourteen (14) days prior to hearing and
16 final action on this Ordinance.

17 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
18 ALBUQUERQUE:

19 Section 1. RATIFICATION. All actions not inconsistent with the provisions of
20 this Ordinance previously taken by the Council and the officials of the City directed
21 toward the provision of economic development assistance in connection with the Project
22 be approved and the same hereby are ratified, approved and confirmed.

23 Section 2. GOALS AND OBJECTIVES. The goals and objectives of the
24 Project are, as set forth in the 2020 PPA, to create and support an economic
25 development project that fosters, promotes and enhances local economic development
26 efforts and that provides job growth and career opportunities for Albuquerque-area
27 residents and otherwise makes a substantive contribution to the community.

28 Section 3. THE PROJECT. The Project will consist of the acquisition,
29 construction, improvement and rehabilitation of entertainment production facilities and
30 related real property within the City.

31 Section 4. FINDINGS. The Council hereby declares that it has considered all
32 relevant information presented to it relating to the Project and the 2020 PPA and hereby
33 finds and determines that the provision of economic development assistance for the

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1 Project is necessary and advisable and in the interest of the public and will promote the
2 public health, safety, morals, convenience, economy, and welfare of the City and its
3 residents.

4 Section 5. AUTHORIZATION AND APPROVAL OF THE PROJECT AND THE
5 2020 PPA; APPROPRIATION OF FUNDS.

6 (A) The City hereby approves the Project and the 2020 PPA, which
7 provides, among other things, that the City will administer and disburse to the Company
8 funds totaling up to \$24,000,000 of which \$17,000,000 is to be received by the City from
9 the State Economic Development Department and \$1,000,000 are to be City funds and
10 \$6,000,000 of City in-kind contributions, in exchange for which the Company will
11 complete the Project as specified in the 2020 PPA. "In-kind contributions" are defined
12 as including, but not limited to, development costs and infrastructure related to the
13 Project.

14 (B) The City hereby approves the termination of the 2019 PPA and the
15 incorporation of the outstanding responsibilities and obligations under the 2019 PPA
16 into the 2020 PPA. The termination of the 2019 PPA shall be effective upon the full
17 execution of the 2020 PPA.

18 Section 6. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.

19 (A) The form, terms, and provisions of the 2020 PPA in the form
20 presented to the Council with this Ordinance are in all respects approved, authorized,
21 and confirmed, and the City is authorized to enter into the 2020 PPA in substantially the
22 form thereof, with only such changes as are not inconsistent with this Ordinance or such
23 other changes as may be approved by supplemental resolution of the Council.

24 (B) The Council authorizes the Mayor or the Chief Administrative
25 Officer of the City to execute and deliver the 2020 PPA in the name and on behalf of the
26 City, with only such changes therein as are consistent with this Ordinance or such
27 changes as may be approved by supplemental resolution of the Council.

28 (C) The Mayor, Chief Administrative Officer, City Treasurer and City
29 Clerk are further authorized to execute, authenticate and deliver such certifications,
30 instruments, documents, letters and other agreements, including an intergovernmental
31 agreement with the State Economic Development Department and any appropriate
32 security agreements, and to do such other acts and things, either prior to or after the

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1 date of delivery of the executed 2020 PPA, as are necessary or appropriate to
2 consummate the transactions contemplated by the 2020 PPA.

3 (D) City officials shall take such action as is necessary in conformity
4 with the Act, the LEDA Ordinance and this Ordinance to effectuate the provisions of the
5 2020 PPA and carry out the transactions as contemplated by this Ordinance and the
6 2020 PPA, including, without limitation, the execution and delivery of any documents
7 deemed necessary or appropriate in connection therewith.

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


12 Section 8. REPEALER. All bylaws, ordinances, resolutions, and orders, or
13 parts thereof, inconsistent with this Ordinance are repealed by this Ordinance but only
14 to the extent of that inconsistency. This repealer shall not be construed to revive any
15 bylaw, ordinance, resolution, or order, or part thereof, previously repealed.

16 Section 9. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE
17 DATE. This Ordinance, immediately upon its final passage and approval, shall be
18 recorded in the ordinance book of the City kept for that purpose, and shall be there
19 authenticated by the signature of the Mayor and the presiding officer of the City Council,
20 and by the signature of the City Clerk or any Deputy City Clerk, and notice of adoption
21 thereof shall be published once in a newspaper that maintains an office in, and is of
22 general circulation in, the City, and shall be in full force and effect five (5) days following
23 such publication.

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1 PASSED AND ADOPTED THIS 7th DAY OF December, 2020
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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Patrick Davis, President
City Council

APPROVED THIS 10 DAY OF December, 2020

Bill No. O-20-44



Timothy M. Keller, Mayor
City of Albuquerque

ATTEST:


Ethan Watson, City Clerk

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