CITY of ALBUQUERQUE
TWENTY FOURTH COUNCIL

COUNCIL BILL NO. O-20-44, ENACTMENT NO. O-2020-045

SPONSORED BY: Pat Davis

ORDINANCE

1. APPROVING A PROJECT INVOLVING A MULTINATIONAL COMPANY, NETFLIX STUDIOS LLC, PURSUANT TO THE LOCAL ECONOMIC DEVELOPMENT ACT AND CITY ORDINANCE F/S O-04-10, THE CITY'S IMPLEMENTING LEGISLATION FOR THAT ACT, TO SUPPORT THE ACQUISITION, CONSTRUCTION, IMPROVEMENT AND REHABILITATION OF ENTERTAINMENT PRODUCTION FACILITIES AND RELATED REAL PROPERTY LOCATED IN ALBUQUERQUE, NEW MEXICO;

2. AUTHORIZING THE EXECUTION OF A PROJECT PARTICIPATION AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE PROJECT INCLUDING THE INCORPORATION OF THE COMPANY'S EXISTING PROJECT PARTICIPATION AGREEMENT INTO THE NEW AGREEMENT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO 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 5-10-1 through 5-10-13 NMSA 1978, as amended (the "Act"), the City is authorized to provide economic development assistance to eligible entities for certain projects located within the corporate limits of the municipality; and

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

WHEREAS, pursuant to the LEDA Ordinance, Netflix Studios LLC (the "Company"), has submitted to the Council and the Albuquerque Development
Commission (the “Commission”) an application (the “2020 Application”) requesting certain economic development assistance for the acquisition, construction, improvement and rehabilitation of entertainment production facilities and related real property within the City (the “Project”); and

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

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

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

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

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

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

WHEREAS, the City anticipates that the State will transfer to it, for subsequent transfer to or on behalf of the Company pursuant to an intergovernmental agreement
between the City and the State, certain funds up to $17,000,000 of the State that are
available for the Project, and for which the City will act as Fiscal Agent; and

WHEREAS, the Commission considered the Company’s 2020 Application on
November 23, 2020 and recommends approval of the 2020 Application; and

WHEREAS, the Act and the LEDA Ordinance require that the City and the
Company enter into a project participation agreement meeting the requirements of the
Act and the LEDA Ordinance; and

WHEREAS, City staff has worked with the Company to prepare, and has
negotiated the terms of, a project participation agreement and related documents that
will govern the relationship between the City and the Company with respect to the
Project (the “2020 PPA”); and

WHEREAS, in addition to the new commitments to the Company, the 2020 PPA
incorporates the outstanding responsibilities and obligations of the City, State and
Company from the 2019 PPA resulting in the 2020 PPA being the comprehensive
agreement between the relevant parties upon execution of the 2020 PPA and
termination of the 2019 PPA; and

WHEREAS, the form of the proposed 2020 PPA has been filed with the City
Clerk and presented to the Council; and

WHEREAS, the proposed 2020 PPA contains the provisions required by the Act
and the LEDA Ordinance and, among other things, provides that the Company will grant
to the City a security instrument to secure the Company’s performance of its obligations
under the 2020 PPA, including those related to the State contributions, and “clawback”
provisions for recovery of benefits by the City in the event that the economic benefits to
the City to be conferred by the Project are not realized; and

WHEREAS, the City has obtained a cost-benefit analysis with respect to the
Project on the basis of information provided to the City by the Company, which cost-
benefit analysis shows that the City will recoup the value of its contribution within ten
(10) years; and

WHEREAS, the 2020 Application, together with the cost-benefit analysis,
demonstrates the benefits that will accrue to the community as a result of the donation
of public resources and demonstrates that the Company, by completing the Project, will
be making a substantive contribution to the community, as required by the LEDA
Ordinance; and
WHEREAS, the Commission has considered the Project and the proposed 2020 PPA and has recommended that the Council approve the Company's proposal; and

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

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

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

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

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

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

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

Section 4. FINDINGS. The Council hereby declares that it has considered all relevant information presented to it relating to the Project and the 2020 PPA and hereby finds and determines that the provision of economic development assistance for the
Project is necessary and advisable and in the interest of the public and will promote the public health, safety, morals, convenience, economy, and welfare of the City and its residents.

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

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

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

Section 6. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.

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

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

(C) The Mayor, Chief Administrative Officer, City Treasurer and City Clerk are further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including an intergovernmental agreement with the State Economic Development Department and any appropriate security agreements, and to do such other acts and things, either prior to or after the
date of delivery of the executed 2020 PPA, as are necessary or appropriate to consummate the transactions contemplated by the 2020 PPA.

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

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

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

Section 9. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Ordinance, immediately upon its final passage and approval, shall be recorded in the ordinance book of the City kept for that purpose, and shall be there authenticated by the signature of the Mayor and the presiding officer of the City Council, and by the signature of the City Clerk or any Deputy City Clerk, and notice of adoption thereof shall be published once in a newspaper that maintains an office in, and is of general circulation in, the City, and shall be in full force and effect five (5) days following such publication.
PASSED AND ADOPTED THIS 7th DAY OF December, 2020
BY A VOTE OF: 9 FOR 0 AGAINST.

Patrick Davis, President
City Council

APPROVED THIS 10 Day of December, 2020

Timothy M. Keller, Mayor
City of Albuquerque

ATTEST:

Ethan Watson, City Clerk