

CITY of ALBUQUERQUE

TWENTY FOURTH COUNCIL

COUNCIL BILL NO. O-20-45 ENACTMENT NO. O-2020-044

SPONSORED BY: Pat Davis

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ORDINANCE

AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (NETFLIX STUDIOS PROJECT), SERIES 2020 IN ONE OR MORE SERIES WHICH WHEN COMBINED WOULD BE IN THE MAXIMUM, AGGREGATE PRINCIPAL AMOUNT OF \$500,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION, IMPROVEMENT, REHABILITATION AND EQUIPPING OF ENTERTAINMENT PRODUCTION FACILITIES; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE AGREEMENT, BONDS, INFRASTRUCTURE IMPROVEMENTS AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND 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 3-32-1 through 3-32-16, New Mexico Statutes Annotated, 1978 Compilation, as amended (the "Act"), the City is authorized to acquire industrial revenue projects located within the corporate limits of the municipality for the purpose of promoting industry and trade by inducing commercial enterprises to locate or expand in the State of New Mexico; and

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1 WHEREAS, pursuant to the Act, the City is authorized to issue revenue bonds for
2 the purpose of defraying the cost of acquiring any project and to secure the payment
3 of such bonds, all as provided in the Act; and

4 WHEREAS, Netflix Studios, LLC (the "Company") is a limited liability company
5 organized under the laws of the State of Delaware and is authorized to do business
6 in New Mexico; and

7 WHEREAS, the Company has requested that the City issue its industrial revenue
8 bonds pursuant to the Act for the purpose of providing funds to finance the
9 acquisition, construction, improvement, rehabilitation and equipping of entertainment
10 production facilities within the corporate limits of the City (the "Project"); and

11 WHEREAS, the City Council of the City of Albuquerque (the "Council") has
12 adopted an ordinance establishing the Albuquerque Development Commission (the
13 "Commission") to review projects proposed to be financed with industrial revenue
14 bonds pursuant to City Resolution No. 16-1985, as amended; and

15 WHEREAS, the Company has presented to the City and the Commission a
16 proposal (the "Project Plan") whereby the City shall, pursuant to the Act, acquire,
17 construct, improve, rehabilitate and equip certain property and equipment (the
18 "Project Property") for the purpose of operating entertainment production facilities at
19 Mesa del Sol, covering approximately 198 acres, for an entertainment production
20 and distribution company, within the boundaries of the City, and pursuant to which
21 the City would issue its taxable industrial revenue bonds in order to finance the
22 Project; and

23 WHEREAS, the Commission has reviewed the Project Plan, and on November
24 23, 2020, has determined that the Company has complied with City Resolution No.
25 16-1985, and has recommended approval of the Project Plan by the Council; and

26 WHEREAS, under the Company's Project Plan, the City would enter into an
27 Indenture dated as of December 1, 2020 (the "Indenture") between the City and a
28 corporate depository satisfactory to the City to be designated at a later date, as
29 depository (the "Depository"), pursuant to which, together with this ordinance (the
30 "Bond Ordinance"), the City would issue its bonds designated as the City of

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1 Albuquerque, New Mexico Taxable Industrial Revenue Bonds (Netflix Studios
2 Project), Series 2020 (the "Bonds") in one or more series; and

3 WHEREAS, under the Company's Project Plan, the City and the Company would
4 enter into a Lease Agreement dated as of December 1, 2020 (the "Lease"), pursuant
5 to which the Company will lease the Project Property from the City and will make
6 payments to the Depository sufficient to pay the principal of, redemption premium, if
7 any, and interest on the Bonds, and to pay all other obligations incurred pursuant to
8 the provisions of the Lease and the Bond Ordinance; and

9 WHEREAS, under the Company's Project Plan, the Lease will provide that the
10 Company shall maintain the Project and carry all proper insurance with respect
11 thereto; and

12 WHEREAS, the City intends to enter into a certain Infrastructure Improvements
13 Agreement (the "Infrastructure Agreement") by and among the City; the Company;
14 MDS Investments, LLC, a New Mexico limited liability company; Mesa del Sol, LLC,
15 a New Mexico limited liability company; the Mesa del Sol Tax Increment
16 Development District I; and the Mesa del Sol Public Improvement District 1; and

17 WHEREAS, the Infrastructure Agreement shall provide for the financing,
18 construction and installation of certain public infrastructure that is or will be required
19 in connection with the development of the Project Property, and to address other
20 issues related to the use and development of the Project Property; and

21 WHEREAS, the proceeds of the Bonds shall be used for the purpose of financing
22 the acquisition, construction, improvement, rehabilitation and equipping of the
23 Project (the "Financing"); and

24 WHEREAS, the Bonds in a maximum, aggregate principal amount not to exceed
25 \$500,000,000 will be issued, sold, and delivered by the City in a private sale to an
26 affiliate of the Company (the "Purchaser") pursuant to a bond purchase agreement
27 (the "Bond Purchase Agreement") among the City, the Company, and the
28 Purchaser; and

29 WHEREAS, the proceeds of the Bonds shall be applied to pay the costs of the
30 Project and to pay certain costs associated with the transaction; and

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1 WHEREAS, the City is authorized to enter into the Lease, the Indenture, the
2 Bond Purchase Agreement, the Infrastructure Agreement and other related
3 documents and to issue the Bonds pursuant to the Act and the Bond Ordinance; and

4 WHEREAS, after having considered the provisions of the Project Plan and the
5 Financing, the Council has concluded that it is in the best interest of the City to
6 authorize the issuance of the Bonds to finance the Project, and that the City's
7 issuance of the Bonds shall constitute a valid public purpose under the Act; and

8 WHEREAS, the Council has been advised by the Company that the disclosure
9 provisions of Rule 15c2-12 of the Securities and Exchange Commission are not
10 applicable to this transaction inasmuch as the Bonds are being sold to the
11 Purchaser, which is an affiliate of the Company, in a private sale without the
12 participation of an underwriter; 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 Bond Ordinance, which notice contained certain information concerning the
16 ownership, purpose, location, and size of the Project and the Project Property, and
17 the amount of the Bonds to be issued to finance the Project, which notice was
18 published at least fourteen (14) days prior to hearing and final action on this Bond
19 Ordinance; and

20 WHEREAS, the proposed forms of the following documents have been filed with
21 the City Clerk and presented to the Council: (1) Project Plan; (2) Lease; (3)
22 Indenture; (4) Bond Purchase Agreement; and (5) Infrastructure Agreement
23 (collectively the "Bond Documents"); and

24 WHEREAS, the City has delivered notice to the County of Bernalillo, State of
25 New Mexico, of its intent to consider issuance of the Bonds, which notice was given
26 at least thirty (30) days prior to the meeting at which final action is to be taken on this
27 Bond Ordinance as required by Section 3-32-6.1, New Mexico Statutes Annotated,
28 1978 Compilation, as amended.

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

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1 Section 1. RATIFICATION. All actions not inconsistent with the provisions of
2 this Bond Ordinance previously taken by the Council and the officials of the City
3 directed toward approval of the issuance and sale of the Bonds be approved and the
4 same hereby are ratified, approved and confirmed.

5 Section 2. THE PROJECT PLAN. The Project to be financed with the Bonds
6 consists of the acquisition, construction, improvement, rehabilitation and equipping
7 of entertainment production facilities for an entertainment production and distribution
8 company. The Company may use additional available money to accomplish the
9 Project. The Project Plan is hereby approved in all respects.

10 Section 3. FINDINGS.
11 The Council hereby declares that it has considered all relevant information
12 presented to it relating to the Bonds and the Project and hereby finds and
13 determines that the issuance of the Bonds pursuant to the Bond Ordinance and the
14 Act to provide funds for the Project is necessary and advisable and in the interest of
15 the public, and will promote the public health, safety, morals, convenience,
16 economy, and welfare of the City and the residents of the City.

- 17 The Council finds that:
- 18 (1) The Bonds will be issued for the purpose of financing the Project;
 - 19 (2) The aggregate face amount of obligations to be issued for the
20 purpose of financing the Project shall not exceed \$500,000,000;
 - 21 (3) The developer and operator of the Project is the Company; and,
 - 22 (4) The Project Property is located in the City.

23 Section 4. AUTHORIZATION AND APPROVAL OF THE BONDS. To finance
24 the cost of acquiring the Project Property, the City hereby authorizes and approves
25 the issuance and sale of its industrial revenue bonds to be designated "City of
26 Albuquerque, New Mexico Taxable Industrial Revenue Bonds (Netflix Studios
27 Project), Series 2020" in one or more series which when combined would be in the
28 maximum, aggregate principal amount of \$500,000,000 and the use of the proceeds
29 of the Bonds to finance the cost of the Project and to pay expenses relating thereto.

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1 Section 5. SALE OF THE BONDS. The sale of the Bonds to the Purchaser at
2 a purchase price equal to the par amount of the Bonds is hereby authorized and
3 approved.

4 Section 6. FORM AND TERM OF THE BONDS. Subject to the limitations set
5 forth in this Bond Ordinance, the Bonds shall be: (i) in the form and shall be
6 numbered and dated all as set forth in the Indenture; (ii) payable as to principal and
7 interest, and subject to optional and mandatory redemption and defeasance in the
8 amounts, upon the conditions and at the times and prices set forth in the Indenture;
9 and, (iii) issued in the principal amount not to exceed \$500,000,000, bearing interest
10 at the rates and maturing on the dates set forth in the Indenture. The interest rate
11 on the Bonds shall not exceed 12% per annum. The Mayor or the Chief
12 Administrative Officer of the City shall sign the Bonds.

13 Section 7. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.
14 The form, terms, and provisions of the Bond Documents in the form on deposit in the
15 office of the City Clerk are in all respects approved, authorized, and confirmed, and
16 the City shall enter into such Bond Documents substantially in the form of each such
17 document on deposit with the City Clerk, with only such changes as are not
18 inconsistent with this Bond Ordinance or such other changes as may be approved
19 by supplemental resolution of the Council.

20 (A) The Council authorizes the Mayor or the Chief Administrative Officer of the
21 City to execute and deliver the Bond Documents in the name and on behalf of the
22 City, and the Council authorizes the City Clerk or Deputy City Clerk to attest to, as
23 necessary, the Bond Documents and the Bonds with such changes therein as are
24 not inconsistent with this Bond Ordinance.

25 (B) The Mayor, Chief Administrative Officer, Chief Financial Officer, City
26 Treasurer, and City Clerk are further authorized to execute, authenticate, and deliver
27 such certifications, instruments, documents, letters, and other agreements, including
28 security agreements, and to do such other acts and things, either prior to or after the
29 date of delivery of the Bonds, as are necessary or appropriate to consummate the
30 transactions contemplated by the Bond Documents.

1 (C) The officers of the City shall take such action as is necessary to effectuate
 2 the provisions of the Indenture and shall take such action as is necessary in
 3 conformity with the Act and this Bond Ordinance to finance the costs of the Project
 4 and for carrying out other transactions as contemplated by this Bond Ordinance and
 5 the Bond Documents including, without limitation, the execution and delivery of any
 6 closing documents to be delivered in connection with the sale and delivery of the
 7 Bonds.

8 Section 8. DELIVERY OF THE BONDS. Upon the execution of the Bond
 9 Documents and the satisfaction of the conditions set forth in the Bond Documents,
 10 the Bonds shall be executed, authenticated, and delivered to the Purchaser. None
 11 of the Bonds shall be valid for any purpose until such Bond has been properly
 12 authenticated as set forth in the Indenture.

13 Section 9. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND
 14 INTEREST AND OTHER MATTERS. The Council makes the following
 15 determinations and findings in accordance with the Act:

16 (A) The maximum amount necessary in each year to pay the principal of and
 17 interest on the Bonds, assuming issuance of the Bonds as of December 17, 2020 in
 18 the amount of \$500,000,000 and bearing interest at the rate of 3.00% is as follows:

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19	<u>Year Ended</u>	<u>Maturing Principal</u>	<u>Interest Amount</u>	<u>Total Debt Service</u>
20	12/31/21	\$0	\$15,000,000	\$15,000,000
21	12/31/22	\$0	\$15,000,000	\$15,000,000
22	12/31/23	\$0	\$15,000,000	\$15,000,000
23	12/31/24	\$0	\$15,000,000	\$15,000,000
24	12/31/25	\$0	\$15,000,000	\$15,000,000
25	12/31/26	\$0	\$15,000,000	\$15,000,000
26	12/31/27	\$0	\$15,000,000	\$15,000,000
27	12/31/28	\$0	\$15,000,000	\$15,000,000
28	12/31/29	\$0	\$15,000,000	\$15,000,000
29	12/31/30	\$0	\$15,000,000	\$15,000,000
30	12/31/31	\$0	\$15,000,000	\$15,000,000
31	12/31/32	\$0	\$15,000,000	\$15,000,000

1	12/31/33	\$0	\$15,000,000	\$15,000,000
2	12/31/34	\$0	\$15,000,000	\$15,000,000
3	12/31/35	\$0	\$15,000,000	\$15,000,000
4	12/31/36	\$0	\$15,000,000	\$15,000,000
5	12/31/37	\$0	\$15,000,000	\$15,000,000
6	12/31/38	\$0	\$15,000,000	\$15,000,000
7	12/31/39	\$0	\$15,000,000	\$15,000,000
8	12/31/40	\$500,000,000	\$15,000,000	\$15,000,000

(B) The terms under which the Project Property is leased provide that the Company shall maintain the Project Property and carry all proper insurance (or self-insure) with respect to the Project Property.

(C) The lease rentals payable under the Lease shall be at least sufficient to pay the principal and interest payments on the Bonds set forth in Paragraph (A) of this Section 9 when due and otherwise render the financing of the acquisition of the Project Property entirely self-liquidating. There shall be no payments to any reserve fund or sinking fund installment payments.

Section 10. NONTAXABLE TRANSACTION CERTIFICATES. The Company, as agent for the City, will acquire the Project. The City will cooperate with the Company to obtain and allow use of Type 9 Nontaxable Transaction Certificates ("Certificates") that have been properly executed for acquisition of tangible personal property relating to the Project as applicable under the New Mexico Gross Receipts and Compensating Tax Act. The Company shall not use the Certificates other than for such things as may be permitted by law, if any, nor shall the Company use such Certificates after the completion of the Project. No costs, expenses or other monetary relief will be recoverable from the City by vendors of equipment.

Section 11. LIMITED OBLIGATIONS. The Bonds shall be special limited obligations of the City payable solely from the revenues derived from the Lease and payable by the Company as described in the Indenture, and shall never constitute a debt or indebtedness of the City or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution, statutes, or home-rule charter of the City, and shall not constitute or give rise to a pecuniary

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1 liability of the City or a charge against its general credit or taxing power. Nothing
2 contained in the Bond Ordinance or the Bond Documents, or any other instrument,
3 shall be construed as obligating the City (except with respect to the Project Property
4 and the application of the revenues therefrom and the proceeds of the Bonds, all as
5 provided in the Bond Documents), nor as incurring a pecuniary liability or charge
6 upon the general credit of the City or against its taxing power, nor shall the breach of
7 any agreement contained in the Bond Ordinance, the Bond Documents, the Bonds,
8 or any other instrument be construed as obligating the City (except with respect to
9 the Project Property and the application of revenues therefrom and the proceeds of
10 the Bonds all as provided in the Bond Documents) nor as incurring a pecuniary
11 liability or a charge upon the general credit of the City or against its taxing power, the
12 City having no power to pay out of its general funds, or otherwise contribute any part
13 of the costs of acquiring the Project Property, nor power to operate the Project as a
14 business or in any manner except as lessor and seller of the Project Property.

15 Section 12. APPROVAL OF INDEMNIFICATION. The Council specifically
16 approves the provisions of the Lease relating to indemnification which provide that
17 the Company shall indemnify and hold harmless the City and its City Councilors,
18 officials, members, officers, employees, and agents against liability to the Company
19 or to any third parties that may be asserted against the City, its City Councilors,
20 officials, members, officers, employees, and agents with respect to the City's
21 ownership of the Project Property or the issuance of the Bonds and arising from the
22 condition of the Project Property or the acquisition or operation of the Project
23 Property by the Company, except to the extent that Section 56-7-1, New Mexico
24 Statutes Annotated, 1978 Compilation, as amended, applies, and except claims for
25 any loss or damage arising out of or resulting from the gross negligence or willful
26 misconduct of the City or any official, member, officer, employee, or agent of the
27 City.

28 Section 13. CITY RESOLUTION 16-1985. To the extent that any provisions of
29 this Ordinance are in conflict with City Resolution 16-1985, the terms of this
30 Ordinance shall prevail.

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1 Section 14. BOND ORDINANCE IRREPEALABLE. After one or more series of
2 the Bonds are issued, this Bond Ordinance shall be and remain irrepealable until the
3 Bonds, including all interest thereon, are fully paid, cancelled, and discharged, or
4 until there has been defeasance of the Bonds in accordance with the Indenture.

5 Section 15. SEVERABILITY. If any section, paragraph, clause or provision of
6 this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the
7 invalidity or unenforceability of that section, paragraph, clause, or provision shall not
8 affect any of the remaining provisions of this Bond Ordinance.

9 Section 16. REPEALER. All by-laws, ordinances, resolutions, and orders, or
10 parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond
11 Ordinance but only to the extent of that inconsistency. This repealer shall not be
12 construed to revive any by-law, ordinance, resolution, or order, or part thereof,
13 previously repealed.

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

22 Section 18. GENERAL SUMMARY FOR PUBLICATION. The title and general
23 summary of the subject contained in the Bond Ordinance shall be published in
24 substantially the following form:

25 CITY OF ALBUQUERQUE, NEW MEXICO
26 NOTICE OF ADOPTION OF ORDINANCE

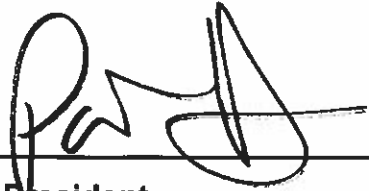
27 Notice is hereby given of the title and of a general summary of the subject matter
28 contained in City Ordinance No. _____ (the "Ordinance"), duly adopted and
29 approved by the City Council of the City of Albuquerque, New Mexico, on November 2,
30 2020. Complete copies of the Ordinance are available for public inspection during the
31 normal and regular business hours of the City Clerk in the office of the City Clerk,
32 Albuquerque/Bernalillo County Government Center, One Civic Plaza, N.W., Albuquerque,

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1 New Mexico.
2 The title of the Ordinance is:
3 AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE,
4 NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (NETFLIX STUDIOS
5 PROJECT), SERIES 2020 IN ONE OR MORE SERIES WHICH WHEN COMBINED
6 WOULD BE IN THE MAXIMUM, AGGREGGATE PRINCIPAL AMOUNT OF
7 \$500,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION,
8 CONSTRUCTION, IMPROVEMENT, REHABILITATION AND EQUIPPING OF
9 ENTERTAINMENT PRODUCTION FACILITIES; AUTHORIZING THE EXECUTION
10 AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE
11 AGREEMENT, BONDS, INFRASTRUCTURE IMPROVEMENTS AGREEMENT
12 AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE
13 BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND
14 FINDINGS RELATING TO THE BONDS AND THE PROJECT; RATIFYING
15 CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS
16 INCONSISTENT WITH THIS ORDINANCE.

17 The title sets forth a general summary of the subject matter contained in the Ordinance.

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



Patrick Davis, President
City Council

12 APPROVED THIS 10 DAY OF June, 2020

16 Bill No. O-20-45



Timothy M. Keller, Mayor
City of Albuquerque

28 ATTEST:



Ethan Watson, City Clerk

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