
**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: Timothy M. Keller, Mayor

FROM: Stephanie M. Yara, Director of Council Services *SMY 6/19/20*

SUBJECT: Transmittal of Legislation

Transmitted herewith is Bill No. F/S O-20-21 Approving A Project Involving Vibrant Corporation Pursuant To The Local Economic Development Act And City Ordinance F/S O-04-10, As Amended, The City's Implementing Legislation For That Act, To Support The Operations Of Vibrant Corporation, A Business Operating In Albuquerque, New Mexico; Authorizing The Execution Of A Project Participation Agreement And Other Documents In Connection With The Project; Making Certain Determinations And Findings Relating To The Project Including The Appropriation Of Funds; Ratifying Certain Actions Taken Previously; And Repealing All Actions Inconsistent With This Ordinance (Bassan, by request), which was passed at the Council meeting of June 15, 2020 by a vote of 8 FOR AND 0 AGAINST.

Excused: Harris

In accordance with the provisions of the City Charter, your action is respectfully requested.

**CITY of ALBUQUERQUE
TWENTY-FOURTH COUNCIL**

COUNCIL BILL NO. F/S O-20-21

ENACTMENT NO. 0-2020-022

SPONSORED BY: Brook Bassan, by request

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ORDINANCE

APPROVING A PROJECT INVOLVING VIBRANT CORPORATION PURSUANT TO THE LOCAL ECONOMIC DEVELOPMENT ACT AND CITY ORDINANCE F/S O-04-10, AS AMENDED, THE CITY'S IMPLEMENTING LEGISLATION FOR THAT ACT, TO SUPPORT THE OPERATIONS OF VIBRANT CORPORATION, A BUSINESS OPERATING IN ALBUQUERQUE, NEW MEXICO; AUTHORIZING THE EXECUTION OF A PROJECT PARTICIPATION AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE PROJECT INCLUDING THE APPROPRIATION OF FUNDS; 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, the City provides public support of economic development projects to foster, promote and enhance local economic development efforts within the City pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978, as amended (the "Act"), and the City's Local Economic Development Act Plan adopted pursuant to Ordinance No. F/S O-04-10 (the "LEDA Plan"), codified in the City's Code of Ordinances at Sections 2-14-1-1 through 2-14-1-13; and

WHEREAS, the City is permitted under the Act to serve as fiscal agent for the State of New Mexico (the "State") to oversee and administer State local economic development funds committed to qualified entities located within the corporate limits of the City; and

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1 WHEREAS, in response to the COVID-19 pandemic, the State Economic
2 Development Department created a zero-interest loan program (the "Loan
3 Program") for qualified entities that meet the requirements of the Act; and

4 WHEREAS, the State's Loan Program is intended to provide short-term
5 financing for qualified entities with repayment of the loan due within two years
6 and with the loan amount being fully securitized for the protection of the State
7 and public funds; and

8 WHEREAS, the City is not providing any City funds for the qualified entity
9 pursuant to the State's Loan Program and is solely serving as the State's fiscal
10 agent consistent with the requirements of the Act; and

11 WHEREAS, pursuant to City Ordinance No. O-20-15, adopted on June 1,
12 2020, the City temporarily suspended the requirements under the LEDA Plan
13 requiring a qualified entity to remain in operations in the City for a minimum of
14 ten years as related solely to those projects receiving funding under the State's
15 Loan Program; and

16 WHEREAS, pursuant to the Act, the LEDA Plan and the Loan Program,
17 Vibrant Corporation (the "Company"), has submitted to the Council and the
18 Albuquerque Development Commission (the "Commission") an application (the
19 "Application") requesting certain economic assistance to help sustain business
20 operations and the retention of twelve employees at a minimum monthly payroll
21 of \$100,000 (the "Project"); and

22 WHEREAS, the City will administer and disburse to the Company loan
23 funds totaling \$304,000 from the State Economic Development Department
24 through the Loan Program; and

25 WHEREAS, the Act and the LEDA Plan require the City and the Company
26 enter into a project participation agreement meeting the requirements of the Act
27 and the LEDA Plan; and

28 WHEREAS, the State, City and Company have negotiated the terms of a
29 project participation agreement (the "Agreement") and related documents that
30 will govern the relationship between the City and the Company with respect to the
31 Project; and

32 WHEREAS, the form of the proposed Agreement has been filed with the
33 City Clerk and presented to the Council; and

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1 WHEREAS, the proposed Agreement contains the provisions required by
2 the Act and the LEDA Plan and, among other things, provides that the Company
3 will grant to the City a security instrument to secure the Company's obligations
4 under the Agreement; and

5 WHEREAS, the Application, together with the cost-benefit analysis,
6 demonstrates the benefits that will accrue to the community as a result of the
7 donation of public resources and demonstrates that the Company will be making
8 a substantive contribution to the community, as required by the LEDA Plan; and

9 WHEREAS, the Commission has considered the Project and the proposed
10 Agreement and has recommended that the Council approve the Company's
11 proposal; and

12 WHEREAS, the City anticipates that the State will transfer to it, for
13 subsequent transfer to or on behalf of the Company pursuant to an
14 intergovernmental agreement between the City and the State, certain funds of the
15 State that are available for the Project; and

16 WHEREAS, after having considered the Application and the Agreement, the
17 Council has concluded that the economic and other benefits of the Project to the
18 City will be material, and that it is desirable and necessary at this time to
19 authorize the City to enter into the Agreement; and

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

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

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

31 Section 2. GOALS AND OBJECTIVES. The goals and objectives of the
32 Project are, as set forth in the Agreement, to create and support an economic
33 development project that fosters, promotes and enhances local economic

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1 development efforts and that provides job security and career opportunities for
2 Albuquerque-area residents and otherwise makes a substantive contribution to
3 the community.

4 Section 3. THE PROJECT. The Project will consist of economic
5 assistance to the Company through the State's Loan Program to help sustain the
6 Company's business operations within the City and the retention of twelve
7 employees at a minimum monthly payroll of \$100,000.

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

14 Section 5. AUTHORIZATION AND APPROVAL OF THE PROJECT AND
15 THE AGREEMENT; APPROPRIATION OF FUNDS. The City hereby approves the
16 Project and the Agreement, which provides, among other things, that the City will
17 administer and disburse State funds to the Company through the Loan Program
18 in the amount of \$304,000, in exchange for which the Company will complete the
19 Project as specified in the Agreement. There is hereby appropriated for the
20 Project \$304,000 of funds received from the State Economic Development
21 Department through the Loan Program.

22 Section 6. AUTHORIZATION OF OFFICERS; APPROVAL OF
23 DOCUMENTS.

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

30 (B) The Council authorizes the Mayor or the Chief Administrative
31 Officer of the City to execute and deliver the Agreement in the name and on
32 behalf of the City, with only such changes therein as are not inconsistent with

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1 this Ordinance or such changes as may be approved by supplemental resolution
2 of the Council.

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

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

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

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

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

1 PASSED AND ADOPTED THIS 15th DAY OF June, 2020
2 BY A VOTE OF: 8 FOR 0 AGAINST.

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4 Excused: Harris

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10 Patrick Davis, President
11 City Council

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14 APPROVED THIS 26 DAY OF June, 2020

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17 Bill No. F/S O-20-21

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22 _____
23 Timothy M. Keller, Mayor
24 City of Albuquerque

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28 ATTEST:
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31 Ethan Watson, City Clerk

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