CITY of ALBUQUERQUE
TWENTY FOURTH COUNCIL

COUNCIL BILL NO. O-20-20 ENACTMENT NO. _____

SPONSORED BY: Brook Bassan, by request

ORDINANCE

Approving A Project Involving OBTC Warehouse, LLC 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 OBTC Warehouse, LLC., 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)

APPROVING A PROJECT INVOLVING OBTC WAREHOUSE, LLC 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 OBTC WAREHOUSE, LLC., 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

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

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

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

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

WHEREAS, pursuant to the Act, the LEDA Plan and the Loan Program, OBTC Warehouse, LLC. (the “Company”), has submitted to the Council and the Albuquerque Development Commission (the "Commission") an application (the "Application") requesting certain economic assistance to help sustain business operations and the retention of four employees at a minimum monthly payroll of $7,700.00 (the "Project"); and

WHEREAS, the City will administer and disburse to the Company loan funds totaling $40,000 from the State Economic Development Department through the Loan Program; and

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

WHEREAS, the State, City and Company have negotiated the terms of a project participation

agreement (the "Agreement") and related documents that will govern the relationship between the City and the Company with respect to the Project; and

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

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

WHEREAS, the 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 will be making a substantive contribution to the community, as required by the LEDA Plan; and

WHEREAS, the Commission has considered the Project and the proposed Agreement and has recommended that the Council approve the Company's proposal; 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 of the State that are available for the Project; and

WHEREAS, after having considered the Application and the Agreement, the Council has concluded that the economic and other benefits of the Project to the City will be material, and that it is desirable and necessary at this time to authorize the City to enter into the Agreement; 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 Agreement, to create and support an economic development project that fosters, promotes and enhances local economic development efforts and that provides job security 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 economic assistance to the Company through the State's Loan Program to help sustain the Company's business operations within the City and the retention of four employees at a minimum monthly payroll of $7,700.00.

Section 4. FINDINGS. The Council hereby declares that it has considered all relevant information presented to it relating to the Project and the Agreement 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 AGREEMENT; APPROPRIATION OF FUNDS. The City hereby approves the Project and the Agreement, which provides, among other things, that the City will administer and disburse State funds to the Company through the Loan Program in the amount of $40,000, in exchange for which the Company will complete the Project as specified in the Agreement. There is hereby appropriated for the Project $40,000 of funds received from the State Economic Development Department through the Loan Program.

Section 6. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.

(A) The form, terms, and provisions of the Agreement 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 Agreement 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 Agreement in the name and on behalf of the City, with only such changes therein as are not inconsistent with this Ordinance or such changes as may be approved by supplemental resolution of the Council.

(C) The Mayor, Chief Administrative Officer, Chief Financial 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 Agreement, as are necessary or appropriate to consummate the transactions contemplated by the Agreement.

(D) City officials shall take such action as is necessary in conformity with the Act, the LEDA Plan and this Ordinance to effectuate the provisions of the Agreement and carry out the transactions as contemplated by this Ordinance and the Agreement, 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.

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