



County of Los Alamos

Los Alamos, NM 87544
www.losalamosnm.us

Agenda - Final County Council - Special Session

Monday, August 12, 2019

12:00 PM

Council Chambers - 1000 Central Avenue
TELEVISED

1. OPENING/ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. PUBLIC COMMENT
4. APPROVAL OF AGENDA
5. INTRODUCTION OF ORDINANCE(S)
 - A. [OR0858-19](#) INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 697;
AN ORDINANCE ADOPTING AN ECONOMIC DEVELOPMENT
PROJECT FOR PUBLIC SUPPORT FROM THE STATE OF NEW
MEXICO FOR THE BENEFIT OF PEBBLE LABS USA INC., A NEW
MEXICO CORPORATION

Presenters: Joanie Ahlers, Economic Development Administrator

Attachments: [A - Ordinance 697 NMEDD LEDA PLUSA.pdf](#)
[B - Participation Agreement PLUSA.pdf](#)
[C - Intergovernmental Agreement NMEDD PLUSA.pdf](#)
[D - Publication Notice.pdf](#)
6. PUBLIC COMMENT
7. ADJOURNMENT

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the County Human Resources Division at 662-8040 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the personnel in the Office of the County Manager at 663-1750 if a summary or other type of accessible format is needed.



County of Los Alamos

Staff Report

August 12, 2019

Los Alamos, NM 87544
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Agenda No.: A.

Index (Council Goals): * 2019 Council Goal - Addressing Long-term Building Vacancies in Key Areas of Our Community; * 2019 Council Goal - Other

Presenters:

Legislative File: OR0858-19

Title:

INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 697; AN ORDINANCE ADOPTING AN ECONOMIC DEVELOPMENT PROJECT FOR PUBLIC SUPPORT FROM THE STATE OF NEW MEXICO FOR THE BENEFIT OF PEBBLE LABS USA INC., A NEW MEXICO CORPORATION

Recommended Action:

I introduce, without prejudice, Incorporated County of Los Alamos Ordinance No. 697 An Ordinance Adopting An Economic Development Project For Public Support Of Pebble Labs USA, Inc. A New Mexico Corporation, and ask staff to assure that it is published as provided in the County Charter.

County Manager's Recommendation:

The County Manager recommends that Council introduce this Ordinance.

Body:

Pebble Labs USA, Inc, (PLUSA) is a local startup that is a result of the bio- lab research program at the New Mexico Consortium (NMC). They are currently headquartered at the NMC 100 Entrada Drive in Los Alamos County. On May 28, 2019, County adopted Ordinance No. 693, acknowledging County's commitment to support the expansion of PLUSA's corporate campus in the amount of the value of land at One Million Four Hundred Six Thousand Five Hundred Dollars (\$1,406,500.00), subject to certain terms and conditions as set forth in that Ordinance and Project Participation Agreement (PPA), as well as the passage of Ordinance 694 enabling the sale of up to \$60 million in Industrial Revenue Bonds. Those actions enabled PLUSA to assemble parcels sufficient for the build out of a corporate campus for PLUSA's future operations.

PLUSA has been preparing to expand and purchase the NMC and will now be making a significant investment in buildout of the corporate campus, new bio-lab facilities and research test gardens. In order to complete the construction, they have approached New Mexico Economic Development Department (NMEDD) for a LEDA Grant.

NMEDD has approved the Grant, however, for PLUSA to access the funds the State requires the local municipal jurisdiction to act as "fiscal agent". The benefit for LAC will be the opportunity to retain a young corporation that is producing world changing science. The increase in high paying jobs within the County will have a positive impact on our community. As fiscal agent LAC Economic Development Staff will be charged with oversight on behalf of NMEDD. The reporting criteria and timeline for NMEDD are similar to the LAC LEDA PPA that the County entered into

on May 28, 2019 under Ordinance 693.

Fiscal and Staff Impact/Planned Item:

There will be minimal staff impact. There will be a few items that will require LAC Economic Development Division time and attention, however, the agreements are very clearly written to outline the requirements set forth by the NMEDD.

Attachments:

- A - Ordinance 697 NMEDD LEDA_PLUSA
- B - Participation Agreement_PLUSA
- C - Intergovernmental Agreement_NMEDD_PLUSA
- D - Publication Notice

INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 697

**AN ORDINANCE ADOPTING AN ECONOMIC DEVELOPMENT
PROJECT FOR PUBLIC SUPPORT FROM THE STATE OF
NEW MEXICO FOR THE BENEFIT OF PEBBLE LABS USA INC.,
A NEW MEXICO CORPORATION**

Section 1. On June 9, 2009, the governing body of the Incorporated County of Los Alamos ("County") adopted Ordinance No. 543, an Ordinance amending and restating the Economic Development Plan of the County, in accordance with the Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978, as amended.

Section 2. The Economic Development Plan sets forth the purpose of allowing public support of economic development to foster, promote and enhance local economic development efforts through the use of project participation agreements with qualifying entities while continuing to protect against the unauthorized use of public money and other public resources, and to enter into intergovernmental agreements with other local governments to plan and support regional economic development projects.

Section 3. Pebble Labs USA Inc., a New Mexico corporation ("PLUSA"), proposes to acquire, develop and construct a laboratory research campus facility, including land, buildings, equipment, and infrastructure, in the Entrada Business Park in Los Alamos County, New Mexico, and to provide research services within Los Alamos County ("Project").

Section 4. County has adopted Ordinance No. 693 ("Ordinance") to approve the economic development Project proposed by PLUSA acknowledging County's commitment to support the acquisition, development and construction of a laboratory research campus facility, and to provide research services in Los Alamos, New Mexico in the form of a grant of "Real Property" valued at One Million Four Hundred Six Thousand Five Hundred Dollars (\$1,406,500.00), subject to certain terms and conditions set forth in that Ordinance, Project Participation Agreement and Financial Guarantee.

Section 5. The New Mexico Economic Development Department ("NMEDD") has likewise determined that the PLUSA Project should be supported with an additional and separate Four Million Dollars (\$4,000,000.00) from the Local Economic Development Act by the State of New Mexico.

Section 6. County now adopts this Ordinance to permit County to enter into an Intergovernmental Agreement ("IGA") with the NMEDD and an additional and separate PPA ("NMEDD PPA") with PLUSA on behalf of NMEDD pursuant to law.

Section 7. County agrees it shall act as fiscal agent for the NMEDD and shall disburse the State's contribution under the terms and conditions identified in the NMEDD PPA and IGA, and with the same safeguards as County shall exercise in disbursing its own contribution to PLUSA.

Section 8. All agreements between County and NMEDD shall be fully set forth in the IGA between the parties.

Section 9. Severability Clause. Should any section, paragraph, clause or provision of this Ordinance, for any reason, be held to be invalid or unenforceable, the invalidity or

unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 10. This Ordinance shall become effective thirty (30) days after its post adoption publication.

ADOPTED this 27th day of August, 2019.

**COUNCIL OF THE INCORPORATED
COUNTY OF LOS ALAMOS**

**Sara C. Scott,
Council Chair**

ATTEST: (Seal)

**Naomi D. Maestas,
Los Alamos County Clerk**

LOCAL ECONOMIC DEVELOPMENT PROJECT PARTICIPATION AGREEMENT
("NMEDD PPA")

THIS LOCAL ECONOMIC DEVELOPMENT PROJECT PARTICIPATION AGREEMENT (the "Agreement") is entered into as of the 30th day of September, 2019, by and between the Incorporated County of Los Alamos (the "County"), a political subdivision of the State of New Mexico (the "State"), on behalf of the State of New Mexico Economic Development Department ("NMEDD"), and Pebble Labs USA Inc., a New Mexico Corporation qualified to do business in New Mexico ("PLUSA" or the "Corporation").

WHEREAS, the purpose of the Local Economic Development Act ("LEDA"), N.M.S.A. 1978 §§ 5-10-1, et seq. (the "Act"), is to provide public support for economic development to foster, promote and enhance local economic development efforts; and

WHEREAS, the Corporation intends to acquire, develop and construct a laboratory research campus facility, including land, buildings, equipment, and infrastructure, in the Entrada Business Park in Los Alamos County, New Mexico, and to provide research services within Los Alamos County ("Project"); and

WHEREAS, County anticipates receiving funds allocated from the State (the "State Contribution") to convey these funds to the benefit of the Corporation; and

WHEREAS, County shall act as fiscal agent for the State Contribution supporting the Project. County shall use the State Contribution, pursuant to the Act, to convey the funds to the Corporation for eligible LEDA expenditures for the Project based on terms set forth herein; and

WHEREAS, County has duly passed Ordinance No. 543, the Local Economic Development Plan (the "Plan"), pursuant to the Act, approving an economic development plan for the County and authorizing County to provide public support and to consider applications for economic development assistance; and

WHEREAS, the Plan authorizes County to provide to a qualifying entity direct or indirect assistance with priority to entities that represent and commit to the creation of new jobs and the resulting enhancement to the municipal revenue; and

WHEREAS, Section 5-10-10 of the Act requires that a project participation agreement, at a minimum, shall establish: (1) the contributions made by each party; (2) the security provided by the qualifying entity to the local government; (3) a schedule for the project development and completion; and (4) provisions for performance review and actions to be taken if performance is unsatisfactory; and

WHEREAS, Section 5-10-11 of the Act requires that a local government establish a separate accounting for monies dedicated or pledged for funding or financing economic development projects; and

WHEREAS, the State and County are parties to an Intergovernmental Agreement for this Project; and

WHEREAS, the Corporation has submitted an application to the State proposing that, in exchange for certain LEDA assistance described below, the Corporation shall undertake and complete certain project elements, which are set forth in this Agreement; and

WHEREAS, County has adopted Ordinance No. 697 (the "Project Ordinance") permitting County to enter into an intergovernmental agreement with NMEDD and this PPA; and

WHEREAS, the Corporation's application, as certified by NMEDD, demonstrates that the Corporation, by completing the Project, shall make a substantive contribution to the community, as required by the Act and the LEDA Ordinance.

NOW THEREFORE, in consideration of these premises and the agreements by the parties set forth herein, the Corporation and County further agree as follows:

1. Goals and Objectives. The objective is to create and support an economic development project that fosters, promotes and enhances local economic development efforts. The goal is that the Project shall provide jobs and career opportunities that shall benefit the community and contribute to its long-term economic growth and sustainability.
2. Corporation Contribution. The Corporation shall:
 - a. Acquire the New Mexico Consortium Entrada Biolab property located at 100 Entrada Drive, Los Alamos, New Mexico 87544;
 - b. Contribute a total investment of Sixty Million Dollars (\$60,000,000.00) to the Project for Qualified Expenditures over the ten (10) year term of this Agreement.
 - c. Create, hire and maintain one hundred seventy-five (175) additional jobs in New Mexico according to the hiring schedule, described below;
 - d. Retain sixty-one (61) existing employees, as indicated on 2nd quarter Unemployment Insurance report submitted to the department of Workforce Solutions for employee headcount on June 30, 2019 and attached as "Exhibit A";

The Corporation shall also provide a surety bond or other mutually agreed security as collateral in an amount of Four Million Dollars (\$4,000,000.00), as set forth in Section 9.

The obligations of the Corporation under this Agreement are subject to the State making the anticipated contribution of up to Four Million Dollars (\$4,000,000.00) available as described in Section 3 of this Agreement.

3. The State Contribution; Procedure for Disbursement of the State Contribution. County anticipates that the State Contribution of up to Four Million Dollars (\$4,000,000.00) will be delivered by the State to County for disbursement to the Corporation upon enactment of the Project LEDA Ordinance No. 697, and execution of these documents and the Intergovernmental Agreement between the State and County, after which time County shall request transfer of the State funds. Upon receipt, County shall monitor

the State contribution in a separate accounting established in connection with the Project, as required by law. County shall disburse the State Contribution, when it is received, only in the manner described in this Agreement and the Intergovernmental Agreement. County shall disburse the State Contribution as reimbursement for LEDA statutorily eligible expenditures in accordance with this and the Intergovernmental Agreement and subject to the Corporation's compliance with this Agreement including the hiring targets identified herein. Disbursements shall be paid on a reimbursement basis and the Corporation shall incur the initial expense of eligible expenditures prior to submittal of the requests for reimbursement.

The State Contribution is composed of a base LEDA award of Four Million Dollars (\$4,000,000.00) for the use by the Corporation for such purposes as set forth in N.M.S.A. 1978 § 5-10-3 (E) attached hereto as Exhibit "B" and this Agreement and shall be disbursed to the Corporation in accordance with the provisions of Section 7 hereof.

4. County Contribution. County shall act as fiscal agent for the State and shall account for receipts and disbursements of the State Contribution and shall provide financial documentation to the State pertaining to said contribution. County shall comply with all applicable State laws, regulations, policies, guidelines and requirements with respect to the acceptance and disbursement of the State contribution in accordance with the Intergovernmental Agreement.
5. Deposit of Funds. As required by the LEDA Ordinance and the Act, County shall deposit the State Contribution into a clearly identified separate account, which shall be subject to an annual independent audit.
6. Time Commitment. It is the Corporation's intent to begin to acquire, renovate and expand its facility no later than August 31, 2019, and to continue to employ the employees contemplated in this Agreement in Los Alamos County, New Mexico, for a period not less than ten (10) years.
7. Disbursement of State Contribution.
 - a. Conditions to Disbursement; Performance Milestones. The State Contribution shall be disbursed to the Corporation through County for reimbursement of LEDA eligible expenditures immediately upon execution of this Agreement, and execution of the Intergovernmental Agreement by the State and County. The disbursement shall be conditioned on (i) the Corporation having incurred expenses, no earlier than August 28, 2019, which are eligible for reimbursement under LEDA prior to the disbursement, and (ii) the Corporation's satisfaction of the performance milestones set forth below.

b.

<i>LEDA Disbursement Schedule</i>		
<u><i>Tranche</i></u>	<u><i>Amount of State Contribution Available for Disbursement/Tranche</i></u>	<u><i>Disbursement Performance Milestone</i></u>
1	\$3,000,000.00	Acquire land and existing building

2	\$500,000.00	Hire 54 additional employees for total Head Count (HC) of 115 by 7/31/2022.
3	\$500,000.00	Hire 90 additional employees for total HC of 151 by 7/31/2024.

- c. Disbursement Requests. After the Corporation has satisfied the conditions to disbursement set forth in Sections 7(a) and 7(b) above, the Corporation may submit to the County Manager a written request for disbursement of the State Contribution (the "Disbursement Request"). All Disbursement Requests shall be accompanied by (i) documentation substantiating expenses eligible for reimbursement under LEDA (fully executed closing documents for the purchase of land and building showing expenditure of at least Four Million Dollars (\$4,000,000.00), and (ii) certification by the Corporation that it has met the Disbursement Performance Milestone, together with such information as may be necessary to confirm the satisfaction of such Disbursement Performance Milestones. The Corporation may submit a Disbursement Request for up to the full amount of the State Contribution if that amount has been expended by the Corporation in accordance with Section 7(b) above.
- d. County Right to Request Additional Information. The County Manager may, in good faith, object to or request additional information regarding a Disbursement Request by delivering written notice ("Notice of Objection") to the Corporation no later than thirty (30) days after the date the County Manager receives the Disbursement Request. If the County Manager fails to deliver a timely Notice of Objection, the Disbursement Request shall be deemed compliant subject to review by the NMEDD to assure the charges submitted are LEDA eligible. NMEDD's review and approval or objection shall not be unreasonably withheld. If the County Manager delivers a timely Notice of Objection, the County Manager and the Corporation shall work in good faith to resolve the issues raised in the Notice of Objection.
- e. Disbursement of State Contribution. If the County Manager does not deliver a timely Notice of Objection, the County Manager will disburse to the Corporation the full amount requested in the Disbursement Request no later than forty-five (45) days after the Corporation's delivery of the Disbursement Request. If the County Manager delivers a timely Notice of Objection, the County Manager shall disburse the amount ultimately agreed or decided to be released to the Corporation no later than thirty (30) days after the resolution of the issues raised in such Notice of Objection.
- f. No Offset of County costs. County may not offset any internal costs or overhead charges for review or processing of the Disbursement Requests against the Disbursement Request or the State Contribution.
- g. Notification of Failure to Maintain Cumulative Full Time Job Creation Target. In the event that the Corporation falls below the Cumulative Full Time Job Creation Target after its corresponding Job Determination Period, the Corporation shall notify County in writing prior to disbursement by County to the Corporation of the State Contribution. Upon receipt of that notification, the

next payment shall be suspended until the Cumulative Full Time Job Creation Target for the current target year is achieved and sustained for ninety (90) consecutive days.

8. Job Commitment and Clawbacks.

- a. Clawbacks. It is the Corporation's commitment to create, hire and maintain the number jobs set forth in the table below under the column captioned "Cumulative Full Time Job Creation Target" on the "Job Determination Period" set forth below. If the Corporation does not achieve the job numbers set forth under the column captioned "Cumulative Full Time Job Creation Target" in the table below on each of the specified "Job Determination Period" (and after expiration of the Cure Periods), then the Corporation shall be required to pay a "Clawback Penalty" (as defined below) to County which shall be applied in the percentage of the total amount of LEDA funds received by the Corporation at the point of non-compliance as set forth in the table below:

Job Creation Commitment and Schedule

<u>Year</u>	<u>Cumulative Full Time Job Creation Target</u>	<u>Payroll</u>	<u>Job Determination Period</u>		<u>Clawback Penalty</u>
1	61+18=79	\$1,260,000.	08/01/2019	07/31/2020	100%
2	Maintain 79+18=97	\$2,595,600.	08/01/2020	07/31/2021	100%
3	Maintain 97+18=115	\$4,010,202.	08/01/2021	07/31/2022	100%
4	Maintain 115+18=133	\$5,660,334.	08/01/2022	07/31/2023	100%
5	Maintain 133+18=151	\$7,090,740.	08/01/2023	07/31/2024	100%
6	Maintain 151+18=169	\$8,764,092.	08/01/2024	07/31/2025	100%
7	Maintain 169+18=187	\$10,529,064.	08/01/2025	07/31/2026	90%
8	Maintain 187+18=205	\$12,397,104.	08/01/2026	07/31/2027	80%
9	Maintain 205+18=223	\$14,365,188.	08/01/2027	07/31/2028	70%
10	Maintain 221+13=236	\$15,983,450.	08/01/2028	07/31/2029	60%
<i>Total</i>	61+175=236	\$15,983,450.			

For the purposes of this Section:

The "Clawback Penalty" is a penalty that the Corporation shall be required to pay County upon the Corporation's failure to meet the Cumulative Full Time Job Creation Target on the applicable Job Determination Period, which is the final day of the Job Determination Periods specified in the table above, if such Cumulative Full Time Job Creation Target is not otherwise reached by the Corporation during the Cure Period.

"Cure Period" is the period of one hundred eighty (180) days after each Job Determination Date during which time the Corporation shall have the opportunity to cure any shortfall in meeting the Minimum Job Number. If the Corporation meets the Cumulative Full Time Job Creation Target at any time during the Cure Period, the Corporation shall have no obligation to pay a Clawback Penalty corresponding to the applicable Job Determination Date. If the Corporation fails to reach the Cumulative Full Time Job Creation Target during the Cure Period, the

Corporation shall pay County a Clawback Penalty determined in accordance with the table set forth above.

A "Job" for this purpose of this section shall mean an employment position that consists of at least thirty-two (32) paid hours of work per week and which provides the employee with a full range of benefits offered to other similarly situated Corporation employees.

- b. Right to Request Modification for Business Climate Changes. The parties hereto recognize certain economic factors generally described as "Business Climate Changes" are beyond the control of any of the parties and may affect the ability of the Corporation to strictly adhere to the job creation numbers and schedule set forth herein. The Corporation may request specific modifications to the job creation schedule. If County agrees that Business Climate Changes have affected the Corporation's ability to perform, the Performance Clawback may be modified. Such modification must be requested in writing by the Corporation.
 - c. Job Reporting. Every year for the Term of this Agreement, the Corporation shall submit a quarterly employment report in the form of an affidavit signed by an officer of the Corporation and Schedule A of the Corporation's ES-903A report to the New Mexico Department of Workforce Solutions for the preceding quarter no later than the following dates: April 30, July 31, October 31 and January 31. County or the State may request a copy of that form at any time while this Agreement is in effect, and the Corporation agrees to provide such documents. The Corporation acknowledges this quarterly reporting shall be relied upon by County and the State to ascertain if the Corporation is in compliance with the job creation provisions of this Agreement and all subsequent and ancillary agreements. The Corporation shall receive no disbursements of State Contribution as stipulated in Section 7 above without the quarterly job reporting as set forth herein.
 - d. The Corporation agrees that any additional companies created out of the work of PLUSA shall be directed in writing, with a copy to the State of New Mexico and County, to meet with State of New Mexico and County prior to their exit from PLUSA in sufficient time (minimum of 90 days) to allow the State of New Mexico and County the opportunity to retain and grow those companies in New Mexico.
 - i. The "clawback penalty" as it relates to this section 8(d) means the Corporation shall be required to pay County upon the Corporation's failure to comply with Section 8(d) above, an amount equal to five percent (5%) of the total amount of LEDA funds received by the Corporation at the point of non-compliance.
 - e. Clawback Penalty. The Clawback Penalties set forth in this Section 8 together with the security instrument provided pursuant to Section 9 to secure the Corporation's Clawback obligations, shall be the sole and exclusive remedy of County for any breach of this Agreement by the Corporation.
9. Security. As security for the faithful performance and payment of all of Corporation's obligations under this Agreement, the Corporation shall furnish County a surety bond

or other mutually agreed security in the amount of four million dollars (\$4,000,000) for a period of Ten (10) years or as set forth in Section 13 of this Agreement.

10. Fees. Each party shall bear its own costs and expenses in connection with the negotiation, execution and delivery of this Agreement or any amendment or enforcement of this Agreement.
11. Annual Reporting Requirement, Performance Review and Termination. To ensure the prudent use of the taxpayer's funds and as required by the LEDA Ordinance and the Act, the Project shall be subject to an annual performance review conducted by County staff. The review shall evaluate whether the Project is meeting the requirements set forth in this Agreement and any subsequent agreements or amendments and shall be made available to the State. The annual report provided by the Corporation to County shall contain a description of work accomplished, the methods and procedures used, a detailed budget breakdown of expenditures, a description of any problems or delays encountered and the reasons therefore, and such other information as may be requested by County.
12. County or State may request the Corporation to provide data and information to assess the broader economic impact of the Project, but the Corporation shall not be required to divulge information or documents it considers confidential or proprietary. If and only if the requirements are not being met, County may terminate this assistance to the Project by passage of an ordinance which terminates this Agreement and specifies the disposition of all obligations of the Project. In addition, in accordance with LEDA, County may enact an ordinance revoking the LEDA Ordinance and dissolving or terminating any or all Projects thereunder. In the event County terminates the LEDA Ordinance or this Agreement, County shall specify the disposition of all obligations of the Project and all rights of the parties arising under this Agreement through the date of such termination.
13. Effective Date. This Agreement shall become effective on the date it is fully executed and shall terminate ten (10) years and six (6) months after the effective date, or when otherwise terminated as provided herein. After this Agreement has been in place for a minimum period of five (5) years and six (6) months, and the Corporation has met all hiring obligations and maintained them for a minimum of six (6) months, and has met all other obligations contained within this document, the Corporation may petition County and State for release of security and termination of this Agreement, any such request shall not unreasonably be withheld.
14. Liability. No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Nothing herein shall operate or be deemed to alter or expand any liabilities or obligations under the applicable provisions of the New Mexico Tort Claims Act (NMSA 1978 §§ 41-4-1, et seq.), or to waive any immunities, limitations or required procedures thereunder. Nothing in this Agreement constitutes a waiver of any party's right to seek judicial relief.
15. Notice. All notices or other written communications, including requests for disbursement, that are required or permitted to be given pursuant to this Agreement must be in writing and delivered personally, by a recognized courier service, by

recognized overnight delivery service, by electronic mail, or by registered or certified mail, postage prepaid, to the parties at the addresses shown in the signature block of this Agreement. If notice is mailed it will be deemed received on the earlier of actual receipt or on the third business day following the date of mailing. If a notice is hand-delivered or sent by overnight delivery service, it will be deemed received upon actual delivery. A party may change its notice address by written notice to the other party to this Agreement.

16. Amendments. This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto.

17. Governing Law. This Agreement shall be governed by the laws of the State of New Mexico.

18. Miscellaneous. This Agreement binds and inures to the benefit of County and the Corporation and their respective successors and permitted assigns. This Agreement may not be assigned without the written consent of the non-assigning party and the NMEDD; provided, however, that with notice to County and the NMEDD, the Corporation may assign this Agreement to any affiliate or other member of the PLUSA that agrees in writing to assume and perform all of the Corporation's obligations under this Agreement. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together constitute one instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the last date of signature below.

Incorporated County of Los Alamos

Harry Burgess, County Manager

Date

Address for Notice:

Incorporated County of Los Alamos
Harry Burgess, County Manager
1000 Central Avenue, Suite 350
Los Alamos, New Mexico 87544

Approved as to form:

J. Alvin Leaphart, County Attorney

Date

Pebble Labs USA Inc.

Michael Harrison, CEO

Date

Address for Notice:

Pebble Labs USA Inc.
Attn: Michael Harrison
433 Paseo de Peralta, Suite 200
Santa Fe, New Mexico 87501

**INTERGOVERNMENTAL AGREEMENT
NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT AND
THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO**

This Intergovernmental Agreement ("Agreement") is entered into as of the date of the last signature affixed below by and between the New Mexico Economic Development Department ("NMEDD"), acting through its Cabinet Secretary, Alicia Keyes, and the Incorporated County of Los Alamos ("County"), and collectively referred to as "the Parties," with reference to the following facts.

SECTION 1: RECITALS:

WHEREAS, the New Mexico State Legislature has appropriated funds to NMEDD "[f]or economic development projects pursuant to the Local Economic Development Act" (the "Appropriation"); and

WHEREAS, the purpose of the Local Economic Development Act, NMSA 1978 §§ 5-10-1 through 5-10-13 (2007) ("LEDA"), is to provide "public support for economic development to foster, promote and enhance local economic development efforts..." and

WHEREAS, County has adopted LEDA by Ordinance No. 543 which established the County's Economic Development Act Plan that promotes economic development within the County; and

WHEREAS, Pebble Labs USA Inc., a New Mexico corporation ("PLUSA"), proposes to acquire, develop and construct a laboratory research campus facility, including land, buildings, equipment, and infrastructure, in the Entrada Business Park in Los Alamos County, New Mexico, and to provide research services within Los Alamos County ("Project"); and

WHEREAS, County has adopted Ordinance No. 693 ("Ordinance") to approve the economic development Project proposed by Pebble Labs USA, Inc., ("PLUSA") acknowledging County's commitment to support the acquisition, development and construction of a laboratory research campus facility, and to provide research services in Los Alamos, New Mexico in the form of a grant of "Real Property" valued at One Million Four Hundred Six Thousand Five Hundred Dollars (\$1,406,500.00), subject to certain terms and conditions set forth in that Ordinance, Project Participation Agreement and Financial Guarantee; and

WHEREAS, NMEDD has likewise determined that an additional and separate PLUSA project should be supported with an additional and separate Four Million Dollars (\$4,000,000.00) from LEDA by the State of New Mexico ("NMEDD PPA"); and

WHEREAS, County has adopted Ordinance No. 697 (the "Project Ordinance") permitting County to enter into this intergovernmental agreement and the NMEDD PPA; and

WHEREAS, NMEDD and County desire to enter into this Agreement to facilitate disbursement of funds for the Project; and

ADD WHEREAS REFERENCING ORD 697

NOW THEREFORE, the Parties do hereby agree to the following terms and conditions to accomplish the Project.

SECTION 2. PURPOSE OF AGREEMENT:

The purpose of this Agreement is to place the primary responsibility on County for overseeing and administering the State funds from the Appropriation for the Project. It is the intent of the Parties that County shall distribute State funds from the Appropriation in an amount not to exceed Four Million Dollars (\$4,000,000) for disbursements made to PLUSA for qualifying expenditures made by PLUSA to implement the Project. The Parties agree that any and all State funds received shall be accounted for by County as the fiscal agent for NMEDD in accordance with the procedures County uses to account for its own funds.

SECTION 3. SCOPE OF WORK:

County shall act as fiscal agent for the State funds from the Contribution supporting the Project. County shall distribute State funds from the Contribution to PLUSA, pursuant to the provisions of LEDA and the NMEDD PPA attached hereto as Exhibit "A", for qualifying scope, costs and expenses incurred for the Project. In exchange for the State funds from the Appropriation, PLUSA shall expend approximately Sixty Million Dollars (\$60,000,000.00) for land, buildings, infrastructure, equipment and other expenses incurred by the Project including the expansion of the laboratory research campus facility in Los Alamos, New Mexico.

SECTION 4. COUNTY RESPONSIBILITIES:

County shall:

1. Request to distribute State funds from the Contribution to PLUSA for costs and expenses incurred for the Project as set forth in Ordinance No. 697, NMEDD PPA, and this Agreement. County shall submit requests for reimbursement to NMEDD with supporting documentation in a format acceptable to NMEDD for qualifying costs associated with the Project. County shall notify NMEDD in writing of any default by PLUSA within ten (10) days of the event of default;
2. Serve as Fiscal Agent for the State funds from the Appropriation transferred to it under this Agreement;
3. Submit all required and reasonably requested documentation to NMEDD and copies of invoices and other documentation as required by NMEDD within the time required; and
4. Not impose any obligations on NMEDD with respect to the administration of this Project, other than the reimbursement of funds as described in this Agreement. Any funds recaptured by County as the result of enforcing the provisions of the NMEDD PPA shall be returned to NMEDD.
5. In the event of default by PLUSA, the County shall make a good faith effort to claw back State LEDA funds as provided in the NMEDD PPA, however the County shall not be obligated to pursue legal action on behalf of the State or NMEDD.

SECTION 5. COUNTY CERTIFICATIONS:

As Fiscal Agent, County hereby assures and certifies that:

1. It shall comply with all applicable State laws, regulations, policies, guidelines and requirements with respect to the acceptance and use of State funds from the Appropriation;
2. It has the legal authority to receive and expend the funds;
3. It shall enforce the provisions of the NMEDD PPA, on behalf of NMEDD, for a LEDA Project for PLUSA involving the expansion, renovations or improvements to the existing laboratory research campus facility in Los Alamos, during the term of the NMEDD PPA;

4. It has entered into an additional and separate PPA on behalf of NMEDD (NMEDD PPA) and has obtained all financial security necessary to protect the State's investment under this project;
5. It shall not at any time during the life of this Agreement convert any property acquired or developed pursuant to this Agreement to uses other than those as described herein and in the County PPA (County Ordinance No. 693) and in the NMEDD PPA, except as may be necessary in the case of default by PLUSA;
6. It shall notify NMEDD of any default on the part of PLUSA within ten (10) days of the event of default;
7. County has established a County Code Ordinance that prohibits any member, officer, or employee of the County or its designees or agents, and other County public official that exercises any functions or responsibilities with respect to the Project during his/her tenure, and for one (1) year thereafter, from having any interest, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with Project that is the subject of this Agreement; and
8. This Agreement and the NMEDD PPA complies with Article IX, Section 14 of the New Mexico Constitution, known as the "anti-donation clause."

SECTION 6. NMEDD RESPONSIBILITIES:

NMEDD shall:

1. Assure and certify that it has exercised due diligence in certifying that the Project is a viable economic development initiative with potential long term economic development benefits.
2. At its discretion, review and audit the Project if it is deemed to be necessary or desirable; and
3. Transfer up to Four Million Dollars (\$4,000,000) to County to be used for the Project in accordance with this Agreement. Such appropriation shall be effected after this Agreement has been fully executed and in accordance with Section 4 of this Agreement. The transferred funds shall be used only for the purpose stated in this Agreement.

SECTION 7. TERM OF AGREEMENT:

This Agreement shall become effective on the date it is fully executed. It shall terminate no later than July 31, 2029, or when the NMEDD PPA terminates.

SECTION 8. LIABILITY:

No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, et seq. The Parties may agree to reimburse one another under these liability provisions, subject to sufficient appropriation by the New Mexico Legislature for NMEDD or County Council for County, or sufficient funds being available to the Party, as determined by the Party responsible for payment.

SECTION 9. DISPOSITION OF PROPERTY; RECORDS; RETURN OF SURPLUS FUNDS:

1. Real Property purchased under this Agreement for the Project shall remain with the purchasing Party except for any Real Property transfer to County that may occur pursuant to Industrial Revenue Bonds.
2. County shall keep such records, and shall fully disclose the amount and disposition of the total State funds budgeted for the Project, the purposes for which such funds were used, and such other records as NMEDD may require.
3. If, upon the expiration of the Project or the termination date of this Agreement, any surplus funds from the Appropriation are possessed by County, County shall return said funds to NMEDD for disposition in accordance with law.

SECTION 10. STRICT ACCOUNTABILITY:

County shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to NMEDD and the New Mexico State Auditor quarterly or upon request, and shall maintain all such records for a period of six (6) years following completion of all the records and any audits.

SECTION 11. REPORTS:

County shall submit annual reports to NMEDD during the life of this Agreement respecting PLUSA's direct job creation mutually attributable to the State funds from the Appropriation and County funds provided pursuant to Ordinance No. 697, and a final report to NMEDD either on or before the termination of this Agreement. The final report shall contain a description of work accomplished, the methods and procedures used, a detailed budget breakdown of expenditures, a description of any problems or delays encountered and the reasons therefore, and such other information as may be requested by NMEDD.

SECTION 12. NOTICES; REPRESENTATIVES OF THE PARTIES:

Any notice required to be given to a Party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. Mail, either first class or certified, return receipt requested, postage prepaid, as follows. The Parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

To NMEDD:

Juan Torres
Financial Development Team Leader
Joseph Montoya Building
1100 St. Francis Drive
Santa Fe, New Mexico 87505
juan.torres@state.nm.us

To the Incorporated County of Los Alamos:

Harry Burgess, County Manager
1000 Central Avenue, Suite 350
Los Alamos, New Mexico 87544
Harry.burgess@lacnm.us

SECTION 13. AMENDMENTS:

This Agreement shall not be altered, changed, or amended, except by instrument in writing executed by all of the Parties hereto.

SECTION 14. GOVERNING LAW:

This Agreement shall be governed by the laws of the State of New Mexico, excluding its choice of law provisions.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature below.

INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

By: _____
Harry Burgess, County Manager

ATTEST:

Date: _____

Naomi D. Maestas, County Clerk

APPROVED AS TO FORM

By: _____
J. Alvin Leaphart, County Attorney

ECONOMIC DEVELOPMENT DEPARTMENT

By: _____
Alicia J. Keyes
Its: Cabinet Secretary

Date: _____

By: _____
David Mathews
Its: General Counsel, certifying legal sufficiency

NOTICE OF ORDINANCE NO. 697

STATE OF NEW MEXICO, COUNTY OF LOS ALAMOS

Notice is hereby given that the Council of the Incorporated County of Los Alamos, State of New Mexico, has directed publication of Los Alamos County Ordinance No. 697. This will be considered by the County Council at an open meeting on Tuesday, August 27, 2019, at 6:00 p.m., at the Los Alamos County Municipal Building: 1000 Central Avenue, Los Alamos, New Mexico 87544. The full copy is available for inspection or purchase, during regular business hours, in the County Clerk's Office: 1000 Central Avenue, Suite 240.

INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 697

AN ORDINANCE ADOPTING AN ECONOMIC DEVELOPMENT PROJECT FOR PUBLIC SUPPORT FROM THE STATE OF NEW MEXICO FOR THE BENEFIT OF PEBBLE LABS USA INC., A NEW MEXICO CORPORATION

Council of the Incorporated County of Los Alamos

By: /s/ Sara C. Scott, Council Chair

Attest: /s/Naomi D. Maestas, County Clerk

Publication Notice: Thursday, August 15, 2019