

LOCAL ECONOMIC DEVELOPMENT PARTICIPATION AGREEMENT

THIS LOCAL ECONOMIC DEVELOPMENT PARTICIPATION AGREEMENT (the “Agreement”) is entered into as of the _____ day of _____, 2018, 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 UbiQD, Inc. (the “Company”).

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;

WHEREAS, the Company intends to renovate a manufacturing facility (the “Project”);

WHEREAS, the County anticipates receiving funds allocated from the State (the “State Contribution”) to convey these funds to the benefit of the Company;

WHEREAS, the County will act as fiscal agent for the State Contribution supporting the Project. The County will use the State Contribution, pursuant to the Act, to convey the funds to the Company for eligible LEDA expenditures in the categories of building and infrastructure for the Project based on terms set forth herein;

WHEREAS, the 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 the County to provide public support and to consider applications for economic development assistance;

WHEREAS, the Plan authorizes the 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;

WHEREAS, § 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;

WHEREAS, § 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;

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

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

WHEREAS, the County has adopted Ordinance No. 675 (the “Project Ordinance”) permitting the County to enter into an intergovernmental agreement with NMEDD and this PPA; and

WHEREAS, the Company's application, as certified by NMEDD, clearly demonstrates the Company, by completing the Project, will be making a substantive contribution to the community, as required by the LEDA statutes and the LEDA Ordinance.

NOW THEREFORE, in consideration of these premises and the agreements by the parties set forth herein, the Company and the 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 will provide jobs and career opportunities that will benefit the community and contribute to its long-term economic growth and sustainability.
2. Company Contribution. The Company will:
 - a. Renovate their manufacturing facility;
 - b. Create, hire and maintain twenty (20) additional jobs at the Facility according to the hiring schedule, described below;
 - c. Retain five (5) existing employees, as indicated on ES903A for employee headcount on December 31, 2016; and
 - d. Make a capital investment to renovate their manufacturing facility located in Los Alamos, New Mexico of at least One Hundred Twenty Five Thousand Dollars (\$125,000.00) from the effective date of this Agreement to December 31, 2018.

The Company will also provide a first mortgage on the property as collateral for the State Contribution in an amount of to One Hundred Twenty-Five Thousand Dollars (\$125,000.00), as set forth in Section 9.

The obligations of the Company under this Agreement are subject to the State making the anticipated contribution of up to One Hundred Twenty Five Thousand Dollars (\$125,000.00) described in Section 3 available under this Agreement.

3. The State Contribution; Procedure for Disbursement of the State Contribution. The County anticipates that the State Contribution of up to One Hundred Twenty Five Thousand Dollars (\$125,000.00) will be delivered by the State to the County for disbursement to the Company upon enactment of the Project LEDA Ordinance No. 675, and execution of these documents and the Intergovernmental Agreement between the State and the County, after which time the County will request transfer of the State funds. Upon receipt, the County will monitor the State contribution in a separate accounting established in connection with the Project, as required by law. The County will disburse the State Contribution, if and when it is received, only in the manner described in this Agreement and the Intergovernmental Agreement. The County will disburse the State Contribution as reimbursement for LEDA statutorily eligible expenditures including, but not limited to building and infrastructure in accordance with this and the Intergovernmental Agreement and subject to the Company's compliance with this Agreement including the hiring targets herein. Disbursements shall be paid on a

reimbursement basis and the Company 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 One Hundred Twenty Five Thousand Dollars (\$125,000.00) for the use of the Company for such purposes as set forth in N.M.S.A. 1978 § 5-10-3(D) and this Agreement and will be disbursed to the Company in accordance with the provisions of Section 7 hereof.

4. The County Contribution. The County shall act as fiscal agent for the state and will account for receipts and disbursements of the State contribution and will provide financial documentation to the State pertaining to said contribution. The County will comply with all applicable State laws, regulations, policies, guidelines and requirements with respect to the acceptance and disbursement of the State contribution.
5. Deposit of Funds. As required by the LEDA Ordinance and statute, the County will 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 Company's intent to begin renovations no later than December 31, 2018 and to continue to employ the employees contemplated in this Agreement in Los Alamos County, New Mexico for a period not less than five (5) years.
7. Disbursement of State Contribution.
 - a. Conditions to Disbursement; Performance Milestones. The State Contribution will be disbursed to the Company through the 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 will be conditioned on (i) the Company's having incurred expenses which are eligible for reimbursement under LEDA prior to the disbursement, and (ii) the Company's satisfaction of the performance milestones set forth below.
 - b. Disbursement Requests. After the Company has satisfied the conditions to disbursement set forth in Section 7(a) above, the Company 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, and (ii) certification by the Company 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 Company may submit a Disbursement Request for up to the full amount of the State Contribution if that amount has been expended by the Company.
 - c. 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 Company 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 will be deemed compliant subject to review by the New Mexico Economic Development Department to assure the charges submitted are LEDA eligible. The Department'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 Company will work in good faith to resolve the issues raised in the Notice of Objection.

- d. Disbursement of State Contribution. If the County Manager does not deliver a timely Notice of Objection, the County Manager will disburse to the Company the full amount requested in the Disbursement Request no later than forty-five (45) days after the Company's delivery of the Disbursement Request. If the County Manager delivers a timely Notice of Objection, the County Manager will disburse the amount ultimately agreed or decided to be released to the Company no later than thirty (30) days after the resolution of the issues raised in such Notice of Objection.
- e. No Offset of County costs. The 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.

8. Job Commitment and Clawbacks.

- a. Clawbacks. It is the Company's commitment to create, hire and maintain the number jobs set forth in the table below under the column captioned "Target Job Number" on the Job Measurement Dates set forth below. If the Company does not achieve the job numbers set forth under the column captioned "Minimum Job Number" in the table below on each of the specified Job Measurement Dates (and after expiration of the Cure Periods) , then the Company shall be required to pay a Clawback Penalty (as defined below) to the County which will be applied in the percentage set forth in the table below:

<i>Job Creation Commitment and Schedule</i>					
<u>Year</u>	<u>Cumulative Full Time Target Job Number</u>	<u>Cumulative Full Time Minimum Job Number</u>	<u>Job Determination Period</u>		<u>Clawback % on Job Creation Shortfall</u>
1	5	10	1-Jan-18	31-Dec-18	100%
2	+4	14	1-Jan-19	31-Dec-19	100%
3	+3	17	1-Jan-20	31-Dec-20	75%
4	+5	21	1-Jan-21	31-Dec-21	50%
5	+4	25	1-Jan-22	31-Dec-22	25%
<i>Total</i>	<i>20</i>	<i>25</i>			

For the purposes of this Section:

The "Clawback Penalty" is a penalty that the Company will be required to pay the County upon the Company's failure to meet the Minimum Job Number on the applicable Job Determination Date, which is the final day of the Job Determination Periods pacified

in the table above, if such Minimum Job Number is not otherwise reached by the Company during the Cure Period.

“Cure Period” is the period of one hundred eighty (180) days after each Job Determination Date during which time the Company shall have the opportunity to cure any shortfall in meeting the Minimum Job Number. If the Company meets the Minimum Job Number at any time during the Cure Period, the Company shall have no obligation to pay a Clawback Penalty corresponding to the applicable Job Determination Date. If the Company fails to reach the Minimum Job Number during the Cure Period, the Company shall pay the County a Clawback Penalty determined in accordance with the table set forth above.

A “Job” for this purpose of this section will 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 Company 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 Company to strictly adhere to the job creation numbers and schedule set forth herein. The Company may request specific modifications to the job creation schedule. If the County agrees that Business Climate Changes have affected the Company’s ability to perform, the Performance Clawback may be modified. Such modification must be requested in writing by the Company.
- c. Job Reporting. The Company shall submit a quarterly employment report in the form of an affidavit signed by an officer of the Company and Schedule A of the Company’s ES-903A report to the New Mexico Department of Workforce Solutions for the preceding quarter no later than the end of the following months: April 30, July 31, October 31 and January 31. The County or the State may request a copy of that form at any time while this Agreement is in effect, and the Company agrees to provide such documents. The Company acknowledges this quarterly reporting will be relied upon by the County and the State to ascertain if the Company is in compliance with the job creation provisions of this Agreement and all subsequent and ancillary agreements. The Company will receive no disbursements of State Contribution as stipulated in Section 7 above without the quarterly job reporting as set forth herein.
- d. Notification of Failure to Maintain Minimum Job Number. In the event that the Company falls below the Minimum Job Number after its corresponding Job Determination Date, the Company shall notify the County in writing prior to disbursement by the County to the Company of the State Contribution. Upon receipt of that notification, the next payment shall be suspended until the Minimum Job Number for the current target year is achieved and sustained for ninety (90) consecutive days.
- 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 Company’s Clawback

obligations, shall be the sole and exclusive remedy of the County for any breach of this Agreement by the Company.

9. Security. As security for the faithful performance and payment of all of Company's obligations under this Agreement, the Company shall furnish the County a first mortgage lien upon the real property and improvements thereon. The County may foreclose the mortgage lien to satisfy any unpaid Clawback Penalty which shall become due and payable. If the Company achieves and then sustains the Minimum Job Number of twenty-five (25) employees for one hundred eighty (180) consecutive days subsequent to December 31, 2022, the mortgage will be released.
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 statute and Ordinance, the Project will be subject to an annual performance review conducted by County staff. The review will 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 final report provided by the Company to the 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 the County.
12. The County or State may request the Company to provide data and information to assess the broader economic impact of the Project, but the Company shall not be required to divulge information or documents it considers confidential or proprietary. If the requirements are not being met, the 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, the County may enact an ordinance revoking the LEDA Ordinance and dissolving or terminating any or all Projects thereunder. In the event the County terminates the LEDA Ordinance or this Agreement, the County will 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 5 years and 6 months after the effective date, or when otherwise terminated.
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 the County and the Company and their respective successors and permitted assigns. This Agreement may not be assigned without the written consent of the non-assigning party and the New Mexico Economic Development Department; provided, however, that with notice to the County and the New Mexico Economic Development Department, the Company may assign this Agreement to any affiliate or other member of the UBIQD that agrees in writing to assume and perform all of the Company'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:

Los Alamos County
Harry Burgess
County Manager
1000 Central Avenue, Suite 350
Los Alamos, NM 87544

Approved as to form:

J. Alvin Leaphart, County Attorney

UbiQD, Inc.

Hunter McDaniel, CEO

Date

Address for Notice:

UbiQD, Inc.
Attn: Hunter McDaniel
134 East Gate Drive
Los Alamos, NM 87544