

**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 (“NMNEMEDD”), acting through its Cabinet Secretary, Matthew Geisel, and the Incorporated County of Los Alamos, New Mexico (the “County”), and collectively referred to as “the Parties,” with reference to the following facts.

SECTION 1. RECITALS:

WHEREAS, the New Mexico State Legislature enacted Laws 2014, Chapter 63, Section 5, Subsection 33, which appropriated Fifty Million Dollars (\$50,000,000) 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 et seq. (“LEDA”), is to provide “public support for economic development to foster, promote and enhance local economic development efforts...;” and

WHEREAS, the 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, the County has adopted Ordinance No. 675 (“Ordinance”) acknowledging County’s commitment to support the expansion of UbiQD in the amount of Three Hundred Twenty-Five Thousand Dollars (\$325,000.00), subject to certain terms and conditions as set forth in that Ordinance, in a Project Participation Agreement (PPA) and Secured Promissory Note; and

WHEREAS, NMEDD has likewise determined that an additional and separate UbiQD project (“Project”) should be supported with an additional and separate One Hundred Twenty-Five Thousand Dollars (\$125,000.00) from the Local Economic Development Act by the State of New Mexico; and

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

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 the County for overseeing and administering the State funds from the Appropriation for the Project. It is the intent of the Parties that the County will oversee and administer the State funds from the Appropriation in an amount not to exceed One Hundred Twenty Five Thousand Dollars (\$125,000.00) for disbursements made to UbiQD for qualifying expenditures made by UbiQD to implement the Project. The Parties agree that any and all State funds received will be accounted for by the County as the fiscal agent for NMEDD in accordance with the procedures the County uses to account for its own funds.

SECTION 3. SCOPE OF WORK:

The County will act as fiscal agent for the NMEDD for State funds from the Appropriation supporting the Project. The County will disburse the State funds from the Appropriation to UbiQD, pursuant to the provisions of LEDA and the NMEDD PPA, attached as Exhibit A, for qualifying scope, costs and expenses incurred by UbiQD for

the Project. In exchange for the State funds from the Appropriation, UbiQD will provide the following contribution:

1. Create a total of twenty (20) new jobs and sustain those jobs, plus the existing baseline of five (5) jobs, as identified in Exhibit A.
2. The County will receive: a first mortgage lien on real property from UbiQD as Security for the County and State in the event of default by UbiQD with any of the provisions of the NMEDD PPA and any exhibits thereto or amendments thereof. The County will review the timeline and progress of the Project annually for a period of five (5) consecutive years. Upon termination of the NMEDD PPA, the County will certify to NMEDD that UbiQD has satisfied the requirements of the NMEDD PPA. UbiQD and the County agree that failure to meet the substantive contributions will result in a violation of the terms and conditions of these Agreements. Such violation, after any cure period granted to UbiQD, will require UbiQD repay up to the committed One Hundred Twenty Five Thousand Dollars (\$125,000.00) from the State funds, prorated on the basis of one (1) job per Six Thousand Two Hundred Fifty Dollars (\$6,250.00). All the terms, conditions and requirements set forth under the NMEDD PPA are incorporated into this Agreement by reference.

SECTION 4. COUNTY RESPONSIBILITIES:

The County shall:

1. Monitor and disburse the State funds from the Appropriation to UbiQD for qualifying costs and expenses incurred for the Project as set forth in Ordinance No. 675 and the NMEDD PPA, and this Agreement. The

County shall notify NMEDD in writing of any default by UbiQD 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 delivery of State funds from the Appropriation to the County as described in this Agreement. Any funds recaptured by the County as the result of enforcing the provisions of the NMEDD PPA shall be returned to NMEDD.

SECTION 5. COUNTY CERTIFICATIONS:

As Fiscal Agent, the County hereby assures and certifies that:

1. It will 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 will enforce the provisions of the NMEDD PPA, on behalf of NMEDD, for a LEDA Project for UbiQD involving the renovations or improvements to the existing facility in Los Alamos, for a term of five (5) years which will, in turn, provide for job creation and retention within the County;

4. It has entered into an additional and separate PPA on behalf of NMEDD 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. 671) and in the NMEDD PPA, except as may be necessary in the case of default by UbiQD;
6. It will notify NMEDD of any default on the part of UbiQD within ten (10) days of the event of default;
7. The 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. Deliver to the County One Hundred Twenty-Five Thousand Dollars (\$125,000.00) to be used by UbiQD for the Project in accordance with this Agreement. The delivered 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 and shall terminate five (5) years and six (6) months after the effective date.

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 the 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. The County shall keep such records as will 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.
2. If, upon the expiration of the Project or the termination date of this Agreement, any surplus State funds from the Appropriation are possessed by the County, the County shall return said funds to NMEDD for disposition in accordance with law.

SECTION 10. STRICT ACCOUNTABILITY:

The 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:

The County shall submit annual reports to NMEDD during the life of this Agreement respecting UbiQD's direct job creation mutually attributable to the State funds from the Appropriation and the County funds provided pursuant to Ordinance No. 671 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 First Class 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 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, including its choice of law provisions.

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

COUNTY OF LOS ALAMOS, NEW MEXICO

By: _____
Harry Burgess, County Manager

ATTEST:

Date: _____

APPROVED AS TO FORM

By: _____
J. Alvin Leaphart, County Attorney

ECONOMIC DEVELOPMENT DEPARTMENT

By: _____

Matthew Geisel

Its: Cabinet Secretary

Date: _____

By: _____

David Mathews

Its: General Counsel, certifying legal sufficiency