

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