

**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

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 Contribution 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