

INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 695

**AN ORDINANCE ADOPTING AN ECONOMIC DEVELOPMENT
PROJECT FOR PUBLIC SUPPORT OF TNJLA LLC,
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 joint powers agreements with other local governments to plan and support regional economic development projects.

Section 3. TNJLA LLC, a New Mexico corporation ("Company"), proposes to acquire, develop and construct an extended stay hotel facility, including a 250 – 300 person banquet-style conference center, and a minimum of 1,800 square feet of stand-alone food and beverage retail on the 20th Street Extension properties in Los Alamos County (the "Project").

Section 4. Company has submitted an application to County pursuant to NMSA 1978 § 5-10-9, and has established itself as a qualifying entity and has addressed the following criteria:

- a. Company is a private for-profit development business that has an established track record of successful hotel projects in New Mexico. The application includes information about the Company's financials and its leadership team.
- b. Company's economic activity meets County's objective of expansion of the tax base by generating increased taxes from new construction, and from Company purchases such as equipment and supplies.
- c. Company's economic activity meets County's objective of increased job and income opportunities by proposing to create a minimum of seventeen (17) Full-Time Equivalent jobs based within the County, and maintain said employees over ten (10) years.
- d. Company shall make a good faith effort to promote County as a good and desirable place to visit, live and work.

Section 5. Company has met the priorities of the Economic Development Plan in the following respects:

- a. Meets County's objective of economic diversification by enriching the hospitality offerings in Los Alamos by creating an 86-room extended stay Marriot hotel;
- b. Meets the objective of economic diversification by constructing a hotel, conference center facility, and retail food and beverage space;

- c. Meets the objective of expansion of the tax base by generating increased taxes for property tax, gross receipts tax and Lodger's Tax Revenues via an increase in the number of hotel rooms available in Los Alamos;
- d. Meets the objective of increased job and income opportunities by proposing to generate seventeen (17) new primary jobs at the hotel, conference center, food and beverage service, and retail operations within County no later than twelve (12) months of the project obtaining Certificate of Occupancy;
- e. Meets County's objective of expansion of the tax base by creating a conference center that will accommodate up to 250 - 300 people seated banquet style for local events and Los Alamos National Laboratory meetings;
- f. Meets County's objective of economic diversification by enriching the hospitality offerings in Los Alamos by creating a stand-alone food and beverage retail space;
- g. Meets County's objective of recruiting and retaining businesses that utilize Los Alamos' location for events and meetings, and by offering existing businesses the opportunity to provide catering services for events and meetings;
- h. TNJLA is a private for-profit development business that has an established track record of successful hotel projects in New Mexico.

Section 6. Company has requested that the Incorporated County of Los Alamos provide the following grant of public support as an economic development project: Transfer, by quitclaim deed, all rights, title and interests possessed by County to certain County-owned property defined as Eastern Area 3 Tract NN Lots 6C; 5C; 4C; 3C; 2C; and 1C located on 20th Street Extension, platted and recorded in Los Alamos County Records as Instrument No. 231237 (together, the "Real Property"). The Real Property has an appraised value of One Million Eight Hundred Twenty-Five Thousand Dollars (\$1,825,000.) This requested public support for Company's Project is referred to herein as the economic development "Project Grant."

Section 7. County and Company shall, upon approval of the Project as evidenced by the passage of this Ordinance, enter into a Participation Agreement, attached hereto as Exhibit "A", which Agreement shall include, but not be limited to, the following:

- a. The standards by which to measure furtherance by the Project of the economic development goals of County;
- b. The rights and responsibilities of the parties, including specifically defining the contributions of County and Company;
- c. Standards for regular performance reviews of the Project by County and the specific measurable objectives upon which the performance evaluations of the Project shall be based;
- d. A schedule and review procedures for the Project and performance goal attainment;
- e. The security provided for the Project;
- f. The default and cure provisions and such other procedures by which the Project can be

terminated by County and County's investment recovered;

- g. The time period for which County shall retain an interest in the activity of Company; and
- h. Any other requirements imposed by state law, county ordinance, rule or regulation not specifically identified in this ordinance.

Section 8. The application of Company for public assistance from County in the form of an economic development Project Grant is hereby approved, consistent with the terms of this ordinance and the Project Participation Agreement that has been negotiated and is attached to this Ordinance.

Section 9. The terms, provisions and conditions of the Project Participation Agreement, in the form presented to the County Council and attached to this Ordinance and incorporated herein by reference, are in all respects approved, authorized, and confirmed, and the County Council Chair is authorized to execute the Project Participation Agreement on behalf of County in substantially the form hereof, with only such nonmaterial changes recommended by the County Manager, approved as to form by the County Attorney, and approved by the Council Chair. The County Manager or his designee, is authorized to execute documents, in a form approved by the County Attorney, necessary to transfer all rights, title and interests possessed by County to certain County-owned property to Company as provided for in Section 6 of the Ordinance.

Section 10. The County Council, the Council Chair, other County officials, the County Manager and County staff are hereby authorized to take all action necessary to carry out the provisions of this Ordinance and the Project Participation Agreement.

Section 11. 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 12. This Ordinance shall become effective on September 28, 2019, thirty (30) days after notice of its adoption.

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

PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement ("Agreement") is made and entered into as of September 28, 2019, by and between the Incorporated County of Los Alamos, an incorporated County of the State of New Mexico ("County") and TNJLA LLC, a New Mexico Corporation qualified to do business in New Mexico ("TNJLA").

RECITALS

THE PARTIES HERETO enter into this Agreement on the basis of the following facts, understandings, and intentions:

A. 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 County in accordance with the Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978, as amended and superseding Ordinance 501.

B. County has adopted Ordinance No. 695 providing for the public support of TNJLA's "Project," as defined herein, in the form of a grant of "Real Property," and certain capital improvements as further defined below, which is the "Project Grant." The value of the Real Property the Project Grant is One Million Eight Hundred Twenty-Five Thousand Dollars (\$1,825,000). TNJLA shall acquire, develop and construct an extended stay hotel facility, including a 250-300 person banquet style conference center, and a minimum of 1,800 sq. ft. of stand-alone food and beverage retail on the 20th Street Extension properties in Los Alamos County ("Project").

C. TNJLA's economic activity complies with the Local Economic Development Plan adopted by County on June 9, 2009, by providing a public benefit to the residents of County in the following respects:

1. Meets the objective of economic diversification by constructing a hotel, conference center facility and retail food and beverage space;

2. Meets the objective of expansion of the tax base by generating increased taxes for property tax, GRT and Lodger's Tax Revenues via the increase in number of hotel rooms available in Los Alamos;

3. Meets the objective of increased job and income opportunities by proposing to generate seventeen (17) new primary jobs at the hotel, conference center, food and beverage, and retail operations within County no later than twelve (12) months of the project obtaining Certificate of Occupancy;

4. Meets County's objective of economic diversification by enriching the hospitality offerings in Los Alamos by creating an 86-room extended stay hotel;

5. Meets County's objective of expansion of the tax base by creating a conference center that shall accommodate up to 250-300 people seated banquet style for local events and LANL meetings;

6. Meets County's objective of economic diversification by enriching the hospitality offerings in Los Alamos by creating a stand-alone retail food and beverage retail space;

7. Meets County's objective of recruiting and retaining businesses that utilize Los Alamos location for events and meetings additionally by offering existing businesses opportunity to provide catering services for events and meetings;

8. TNJLA is a private for-profit development business whose principal has an established track record of successful hotel projects in New Mexico.

D. As a condition precedent to its receipt of public assistance in the form of an economic development project, TNJLA is required to execute this Project Participation Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Contributions of County.

A. *Project Grant.* Subject to the terms and conditions of this Project Participation Agreement, County agrees to transfer, by quitclaim deed, with all rights, title and interests possessed by County in the property defined as Eastern Area 3 Tract NN Lots 6C; 5C; 4C; 3C; 2C; and 1C located on 20th Street Extension, platted and recorded in Los Alamos County Records as Instrument No. 231237 (together, the "Real Property"). The Real Property has an appraised value of One Million Eight Hundred Twenty-Five Thousand Dollars (\$1,825,000).

B. *Conditions Precedent.* The parties agree that the following are conditions precedent to any contributions or obligations under this this Project Participation Agreement:

- (i) TNJLA shall have approval from Marriot Corporation to the construct an 86-room Towneplace Suites hotel with conference center in Los Alamos; and
- (ii) TNJLA shall have secured construction financing commitment in an amount sufficient to support the Project.

C. County shall be solely responsible for the cost of any and all signalization and roadway improvements once State traffic warrants are met for the intersection of NM 502 (Trinity Drive) and 20th Street.

2. Contributions of TNJLA.

A. *Construction.* TNJLA shall complete the Project and fully open for operation within forty-eight (48) months of the Effective Date of this Agreement.

- (i) an 86-room Towneplace Suites hotel and conference center to accommodate 250-300 people banquet style; and
- (ii) a minimum of 1800 sq. ft. of stand-alone food and beverage retail space.

B. *Employment.* TNJLA shall create a minimum of seventeen (17) Full Time Equivalent Jobs based in Los Alamos County, New Mexico and maintain said employees over the ten (10) year term of this Agreement. As used herein, a "Full Time Equivalent Job" is defined

as 2,080 employed hours annually, based on any twelve consecutive month period, which is paid through TNJLA's payroll.

C. *Conference Center.* TNJLA shall continuously operate a conference center that shall accommodate 250-300 people banquet style for the entire ten (10) year term of this Agreement. County shall be entitled to use the conference facilities up to four (4) times per year at no charge for room fees and only cleaning and catering fees shall be charged as appropriate and commercially reasonable. County must make reservations at least thirty (30) days in advance for their use of the facility unless mutually agreed upon and shall not displace a paying customer.

D. *Promotion.* TNJLA shall make good faith efforts to promote Los Alamos County as a good and desirable place to visit, live and work.

3. Performance Review and Measurement.

A. *Progress Report and Job Reporting.* TNJLA shall, within ninety (90) days of the end of each anniversary of the effective date during the term of this Agreement, provide County with a written report of its progress toward achieving the performance measures required by Section 2, Contributions of TNJLA, above (collectively the "Performance Measures"). Thereafter, for each year during the term of this Agreement, TNJLA may, at the sole option of the County Manager's Office, be subject to a commercially reasonable annual performance review and audit conducted by the County Manager's Office, or its designee, to evaluate whether TNJLA has achieved the Performance Measures. TNJLA shall reasonably cooperate in the performance review and audit process by making all of its personnel, employees, books and tax records available to County at all reasonable times upon request. The creation and retention of a minimum of seventeen (17) jobs must be verified on an annual basis as part of the Progress Report.

B. *Continuous Operation of Conference Center.* TNJLA shall demonstrate annually in writing via an Affidavit, to be included in the Annual Progress Report detailed below, that they continuously operate a conference center for 250-300 people banquet style for the duration of this Agreement.

C. *Confidential Information and Reliance.* All information regarding TNJLA shall be treated in confidence to the fullest extent allowed by New Mexico law; provided, however, that nothing in this Agreement shall be construed to permit or require County to circumvent, obstruct, or fail to comply with the New Mexico Inspection of Public Records Act, §§ 14-2-1 *et seq.* (NMSA 1978). TNJLA acknowledges that its reporting shall be relied on by County and, possibly, by the State to ascertain whether TNJLA is in compliance with the job creation provisions of this Agreement.

4. Security. TNJLA shall furnish the following security in connection with the Project.

A. *Real Property.* TNJLA agrees to permit new construction within twelve (12) months of acquisition of the Real Property from County. If TNJLA fails to permit new construction within twelve (12) months, and County has acted in a commercially reasonable manner and has not unreasonably withheld approval, and there is no force majeure (as defined below), then TNJLA shall be required to return with all rights, title and interests in the Real Property unencumbered by any lies, mortgage or other debt, to County by Quit Claim Deed.

B. *Financial Guarantee.* TNJLA's principals agree to provide a Financial Guarantee in an amount equal to One Million Eight Hundred Twenty-Five Thousand Dollars (\$1,825,000) to the benefit of County which is secured by a subordinated interest on the project property in an amount equal to One Million Eight Hundred Twenty-Five Thousand Dollars (\$1,825,000), as well as personal guarantees from both Tushar Patel and Jayesh Patel in an amount equal to One Million Eight Hundred Twenty-Five Thousand Dollars (\$1,825,000), both with an effective date that is the same date of transfer by quitclaim deed of the Real Property to TNJLA. County shall have the right to recoup its Financial Guarantee, as provided for in this agreement, from both sources of security, but not in a total amount that exceeds the amount of the Financial Guarantee existing at the time of default as defined below. The overlapping portion the Financial Guarantee that are provided by the personal guarantees defined herein shall expire six months after Certificate of Occupancy is issued for the hotel / conference center. The Financial Guarantee secures performance of TNJLA's obligations under this Agreement. The Financial Guarantee shall be reduced by Ten Percent (10%) of the original amount for each year of the ten (10) year term of this Agreement. The Financial Guarantee shall be Zero Dollars (\$0.00) at the end of the tenth (10th) year. To clarify, both parties agree that the value of the security shall reduce each year by an amount equal to Ten Percent (10%) of the original value. In the event of a termination necessitating the exercise of the guarantee, the language of this Agreement controls as it pertains to the amount of guarantee amount required to satisfy County demands.

5. Termination and Recovery of Investment.

A. *Events of Default.* The following events shall constitute events of default under this Agreement:

- (i) Failure of TNJLA to fulfill, in whole or in part, any Performance Measure or other obligation required by this Agreement; including but not limited to:
 - a. *Annual Progress Report and Job Reporting.* The creation and retention of a minimum of seventeen (17) jobs must be verified on an annual basis as part of the Progress Report.
 - b. *Continuous Operation of Conference Center.* TNJLA shall demonstrate in writing via an Affidavit that they continuously operate a conference center for 250-300 people banquet style for the duration of this Agreement, verification of operation via Affidavit shall be demonstrated within the Annual Progress Report.
- (ii) TNJLA (i) ceases operations of the Project prior the end of the ten (10) year term of this Agreement.
- (iii) TNJLA sells or assigns the Project or any portion thereof, without the written consent of County. However, should TNJLA propose a sale or assignment of the Project or any portion thereof to a qualified buyer who shall assume and meet all obligations of this Agreement, County approval shall not be unreasonably withheld.
- (iv) TNJLA fails to complete the Project and fully open for operation within forty-eight (48) months of the Effective Date of this Agreement. County shall act in a commercially reasonable manner when approving, inspecting and granting Certificate of Approval.
- (iii) The discovery by County that any representation, warranty, or covenant made by TNJLA in connection with this Agreement was false, materially misleading, erroneous, or breached in any material respect.

B. *TNJLA's Response to Default.* Upon the occurrence of an event of default by TNJLA specified in this Agreement, County shall notify TNJLA in writing that an event of default has occurred under this Agreement. Within sixty (60) days of the receipt of such notice, TNJLA shall:

- (i) Cause the default to be cured; or
- (ii) Furnish a written response indicating:
 - a. The factors which caused or contributed, in whole or in part, to the occurrence of default;
 - b. The measures TNJLA has undertaken to avoid the reoccurrence of default in the future;
 - c. Whether any Performance Measure not achieved can still be achieved in a timeframe acceptable to County;
 - d. What further action TNJLA plans to take to achieve the Performance Measure in a timeframe acceptable to County; and
 - e. In the event of a default after construction has commenced, TNJLA has the right to terminate this Agreement by tendering to County an amount equivalent to the Financial Guarantee as referenced in Section 4B of this Agreement.

C. *County Response to Default of Section 2: Contributions of TNJLA.* County staff shall review the response furnished by TNJLA and within thirty (30) days from receipt of such response, recommend to the County Council whether to modify or terminate this Participation Agreement. TNJLA shall have an opportunity to make a presentation to the County Council at any meeting where such recommendation shall be acted upon. The County Council shall maintain the right to reasonably modify or terminate this Agreement. The County Council power and authority is not limited in any way by the event of a default. TNJLA maintains a reasonable right to arbitrate.

6. Term. The term of this Agreement shall commence on the Effective Date of this Agreement and continue for ten (10) years unless terminated sooner, as provided herein. TNJLA has the right to return the Real Property and terminate this Agreement if, despite commercially reasonable efforts, it is unable to timely permit new construction within twelve (12) months of acquisition of the Real Property from County.

7. Obligation to Perform. The failure of County to insist, in any one or more instances, upon performance of any of the terms or covenants of this Agreement shall not be construed as a waiver or relinquishment of County's right to the future performance of any such terms and covenants, and the obligations of TNJLA with respect to such future performance shall continue in full force and effect.

8. Force Majeure. Neither TNJLA nor County shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war or any other force majeure as defined by New Mexico law that could not have been reasonably avoided by exercise of due diligence.

9. Notices. All notices and communications required or permitted under this Agreement (including change of address and facsimile or telephone number set forth below) shall be in writing and shall be deemed given to, and received by, the receiving party: (i) when hand-delivered to the street address of the receiving party set forth below; (ii) when sent by facsimile transmission to the facsimile number of the receiving party set forth below; (iii) one (1) day after deposit with a national overnight courier addressed to the receiving party at the street address set forth below;

or (iv) five (5) days after deposit in the U. S. mail, certified mail, return receipt requested, postage prepaid, addressed to the receiving party at the mailing address set forth below.

County: Los Alamos County
County Manager
1000 Central Avenue, Suite 350
Los Alamos, New Mexico 87544
Telephone: (505) 663-1750
Facsimile: (505) 662-8079

TNJLA: TNJLA, Inc.
Tushar Patel, Chief Executive Officer
4520 Lower Terrace Circle NE
Albuquerque, New Mexico 87111
Telephone: (505) 275-8223

10. Amendment. This Agreement shall not be altered, changed, or amended other than by a written instrument executed by both parties.

11. Appropriations. The performance by County of any of the terms, covenants, or conditions in this Agreement that County is obligated to perform shall be subject to the availability of appropriated funds that may be lawfully used for such purpose.

12. Partnership. Nothing contained in this Agreement shall be construed as creating or establishing a joint venture or partnership between County and TNJLA.

13. Authority. The individual(s) signing this Agreement on behalf of TNJLA represent and warrant that they have the power and authority to bind TNJLA, and that no further action, resolution, or approval from TNJLA is necessary to enter into a binding contract.

14. Governing Law. This Agreement shall be governed by the laws of the State of New Mexico (without giving effect to the State of New Mexico's choice of law provisions).

15. Severability. If any terms of this Agreement, or the application of such terms to any circumstance, person, or entity, shall be held illegal, invalid, or unenforceable, the remainder of this Agreement, or the application of such terms to persons or circumstances other than those to which it is held illegal, invalid, or unenforceable, shall not be affected; provided, however, that the remainder of this Agreement is still capable of performance in substantial accordance with the original intent of the parties.

16. Miscellaneous. This Agreement binds and inures to the benefit of County and TNJLA and their respective successors and permitted assigns. This Agreement may not be assigned without the written consent of the non-assigning party, which may not be unreasonably withheld; provided, however that with notice, TNJLA may assign this Agreement to any affiliate of TNJLA that agrees in writing to assume and perform all of the obligations of TNJLA under this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Project Participation Agreement effective as of the date first written above (the "Effective Date").

INCORPORATED COUNTY OF LOS ALAMOS

Attest:

By: _____
Harry Burgess, County Manager

Naomi D. Maestas, County Clerk

APPROVED TO FORM:

J. Alvin Leaphart, County Attorney

TNJLA, Inc.,
a New Mexico Corporation

By: _____
Name: _____
Title: _____