

INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 718

AN ORDINANCE TERMINATING THE ECONOMIC DEVELOPMENT PROJECT FOR PUBLIC SUPPORT OF TNJLA LLC, A NEW MEXICO CORPORATION

WHEREAS, Ordinance No. 695, adopted by the Los Alamos County Council on October 15, 2019, authorized public support of TNJLA LLC (“TNJLA”) economic development project (“Project”) in accordance with the Local Economic Development Act, Section 5-10-1 through 5-10-13 NMSA 1978, as amended; and

WHEREAS, the Incorporated County of Los Alamos (“County”) and TNJLA entered into a Project Participation Agreement on November 16, 2019 (“PPA”); and

WHEREAS, TNJLA proposed 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 space on the 20th Street Extension properties in Los Alamos County; create and maintain for fifteen (15) years a minimum of seventeen (17) full-time jobs based within the County; and promote Los Alamos County as a good and desirable place to visit, live, and work under the terms of the PPA; and

WHEREAS, TNJLA agreed to complete the Project and be fully open for by November 15, 2023; and

WHEREAS, County, subject to the terms of the PPA, agreed to provide public support to TNJLA for the Project in the form of a transfer of real property, specifically certain County-owned property located on the 20th Street Extension, platted and recorded in Los Alamos County Records as Document No. 231237 (together, the “Real Property”), the value of which was appraised at One Million Eight Hundred Twenty-Five Thousand Dollars (\$1,825,000.00); and

WHEREAS, in accordance with the PPA, transfer of the Real Property from County to TNJLA was conditioned upon TNJLA securing a construction financing commitment in an amount sufficient to support the Project; and

WHEREAS, to date, TNJLA has not provided to County evidence of having secured a construction financing commitment in an amount sufficient to support the Project, such that the County-owned Real Property has not been transferred to TNJLA; and

WHEREAS, TNJLA requested that County agree to terminate the PPA; and

WHEREAS, TNJLA agreed to unconditionally waive and release any and all rights and obligations it has or could exercise under the PPA in a Waiver and Release Agreement, effective June 23, 2022, which is attached hereto as Exhibit “A” (“Agreement”); and

WHEREAS, TNJLA agreed to release County from all obligations, claims and causes of action arising from the PPA and its termination in the Agreement; and

WHEREAS, under the conditions expressed herein, the Council of the Incorporated County of Los Alamos agrees to terminate the PPA.

NOW, THEREFORE, THE INCORPORATED COUNTY OF LOS ALAMOS ORDAINS:

Section 1. The Project for TNJLA as evidenced by the PPA is hereby terminated.

Section 2. County shall, by all necessary and appropriate means and as detailed in the Agreement, ensure all obligations owed to County by TNJLA LLC are fulfilled, and, if necessary, pursue all remedies, legal or equitable, to which County is entitled.

Section 3. 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.

Section 4. 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 5. This Ordinance shall become effective thirty (30) days after its post adoption publication.

ADOPTED this 9th day of August 2022.

INCORPORATED COUNTY OF LOS ALAMOS

**Randall T. Ryti,
Council Chair**

ATTEST:

**Naomi D. Maestas,
Los Alamos County Clerk**

CLERK JLA 28 22 13

WAIVER AND RELEASE AGREEMENT

This WAIVER AND RELEASE AGREEMENT (the "Agreement") is entered into by TNJLA LLC ("TNJLA") and the Incorporated County of Los Alamos, New Mexico ("County"), and together with TNJLA, the "Parties") as of June 23, 2022 ("Effective Date").

1. Pursuant to the Local Economic Development Act, NMSA 1978, Sections 5-10-1 through 5-10-17, and Ordinance No. 695 adopted by the Los Alamos County Council on October 15, 2019, County and TNJLA entered into a Project Participation Agreement ("PPA") dated November 16, 2019, pursuant to which County agreed to transfer certain County-owned property located on the 20th Street Extension, platted and recorded in Los Alamos County Records as Instrument Document No. 231237 ("Real Property"), the value of which was appraised at One Million Eight Hundred Twenty-Five Thousand Dollars (\$1,825,000.00); and

2. Pursuant to the PPA, the transfer of the Real Property from County to TNJLA was conditioned upon TNJLA securing a construction financing commitment in an amount sufficient to support the Project; and

3. TNJLA has not provided evidence to County of having secured a construction financing commitment in an amount sufficient to support the Project, such that the County-owned Real Property has not been transferred; and

4. TNJLA has requested that County agree to terminate the PPA; and

5. TNJLA agrees to unconditionally waive and release any and all rights and obligations it has or could exercise under the PPA; and

6. TNJLA agrees to release County from all obligations, claims and causes of action arising from the PPA and this Agreement.



7. TNJLA, for itself, its subsidiaries, affiliates, agents, assigns, attorneys and all other persons or entities to whom or for whose conduct the County its agents, representatives, successors, assigns, and insurers may be liable, agrees to forever release and discharge the County, its agents, representatives, successors, assigns, and insurers from any obligations, claims for relief, consequences, causes of action, costs, direct and consequential damages, liabilities or claims of any kind, known or unknown, arising or which may in the future arise from the PPA and this Agreement.

8. TNJLA acknowledges that the consideration received in exchange for this Agreement is intended to and does forever release and discharge County, its agents, representatives, successors, assigns, and insurers from any obligations, claims for relief, consequences, causes of action, costs, direct and consequential damages, liabilities or claims of any kind, known or unknown, arising or which may in the future arise from the PPA and agrees to waive any right to assert in the future any claims not known or suspected, even though if such claims were known, such knowledge could materially affect the terms of this Release.

9. The undersigned, on behalf of TNJLA and its legal representatives, successors and assigns, hereby represents and warrants that: (A) he or she is competent to execute this Release, (B) he or she is authorized to execute this Release on behalf of TNJLA, (C) TNJLA has fully informed itself of the terms, contents, conditions and effect of this Release, (D) TNJLA has had the opportunity for benefit and advice of counsel of his or her own choosing before executing this Release, (E) except for the above-noted consideration, no promise or representation of any kind had been made to TNJLA concerning the subject matter of this Release, (F) TNJLA has relied solely and completely upon its own judgment and the advice of counsel of its own choosing before the execution of this Release, (G) TNJLA fully understands that this Release operates as a full,

TNJLA RELEASE AND WAIVER AGREEMENT

complete and final release of any and all claims that have been asserted or could have been asserted by TNJLA against County relating to any and all claims arising from the PPA and this Agreement, and (H) TNJLA has not assigned, sold or otherwise attempted to convey any right, claim or interest that is the subject of this Release.

10. The parties agree as follows:
 - A. TNJLA hereby unconditionally waives and releases any and all rights and obligations it has or could exercise under the PPA.
 - B. The Incorporated County of Los Alamos shall pay the sum of SEVENTEEN THOUSAND DOLLARS (\$17,000.00) in consideration of all claims and demands against County to the date of this Agreement, regardless of whether such claims and demands were asserted in the incidents.
 - C. TNJLA, for itself, its subsidiaries, affiliates, agents, assigns, attorneys and all other persons or entities to whom or for whose conduct the County, its agents, representatives, successors, assigns, and insurers may be liable, hereby fully and unconditionally dismiss, release and forever discharge County and its successors, assigns, elected officials, employees, agents and insurers, from any obligations, claims for relief, consequences, causes of action, costs, direct and consequential damages, liabilities or claims of any kind, known or unknown, arising or which may in the future arise from the PPA and hereby waives any right to assert in the future any claims not known or suspected, even though if such claims were known, such knowledge could materially affect the terms of this Release.

- D. TNJLA acknowledges that the consideration received under this Release and Settlement Agreement is intended to and does release and discharge the Released Parties, their agents, representatives, successors, assigns, and insurers from any claims or consequences arising from the incident and hereby waives any right to assert in the future any claims not known or suspected, even though if such claims were known, such knowledge would materially affect the terms of this Agreement.
- E. TNJLA acknowledges that the Released Parties have not made any promises or representations other than those recited in this Release and Settlement Agreement to induce them to enter into agreement.
- F. The terms of this Release and Settlement Agreement are contractual, fully enforceable, and are not mere recitals.
- G. This Release and Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of New Mexico.
- H. In the event that any paragraph or portion of this Release and Settlement Agreement should be later determined unenforceable, all other paragraphs of agreement shall remain in full force and effect. However, if the essential terms of this Agreement are held to be illegal or invalid, then this Agreement shall be equitably interpreted to fulfill the parties' intent to (1) terminate the PPA and (2) release the County from any liability, damages, or claims pursuant to the terms of the Release by TNJLA or its successors in interest in consideration for SEVENTEEN THOUSAND DOLLARS (\$17,000).

TNJLA RELEASE AND WAIVER AGREEMENT

I. This Agreement contains the entire agreement between TNJLA and the Released Parties with regard to the matters set forth herein. There are no other understandings or agreements, oral or otherwise, between the parties except as expressly set forth herein.

RELEASOR:

TNJLA LLC, a New Mexico limited liability company,
By: Tushar Patel
Tushar Patel, Chief Executive Officer

NOTARY:

State of New Mexico
County of BERNALILLO

Signed or attested before me on 6TH JUNE, 2022, by Tushar Patel.

N.P.
Signature of notarial officer



OFFICIAL SEAL
NANDA PATEL
Notary Public - State of New Mexico
My Commission Expires: 07-14-24

My commission expires:

ACKNOWLEDGED by RELEASEE:

INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO, a political subdivision of the state of New Mexico,

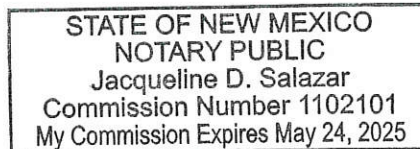
By: Steven Lynne
Steven Lynne, County Manager

NOTARY:

State of New Mexico
County of Los Alamos

Signed or attested before me on 23rd June, 2022 by Steven Lynne.

Jacqueline D. Salazar
Signature of notarial officer



My commission expires: May 24, 2025