

INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 736

**AN ORDINANCE TERMINATING THE ECONOMIC
DEVELOPMENT PROJECT OF PEBBLE LABS INC.,
A DELAWARE CORPORATION**

WHEREAS, Incorporated County of Los Alamos Ordinance No. 697, adopted by the Los Alamos County Council on August 27, 2019, authorized the Incorporated County of Los Alamos ("County"), on behalf of the State of New Mexico Economic Development Department (the "State"), to enter into a Local Economic Development Project Participation Agreement and Pebble Labs USA, Inc.; and

WHEREAS, the County and Pebble Labs USA, Inc., entered into Local Economic Development Project Participation Agreement ("NMEDD PPA") dated September 30, 2019, whereby the State agreed to provide up to FOUR MILLION DOLLARS (\$4,000,000.00) in State Local Economic Development ("LEDA") funds to the County to be distributed to Pebble Labs USA, Inc., to acquire, develop and construct a laboratory research campus facility, including land, buildings, equipment, and infrastructure, in the Entrada Business Park within Los Alamos County, New Mexico, and to provide research services within Los Alamos County ("Project"); and

WHEREAS, Pebble Labs USA, Inc., met its conditions precedent relating to the Project and qualified for the State LEDA funds in the amount of THREE MILLION DOLLARS (\$3,000,000.00), which were received by Pebble Labs USA, Inc., on December 30, 2019; and

WHEREAS, the First Amendment to the NMEDD PPA was entered into on June 13, 2022, (collectively herein as "the Agreements") by and between the County, on behalf of the State, and Pebble Labs Inc., assignee of Pebble Labs USA, Inc. (together "Pebble Labs"), capping the State's LEDA funds to THREE MILLION DOLLARS (\$3,000,000.00); and

WHEREAS, Pebble Labs has not met the jobs requirement of the Agreements. Pebble Labs acknowledges that it has not fulfilled all of the terms of the Agreements and has agreed to pay back SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00) of public funds; and

WHEREAS, the State recommends that the County Council terminate the Agreements based upon the mutually agreed upon Project Participation Termination and Clawback Payment Agreement, attached hereto and made a part hereof as Exhibit A.

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

Section 1. The Local Economic Development Project Agreement for Pebble Labs USA, Inc., as assigned to Pebble Labs, Inc., as evidenced by the Agreements is hereby terminated.

Section 2. The total of the amount due by Pebble Labs is hereby declared due and payable in accordance with the terms and conditions of Exhibit A.

Section 3. The County Manager, or designee, is authorized to enter into the Project Participation Termination and Clawback Payment Agreement, Exhibit A, and take all necessary action, including the execution of necessary documents, and a form approved by the County Attorney, to terminate the Agreements.

Section 4. 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 5. 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 6. This Ordinance shall become effective thirty (30) days after publication of notice of its adoption.

ADOPTED this 12th day of November 2024.

**COUNCIL OF THE INCORPORATED
COUNTY OF LOS ALAMOS**

**Denise Derkacs,
Council Chair**

ATTEST:

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

PROJECT PARTICIPATION TERMINATION AND CLAWBACK PAYMENT AGREEMENT

This Project Participation Termination and Clawback Payment Agreement ("Agreement") is entered in this ____ day of October 2024, by and between the Incorporated County of Los Alamos (the "County"), a political subdivision of the State of New Mexico (the State), the State of New Mexico Economic Development Department ("NMEDD"), and Pebble Labs Inc., a Delaware Corporation authorized to do business in New Mexico (assignee of Pebble Labs USA Inc. by that certain Assignment and Assumption of NMEDD Project Participation Agreement dated as of December 31, 2020) (together: "Pebble Labs", "PLUSA" or the "Corporation"), collectively the "Parties".

RECITALS

- A. On September 30, 2019, the County and Pebble Labs entered into a Project Participation Agreement (the "NMEDD PPA") providing for up to FOUR MILLION DOLLARS (\$4,000,000.00) in State Local Economic Development Act ("LEDA") funds to the County to be distributed to Pebble Labs 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").
- B. Pebble Labs met conditions precedent relating to the Project and qualified for State LEDA funds in the amount of THREE MILLION DOLLARS (\$3,000,000.00), which were received by Pebble Labs on December 30, 2019. Pebble Labs was then adversely impacted by the global and local effect of the COVID-19 Pandemic.
- C. On June 13, 2022, the County and Pebble Labs entered into the First Amendment to the Local Economic Development Project Participation Agreement (the "Amendment") pursuant to which the State's LEDA funds contribution was capped at THREE MILLION DOLLARS (\$3,000,000.00).
- D. Following a comprehensive review by the State, it was determined that Pebble Labs has not met the jobs requirement of the NMEDD PPA or the Amendment. Pebble Labs acknowledges that it has not fulfilled all of the terms of the NMEDD or the Amendment and has agreed to pay back SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00) in public funds.
- E. The State has invested THREE MILLION DOLLARS (\$3,000,000.00) in Pebble Labs. The State acknowledges, that while Pebble Labs did not fulfill all of its obligations under the PPA and Amendment, it has provided direct fiscal impact to the State in the equivalent of ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1,250,000.00), and has provided direct fiscal impact to the County in the equivalent of ONE MILLION DOLLARS (\$1,000,000.00), for a total public impact of TWO MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$2,250,000.00).
- F. The balance of SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00) shall be clawed back.

NOW THEREFORE, the Parties agree as follows:

Section 1. Pebble Labs shall pay the County, on behalf of the State as a fiscal agent, SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00), in immediately available funds, on the following payback schedule:

Date	Recipient	Amount
Upon the Effective Date of Ordinance No. 736	County of Los Alamos (State LEDA)	\$75,000.00
November 1, 2025	County of Los Alamos (State LEDA)	\$225,000.00
November 1, 2026	County of Los Alamos (State LEDA)	\$225,000.00
November 1, 2027	County of Los Alamos (State LEDA)	\$225,000.00

Within thirty (30) days upon receipt, the County shall transfer funds received from Pebble Labs for State LEDA to NMEDD.

Section 2. Upon receipt of payment by Pebble Labs, the County shall accept Pebble Lab's reduction in its letter of credit to an amount equivalent to the remainder of the balance owed, as provided herein. The County shall hold the balance of the letter of credit as security until all payments have been received by Pebble Labs, as provided herein.

Section 3. Upon the effective date of County Ordinance No. 736, the NMEDD PPA and the Amendment, in their entirety, are terminated, and this Agreement shall remain in full force and effect until Pebble Labs has successfully and completely paid back the SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00), as agreed to herein. The County and NMEDD hereby acknowledge that upon the effective date of County Ordinance No. 736 and the termination of the NMEDD PPA and the Amendment, Pebble Labs shall have no further obligations or liabilities arising under the NMEDD PPA and the Amendment and shall be released under those agreements, notwithstanding Pebble Labs' ongoing obligations under this Agreement.

Section 4. The failure of the County or the State to insist upon Pebble Lab's strict performance of this Agreement, or to exercise any right, power or remedy available by law or equity shall neither impair that provision or right, nor constitute a waiver of that provision or right, in whole or in part. The County shall not be obligated to pursue legal action on behalf of the State or NMEDD.

Section 5. Severability; Entire Agreement. In case any one or more of the provisions hereof is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein. This Agreement constitutes the complete agreement and understanding among the Parties regarding the subject matter hereof, and it supersedes any prior understandings, agreements, or representations by or among the Parties, written or oral, which may have related to the subject matter hereof in any way.

Section 6. Legal Recognition of Electronic Signatures. Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

Section 7. Execution in Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together shall constitute one instrument.

Section 8. Applicable Law. This Agreement shall be construed, enforced and governed by the applicable laws of the State of New Mexico.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

**STATE OF NEW MEXICO,
ECONOMIC DEVELOPMENT DEPARTMENT**

Rob Black, Secretary - Designate

Date

PEBBLE LABS

Nick Adams, CEO

Date

INCORPORATED COUNTY OF LOS ALAMOS

Anne W. Laurent, County Manager

Date

Approved as to form:

J. Alvin Leaphart, County Attorney

Date