

PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement ("Agreement") is made and entered into as of _____, 202__ ("Effective Date") by and between the **Incorporated County of Los Alamos**, an incorporated County of the State of New Mexico ("County") and **ABC, Inc.**, a New Mexico Corporation qualified to do business in New Mexico ("ABC"), collectively (the "Parties").

RECITALS

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

- A. On May 5, 2020, the governing body of the Incorporated County of Los Alamos adopted Ordinance No.02-304, an Ordinance amending and restating the economic development plan of the County in accordance with the Local Economic Development Act ("LEDA"), Sections 5-10-1 through 5-10-13 NMSA 1978, as amended and superseding Ordinance 501.
- B. County has adopted Ordinance No. _____ providing for the public support of ABC's Project, as defined herein, in the form of a cash grant of _____ as further defined below, which is the "Project Grant." ABC shall acquire, develop or construct a _____, in _____ ("Project").
- C. ABC's economic activity complies with the Local Economic Development Plan adopted by the County on May 5, 2020, by providing a public benefit to the residents of the County in the following respects:
 - (1) Meets the objective of economic diversification by _____.
 - (2) Meets the objective of expansion of the tax base by _____.
 - (3) Meets the objective of increased job and income opportunities by _____.
 - (4) Meets County's objective of economic diversification by _____.
 - (5) Meets County's objective of expansion of the tax base by generating increased taxes from _____.
 - (6) ABC is a private for-profit _____ that generates income through _____. ABC has met the priorities of the Economic Development Plan in the following respects:
 - a) ABC is a private business seeking to expand its existing facilities in Los Alamos County by _____.
 - b) ABC has demonstrated its commitment to the Los Alamos community by choosing to grow in Los Alamos County and by contributing significant investor funds to the Project.
 - c) ABC has been operating in Los Alamos County since _____ and has a proven track record of financial and management stability.

- d) ABC shall contribute the following as part of its overall economic development projects under County LEDA programs:
 - i. ABC shall invest _____ Dollars (\$XX,XXX.XX) of its own funds in the Project.
 - ii. ABC shall create ____ Full Time Equivalent Jobs in Los Alamos County beginning the ____ quarter after the effective date of this Agreement and shall maintain those Full Time Equivalent Jobs in Los Alamos County for the duration of this Agreement.
 - iii. ABC shall increase its GRT collection by ____% beginning in the ____ quarter after the effective date of this Agreement and shall maintain that increase in GRT collection for the duration of this Agreement.
 - iv. In addition, ABC shall promote Los Alamos County as a good and desirable place to live and work.

D. As a condition precedent to its receipt of public assistance in the form of an economic development project, ABC 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 the County.**

(A) **Project Grant.** Subject to the terms and conditions of this Project Participation Agreement, the County agrees to provide _____ Dollars (\$xx,xxx.xx) in the form of a cash grant payable to ABC upon the effective date of this Agreement.

2. **Contributions of ABC.**

(A) **Investment.** ABC shall contribute a total investment of _____ Dollars (\$xx,xxx.xx) of its owns funds in the Project..

(B) **Employment.** ABC shall create ____ Full Time Equivalent Jobs in Los Alamos County beginning the ____ quarter after the effective date of this Agreement and shall maintain those Full Time Equivalent Jobs in Los Alamos County for the duration of this Agreement. As used herein, a “Full Time Equivalent Job” is defined as two thousand eighty (2,080) employed hours annually, based on any twelve (12) consecutive month period, which is paid through ABC’s payroll.

(C) **GRT Increase.** ABC shall increase its GRT collection by ____% beginning in the ____ quarter after the effective date of this Agreement and shall maintain that increase in GRT collection for the duration of this Agreement.

(D) **Promotion.** ABC shall make good faith efforts to promote Los Alamos County as a good and desirable place to live and work.

3. **Performance Review and Measurement.**

(A) **Progress Report.** ABC shall, within thirty (30) days of the end of each quarter after 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 ABC* above (collectively the "Performance Measures"). Thereafter, for each quarter during the term of this Agreement, ABC, at the sole option of the County Manager's Office, shall be subject to a performance review and audit conducted by the County Manager's Office, or its designee, to evaluate whether ABC has achieved the Performance Measures. ABC shall fully cooperate in the performance review and audit process by making all of its personnel, employees, books and records available to County at all reasonable times upon request. This progress report shall be in form of an affidavit signed by an officer of ABC.

(B) **Confidential Information and Reliance.** All information regarding ABC 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). ABC acknowledges that its reporting shall be relied on by County to ascertain whether ABC is in compliance with the terms of this Agreement.

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

(A) **Financial Guarantee.** ABC agrees to provide a Financial Guarantee to the benefit of County in a form acceptable to the Parties, in an amount equal to the Project Grant with an effective date that is the same date as the Effective Date of this Agreement. The Financial Guarantee secures performance of ABC's obligations under this Agreement. The Financial Guarantee represents the dollar amount ABC shall return to County in the event of default as provided for in Paragraph 5 of this Agreement. The principal amount annually shall be consistent with the below schedule:

Effective Date to First Anniversary of Financial Guarantee:	\$
First Anniversary to Second Anniversary:	\$
Second Anniversary to Third Anniversary:	\$
.....	\$
.....	\$
.....	0

5. **Termination and Recovery of Investment.**

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

- (i) Failure of ABC to fulfill, in whole or in part, any Performance Measure or other obligation required by this Agreement; including but not limited to:

- (a) Investment. If ABC fails to invest _____ Dollars (\$XX,XXX.XX) of its own funds in the Project.
- (b) Employment. If ABC fails to create ____ Full Time Equivalent Jobs in Los Alamos County beginning the _____ quarter after the Effective Date of this Agreement or maintain those Full Time Equivalent Jobs in Los Alamos County for the duration of this Agreement.
- (c) Increased Gross Receipts Taxes. If ABC fails to increase its GRT collection by _____% beginning in the _____ quarter after the Effective Date of this Agreement or fails to maintain that increase in GRT collection for the duration of this Agreement.

- (ii) ABC (a) ceases operations, (b) moves the facility out of Los Alamos County, or (c) any other voluntary act of ABC that results in the Project being discontinued.
- (iii) The discovery by County that any representation, warranty, or covenant made by ABC in connection with this Agreement was or has become false, materially misleading, erroneous, or breached in any material respect.

(B) ABC's Response to Default. Upon the occurrence of an event of default by ABC specified in this Agreement, County shall notify ABC in writing that an event of default has occurred under this Agreement. Within sixty (60) days of the receipt of such notice, ABC 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 ABC 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; and
 - (d) What further action ABC plans to take to achieve the Performance Measure in a timeframe acceptable to County.

(C) County Response to Default of Section 2: Contributions of ABC. County staff shall review the response furnished by ABC and within thirty (30) days from receipt of such response, recommend to the County Council whether to modify or terminate this Participation Agreement. ABC shall have an opportunity to make a presentation to the County Council at any meeting where such recommendation will be acted upon. The decision of the County Council to modify or terminate this Agreement shall be final and binding. Other than the opportunity for ABC to make a presentation to the County Council, in the event of default nothing herein shall be construed to limit in any way the power and authority of the County Council.

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 ABC 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, ABC may assign this Agreement to any affiliate of ABC that agrees in writing to assume and perform all of the obligations of ABC under this Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Project Participation Agreement.

COUNCIL OF THE INCORPORATED
COUNTY OF LOS ALAMOS

Attest:

By: _____
 , Council Chair

 , County Clerk

APPROVED TO FORM:

 , County Attorney

ABC, Inc.,
a New Mexico Corporation

By: _____
Name: _____
Title: _____

