

1 **WHEREAS, pursuant to the LEDA Ordinance, Maxeon New Mexico**
2 **Holdings, LLC (together with its successors, assigns and affiliates, the**
3 **“Company”), has submitted to the Council and the Albuquerque Development**
4 **Commission (the "Commission") an application (the "Application") requesting**
5 **certain economic development assistance for the acquisition, construction,**
6 **redevelopment, renovation and rehabilitation of a solar cell and solar panel**
7 **manufacturing facility within the City (the "Project"); and**

8 **WHEREAS, the Company is a qualifying entity under the LEDA Ordinance**
9 **and the Act; and**

10 **WHEREAS, in response to the Application, the City proposes a**
11 **commitment of \$2,000,000 in LEDA funds and 0.797370% of the City’s gross**
12 **receipts and compensating tax increments generated by the taxable expenses**
13 **related to the construction of the Project for ten years to the Company for the**
14 **Project; and**

15 **WHEREAS, the City anticipates that the State will transfer to it, for**
16 **subsequent transfer to or on behalf of the Company pursuant to an**
17 **intergovernmental agreement among the City, Bernalillo County, New Mexico (the**
18 **“County”) and the State, certain State funds up to \$18,000,000 that are available**
19 **for the Project, and for which the City will act as Fiscal Agent; and**

20 **WHEREAS, the Commission considered the Company’s Application on**
21 **October 19, 2023 and recommends approval of the Application; and**

22 **WHEREAS, the Act requires each of the State, the County, and the City to**
23 **enter into a project participation agreement with the Company as to LEDA**
24 **contributions supporting the Project and funded to the Company from the**
25 **dedication by: (i) the State of fifty percent of the state gross receipts and**
26 **compensating tax increments generated by the taxable expenses related to the**
27 **construction of the Project for ten years and available for dedication to the**
28 **Project; and (ii) the City and the County of fifty percent of the applicable local**
29 **gross receipts and compensating tax increments generated by the taxable**
30 **expenses related to the construction of the Project for ten years and available for**
31 **dedication to the Project; and**

32 **WHEREAS, the City anticipates that the County will adopt its own, separate**
33 **ordinance dedicating 0.375% of the County’s gross receipts and compensating**

1 tax increments generated by the taxable expenses related to the construction of
2 the Project for ten years to the Company for the Project; and

3 WHEREAS, the Act and the LEDA Ordinance require that the City and the
4 Company enter into a project participation agreement meeting the requirements
5 of the Act and the LEDA Ordinance; and

6 WHEREAS, City staff has worked with the State, the County and the
7 Company to prepare, and has negotiated the terms of, a project participation
8 agreement and related documents that will govern the relationship between the
9 City and the Company with respect to the Project (the "PPA"); and

10 WHEREAS, the form of the proposed PPA has been filed with the City Clerk
11 and presented to the Council; and

12 WHEREAS, the proposed PPA contains the provisions required by the Act
13 and the LEDA Ordinance and, among other things, provides that the Company
14 will grant to the City a security instrument to secure the Company's performance
15 of its obligations under the PPA, including those related to the State
16 contributions, and "clawback" provisions for recovery of benefits by the City in
17 the event that the economic benefits to the City to be conferred by the Project are
18 not realized; and

19 WHEREAS, the City has obtained a cost-benefit analysis with respect to the
20 Project on the basis of information provided to the City by the Company, which
21 cost-benefit analysis shows that the City will recoup the value of its contribution
22 within ten (10) years; and

23 WHEREAS, the Application, together with the cost-benefit analysis,
24 demonstrates the benefits that will accrue to the community as a result of the
25 donation of public resources and demonstrates that the Company, by completing
26 the Project, will be making a substantive contribution to the community, as
27 required by the LEDA Ordinance; and

28 WHEREAS, the Commission has considered the Project and the proposed
29 PPA and has recommended that the Council approve the Company's proposal;
30 and

31 WHEREAS, the total amount of public money expended and the value of
32 credit pledged in each fiscal year in which money is expended by the City for the
33 Project (and any other approved projects) pursuant to the Act does not and will

1 not exceed ten percent of the general fund expenditures of the City in such fiscal
2 year; and

3 WHEREAS, after having considered the Application and the form of PPA,
4 the Council has concluded that the economic and other benefits of the Project to
5 the City will be substantial, that it is desirable and necessary at this time to
6 authorize the City to enter into the PPA in substantially the form presented in
7 connection with this Ordinance, and that the City's provision of the assistance
8 contemplated by the PPA will constitute a valid public purpose under the Act; and

9 WHEREAS, there has been published in The Albuquerque Journal, a
10 newspaper of general circulation in the City, public notice of the Council's
11 intention to adopt this Ordinance, which notice was published at least fourteen
12 (14) days prior to hearing and final action on this Ordinance.

13 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY
14 OF ALBUQUERQUE:

15 Section 1. RATIFICATION. All actions not inconsistent with the
16 provisions of this Ordinance previously taken by the Council and the officials of
17 the City directed toward the provision of economic development assistance in
18 connection with the Project be approved and the same hereby are ratified,
19 approved and confirmed.

20 Section 2. GOALS AND OBJECTIVES. The goals and objectives of the
21 Project are, as set forth in the PPA, to create and support an economic
22 development project that fosters, promotes and enhances local economic
23 development efforts and that provides job growth and career opportunities for
24 Albuquerque-area residents and otherwise makes a substantive contribution to
25 the community.

26 Section 3. THE PROJECT. The Project will consist of the acquisition,
27 construction, redevelopment, renovation and rehabilitation of a solar cell and
28 solar panel manufacturing facility within the City.

29 Section 4. FINDINGS. The Council hereby declares that it has considered
30 all relevant information presented to it relating to the Project and the PPA and
31 hereby finds and determines that the provision of economic development
32 assistance for the Project is necessary and advisable and in the interest of the

1 public and will promote the public health, safety, morals, convenience, economy,
2 and welfare of the City and its residents.

3 **Section 5. AUTHORIZATION AND APPROVAL OF THE PROJECT AND**
4 **THE PPA; APPROPRIATION OF FUNDS.**

5 (A) The City hereby approves the Project and the PPA, which
6 provides, among other things, that the City will administer and disburse to the
7 Company funds totaling: (i) up to \$20,000,000 of which \$18,000,000 is to be
8 received by the City from the State Economic Development Department and
9 \$2,000,000 are to be City funds; and (ii) 0.797370% of the City's gross receipts
10 and compensating tax increments generated by the taxable expenses related to
11 the construction of the Project for ten years, in exchange for which the Company
12 will complete the Project, all as specified in the PPA. There is hereby
13 appropriated for the Project (i) up to \$18,000,000 of funds received from the State
14 Economic Development Department and up to \$2,000,000 of City funds; and (ii)
15 0.797370% of the City's gross receipts and compensating tax increments
16 generated by the taxable expenses related to the construction of the Project for
17 ten years.

18 **Section 6. AUTHORIZATION OF OFFICERS; APPROVAL OF**
19 **DOCUMENTS.**

20 (A) The form, terms, and provisions of the PPA in the form
21 presented to the Council with this Ordinance are in all respects approved,
22 authorized, and confirmed, and the City is authorized to enter into the PPA in
23 substantially the form thereof, with only: (i) such changes as are not inconsistent
24 with this Ordinance; (ii) such changes as shall be approved by the Mayor or the
25 Chief Administrative Officer upon consultation with the City's bond counsel, with
26 the execution of such document by the Mayor or the Chief Administrative Officer
27 constituting conclusive evidence of such approval; or (iii) such other changes as
28 may be approved by supplemental resolution of the Council.

29 (B) The Council authorizes the Mayor or the Chief Administrative
30 Officer of the City to execute and deliver the PPA in the name and on behalf of the
31 City, with only: (i) such changes as are not inconsistent with this Ordinance; (ii)
32 such changes as shall be approved by the Mayor or the Chief Administrative
33 Officer upon consultation with the City's bond counsel, with the execution of

1 such document by the Mayor or the Chief Administrative Officer constituting
2 conclusive evidence of such approval; or (iii) such other changes as may be
3 approved by supplemental resolution of the Council.

4 (C) The Mayor, Chief Administrative Officer, City Treasurer and
5 City Clerk are further authorized to execute, authenticate and deliver such
6 certifications, instruments, documents, letters and other agreements, including
7 an intergovernmental agreement with the State Economic Development
8 Department and the County and any appropriate security agreements, and to do
9 such other acts and things, either prior to or after the date of delivery of the
10 executed PPA, as are necessary or appropriate to consummate the transactions
11 contemplated by the PPA.

12 (D) City officials shall take such action as is necessary in
13 conformity with the Act, the LEDA Ordinance and this Ordinance to effectuate the
14 provisions of the PPA and carry out the transactions as contemplated by this
15 Ordinance and the PPA, including, without limitation, the execution and delivery
16 of any documents deemed necessary or appropriate in connection therewith.

17 Section 7. SEVERABILITY. If any section, paragraph, clause or provision
18 of this Ordinance shall for any reason be held to be invalid or unenforceable, the
19 invalidity or unenforceability of that section, paragraph, clause, or provision shall
20 not affect any of the remaining provisions of this Ordinance.

21 Section 8. REPEALER. All bylaws, ordinances, resolutions, and orders,
22 or parts thereof, inconsistent with this Ordinance are repealed by this Ordinance
23 but only to the extent of that inconsistency. This repealer shall not be construed
24 to revive any bylaw, ordinance, resolution, or order, or part thereof, previously
25 repealed.

26 Section 9. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE
27 DATE. This Ordinance, immediately upon its final passage and approval, shall be
28 recorded in the ordinance book of the City kept for that purpose, and shall be
29 there authenticated by the signature of the Mayor and the presiding officer of the
30 City Council, and by the signature of the City Clerk or any Deputy City Clerk, and
31 notice of adoption thereof shall be published once in a newspaper that maintains
32 an office in, and is of general circulation in, the City, and shall be in full force and
33 effect five (5) days following such publication.

1 PASSED AND ADOPTED THIS 20th DAY OF November, 2023
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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8 _____
9 **Pat Davis, President**
10 **City Council**

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14 APPROVED THIS 5 DAY OF Dec, 2023

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17 **Bill No. F/S O-23-91**

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21 _____
22 **Timothy M. Keller, Mayor**
23 **City of Albuquerque**

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25
26 **ATTEST:**

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28 

29 _____
30 **Ethan Watson, City Clerk**

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