

# CITY of ALBUQUERQUE

## TWENTY-FIFTH COUNCIL

COUNCIL BILL NO. O-22-12 ENACTMENT NO. **0-2022-013**

SPONSORED BY: Brook Bassan, by request

### ORDINANCE

1 APPROVING A PROJECT INVOLVING PAJARITO POWDER, LLC PURSUANT TO  
2 THE LOCAL ECONOMIC DEVELOPMENT ACT AND CITY ORDINANCE F/S O-04-  
3 10, THE CITY'S IMPLEMENTING LEGISLATION FOR THAT ACT, TO SUPPORT  
4 THE LEASING, RENOVATION AND IMPROVEMENT COSTS FOR A RENEWABLE  
5 ENERGY TECHNOLOGY COMPANY AND CATALYST MANUFACTURING FACILITY  
6 LOCATED IN ALBUQUERQUE, NEW MEXICO; AUTHORIZING THE EXECUTION OF  
7 A PROJECT PARTICIPATION AGREEMENT AND OTHER DOCUMENTS IN  
8 CONNECTION WITH THE PROJECT; MAKING CERTAIN DETERMINATIONS AND  
9 FINDINGS RELATING TO THE PROJECT INCLUDING THE APPROPRIATION OF  
10 FUNDS; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING  
11 ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

12 WHEREAS, the City of Albuquerque (the "City") is a legally and regularly  
13 created, established, organized, and existing municipal corporation of the State of New  
14 Mexico (the "State"); and

15 WHEREAS, pursuant to Sections 5-10-1 through 5-10-13 NMSA 1978, as  
16 amended (the "Act"), the City is authorized to provide economic development  
17 assistance to eligible entities for certain projects located within the corporate limits of  
18 the municipality; and

19 WHEREAS, pursuant to the Act, the City has adopted Ordinance No. F/S 04-10  
20 (the "LEDA Ordinance"), approving an economic development plan for the City and  
21 authorizing the City to assist economic development projects in any legally permissible  
22 manner, subject to the terms of the LEDA Ordinance; and

23 WHEREAS, pursuant to the LEDA Ordinance, Pajarito Powder, LLC (the  
24 "Company"), has submitted to the Council and the Albuquerque Development  
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1 Commission (the "Commission") an application (the "Application") requesting certain  
2 economic development assistance for the leasing, renovation and improvement of a  
3 catalyst manufacturing facility for a renewable energy technology company within the  
4 City (the "Project"); and

5 WHEREAS, the City will administer and disburse to the Company funds totaling  
6 up to \$275,000, of which \$250,000 is to be received by the City from the State  
7 Economic Development Department and \$25,000 are to be City funds; and

8 WHEREAS, the Act and the LEDA Ordinance require that the City and the  
9 Company enter into a project participation agreement meeting the requirements of the  
10 Act and the LEDA Ordinance; and

11 WHEREAS, City staff has worked with the Company to prepare, and has  
12 negotiated the terms of, a project participation agreement (the "Agreement") and related  
13 documents that will govern the relationship between the City and the Company with  
14 respect to the Project; and

15 WHEREAS, the form of the proposed Agreement has been filed with the City  
16 Clerk and presented to the Council; and

17 WHEREAS, the proposed Agreement contains the provisions required by the Act  
18 and the LEDA Ordinance and, among other things, provides that the Company will grant  
19 to the City a security instrument to secure the Company's obligations under the  
20 Agreement; and

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

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

30 WHEREAS, the Commission has considered the Project and the proposed  
31 Agreement and has recommended that the Council approve the Company's proposal;  
32 and

1 WHEREAS, the total amount of public money expended and the value of credit  
2 pledged in each fiscal year in which money is expended by the City for the Project (and  
3 any other approved projects) pursuant to the Act does not and will not exceed ten  
4 percent of the general fund expenditures of the City in such fiscal year; and

5 WHEREAS, the City anticipates that the State will transfer to it, for subsequent  
6 transfer to or on behalf of the Company pursuant to an intergovernmental agreement  
7 between the City and the State, certain funds of the State that are available for the  
8 Project; and

9 WHEREAS, after having considered the Application and the Agreement, the  
10 Council has concluded that the economic and other benefits of the Project to the City  
11 will be substantial, that it is desirable and necessary at this time to authorize the City to  
12 enter into the Agreement, and that the City's provision of the assistance contemplated  
13 by the Agreement will constitute a valid public purpose under the Act; and

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

18 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
19 ALBUQUERQUE:

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

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

29 Section 3. THE PROJECT. The Project will consist of the leasing, renovation  
30 and improvement of a catalyst manufacturing facility for a renewable energy technology  
31 company, the addition of 51 new employees, and the operation of the facility within the  
32 City for a minimum of ten years.

1 Section 4. FINDINGS. The Council hereby declares that it has considered all  
2 relevant information presented to it relating to the Project and the Agreement and  
3 hereby finds and determines that the provision of economic development assistance for  
4 the Project is necessary and advisable and in the interest of the public and will promote  
5 the public health, safety, morals, convenience, economy, and welfare of the City and its  
6 residents.

7 Section 5. AUTHORIZATION AND APPROVAL OF THE PROJECT AND THE  
8 AGREEMENT; APPROPRIATION OF FUNDS. The City hereby approves the Project  
9 and the Agreement, which provides, among other things, that the City will administer  
10 and disburse to the Company funds totaling up to \$275,000, of which \$250,000 is to be  
11 received by the City from the State Economic Development Department and \$25,000  
12 are to be City funds, in exchange for which the Company will complete the Project as  
13 specified in the Agreement. There is hereby appropriated for the Project up to \$250,000  
14 of funds received from the State Economic Development Department and up to \$25,000  
15 of City funds.

16 Section 6. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.

17 (A) The form, terms, and provisions of the Agreement in the form  
18 presented to the Council with this Ordinance are in all respects approved, authorized,  
19 and confirmed, and the City is authorized to enter into the Agreement in substantially  
20 the form thereof, with only such changes as are not inconsistent with this Ordinance or  
21 such other changes as may be approved by supplemental resolution of the Council.

22 (B) The Council authorizes the Mayor or the Chief Administrative  
23 Officer of the City to execute and deliver the Agreement in the name and on behalf of  
24 the City, with only such changes therein as are not inconsistent with this Ordinance or  
25 such changes as may be approved by supplemental resolution of the Council.

26 (C) The Mayor, Chief Administrative Officer, Chief Financial Officer,  
27 City Treasurer, and City Clerk are further authorized to execute, authenticate and  
28 deliver such certifications, instruments, documents, letters and other agreements,  
29 including an intergovernmental agreement with the State Economic Development  
30 Department and any appropriate security agreements, and to do such other acts and  
31 things, either prior to or after the date of delivery of the executed Agreement, as are  
32 necessary or appropriate to consummate the transactions contemplated by the  
33 Agreement.

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

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

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

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

1 PASSED AND ADOPTED THIS 21<sup>st</sup> DAY OF March, 2022  
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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10 Isaac Benton, President  
11 City Council

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15 APPROVED THIS 4 DAY OF April, 2022  
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20 Bill No. O-22-12

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24 Timothy M. Keller, Mayor  
25 City of Albuquerque

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28 ATTEST:

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31 Ethan Watson, City Clerk  
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