

**CITY of ALBUQUERQUE
TWENTY-FIFTH COUNCIL**

COUNCIL BILL NO. O-23-94 ENACTMENT NO. O-2023-035

SPONSORED BY: Renée Grout, by request

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ORDINANCE

1
2 **APPROVING A PROJECT INVOLVING ARRAY TECHNOLOGIES, INC. PURSUANT**
3 **TO THE LOCAL ECONOMIC DEVELOPMENT ACT AND CITY ORDINANCE F/S O-**
4 **04-10, THE CITY'S IMPLEMENTING LEGISLATION FOR THAT ACT, TO SUPPORT**
5 **THE ACQUISITION, CONSTRUCTION AND IMPROVEMENT OF A**
6 **MANUFACTURING FACILITY TO MANUFACTURE UTILITY SCALE SOLAR**
7 **TRACKER TECHNOLOGY AND RELATED PRODUCTS; AUTHORIZING THE**
8 **EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT IN CONNECTION WITH**
9 **THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING**
10 **TO THE PROJECT INCLUDING THE APPROPRIATION OF FUNDS; RATIFYING**
11 **CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS**
12 **INCONSISTENT WITH THIS ORDINANCE.**

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

16 WHEREAS, pursuant to Sections 5-10-1 through 5-10-13 NMSA 1978, as
17 amended (the "Act"), the City is authorized to provide economic development
18 assistance to eligible entities for certain projects benefitting the municipality and its
19 residents; and

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

24 WHEREAS, pursuant to the LEDA Ordinance, Array Technologies, Inc. (the
25 "Company"), has submitted to the Council and the Albuquerque Development
26 Commission (the "Commission") an application (the "Application") requesting certain

1 economic development assistance for the acquisition, construction and improvement of
2 a manufacturing facility for the Company to manufacture utility scale solar trackers and
3 related products, which will include the retention of 318 employees and the addition of
4 87 new employees, within the Albuquerque Metropolitan Area (the "Project"); and

5 WHEREAS, the Project is located in unincorporated Bernalillo County (the
6 "County") and the County will administer and disburse to the Company LEDA funds
7 totaling up to \$3,000,000, of which \$2,500,000 is to be received by the County from the
8 State Economic Development Department, \$250,000 are to be City LEDA funds, and
9 \$250,000 are to be County LEDA funds; and

10 WHEREAS, the Act requires that a local government, in this case the County,
11 enter into a project participation agreement meeting the requirements of the Act and
12 that the City and State, as participants in the award of LEDA funds, enter into
13 Intergovernmental Agreements; and

14 WHEREAS, City staff has participated with the Company, the County and the
15 State to prepare a project participation agreement (the "Agreement") and
16 Intergovernmental Agreement that will govern the relationship between the City, County,
17 State and Company with respect to the Project; and

18 WHEREAS, the form of the proposed Agreement and Intergovernmental
19 Agreement has been filed with the City Clerk and presented to the Council; and

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

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

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

1 WHEREAS, the Commission has considered the Project and has recommended
2 that the Council approve the Company's proposal; and

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

7 WHEREAS, the City anticipates that it will transfer to the County, for subsequent
8 transfer to or on behalf of the Company pursuant to the Intergovernmental Agreement
9 between the City and the County, certain funds of the City that are available for the
10 Project; and

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

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

21 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY
22 OF ALBUQUERQUE:

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

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

32 Section 3. THE PROJECT. The Project will consist of the acquisition,
33 construction and improvement of a manufacturing facility for the Company to

1 manufacture utility scale solar trackers and related products, which will include the
2 retention of 318 employees and the addition of 87 new employees within the City and
3 the operation of the facility for a minimum of ten years.

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

10 Section 5. AUTHORIZATION AND APPROVAL OF THE PROJECT AND THE
11 AGREEMENT; APPROPRIATION OF FUNDS. The City hereby approves the Project
12 and the Intergovernmental Agreement, which provides, among other things, that the
13 County will administer and disburse to the Company LEDA funds totaling up to
14 \$3,000,000, of which \$2,500,000 is to be received by the County from the State
15 Economic Development Department, \$250,000 are to be City LEDA funds, and
16 \$250,000 are to be County LEDA funds, in exchange for which the Company will
17 complete the Project as specified in the Agreement. There is hereby appropriated for
18 the Project up to \$250,000 of City funds for the Project.

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

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

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

31 (C) The Mayor, Chief Administrative Officer, Chief Financial Officer,
32 City Treasurer, and City Clerk are further authorized to execute, authenticate and
33 deliver such certifications, instruments, documents, letters and other agreements, and

1 to do such other acts and things, either prior to or after the date of delivery of the
2 executed Agreement, as are necessary or appropriate to consummate the transactions
3 contemplated by the Agreement.

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

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

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

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

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1 PASSED AND ADOPTED THIS 4th DAY OF December, 2023
2 BY A VOTE OF: 8 FOR 0 AGAINST.

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4 For: Bassan, Benton, Davis, Fiebelkorn, Grout, Lewis, Peña, Sanchez

5 Excused: Jones

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10 Pat Davis, President

11 City Council

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14 APPROVED THIS 20 DAY OF December, 2023

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18 Bill No. O-23-94

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23 Timothy M. Keller, Mayor

24 City of Albuquerque

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27 ATTEST:

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30 Ethan Watson, City Clerk

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