

CITY of ALBUQUERQUE

TWENTY-FIRST COUNCIL

COUNCIL BILL NO. O-14-4 ENACTMENT NO. 0-2014-005

SPONSORED BY: Rey Garduño and Dan Lewis

ORDINANCE

APPROVING A PROJECT INVOLVING ECLIPSE AEROSPACE, INC. PURSUANT TO THE LOCAL ECONOMIC DEVELOPMENT ACT AND CITY ORDINANCE F/S O-04-10, THE CITY'S IMPLEMENTING LEGISLATION FOR THAT ACT, TO SUPPORT THE CONTINUED OPERATION AND EXPANSION OF OPERATIONS AT A FACILITY FOR AIRCRAFT ASSEMBLY AND ADMINISTRATIVE OPERATIONS; AUTHORIZING THE EXECUTION OF A PROJECT PARTICIPATION AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

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

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

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

WHEREAS, Eclipse Aerospace, Inc., a Delaware company with its principal place of business at 2503 Clark Carr Loop SE, Albuquerque, New Mexico (the

1 "Company"), the State of New Mexico (the "State"), and the City, are parties to a
2 certain letter of intent dated September 16, 2013 (the "letter of intent"), in which
3 each party committed, subject to legislative approval in the case of the City, to
4 make certain contributions towards the Project, as defined below; and

5 WHEREAS, the letter of intent stated that the City's and State's
6 contributions would be in exchange for certain commitments made by the
7 Company; and

8 WHEREAS, pursuant to the LEDA Ordinance, the Company has submitted to
9 the Council and the Albuquerque Development Commission (the "Commission") an
10 application (the "Application") requesting certain economic development assistance
11 consisting of a credit toward the rent payable for its facility, which is leased from
12 the City's Aviation Department, in exchange for certain employment commitments
13 (the "Project"); and

14 WHEREAS, the Act and the LEDA Ordinance require that the City and the
15 Company enter into a project participation agreement (the "Project Participation
16 Agreement") meeting the requirements of the Act and the LEDA Ordinance; and

17 WHEREAS, City staff has worked with the Company to prepare, and has
18 negotiated the terms of, a Project Participation Agreement and a security
19 agreement (the "Security Agreement" and, collectively with the Project
20 Participation Agreement, the "Agreements") that will govern the relationship
21 between the City and the Company with respect to the Project; and

22 WHEREAS, the forms of the proposed Agreements have been filed with the
23 City Clerk and presented to the Council; and

24 WHEREAS, the proposed Agreements contain the provisions required by the
25 Act and the LEDA Ordinance and, among other things, provide that the City will
26 obtain a security interest in certain assets of the Company to secure the
27 Company's obligations under the Agreements; and

28 WHEREAS, the Application included a cost-benefit analysis with respect to
29 the Project obtained by the City on the basis of information provided to the City by
30 the Company, which cost-benefit analysis shows that the City will recoup the value
31 of its contribution within ten (10) years; and

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1 WHEREAS, the Application demonstrates the benefits that will accrue to the
2 community as a result of the donation of public resources and demonstrates that
3 the Company, by completing the Project, will be making a substantive contribution
4 to the community, as required by the LEDA Ordinance; and

5 WHEREAS, the Commission has considered the Project and the proposed
6 Agreements and has recommended that the Council adopt the Company's proposal;
7 and

8 WHEREAS, the total amount of public money expended and the value of
9 credit pledged in each fiscal year in which money is expended by the City for the
10 Project (and any other approved projects) pursuant to the Act does not and will not
11 exceed five percent of the general fund expenditures of the City in such fiscal year;
12 and

13 WHEREAS, the City anticipates that the State will transfer to it, for
14 subsequent transfer to or on behalf of the Company pursuant to an
15 intergovernmental agreement between the City and the State, certain funds of the
16 State that are available for the Project; and

17 WHEREAS, after having considered the Application and the Agreements, the
18 Council has concluded that the economic and other benefits of the Project to the
19 City will be substantial, that it is desirable and necessary at this time to authorize
20 the City to enter into the Agreements, and that the City's provision of the
21 assistance contemplated by the Project Participation Agreement will constitute a
22 valid public purpose under the Act; and

23 WHEREAS, there has been published in the Albuquerque Journal, a
24 newspaper of general circulation in the City, public notice of the Council's intention
25 to adopt this Ordinance, which notice contained certain information pertaining to
26 the Project and was published at least fourteen (14) days prior to hearing and final
27 action on this Ordinance.

28 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
29 ALBUQUERQUE:

30 Section 1. RATIFICATION. All actions not inconsistent with the provisions of
31 this Ordinance previously taken by the Council and the officials of the City directed

1 toward the provision of economic development assistance in connection with the
2 Project be approved and the same hereby are ratified, approved and confirmed.

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

9 Section 3. THE PROJECT. The Project will consist of the continued
10 operation and expansion of employment at a facility located at Albuquerque
11 International Sunport at which the Company will conduct aircraft assembly,
12 administrative and managerial operations, including occupancy of the facility by the
13 Company, the hiring of up to 100 employees (in addition to existing base
14 employment of 175 employees) in accordance with the schedule set forth in the
15 Project Participation Agreement, which employees will be engaged in positions
16 which will cross a wide range of skill levels from entry level to managerial
17 positions, and the maintenance of at least 248 employees through at least
18 December 31, 2018 and the maintenance of operations through at least December
19 31, 2023.

20 Section 4. FINDINGS.

21 (A) General. The Council hereby declares that it has considered all
22 relevant information presented to it relating to the Project and the Agreements and
23 hereby finds and determines that the provision of economic development
24 assistance for the Project is necessary and advisable and in the interest of the
25 public and will promote the public health, safety, morals, convenience, economy,
26 and welfare of the City and its residents.

27 Section 5. AUTHORIZATION AND APPROVAL OF THE PROJECT AND THE
28 AGREEMENTS. The City hereby approves the Project and the Agreements, which
29 provide, among other things, that the City will contribute to the Project up to
30 \$238,200, such amount to be payable in installments as additional employees are
31 hired, and that the City will administer and disburse to the Company funds totaling

1 up to \$397,014 to be received by the City from the State Economic Development
2 Department, in exchange for which the Company will complete the Project.

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

4 (A) The form, terms, and provisions of the Agreements in the forms
5 presented to the Council are in all respects approved, authorized, and confirmed,
6 and the City shall enter into the Agreements in substantially the forms thereof, with
7 only such changes as are not inconsistent with this Ordinance or such other
8 changes as may be approved by supplemental resolution of the Council.

9 (B) The Council authorizes the Mayor or the Chief Administrative
10 Officer of the City to execute and deliver the Agreements in the name and on
11 behalf of the City, with only such changes therein as are not inconsistent with this
12 Ordinance or such changes as may be approved by supplemental resolution of the
13 Council.

14 (C) The Mayor, Chief Administrative Officer, City Treasurer and City
15 Clerk are further authorized to execute, authenticate and deliver such certifications,
16 instruments, documents, letters and other agreements, and to do such other acts
17 and things, either prior to or after the date of delivery of the executed Agreements,
18 as are necessary or appropriate to consummate the transactions contemplated by
19 the Agreements.

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

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

30 Section 8. REPEALER. All by-laws, ordinances, resolutions, and orders, or
31 parts thereof, inconsistent with this Ordinance are repealed by this Ordinance but
32 only to the extent of that inconsistency. This repealer shall not be construed to

1 revive any by-law, ordinance, resolution, or order, or part thereof, previously
2 repealed.

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

1 PASSED AND ADOPTED THIS 19th DAY OF February 2014
2 BY A VOTE OF: 6 FOR 0 AGAINST.

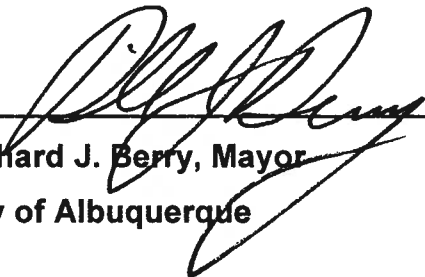
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4 Excused: Lewis, Peña, Winter

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7 
8 Ken Sanchez, President

9 City Council

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13 APPROVED THIS 28th DAY OF February, 2014

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17 Bill No. O-14-4

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20 
21 Richard J. Berry, Mayor
22 City of Albuquerque

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25
26 ATTEST:

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29 City Clerk