City of Las Cruces®

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Council Action and Executive Summary

Item # 19 Ordinance/Resolution# 2797

For Meeting of October 17, 2016 (Ordinance First Reading Date)

For Meeting of November 7, 2016 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: AN ORDINANCE SUPPORTING INVESTMENT OF $150,000 IN AN ECONOMIC DEVELOPMENT PROJECT IN ACCORD WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN, AUTHORIZING AN ECONOMIC DEVELOPMENT PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND X2NSAT, INC. AND ENTERING INTO AN AGREEMENT TO SERVE AS FISCAL AGENT FOR THE STATE OF NEW MEXICO'S PARTICIPATION IN THE PROJECT.

PURPOSE(S) OF ACTION:

To adopt Local Economic Development Act (LEDA) Project Participation Agreements.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Robert G. Cates	**Department/Section:** Legal/City Attorney	**Phone:** 541-2128
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

This proposed Ordinance is to approve investment off City of Las Cruces resources of $150,000.00 plus the sale of land at the West Mesa Industrial Park to X2nSAT, Inc. (X2nSAT), a California corporation, to be invested in a regional satellite communications company for the purpose of job creation. X2nSAT would commit to the creation of 30 full-time jobs with an average payroll 20% higher than the prevailing Dona Ana County wage and maintain those positions for a minimum of two years. X2nSAT has been based in Petaluma, California for over 20 years and specializes in satellite communications for the tracking and management of fleet vehicles and related commercial activities. X2nSAT has received commitment from the State of New Mexico for an additional $300,000.00 in LEDA funds that would be available to construct a new production facility at the West Mesa Industrial Park.

The City would enter into a Project Participation Agreement with X2nSAT subject to the requirements of LEDA and the adopted LEDA Plan of the City, for its $150,000.00 investment in the project. The City would enter into a contract with the State of New Mexico to serve as fiscal agent for the administration of the $300,000.00 the State will invest in the project through an independent Project Participation Agreement.

(Continue on additional sheets as required)

Due to other municipal code requirements, the sale of land by the City to X2nSAT is the subject of a separate proposed Ordinance.

SUPPORT INFORMATION:

1. Ordinance.
2. Exhibit "A", LEDA Project Participation Agreement between X2nSAT and the City.
3. Exhibit "B", LEDA Project Participation Agreement between X2nSAT and the State.
4. Exhibit "C", New Mexico Economic Development Department and City Intergovernmental Agreement.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☒	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____.
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☒	Proposed funding is from fund balance in the 1400 Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: ___ the amount of _____ for FY17.
	No	☒	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
*	*	*	*	*	*

*Budget adjustment resolution at the November 17, 2016 City Council Meeting.

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance and will allow the City of Las Cruces to enter into a LEDA Project participation Agreement with X2nSAT t and approve the entry of the City into an Intergovernmental Agreement with the State of New Mexico to serve as fiscal agent.

(Continue on additional sheets as required)

2. Vote "No"; this will disapprove the Ordinance. The City will not enter into a LEDA contract or Project Participation Agreement with X2nSAT and will not agree to serve as fiscal agent for the funds provided X2nSAT by the State of New Mexico.
3. Vote to "Amend"; this could modify the Ordinance based on direction provided by the City Council. It would require acceptance by X2nSAT and/or the State of New Mexico.
4. Vote to "Table"; direction would be required of the City Council to staff and could delay the project's initiation.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

(Continue on additional sheets as required)

City of Las Cruces®
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COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of October 17, 2016 (Ordinance First Reading Date)

For Meeting of November 7, 2016 (Adoption Date)

TITLE:

AN ORDINANCE SUPPORTING INVESTMENT OF $150,000 IN AN ECONOMIC DEVELOPMENT PROJECT IN ACCORD WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN, AUTHORIZING AN ECONOMIC DEVELOPMENT PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND X2NSAT, INC. AND ENTERING INTO AN AGREEMENT TO SERVE AS FISCAL AGENT FOR THE STATE OF NEW MEXICO'S PARTICIPATION IN THE PROJECT.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes ☐ No ☒

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	Robert Cates	541-2128	10/11/16
Department Director	[illegible]	541-2128	11 Oct 2016
Other			
Assistant City Manager /CAO Management & Budget Manager	for [illegible]	541-2100 541-2107	10/12/16
Assistant City Manager/COO		541-2271	
City Attorney	[illegible]	541-2128	11 OCT 2016
City Clerk	[illegible]	541-2115	10-12-16

COUNCIL BILL NO. 17-011
ORDINANCE NO. 2797

AN ORDINANCE SUPPORTING INVESTMENT OF $150,000 IN AN ECONOMIC DEVELOPMENT PROJECT IN ACCORD WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN, AUTHORIZING AN ECONOMIC DEVELOPMENT PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND X2NSAT, INC. AND ENTERING INTO AN AGREEMENT TO SERVE AS FISCAL AGENT FOR THE STATE OF NEW MEXICO'S PARTICIPATION IN THE PROJECT.

The City Council is informed that:

WHEREAS, the City is the owner of land situated within the West Mesa Industrial Park which was acquired by the City for the purpose of industrial and economic development; and

WHEREAS, the City adopted the Local Economic Development Plan in 2014 to allow the City to offer land and other financial incentives to individual qualified entities for the creation of jobs; and

WHEREAS, X2nSAT, Inc. (X2nSAT), a California corporation, is a qualified company for purposes of the State Local Economic Development Act (LEDA) and under the Local Economic Development Plan; and

WHEREAS, X2nSAT has agreed to the development of a new production facility to be located at the West Mesa Industrial Park and will develop up to 30 new jobs in the City under incentives for land purchase prices and the grant of up to One Hundred Fifty Thousand Dollars ($150,000) from the City; and

WHEREAS, the City has been asked by the State of New Mexico to serve as the fiscal agent for the disbursement and accounting of the sum of Three Hundred Thousand Dollars ($300,000) in State Local Economic Development Act funds that have been pledged to X2nSAT as part of its separate Project Participation Agreement; and

WHEREAS, the City would administer any investment of funds to X2nSAT under

a Project Participation Agreement separate from the agreement that has been approved for the management of State of New Mexico funds.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces:

(I)

THAT the Local Economic Development Act Project Participation Agreement between X2nSAT and the City and attached hereto as Exhibit "A", and made part of this Ordinance, is hereby approved.

(II)

THAT the Intergovernmental Agreement between the City and the State of New Mexico that governs the fiscal agency by the City under the Project Participation Agreement entered into between the State of New Mexico and X2nSAT and attached hereto as Exhibit "B" and Exhibit "C", and made part of this Ordinance, is hereby approved.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED on this _____ day of _____, 20____.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: ____
Councillor Gandara: ____
Councillor Smith: ____
Councillor Pedroza: ____
Councillor Eakman: ____
Councillor Sorg: ____
Councillor Levatino: ____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT
A

LOCAL ECONOMIC DEVELOPMENT ACT
PROJECT PARTICIPATION AGREEMENT FOR
X2nSAT, CORP. and City of Las Cruces

THIS AGREEMENT is made and entered into the 5th day of October, 2016 by and between X2nSAT, Corp., a California Domestic Corporation, whose address is 1310 Redwood Way, Petaluma, CA 94952 and the City of Las Cruces, a New Mexico municipal corporation, who address is P.O. Box 20000, Las Cruces, New Mexico 88004-9002.

WHEREAS, X2nSAT, Corp. provides satellite tracking services from home offices in Petaluma, California and wishes to expand their market with new facilities located in the State of New Mexico; and

WHEREAS, X2nSAT, Corp. is a Qualifying Entity under the Local Economic Development Act (Chapter 5, Article 10, NMSA 1978, as amended) and the Las Cruces Local Economic Development Plan 2014; and

WHEREAS, X2nSAT, Corp. expects an increased demand for its services related to the tracking and management of satellite technology and has determined that the proximity to locally available satellite receiver and communications arrays creates a significant economic advantage to conducting business from the Las Cruces area; and,

WHEREAS, the construction of a new facility located at the Las Cruces West Mesa Industrial Center will greatly enhance the market reach to existing and new customers of X2nSAT, Corp., and

WHEREAS, The City is willing to enter into an agreement to financially support the development of new facilities and the creation of up to 30 new jobs by an agreement reached in accordance with the Local Economic Development Act and a Project Participation Agreement; and will act as the fiscal agent on this same project for the management of the investment of the State of New Mexico in this project under a separate Project Participation Agreement.

NOW THEREFORE, the parties hereto agree as follows:

1. **Project Goals**: The goals of the Economic Development Project described in this Agreement, (the "Project") are (a) to provide a new facility for the tracking and monitoring of satellite communications that is based in the City of Las Cruces, and (b) to enhance the Las Cruces economy by creating a minimum of at least 30 new full-time jobs during the first two years after the facility is ready, and additional jobs during further expansion thereafter.
2. **Project Location**: The Project location is 12.6+ acres of Lots 5 and 9 of the West Mesa Industrial Park No. 22 (GIS parcels 32 and 33) of the Las Cruces West Mesa Industrial Center upon which X2nSAT, Corp. will construct a new facility. X2nSAT, Corp. will hold on option to acquire up to 10 acres of GIS parcel 31 for future expansion needs for a period of two years, renewable at its election for two additional two year periods.
3. **City Contributions**: In order to achieve the goals of this Agreement, the City will sell to X2nSAT, Corp. Lots 5 and 9 of West Mesa Industrial Park No. 22 (GIS parcels 32 and 33) of the Las Cruces West Mesa Industrial Park at a price of $315,057 for 12.6+ acres and will convey additional lands, as needed, from GIS parcel 31 at a price of $25,000 per acre, for up to 10 acres, and convey for the right to that acreage a right of first refusal. In addition, the

EXHIBIT
A

City will provide LEDA financing in the amount of $150,000 towards the creation of the facility, acquisition of equipment and the recruiting and retention of employees.

4. **X2nSAT, Corp. Contributions:** In order to achieve the goals of this Agreement, X2nSAT, Corp. will pay $25,000 per acre for the 12.6+ acres of land it acquires at the Las Cruces West Mesa Industrial Park and $25,000 per acre for up to 10 acres of additional property it may elect to acquire at that site. Upon purchasing the Project lands, X2nSAT, Corp. will begin construction of the new facility that will house its commercial satellite operations. For the purposes of this Agreement, X2nSAT, Corp. will begin the process of recruitment and retention of personnel to fill up to 30 newly created full-time job positions, with total payroll for those 30 jobs cumulatively paid 20% above the prevailing Dona Ana County median wage as determined by the New Mexico Department of Labor's median salary figure for Dona Ana County. These new employees will be in addition to any persons currently employed by X2nSAT, Corp. within the Las Cruces area as of the date of this Agreement. To the extent possible, positions will be filled by Dona Ana County residents. Those positions will be filled by X2nSAT, Corp. for a period of not less than two consecutive calendar years within the term of this Agreement. A job position created does not require that the same individual hold that position for the two-year period.
5. X2nSat, Corp. shall have a right of First Refusal to acquire up to 10 acres of land within GIS parcel 31 of the West Mesa Industrial Park. That right may be exercised at any time within the first two years after the effective date of this Agreement, and the option may be extended in writing by X2nSAT, Corp. for up to two additional two year periods at its option at the rate of $25,000 an acre for said property. Parties acknowledge that should X2nSAT, Corp. elect to acquire additional lands from GIS Lot 31 that such land is presently undivided and not specifically identified other than lying within GIS Lot 31 and will require survey and re-platting before specific lands may be transferred. This Option will terminate with the expiration of this Agreement if not formally exercised before that date.
6. X2nSAT will conform to all City Ordinances, existing and hereafter adopted, and all amended zoning and land use ordinances and regulations of the City.
7. **Timeline and Measurable Goals:** The Project includes Phase I construction of the new building and Phase II recruitment and retention of 30 new employees. X2nSAT, Corp. commits to meeting the measurable goals shown in the following table with time frames indicated and failure to meet any of these goals, unless due to force majeure or conditions beyond the control of X2nSAT, Corp. may be deemed a default of X2nSAT, Corp.'s obligations under this Agreement, and the City shall be entitled to recover proportional compensation for a portion of its contribution to the development of the Project.

Event	Contingency	Deadline
Conveyance of property to X2nSAT, CORP.		January 1, 2017
Construction Commences		January 31, 2017
First Measurable Goal: Facility Construction Complete (estimated)		January 1, 2018
Second Measurable Goal: 10 New Jobs Created	90 days after completion of construction	To be maintained for 24 months

Third Measurable Goal: Additional 10 New Jobs Created	180 days after completion of construction	To be maintained for 24 months
Fourth Measurable Goal: 10 Additional New Jobs Created	365 days after completion of construction	To be maintained for 24 months

8. **Security for Performance of Milestones:** X2nSAT, Corp., agrees to provide to the City of Las Cruces a lien on its real property located at the Las Cruces West Mesa Industrial Center and in the amount of not less than $150,000 to secure the contributions of the City of Las Cruces in the event of default by the X2nSAT, Corp., its successors and assigns, to the terms of this Agreement. Upon the completion of milestones for job creation and the certification that such jobs have been maintained as full-time positions for a minimum of two consecutive calendar years (24 months), the City of Las Cruces will reduce its lien on the following schedule:

Milestone	City Release
Second Milestone: 10 Jobs Created and maintained for twenty-four (24) months.	30% of lien on land
Third Milestone: An additional 10 Jobs Created and maintained for twenty-four (24) months.	30% of lien on land (total of 60%)
Fourth Milestone: The final 10 Jobs Created and maintained for twenty-four (24) months.	40% of lien on land (total of 100%)

The parties recognize and agree that X2nSAT, Corp. may secure a construction loan for the development of their new Facility and that such loan shall have a lien on the Project property that may be prior and senior to the lien of the City thereon. In the event of a material failure by X2nSAT, Corp. to meet its commitments under this Agreement within two (2) years after the completion of Phase I construction of the new facility, the city may recover from X2nSAT, CORP. that portion of the City's $150,000 contribution that is proportional to the failure of X2nSAT, CORP. to complete its obligations under this Agreement, taking into account the amounts actually expended and the new employees actually hired by X2nSAT, Corp. However, the City's proportional recovery of its contribution, if any, shall be determined based on the extent of completion of all Measurable Goals as of the date that is two (2) years after completion of the Phase I construction.

9. **Performance Review.** Within 30 days of the conveyance of the Property, X2nSAT, Corp. will submit a letter report listing its current employees located within the State of New Mexico, the positions they currently occupy, and any unfilled vacancies. X2nSAT, Corp. will then submit a letter report to the City Manager promptly following completion of Phase I construction (First Measurable Goal), which will include the date that the construction was complete and the project was accepted by X2nSAT, Corp. The letter report will also list the dates for completion of each subsequent Measurable Goal, based on the timetable set forth in this Agreement. Thereafter, within ten (10) days following the date for the completion of each Measurable Goal, X2nSAT, Corp. will submit to the City Manager a letter report advising the City of the number of new positions filled as of the Measurable Goal date, the

name of the employee and the salary range for those positions, and including such other information regarding the filling of the new position as may seem appropriate to X2nSAT, Inc. or as may be reasonably requested by the City. In addition, upon the second anniversary of each Measurable Goal having been met, X2nSAT, Inc. will submit to the City Manager a report with documentation showing that the Measurable Goal has been met, with a request for release of the appropriate portion of the City's lien. If the City concurs that the Measurable Goal has been met, the City will within ten (10) business days after receiving the report release the appropriate portion of the City's lien. If the City does not concur that a given Measurable Goal has been met, the City will promptly contact X2nSAT, Inc. so that the parties may address and resolve the disagreement.

In the event X2nSAT, Inc. fails to meet any Measurable Goal, then on the request of the City, officers of the parties will meet to discuss the matter and determine whether any remedial action may be appropriate to ensure that future goals are met. However, no remedial action shall be implemented except on the mutual agreement of X2nSAT, Inc. and the City.

10. **Cost and Fees**:

(a) X2nSAT, Inc. will be solely responsible for all development costs including but not limited to development fees, permits, applications, utility extensions and utility hook-ups.

(b) If either party to this Agreement is found by a court to have breached this Agreement, the other party may recover reasonable attorney's fees and costs of litigation. Prior to the institution of any litigation, however, the parties have the contractual duty to meet in good faith and attempt to resolve any controversy hereunder at the least possible expense.

(c) The City of Las Cruces agrees to expedite in a matter of no more than 8 business days all requests for processing of permits and inspections required by the City for building or improving of commercial structures, not including those items that require a longer period of review and approval according to State of New Mexico statutes or regulations.

11. **Agreement Term**: This Agreement shall become effective upon its execution by the parties following its approval by the City Council of the City of Las Cruces and the Board of Directors or Managing Member of X2nSAT, Inc. This Agreement shall continue in full force and effect until (a) X2nSAT, Inc. has met all of its Measurable Goals as set forth in Section 8 hereof, and (b) the city has fully released its lien on the Project property and has fully released the standby letter of credit as provided herein, at which time this Agreement shall terminate; provided, however that his Agreement shall not terminate and remain in effect while there is any disagreement between the parties as to whether any Measurable Goal has been met, or while any remedial action is under way as a consequence of any failure to meet a Measurable Goal as provided in Section 8 herein; and provided further, than nothing contained in this Agreement shall be construed as a limitation on the City's power or authority to terminate its Local Economic Development Plan and dissolve any projects undertaken in Accordance with it, including the Project, as provided in Section 5-10-12, NMSA 1978.

12. **Amendment of Agreement.** This Agreement may be amended only by written amendment executed by the parties hereto with the same formalities as this Agreement, and upon the specific approval of such amendment by the City Council of the City of Las Cruces and by the Board of Directors and President of X2nSAT, Corp.
13. **Non-Assignment.** This Agreement is specific to the City and to X2nSAT, Corp., and shall not be assignable by either party except with the explicit written agreement of the other party hereto, duly approved and adopted as an Amendment to this Agreement.
14. **Binding Effect.** This Agreement shall bind and inure to the benefit of the parties hereto and to their agents, representatives, and legal assigns and successors in interest.
15. **No City Commitments except as Stated Herein:** The parties hereto expressly recognize and agree that the City and its officers, agents and employees undertake no commitments, duties or obligations in connection with this Agreement, except those obligations expressly stated herein. The City expressly reject and disavows any obligations to X2nSAT, Corp. whether implicit or otherwise, except for those commitments and obligations expressly set forth in this Agreement. The City of Las Cruces acknowledges that in addition to its obligation contained herein, that it shall serve as the fiscal agent for that certain LEDA Project Participation Agreement entered into between X2nSAT, Corp. and the State of New Mexico.
16. **Indemnification.** X2nSAT, Corp. shall indemnify and hold harmless and shall defend the City from and against any claim for damages or any other claim that may be asserted by a third party against the City in connection with this Agreement or the Project, to the maximum extent permitted by law.
17. **No Waiver of Tort Claims Act:** Nothing contained in this Agreement shall be deemed to modify or limit any protection or limitation of liability provided to the City under the New Mexico Tort Claims Act (Section 41-4-1 et seq. NMSA 1978).
18. **No Liability of Individual Officers, Agents or Trustees:** No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any officer, employee, director or member of the City Council of the City, past, present or future, not against any director of officer of X2nSAT, Corp., past, present or future, as an individual so long as such individual was acting in good faith.
19. **X2nSAT, Corp. Not an Agent of the City:** Nothing contained herein shall be deemed to make X2nSAT, Corp. or any of its directors, officers, employees or contractors an agent or employee of the City for any purpose whatsoever. X2nSAT, Corp. and it directors, officers, employees and contractors shall not purport to represent the city in any mater nor to have the authority to bind the city or create any obligation on the part of the City or its officers or employees as to any matter whatsoever, whether under any provision of this Agreement or any other theory of law or equity.
20. **Severability:** In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, and all other provisions of this Agreement shall remain in full force and effect so long as their continuance does not have any unjust or inequitable result for either the City or X2nSAT, Corp.
21. **Integration Clause:** This Agreement constitutes the entire agreement of the parties as to the subject matter hereof, and no prior agreement or understanding between the parties as

to the subject matter hereof, whether oral or written, shall be binding except to the extent explicitly incorporated within this Agreement.

22. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, including without limitation the Local Economic Development Act (Sections 5-10-1 through 5-10-13, NMSA 1978) and the ordinances of the City of Las Cruces. The parties agree that in the event of any dispute requiring resort to courts or arbitration, venue shall be in Dona Ana County, New Mexico. City states it has complied with the requirements of New Mexico Statues and the Las Cruces Municipal Code and has authorization to sell and convey the Project Site. X2nSAT, Corp. agrees to develop the Project site in accordance with the Las Cruces Zoning Code and the Protective Covenants and Design Standards for the West Mesa Industrial Park.
23. **Caption:** The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which was approved by the City Council of the City of Las Cruces on _____ and by the President of X2nSAT, Corp. on _____ effective as of the date first written above.

CITY OF LAS CRUCES

By:_____
The Honorable Ken Miyagishima, Mayor

ATTEST:

_____
LINDA LEWIS, CMC
CITY CLERK

APPROVED AS TO FORM:

_____
WILLIAM R. BABINGTON
CITY ATTORNEY

X2n SAT, Corporation

BY:_____
Garrett Hill
President

ACKNOWLEDGEMENT FOR CORPORATION

STATE OF CALIFORNIA)
Sonoma) ss.
COUNTY OF ~~MARIN~~)

The foregoing instrument was acknowledged before me on the OCT 06 2016, 20__ by Garrett Hill, President of X2nSAT, a California Domestic Corporation, on behalf of that said company.

Robert N Foster
Notary Public

My commission expires:

4/25/20

ROBERT N. FOSTER
Commission # 2147855
Notary Public - California
Sonoma County
My Comm. Expires Apr 25, 2020

EXHIBIT
B

PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement (this "Agreement") is entered into on 5th day of October 2016 by and between the CITY OF LAS CRUCES, a New Mexico municipal corporation (the "City") and X2NSAT, INC, a California corporation (the "Company" or the "Project Party").

1. **Recitals.**

A. Pursuant to the Local Economic Development Act, NMSA 1978, Sections 5-10-1 through 5-10-13 ("LEDA"), the City adopted Ordinance No. 2697 (the "Las Cruces Local Economic Development Plan") authorizing the City to consider applications for economic development assistance;

B. As provided in the Local Economic Development Plan Ordinance, the City considered an application from the Company, which proposed that the City serve as local government conduit for $300,000 of an appropriation from the New Mexico Legislature (the "LEDA Funds") to go toward the Company's construction of a communication gateway in the City (the "x2nSAT Project" or "Project").

C. The City has adopted Ordinance No. _____finding that the Company is a "qualifying entity" and the Project is an "economic development project" as those terms are defined by LEDA, and approving this Project Participation Agreement (this "Agreement") as meeting the requirements of LEDA.

2. **The LEDA Funds.**

The State has dedicated $300,000 in LEDA Funds for use in the Project. The Company may request the disbursement of up to $300,000 during the period beginning December 1, 2016 and ending December 31, 2017 (the "Disbursement Period"). The City will direct the LEDA Funds to the Company for use in the Project in the following manner:

a. The Company may submit to the City a request for disbursement of the LEDA Funds to reimburse the Company for expenses in connection with the Project, with documentation substantiating such expenses (collectively, a "Disbursement Request").

b. The City will coordinate with the New Mexico Economic Development Department (**"NMEDD"**) to cause the State to deliver the LEDA Funds to the City in a timely manner and to ensure that the LEDA Funds are available for the Project. LEDA funds will be expended for reimbursement of Project expenses only and cannot be advanced to the Company. The City will have no obligation to expend any City funds to make disbursements to the Company pursuant to this Agreement, and the City will only be required to disburse funds to the Company to the extent that the City receives the LEDA Funds from the State.

c. The City may not offset any internal costs or overhead charges for review or processing of the Disbursement Requests against the Disbursement Request or the LEDA Funds.

EXHIBIT
B

3. Substantive Contribution from the Company.
The Company will make the following substantive contributions:

a. Project Contribution. The Company anticipates making capital investments in the Project and costs associated therewith [including, for the acquisition of land and equipment, tangible personal property and services associated with the acquisition, construction and equipping of the Project to be located in the West Mesa Industrial Park in Las Cruces (the "Facility")] in the amount of approximately $1,000,000 by December 31, 2017 (the "Project Contribution"). Although the Company intends to have a long-term presence in the City, for purpose of the contractual obligations of this Agreement, the Company covenants to continue to operate the Project until December 31, 2020.

b. Job Commitment. It is the Company's intention to create 30 new direct jobs at the Facility by December 31, 2020 (the "Job Target"). "Job" means a permanent, full-time employment position offering the employee the full range of benefits offered to other Company full-time employees.

4. Clawbacks. The clawback provisions of this Section ("Clawbacks") are intended to be the exclusive remedies with respect to any breach of this Agreement caused by the occurrence of any of the events described in this Section.

a. Facility Closure Clawback. If the Company ceases operations at the Facility in the City on or before December 31, 2020, the Company will repay to the City all LEDA Funds that the Company actually received from the City as of that date (the "Facility Closure Clawback.")

b. Performance Clawback. If the Company does not achieve the Job Target set *forth in Section 3(b) of this Agreement by December 31, 2020 (the "Job Target* Date"), the Company shall make a penalty payment to the City (the "Performance Clawback") which will be calculated in the manner specified in the table below:

Portion of Job Target Achieved as of December 31, 2020	Performance Clawback Amount
26 or more jobs	No Performance Clawback Required
16-25 jobs	25% of LEDA Funds received
6-15	75% of LEDA Funds received
Less than 5	100% of LEDA Funds received

If the Company has been required to pay the Facility Closure Clawback, the Company will not be required to pay any Performance Clawback that may come due after the date of such payment.

c. Job Target Date Reporting Requirement. For the purposes of determining compliance with Section 4 above, the Company will provide to the City a copy of Company's Form ES-903, filed with the New Mexico Department of Workforce Solutions and such other data and information on its workforce that is reasonably necessary for the City or its independent contractor to determine whether the

Company has met its Job Target obligations under this Agreement. The Company will provide the City with semi-annual copies of certain of its most recent Form ES-903 report no later than May 1 and November 1 of each year commencing on May 1, 2017 and ending on May 1, 2021.

d. Maximum Clawback. In no event will the Company be required to pay more than the total amount of all LEDA Funds that Company actually receives, for all Clawbacks in the aggregate.

5. Security. No later than the day prior to the date on which the Company receives its disbursement of LEDA Funds, the Company will provide the City with a guarantee in a form acceptable to NMEDD (the "Guarantee"). The maximum obligation secured by the Guarantee (the "Maximum Obligation") will be $300,000 as of the date the Guarantee is granted. Provided that the Company has not been required to pay any Clawback, the Guarantee will terminate on January 1, 2021. If the Company does not draw the entire amount of the LEDA Funds available upon the expiration of the Distribution Period, the Maximum Obligation will be reduced proportionately to reflect the actual amount of LEDA Funds actually received.

6. Force Majeure. Neither party shall be liable to the other party for any failure to perform any provisions or obligations of this Agreement if such failure is caused by or results directly or indirectly from Force Majeure. If a Force Majeure occurs, the City and Company will work in good faith to determine how to address the impact of the Force Majeure on each party's obligations under this Agreement.

7. Dispute Resolution. The parties will work in good faith to resolve any disputes that arise hereunder, and will submit to mediation with a neutral mediator prior to filing any litigation in relation to this Agreement.

8. Notice. All notices or other written communications, including requests for disbursement, that are required or permitted to be given pursuant to this Agreement must be in writing and delivered personally, by a recognized courier service, by a recognized overnight delivery service, by fax, by electronic mail, or by registered or certified mail, postage prepaid, to the parties at the addresses shown below. If notice is mailed, it will be deemed received on the earlier of actual receipt or on the third business day following the date of mailing. If a notice is hand-delivered or sent by overnight delivery service, it will be deemed received upon actual delivery. If any written notice is sent by facsimile or electronic mail, it will be deemed received upon printed or written confirmation of the transmission. A party may change its notice address by written notice to the other party to this Agreement.

The initial notice addresses for the parties are as follows:

If to the City:

City of Las Cruces
Attention: Economic Development Coordinator
PO Box 20000 Las Cruces NM 88004
700 N Main Street Las Cruces, New Mexico 88007
(575) 541-2286

If to the Company:

X2nSAT, Inc
Attention: Garrett Hill, CEO
1310 Redwood Way Ste C
Petaluma CA 94954
(707) 283-8000

9. Ratification. The City and the Company hereby ratify all actions consistent with this Agreement that they or their respective agents may have taken in furtherance of the Project.

10. Miscellaneous. This Agreement binds and inures to the benefit of the City and the Company and their respective successors and permitted assigns. This Agreement may not be assigned without the written consent of the non-assigning party and the New Mexico Economic Development Department. This Agreement may be amended or modified, and the performance by any party of its obligations under this Agreement may be waived, only in a written instrument duly executed by both parties. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together constitute one instrument. This Agreement is governed by and is to be construed in accordance with the laws of New Mexico applicable to agreements made and to be performed in New Mexico.

11. Term of This Agreement. The termination date of this Agreement will be agreed upon by the City and the Company within ninety (90) days after the Company has satisfied the Jobs Requirement in full or has refunded any LEDA funds received as part of a clawback as described in section 4 of this Agreement.

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In witness whereof, the parties hereto set their hands as of the date first appearing above.

CITY:

City of Las Cruces

By _____ ATTEST:
Ken Miyagishima, Mayor

_____

City Clerk

APPROVED AS TO FORM

_____
William R Babington
City Attorney

COMPANY:

X2nSAT, Inc

By _____
Garrett Hill, CEO

ACKNOWLEDGEMENT FOR CORPORATION

STATE OF CA)
) ss
COUNTY OF Sonoma)

The foregoing was acknowledge before me on the OCTOBER 06 2016 2016 by Garrett Hill, CEO of x2nSAT, on behalf of said company.

_____
Notary Public
My Commission expires: 4/25/20

ROBERT N. FOSTER
Commission # 2147855
Notary Public - California
Sonoma County
My Comm. Expires Apr 25, 2020

GUARANTY

GUARANTY (the "Guaranty"), dated as of November ___, 2016 by X2NSAT, INC, a California corporation company having its principal place of business at 1310 Redwood Way, Ste C, Petaluma California (the "Guarantor"), in favor of City of Las Cruces, in Dona Ana County New Mexico (the "Entity").

RECITALS

Whereas, pursuant to the Project Participation Agreement (the "Contract"), dated as of November 7, 2016, between x2nSAT, Inc, (the "Subsidiary") and the Entity, Entity has agreed to pay $300,000 US dollars to the Subsidiary towards expenses arising from Subsidiary's project (as defined in the Contract), as authorized by the City of Las Cruces Ordinance No. _____ ("Economic Development Plan Ordinance") and

Whereas, Subsidiary has agreed to certain obligations as provided in the Contract which, if not fulfilled, shall require a pro-rata return of the $300,000; and

Whereas, the Entity has required, as a condition precedent to entering into the Contract, that the Guarantor execute and deliver this Guaranty. The Entity would not enter into the Contract with the Subsidiary but for the execution and delivery of this Guaranty by the Guarantor.

Whereas , Guarantor is the parent of the Subsidiary.

Whereas In furtherance of the business purposes of the Guarantor, the Guarantor desires to guaranty all obligations of the Subsidiary pursuant to the Contract.

NOW, THEREFORE, based upon the foregoing, and in order to induce the Entity to enter into the Contract, the Guarantor hereby agrees as follows:

ARTICLE 1

DEFINITIONS

ARTICLE 1 *SECTION 1.1. Definitions.* Capitalized terms not otherwise defined in this Guaranty shall have the meanings ascribed to them in the Contract, as the same may be amended, supplemented or otherwise modified from time to time. As used in this Guaranty, the following terms have the following meanings unless the context otherwise requires:

"Guaranteed Obligations" has the meaning ascribed to such term in Section 2.1.

"Guaranty" means this Guaranty, as it may be amended, supplemented or otherwise modified from time to time in writing signed by the Guarantor and the Entity.

ARTICLE 2

THE GUARANTY

SECTION 2.1. *The Guaranty.* Except as expressly set forth herein (and subject in particular to the limitations set forth in Section 4.5 below), the Guarantor hereby unconditionally guarantees to Entity the full and punctual performance by the Subsidiary of its obligations under the Contract including but not limited to the payment of damages (excluding indirect and consequential damages or losses), in each case subject to the conditions and limitations expressly set forth in the Contract (the "Guaranteed Obligations"). The Guarantor and the Entity expressly acknowledge that, subject to Section 2.5 below, default by the Subsidiary or the failure of the Subsidiary to perform any Guaranteed Obligation in the time required in each case under the Contract, is a condition of the exercise of this Guaranty.

SECTION 2.2. *Termination of Guaranty.* This Guaranty shall remain in full force and effect until the earliest date on which (i) all of the Guaranteed Obligations have been completely performed and paid in full, or (ii) a replacement guarantor shall have assumed all the rights and obligations of the Guarantor under this Guaranty (whose appointment shall be subject to the prior written consent of the Entity, provided that such consent shall not be unreasonably withheld or delayed, and shall not be necessary for a replacement guarantor with a net worth of at least 1 Billion United States Dollars). The Guarantor's payment of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge the Guarantor's liability, as set forth herein, for any portion of the Guaranteed Obligations that has not been completely performed or indefeasibly paid in full. Notwithstanding anything to the contrary, this Guaranty shall expire at the latest on January 1, 2021.

SECTION 2.3. *Guaranty Unconditional.* Except as expressly set forth herein and subject in particular to Section 4.5 below, the Guarantor agrees that the obligations of the Guarantor hereunder shall be unconditional and absolute. Notwithstanding any provision of this Guaranty to the contrary, the Guarantor shall be entitled to assert as a defense to any claim for payment of the Guaranteed Obligations, that (i) such Guaranteed Obligations are not currently due under the terms of the Contract or (ii) that such Guaranteed Obligations have previously been paid in full.

SECTION 2.4. *Waivers of Notices and Defenses.* The Guarantor hereby waives acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken by any corporation or person against the Subsidiary or any other corporation or person, except that no payment shall be sought from the Guarantor under this Guaranty unless a notice of default has been served to the Subsidiary with a copy to the Guarantor providing for a minimum cure period of 15 days to remedy such default and indicating the Entity's intention to claim under this Guaranty in the absence of remedy within such cure period.

SECTION 2.5. *Stay.* The Guarantor agrees that, notwithstanding anything to the contrary herein, if the Entity is stayed upon the insolvency, bankruptcy, or reorganization of the Subsidiary from exercising its rights to enforce or exercise any right or remedy with respect to the Guaranteed Obligations, or is prevented from giving any notice or demand for payment or performance or taking any action to realize on any security or collateral or is prevented from collecting any of the Guaranteed Obligations, in any such case, by such proceeding or action, the Guarantor shall pay or render to the Entity upon demand therefor the amount that would otherwise have been due had such rights and remedies been permitted to be exercised by the Entity.

SECTION 2.6. *No Enforcement of Subrogation.* Upon making any payment or performance with respect to any Guaranteed Obligation hereunder, the Guarantor shall be subrogated to the rights of the Entity against the Subsidiary with respect to such payment; *provided* that the Guarantor shall not enforce any payment right by way of subrogation until all Guaranteed Obligations have been paid in full.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

The Guarantor hereby represents and warrants to the Entity that the following statements are true and correct:

SECTION 3.1. *Binding Obligation.* This Guaranty has been duly and validly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and by equitable principles relating to the availability of equitable remedies.

ARTICLE 4

MISCELLANEOUS

SECTION 4.1 *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including bank wire, facsimile transmission or similar writing) and shall be given to such party at its address or telecopy number set forth, in the case of the Guarantor, on the signature pages hereof, or in the case of the Entity, in the Contract, or such other address or telecopy number as such party may hereafter specify for the purpose by notice to the other party. Each such notice, request or other communication shall be effective (i) if given by facsimile transmission, when such telecopy is transmitted to the telecopy number specified in this Section and answerback has been received, (ii) if given by any other means (which in the case of mail shall be registered mail or airmail for international mail), when delivered at the address specified in this Section.

SECTION 4.2. *Waivers.* No failure or delay by the Entity in exercising any right, power or privilege hereunder or under the Contract shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof

or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 4.3. *Amendments and Waivers.* This Guaranty constitutes the complete agreement of the Entity and the Guarantor with respect to the subject matter hereof and supersedes all prior or contemporaneous negotiations, promises, covenants, agreements or representations. No amendment, modification, termination or waiver of any provision of this Guaranty, shall in any event be effective without the written consent of the Entity and Guarantor.

SECTION 4.4. *Successors and Assigns.* This Guaranty is a continuing Guaranty and shall be binding upon the Guarantor or its successors and assigns. This Guaranty shall inure to the benefit of the Entity or its successors and assigns permitted under the Contract. Nothing contained in this Guaranty shall be deemed to confer upon anyone other than the parties hereto (and their permitted successors and assigns) any right to insist upon or to enforce the performance or observance of any of the obligations contained herein.

SECTION 4.5. *Limitation on Liability.* Notwithstanding anything to the contrary contained or implied herein, the maximum aggregate liability of Guarantor hereunder shall not in any event exceed the lower of (i) the actual outstanding liability of the Subsidiary under the Contract, or (ii) said amount less amounts previously paid under the Contract to the Entity and/or its successors and assigns by the Subsidiary and/or its successors, assigns and affiliates.

SECTION 4.6. *APPLICABLE LAW.* THIS GUARANTY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW MEXICO.

SECTION 4.7. *JURISDICTION.* ANY ACTION OR PROCEEDING AGAINST THE GUARANTOR RELATING IN ANY WAY TO THIS GUARANTY MAY BE BROUGHT AND ENFORCED IN THE COURTS OF THE STATE OF NEW MEXICO OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW MEXICO, AND THE GUARANTOR IRREVOCABLY CONSENTS TO THE JURISDICTION OF EACH SUCH COURT IN RESPECT OF ANY SUCH ACTION OR PROCEEDING. THE GUARANTOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, TO THE GUARANTOR AT ITS ADDRESS AS PROVIDED FOR NOTICES HEREUNDER. THE FOREGOING SHALL NOT LIMIT THE RIGHT OF THE ENTITY TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING ANY ACTION OR PROCEEDING, OR TO OBTAIN EXECUTION OF ANY JUDGMENT, IN ANY OTHER JURISDICTION.

THE GUARANTOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION THAT

IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING UNDER THIS GUARANTY IN ANY COURT LOCATED IN THE STATE OF NEW MEXICO, AND HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY COURT LOCATED IN THE STATE OF NEW MEXICO IS NOT A CONVENIENT FORUM FOR ANY SUCH ACTION OR PROCEEDING.

SECTION 4.8. *Severability.* If any provision in or obligation under this Guaranty shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

SECTION 4.9. *Interpretation.* Section headings in this Guaranty are included herein for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose or be given any substantive effect.

SECTION 4.10 *Further Assurances.* At any time or from time to time, upon the request of the Entity, the Guarantor shall execute and deliver such further documents and do such other acts and things as the Entity may reasonably request in order to effect fully the purposes of this Guaranty, in accordance with its terms and subject to all limitations. The Guarantor agrees to be liable for any reasonable expenses incurred by Entity and/or its successors and assigns with respect to any reasonable action or proceeding to enforce this Guaranty.

SECTION 4.11 *Effectiveness.* This Guaranty shall become effective upon the Contract becoming effective.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty by its duly authorized officer as of the date first above written.

GUARANTOR:

X2nSAT, Inc

By: _____
Name: Garrett HIll
Title: CEO

Address: 1310 Redwood Wy
Petaluma CA
94954

EXHIBIT
C

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT AND CITY OF LAS CRUCES INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (Agreement) entered into as of the date of the last signature affixed below by and between the New Mexico Economic Development Department (EDD), acting through its cabinet secretary, and the City of Las Cruces, and collectively referred to as "the Parties" with reference to the following facts.

SECTION 1: **RECITALS:**

WHEREAS, the New Mexico State Legislature appropriated fund to EDD "[f]or economic development projects statewide pursuant to the Local Economic Development Act" (the "Appropriation"); and

WHEREAS, the purpose of the Local Economic Development Act, NMSA 1978 §§ 5-10-1 through 5-10-13 (2007) ("LEDA"), is to provide "public support for economic development to foster, promote and enhance local economic development efforts…;" and

WHEREAS, the City of Las Cruces has adopted LEDA by Ordinance No. 2697 which established the City of Las Cruces Economic Development Act Plan that promotes economic development within the City of Las Cruces; and

WHEREAS, x2nSAT, Inc. ("hereinafter Qualifying Entity") has entered into a Local Economic Development Project Participation Agreement (hereinafter "PPA") with the City and, pursuant to the terms of that PPA, the Qualifying Entity will construct and equip a new communication gateway on land in the City (the "Project") and will create 30 new full-time positions by December 31, 2020. A copy of the PPA is attached hereto as Exhibit A; and

WHEREAS, EDD and the City desire to enter into this Agreement as necessary to facilitate disbursement of funds for the Project.

NOW THEREFORE, the Parties do hereby agree to the following terms and conditions to accomplish the Project.

EXHIBIT
C

SECTION 2. PURPOSE OF AGREEMENT:

The purpose of this Agreement is to place the primary responsibility on the City for overseeing and administering the $300,000 of the Appropriation granted for the Project. It is the intent of the Parties that EDD will transfer an amount not to exceed three hundred thousand dollars ($300,000) from the Appropriation to the City for expenditures made to implement the Project. The Parties agree that any and all State funds received by the City will be accounted for by City as the fiscal agent for EDD in accordance with the procedures the City will use to account for its own funds and property. The Parties further agree that any properties acquired or developed by the City as a result of implementation of the Project will be used by the City for economic development purposes only.

SECTION 3. SCOPE OF WORK:

The City will act as fiscal agent for $300,000 of the Appropriation for the Project. Pursuant to Section 5-10-3(D) of LEDA, EDD will transfer $300,000 to the City for capital costs and expenses associated with the Project. In exchange for the contribution, the Qualifying Entity has agreed that it will create 30 full-time new full-time jobs by December 31, 2020. All the terms, conditions, and requirements set forth under the PPA are incorporated into this Agreement by reference. EDD and the City agree that failure of the Qualifying Entity to create the number of new full-time jobs described in Section 3(B) of the PPA or otherwise meet its obligations set forth under the PPA will result in a violation of the terms and conditions of the PPA. Such violation will require that the City foreclose on the security interest after any cure period granted to the Qualifying Entity. Any monies recovered by the City as a result of the sale or foreclosure of the security interest shall be returned to EDD within 30 days. The Qualifying Entity will deliver to the City contemporaneously with the execution of the PPA a Letter of Credit which will be incorporated into this Agreement as Exhibit B.

SECTION 4. CITY OF LAS CRUCES RESPONSIBILITIES:

The City shall:

1. Pay the costs and expenses incurred for the Project from the Appropriation;

2. Provide to EDD supporting documentation in a format acceptable to EDD for activities associated with the Project;

3. The City shall notify EDD in writing of any default by the Qualified Entity within 10 days of the event of default;

4. Serve as Fiscal Agent for the funds transferred to it under this Agreement;

5. Complete all of the following goals identified in this Agreement within the time limits agreed upon by the Parties, which is attached hereto as Exhibit C;

- distribute the funds transferred to the City by EDD to the Project;
- account for receipts and disbursements of said monies;
- provide EDD with the required financial documentation pertaining to this disbursement; and
- submit all required and reasonably requested documentation to EDD including the endorsed LEDA Ordinance approved by the City Council accepting the Project as a qualifying entity for LEDA, with the accompanying endorsed Project Application and PPA entered into by the City and the Qualifying Entity, a fully executed copy of the security interest, and copies of invoices and other documentation as required by EDD within the time required;

6. Not impose any obligations on EDD with respect to the administration of this Project, other than the reimbursement of funds described in this agreement; and

7. Initiate and prosecute litigation to enforce the terms of the PPA, if necessary; and

8. Monitor job creation by the Qualified Entity and report the number of jobs created twice yearly to EDD for a period of three years following completion of the Project. Job reports shall include a copy of FORM-903 provided by the Qualified Entity to the City, on file with the New Mexico Department of Workforce Solutions.

SECTION 5. CITY OF LAS CRUCES CERTIFICATIONS:

As Fiscal Agent, the City hereby assures and certifies that:

A. It will comply with all applicable State laws, regulations, policies, guidelines and requirements with respect to the acceptance and use of State funds;

B. It has the legal authority to receive and expend the funds;

C. It will enforce the provisions of Ordinance No. _____ approving the Project and the City's Economic Development Plan;

D. It has exercised due diligence in certifying that the Project is a viable economic development initiative with potential long term economic development benefits;

E. It has entered into a PPA with the Qualifying Entity and has obtained all financial documentation necessary to protect the City's and State's investments in the Project;

F. It shall not at any time during the life of this Agreement convert any property acquired or developed pursuant to this Agreement to uses other than those within the Project description as defined herein;

G. It will notify EDD of any default on the part of the Qualifying Entity within 10 days of the event of default and shall provide the Qualifying Entity an opportunity to cure any default by in accordance with the PPA prior to termination thereof;

I. No member, officer or employee of the City or its designees or agents, no member of the governing body of the locality of which the program is situated, and no other public official that exercises any functions or responsibilities with respect to the Project during his/her tenure, or for one (1) year thereafter, shall have any interests, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement. The City shall incorporate in all contracts or subcontracts a provision prohibiting such interest pursuant to this certification; and

K. It has complied with Article IX, Section 14, of the New Mexico Constitution known as the "anti-donation clause".

SECTION 6. **EDD RESPONSIBILITES:**

EDD shall:

A. Transfer to the City an amount not to exceed three hundred thousand dollars ($300,000) for costs and expenses incurred for the Project. The funds shall be used only for the purpose stated in this Agreement;

B. At its discretion, review and audit the Project if it is deemed to be necessary or desirable; and

C. Reimburse the City for any costs associated with litigation to enforce the terms of the Guaranty, if necessary.

SECTION 7. **TERM OF AGREEMENT:**

This Agreement shall become effective on the date it is fully executed and shall terminate when the City submits its Final Report to EDD.

SECTION 8. LIABILITY:

No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Any liability incurred in connection with this Agreement is subject to the New Mexico Tort Claims Act. The City and EDD may agree to reimburse one another under these liability provisions, subject to sufficient appropriation by the New Mexico Legislature or sufficient funds being available to the party, as determined by the party responsible for payment.

SECTION 9. DISPOSITION OF PROPERTY; RECORDS; RETURN OF SURPLUS FUNDS

A. Property purchased under this Agreement for the Project shall remain with the purchasing party unless otherwise agreed upon.

B. The City shall keep such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the Project, the purposes for which such funds were used and such other records as EDD may require.

C. If, upon the expiration of the Project or the termination date of this Agreement, any surplus funds are possessed by City, City shall return said funds to EDD for disposition in accordance with law.

SECTION 10. STRICT ACCOUNTABILITY:

The City shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EDD and the New Mexico State Auditor quarterly or upon request, and shall maintain all such records for a period of six (6) years following completion of all the records and any audits

SECTION 11. REPORTS:

The City shall submit bi-annual reports in May and November of each year during the life of this Agreement to EDD respecting direct and indirect job retention and creation attributable to the State appropriation and a Final Report EDD either on or before the termination of this Agreement or upon final reimbursement to the City of an amount equal to all the Public Contributions, whichever occurs first. The Final Report shall contain a description of work accomplished, the methods and procedures used, a detailed budget breakdown of expenditures, a description of any problems or delays encountered and the reasons therefore, and such other information as may be requested by EDD.

SECTION 12.NOTICES; REPRESENTATIVES OF THE PARTIES:
Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. Mail, either first class or certified, return receipt requested, postage prepaid, as follows. The parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

To EDD:

Finance Development Team Leader
NM Economic Development Dept.
P.O. Box 20003
Santa Fe, NM 87504-5003

To the City:

Economic Development Coordinator
City of Las Cruces
700 N Main St., Suite 3300
Las Cruces, New Mexico 88001

SECTION 13. AMENDMENTS:

This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto.

SECTION 14. GOVERNING LAW:

This Agreement shall be governed by the laws of the State of New Mexico.

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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature below,

CITY OF LAS CRUCES, NEW MEXICO

By:_____

_____

Date:_____

By:_____

_____

Attorney for the City of Las Cruces

ECONOMIC DEVELOPMENT DEPARTMENT

By:_____

_____

Date:_____

By:_____

_____

General Counsel