

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2022-6

3
4
5 AN ORDINANCE

6 RELATING TO THE CITY OF SANTA FE ECONOMIC DEVELOPMENT PLAN
7 ORDINANCE, ARTICLE 11-11 SFCC 1987; APPROVING AND ADOPTING A LOCAL
8 ECONOMIC DEVELOPMENT PROJECT PARTICIPATION AGREEMENT BETWEEN
9 THE CITY OF SANTA FE AND EARTH TRAVELER TEARDROP TRAILERS, LLC, FOR
10 DESIGN, DEVELOPMENT, AND CONSTRUCTION OF TENANT IMPROVEMENTS;
11 LEASE PAYMENTS; AND TO EXPAND A MANUFACTURING CENTER AND SILICON
12 VACUUM SYSTEM, A LOCAL ECONOMIC DEVELOPMENT PROJECT.

13
14 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

15 Section 1. Short Title. This Ordinance shall be known as the “Earth Traveler Local
16 Economic Development Project Ordinance.”

17 Section 2. Recitals.

18 A. The Local Economic Development Act, NMSA 1978, Sections 5-10-1, *et seq.*
19 (“LEDA”) explicitly permits municipalities to assist qualifying entities with economic development
20 projects through the use of public resources; and

21 B. The City of Santa Fe has complied with the requirements of the Local Economic
22 Development Act by adopting an Economic Development Fund Ordinance, Section 11-14 SFCC 1987,
23 incorporating within that ordinance its community economic development plan and its economic
24 development strategy for implementation dated May 21, 2008; and

25 C. Earth Traveler Teardrop Trailers, Inc., (“Qualifying Entity” or “Earth Traveler”) is a

1 Santa Fe-based manufacturer of the world’s lightest outdoor camper, which meets the definition of
2 Qualifying Entity under the Economic Development Ordinance, Section 11-14.4(A) SFCC 1987;
3 and LEDA, NMSA 1978, Section 5-10-3 (J). The Qualifying Entity creates economic base jobs in
4 the outdoor recreation business by manufacturing the world’s lightest camper located in Santa Fe.

5 D. The State of New Mexico has appropriated One Hundred Thousand Dollars and No Cents
6 (\$100,000.00) from the New Mexico LEDA Fund and the City of Santa Fe will provide Twenty-Five
7 Thousand Dollars and No Cents (\$25,000.00) from the Local Economic Development Fund for the
8 project to pay for design, developments, construction of tenant improvements, lease payments,
9 expansion of a manufacturing center, and Silicon Vacuum System. The facility is located at 3217
10 Richards Lane, Suite B, and the expansion will be located at 27 Ridgeline Road both in Santa Fe, New
11 Mexico. The expansion may include construction costs, materials associated with the interior
12 renovation of its facilities, and improvements or construction of telecommunications, broadband
13 connectivity, and other infrastructure necessary to improve service to the facility. This project
14 identified as the “Project” will expand the manufacturing center and the tax base, generating more taxes,
15 fees, and other revenues for the State of New Mexico and City of Santa Fe.

16 E. The facility will be used to design, develop, and manufacture campers, which causes
17 the company to fall under the definition of a “manufacturer” under LEDA.

18 **Section 3. Findings.** The governing body hereby finds:

19 A. The City of Santa Fe has determined that it is in the interest of the welfare of the
20 citizens of Santa Fe to enter into an Economic Development Project Participation Agreement for the
21 purposes of effectuating the City’s Economic Development Plan and the Project.

22 B. In compliance with the City’s Economic Development Fund Ordinance, Section 11-14
23 SFCC (1987), the Project Participation Agreement between Qualifying Entity and the City clearly states
24 the following:

- 25 (1) Earth Traveler is a qualifying entity;

1 (2) The contributions of the City, the City as a fiscal agent of the State, and the
2 Qualifying Entity;

3 (3) The specific measurable objectives upon which the performance review will
4 be based;

5 (4) A schedule for Project development and goal attainment;

6 (5) The security being offered for the City's investment;

7 (6) The procedures by which the Project may be terminated and the City's
8 investment recovered;

9 (7) The time period for which the City shall retain an interest in the Project;

10 (8) The economic development goals of the project; and

11 (9) A "sunset" clause after which the City shall relinquish interest in and oversight
12 of the project.

13 **Section 4. Approval and Adoption of the Project Participation Agreement.** The
14 governing body hereby approves the 2022 PPA (attached as **Attachment A**) whereby the City will be
15 the Fiscal Agent for the State legislative appropriation of One Hundred Thousand Dollars and No Cents
16 (\$100,000.00) and will designate the Twenty-Five Thousand Dollars and No Cents (\$25,000.00) in City
17 Funds. The City will pass the State Legislative appropriation of \$100,000.00 to the Qualifying Entity
18 and provide the City funds of \$25,000.00 to the Qualifying Entity and the funds will be used for design,
19 developments, and construction of tenant improvements, lease payments, expansion of a manufacturing
20 center, Silicon Vacuum System, and infrastructure. In exchange, the Qualifying Entity will expand the
21 tax base and generate more taxes, fees, and other revenues for the State of New Mexico and City of
22 Santa Fe.

23 **Section 5. Severability Clause.** If any section, paragraph, clause, or provision of this
24 ordinance, or any section, paragraph, clause, or provision of any regulation promulgated hereunder
25 shall for any reason be held to be invalid, unlawful, or unenforceable, the invalidity, illegality, or

1 unenforceability of such section, paragraph, clause, or provision shall not affect the validity of the
2 remaining portions of this ordinance or the regulation so challenged.

3 **Section 6. Effective Date.** This ordinance shall become effective immediately upon
4 adoption.


5 PASSED, APPROVED, and ADOPTED this 27th day of April, 2022.

7
8 
9 ALAN WEBBER, MAYOR

10 ATTEST:

11
12 
13 KRISTINE MIHELIC, CITY CLERK

14 APPROVED AS TO FORM:

15 
16
17 ERIN K. McSHERRY, CITY ATTORNEY

18
19
20
21
22
23
24 *Bill No. 2022-6*
25 *Legislation/2022/Ordinances/2022-6 Earth Traveler Teardrop Trailers LEDA Project*

ATTACHMENT A

**INTERGOVERNMENTAL AGREEMENT
NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT AND
THE CITY OF SANTA FE, NEW MEXICO**

This Intergovernmental Agreement (“Agreement”) is entered into as of the date of the last signature affixed below by and between the New Mexico Economic Development Department (“EDD”) and the City of Santa Fe, a municipal corporation of the State of New Mexico (“City”), collectively referred to as the “Parties,” with reference to the following facts.

SECTION 1. RECITALS:

WHEREAS, the New Mexico State Legislature enacted Laws 2014, Chapter 63, Section 5, Subsection 33 which appropriated ten million dollars (\$10,000,000) to EDD “[f]or economic development projects pursuant to the Local Economic Development Act” (the “Appropriation”); and

WHEREAS, the purpose of the Local Economic Development Act, NMSA 1978 §§ 5-10-1, et seq., (“LEDA”), is to provide “public support for economic development to foster, promote, and enhance local economic development efforts...” Section 5-10-2(B); and

WHEREAS, the City has adopted LEDA by Ordinance 2004-42, which established the City’s Economic Development Plan that promotes economic development within the City and Ordinances Nos. 2008-42 and 2018-4 amending the Economic Development Plan Ordinance; and

WHEREAS, the City has adopted Ordinance No. 2022-6 (“Ordinance”) to approve the economic development project (“Project”) to secure the expansion of

Earth Traveler Teardrop Trailers, LLC., a New Mexico corporation (“Earth Traveler”) within the City; and

WHEREAS, the City has entered into a Local Economic Development Project Participation Agreement (“PPA”) with Earth Traveler and, pursuant to the terms of that PPA, Earth Traveler will provide a substantive contribution in exchange for the public contribution. A copy of the PPA and any amendments are attached hereto as **Exhibit B**; and

WHEREAS, the EDD and the City desire to enter into this Agreement 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.

SECTION 2. PURPOSE OF AGREEMENT:

The purpose of this Agreement is to place the primary responsibility on the City to oversee and administer the appropriation for the Project. It is the intent of the Parties that the EDD will transfer an amount not to exceed One Hundred Thousand Dollars and No Cents (\$100,000.00) (the “State Funds”) 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 the City as the fiscal agent for the EDD in accordance with the procedures the City will use to account for its own funds and property used to implement the Project, or 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 the appropriation supporting the Project. EDD will transfer an amount not to exceed One Hundred Thousand Dollars and No Cents (\$100,000.00) from the Appropriation to the City for expenditures made to implement the Project, pursuant to the LEDA statutes. In exchange for the appropriation, Earth Traveler will create twenty (20) new jobs and contribute up to One Million Three Hundred Seventy One Thousand Six Hundred Nineteen Dollars (\$1,371,619) in capital investment within ten (10) years after the execution of this Agreement. In February, 2022, Earth Traveler's starting headcount was 0 full-time jobs, so the starting headcount for this Project is the net jobs above 0 jobs. The EDD expressly agrees that "new" jobs are those jobs created by Earth Traveler on or after the date of LEDA Ordinance adoption. The City will quarterly review the Project timeline and progress until the ten-year anniversary of this Agreement or until the City certifies to the EDD that the requisite Economic Development Goals have been completed to the City's satisfaction or that the EDD contribution of no greater than \$100,000.00 in Funds has been reimbursed to EDD. In the event that Earth Traveler falls below the hiring target in any given period, reimbursements will be suspended until hiring target is achieved and sustained for at least ninety (90) days.

The EDD and the City agree that failure of Earth Traveler to make its required contribution, as defined in the PPA, will result in a violation of the terms and conditions of the PPA. Such violation, after any cure period granted, will require that the City foreclose on the security interest. All the terms, conditions, and requirements set forth under the PPA are incorporated into this Agreement by reference. All State funds recaptured from Earth Traveler by the City shall be returned to EDD within 60 days.

SECTION 4. CITY OF SANTA FE RESPONSIBILITIES:

The City shall:

1. Submit all documentation supporting expenditures made to implement the Project in a format acceptable to the State.
2. Notify the EDD in writing of any default by Earth Traveler within 60 days of the event of default, as defined in the PPA (“Default”);
2. Serve as fiscal agent for the State Funds transferred to it under this Agreement;
3. Complete all of the following goals identified in this Agreement within the time limits agreed upon by the Parties:
 - a. Account for receipts and disbursements of reimbursed State Funds;
 - b. Provide the EDD with the required financial documentation pertaining to this disbursement; and
 - c. Submit all required and reasonably requested documentation to the EDD, including the endorsed LEDA Ordinance approved by the City Council accepting the Project for Earth Traveler as a qualifying entity pursuant to LEDA. Such documentation shall include a fully executed copy of the Earth Traveler security interest, and copies of invoices and other documentation as required by the EDD within the time required; and
4. Not impose any obligations on EDD with respect to the administration of this Project, other than the reimbursement of State Funds described in this Agreement; and

5. Monitor job creation by Earth Traveler and report the number of jobs created each quarter to EDD for a period of ten (10) years after this Agreement has been fully executed. Quarterly reports shall include a copy of FORM ES-903 (or any form substituted therefore by the State) provided by Earth Traveler to the City, on file with the New Mexico Department of Workforce Solutions.

The Parties have created a disbursement schedule in the PPA and listed as Exhibit 1, which is hereby incorporated into this Agreement and made a part hereof by this reference as though set forth in full.

SECTION 5. CITY CERTIFICATIONS:

As fiscal agent, the City hereby assures and certifies that:

1. It will comply with all applicable State laws, regulations, policies, guidelines, and requirements with respect to the acceptance and use of State Funds;
2. It has the legal authority to receive and expend the State Funds;
3. It will enforce the provisions of Ordinance No. 2022-6 approving the Project;
4. It has exercised due diligence in certifying that the Project is a viable economic development initiative with potential long-term economic development benefits;
5. It will provide the EDD documentation and references to expertise it has relied upon in approving this Project upon receipt thereof or reliance

thereupon and copies of reports and documentation it receives from Earth Traveler;

6. It has entered into a PPA and has obtained all financial documentation necessary to protect the City's and the State's investments in this project;
7. 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 in Section 2 - Purpose of Agreement and Section 3 - Scope of Work, stated above;
8. It will notify the EDD of any Default within sixty (60) days of an event of Default. Further, the City shall provide the opportunity for any Default to be cured by Earth Traveler, in accordance with the PPA prior to termination thereof;
9. 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 interest, 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 require Earth Traveler to incorporate in all contracts or subcontracts a provision prohibiting such interest pursuant to this certification; and
10. It has complied with Article IX, Section 14 of the New Mexico Constitution, known as the "anti-donation clause."

SECTION 6. EDD RESPONSIBILITIES:

EDD shall:

1. Transfer an amount not to exceed One Hundred Thousand Dollars and No Cents (\$100,000.00) from the Appropriation to the City for expenditures made to implement the Project; and
2. At the EDD's discretion, review and audit the Project if it is deemed to be necessary or desirable.

SECTION 7. TERM OF AGREEMENT:

This Agreement shall become effective on the date it is fully executed and shall terminate when Earth Traveler documents to the City's satisfaction that the required Economic and Development Goals, as defined in the PPA, have been satisfied, or until the PPA is otherwise terminated or expires, whichever occurs earlier.

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 immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, *et seq.* The Parties 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:

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

2. The City Finance Department 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 the EDD may require.
3. If, upon the expiration of the Project or the termination date of this Agreement, any surplus Funds are possessed by the City, the City shall return said Funds to the EDD for disposition in accordance with law.

SECTION 10. STRICT ACCOUNTABILITY:

The City Finance Department 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 to the EDD the quarterly employment report in the form of an affidavit signed by an officer of Earth Traveler, which Earth Traveler is required to submit quarterly to the City. The City Office of Economic Development shall submit to the EDD the quarterly reports that Earth Traveler is required to submit to the City, including copies of Form ES-903 (or any form substituted therefor by the State), filed by Earth Traveler with the New Mexico Department of Workforce Solutions. The City Office of Economic Development shall submit to the EDD a final report respecting direct and indirect job creation and retention attributable to the State appropriation on or before the termination of this Agreement. 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 the EDD.

SECTION 12. NOTICES; REPRESENTATIVES OF THE PARTIES:

Any notice required to be given to a 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.

If to the EDD:

Attn: Mark Roper
NM Economic Development
Department, Division Director
Joseph Montoya Building
1100 St. Francis Drive
Santa Fe, New Mexico 87505
Mark.Roper@state.nm.us

If to the City:

Attn: Rich Brown
Director, Office of Economic
Development
500 Market Station, Suite 200
Santa Fe, New Mexico 87504
rdbrown@santafenm.gov

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.

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

CITY OF SANTA FE:




Alan Webber, Mayor

ATTEST:


Kristina Mihaljevic, City Clerk

APPROVED AS TO FORM:



[Andrea Salazar \(Apr 29, 2022 10:18 MDT\)](#)
Andrea Salazar, Assistant City Attorney

APPROVED AS TO FINANCE:



[Mary McCoy \(Apr 29, 2022 10:18 MDT\)](#)
Mary McCoy, Finance Director

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

By: _____

Alicia J. Keyes, Cabinet Secretary

Date: _____

By: _____

Jesika Ulibarri

Its: General Counsel, certifying legal sufficiency

**CITY OF SANTA FE
ECONOMIC DEVELOPMENT
PROJECT PARTICIPATION AGREEMENT**

THIS PROJECT PARTICIPATION AGREEMENT (“Agreement”) is made and entered into this 27th day of April, 2022, by and between the City of Santa Fe, a municipal corporation (hereinafter referred to as the “City”) and Earth Traveler Teardrop Trailers, LLC, a corporation registered as a for-profit corporation in the State of New Mexico (hereinafter referred to as the “Qualifying Entity”, “Q/E”, or Earth Traveler).

WHEREAS, the State of New Mexico has deemed it in the best interest of the citizens of New Mexico to enact the Local Economic Development Act (LEDA), NMSA 1978, §§ 5-10-1, et seq., to provide public support for economic development to foster, promote and enhance local economic development efforts;

WHEREAS, LEDA explicitly permits municipalities to assist qualifying entities with economic development projects through the use of public resources;

WHEREAS, the City has complied with LEDA requirements by adopting an economic development plan ordinance incorporating within that ordinance its community economic development plan (SFCC 1987, § 11-11), called the Community Economic Development Plan and Economic Development Strategy for Implementation dated May 21, 2008;

WHEREAS, Earth Traveler, is a “qualifying entity” under LEDA and the Economic Development Ordinance in that it is an outdoor recreational products developer which is a “manufacturer” of products that creates economic base jobs. SFCC (1987), § 11-11.4 (A) ; NMSA 1978, § 5-10-3 (L)(1);

WHEREAS, all requirements under the Economic Development Plan Ordinance to enter into this Agreement have been fulfilled;

WHEREAS, the Q/E has submitted an application (“Application”) to the City for assistance under the Economic Development Plan Ordinance (SFCC 1987 §11-11) and for the City to act as fiscal agent for the grant monies (“Grant Monies”) granted by the City through its Office of Economic Development and through the New Mexico Economic Development Department;

WHEREAS, in the Application, the Q/E proposed an “economic development project” compliant with LEDA, in that it will use the Grant Monies for qualified reimbursable LEDA expenses on the facility (the “Project”) located at, 3217 Richards Lane, Unit B, Santa Fe, NM 87507;

WHEREAS, the City has determined that it is in the interest of the welfare of the citizens of the City to enter into this Agreement for the purposes of effectuating its economic development plan;

WHEREAS, the City's total maximum contribution of Grant Monies to the Project is Twenty Five Thousand Dollars and No Cents (\$25,000.00); the State of New Mexico's maximum contribution to the Project will not exceed One Hundred Thousand Dollars and No Cents (\$100,000.00) from the New Mexico LEDA Fund ("NM LEDA Fund") pursuant to an intergovernmental agreement between the City and the State to be executed soon after the execution of this Agreement; and the Q/E shall contribute up to One Million Three Hundred Seventy-One Thousand Six Hundred Nineteen Dollars (\$1,371,619) to the Project; and

WHEREAS, the Q/E will spend up to Eight Hundred Thirty Eight Thousand Three Hundred Seventy-Two Dollars and No Cents (\$838,372.00) in tenant improvements and lease payments by approximately January 31, 2032;

WHEREAS, the Project addresses the following objectives from the Santa Fe Economic Development Implementation Strategy as adopted by City Resolution 2008-42: "Diversify the Santa Fe Economy with an emphasis on high wage jobs and career paths;" "Pursue overall affordability where local wages can support living in Santa Fe (reduce leakage);" and "Bolster Santa Fe's leadership position and/or potential in innovation."

WHEREAS, this Agreement clearly provides the following as required by LEDA and the Economic Development Plan Ordinance: (1) the economic development goals of the Project; (2) the contributions of the City, State and the Q/E; (3) the specific measurable objectives upon which the performance review will be based; (4) a schedule for project development and goal attainment; (5) the security being offered for the City's and State's investment; (6) the procedures by which the project may be terminated and the City's investment recovered; (7) the time period for which the City shall retain an interest in the Project; (8) a "sunset" clause after which the City shall relinquish interest in and oversight of the Project; and (9) that the Qualifying Entity is a qualifying entity.

NOW THEREFORE, in consideration of the foregoing, the following and other good and valuable consideration, the receipt of which is hereby acknowledged the undersigned parties hereby agree as follows.

1. CONTRIBUTIONS OF THE CITY, THE STATE AND THE Q/E

A. Contributions of the State and the City. The maximum Grant Monies that may be disbursed under this Agreement shall be One Hundred Twenty Five Thousand Dollars and No Cents (\$125,000.00) as described below:

(1) City Contribution. This Agreement governs the City's contribution to the Project. The City shall reimburse the Q/E in the amount of up to Twenty Five Thousand Dollars and No Cents (\$25,000.00) for LEDA eligible expense reimbursements.

(2) State Contribution: This Agreement governs the State's contribution of up to One Hundred Thousand Dollars and No Cents (\$100,000.00) from the NM LEDA Fund by way of the New Mexico Economic Development Department. The City will serve as fiscal agent pursuant to the Intergovernmental Agreement between the City and State, which is in substantial form as **Attachment A**, the terms of which are incorporated into this Agreement.

(3) Disbursement of Grant Monies: Dispersal of the NM LEDA Funds by the State and the City's economic development funds are contingent upon the following:

(a) The City and the New Mexico Economic Development Department shall execute an intergovernmental agreement for the State to grant up to One Hundred Thousand Dollars and No Cents (\$100,000.00) to the City as fiscal agent for the Project; and

(b) The Q/E shall submit to the City for review, a cover letter, invoice, proof of payment, as necessary for reimbursement as set forth in Table below. Disbursement shall be made on a reimbursement basis of eligible costs under the LEDA, as further limited to Lease Payments:

<i>State of New Mexico and City of Santa Fe LEDA Disbursement Schedule</i>		
<u>Tranche</u>	<u>Amount of State and City Contribution Available for Disbursement/Tranche</u>	<u>Disbursement Performance Milestone</u>
1	\$75,000 State of New Mexico	Hire and maintain one FTE for three months, LEDA eligible expenses following execution of ordinance.
2	\$25,000 State of New Mexico \$25,000 City of Santa Fe	By December 31, 2023, hire and retain three (3) additional employees hired between January 1, 2022 and December 31, 2023 for a total employee count of six (6) and submit proof of payment invoice for LEDA-eligible expenses up to remaining LEDA Award.

It is expressly understood that any costs eligible for reimbursement must be incurred after this Agreement is in effect.

(c) The City shall reimburse to the Q/E up to Twenty-Five Thousand Dollars and No Cents (\$25,000.00) in City Grant Monies. The City monies will be available for disbursement as identified in the table above.

B. Contributions of the Q/E.

(1) Financial Investment: The Q/E shall contribute up to One Million Three Hundred Seventy-One Thousand Six Hundred Nineteen Dollars and No Cents (\$1,371,619.00) or more in matching funds to complete the Project.

(2) Project Management: Unless otherwise specified in this Agreement, the Q/E shall be responsible for managing all parts of the Project.

(3) Direct Economic Output: The Project is anticipated to generate Seven Million Six Hundred Eighty Seven Thousand Three Hundred Thirty-Four Dollars (\$7,687,334) in direct salaries for existing and expanded operations over ten years (See **Attachment B**). The total estimated direct economic output for the expansion of the facility is Three Million One Hundred Fifty-Seven Thousand Six Hundred Forty-Six Dollars (\$3,157,646) over ten years, as is further described in the Fiscal Impact Analysis. (See p. 5 of **Attachment B**).

(4) Expanded Tax Base: As a result of the completion of the Project, the Q/E is expected to generate contributions to the City's tax base, as projected in the Fiscal Impact Analysis. Net benefits for the City generated by the project (including property taxes, gross receipts taxes, utility fees, utility franchise fees, lodger's taxes, and other use taxes) are estimated to be Nine Hundred Seventy Three Thousand, Three Hundred Eighty-Three Dollars (\$973,383) over ten years. (See p. 14 of **Attachment B**.)

(5) Proportional Investment: The Q/E at its discretion may decide to not accept the entire One Hundred Twenty Five Thousand Dollars (\$125,000) in Grant Monies for the Project. If the Q/E does not accept the entire Grant Monies, then the Q/E's required capital investment and job creation requirements would then decrease proportionally to the level of Grant Monies accepted. The Q/E shall notify the City 30 days prior to its decision.

2. PERFORMANCE REVIEW AND CRITERIA – ECONOMIC DEVELOPMENT GOALS

A. Economic Development Goals. The following Economic Development Goals shall be fulfilled by the Q/E:

(1) The Q/E shall hire new employees in accordance with the schedule set forth in the Job Creation Commitment and Schedule. See **Attachment C**. The Q/E presently employs zero full-time workers and by January 31, 2023, the Q/E shall employ at least three (3) new employees in the City of Santa Fe, for a total of 3 employees. All new employees shall be paid at least an average hourly wage of \$17.00.

(2) By January 31, 2031, the Q/E shall employ no fewer than twenty (20) new employees, while retaining the prior employment figures, for a total of 20 jobs in the City of Santa Fe. All new employees shall be paid in accordance with the payroll data points in **Attachment C**.

(3) The Q/E's contribution as set forth in Paragraph 1.B herein is incorporated into the Economic and Development Goals.

B. Reports; Certifications; Review.

- (1) Quarterly Reports. During the term of this Agreement, the Q/E shall provide to the Office of Economic Development quarterly reports due on January 31st, April 30th, July 31st, and October 31th of each year for the preceding quarter's job report filed to the New Mexico Department of Workforce Solutions. The Q/E's quarterly reports shall clearly indicate how the Q/E has met the job creation prerequisites in **Attachment A**. Quarterly reports shall be in the form of an affidavit signed by an officer of the Q/E, see example **Attachment D**. Quarterly reports shall include a copy of FORM ES-903a, or an equivalent document as required by the New Mexico Department of workforce Solutions, provided by the Q/E to the City to demonstrate compliance with this Agreement at each review cycle. In the quarterly report, the Q/E shall include number of new jobs created and filed that quarter, the average minimum annual salary of the new jobs, the total number of jobs, total payroll, and the amount of the Q/E's total capital investment, with line items of building improvements and lease payments, to date. The first quarterly report shall certify the number of baseline jobs as of January 31, 2022.

Additionally, Project Party will provide to the State of New Mexico Economic Development Department their most recent quarterly Department of Workforce Solutions 903A Report or its equivalent on a quarterly basis beginning with January 31, 2022 and continuing on April 30, July 31, and October 31 of each year until the completion of this agreement.

- (2) Annual Reports. The City may require the Q/E to provide annual reports or a presentation to the City's governing body and the Economic Development Advisory Committee (EDAC). The City will give the Q/E a minimum of 30 days' notice if a report or presentation to the governing body or EDAC is required. City staff shall review these reports to ensure the Q/E's compliance with this Agreement in accordance with the Job Creation Commitment and Schedule.

- (3) Expanded Tax Base Report: Within a reasonable time after completion of the construction of the facilities, but in any event by the next quarterly report, the Q/E shall provide to the City a written report on the construction jobs and wages created by the construction portion of the project..

- (4) Certification of Non-Interest. The Q/E shall certify to the City that to the Q/E's best information, knowledge and belief and after reasonable inquiry, 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 year thereafter, has any interest, direct or indirect, in the Q/E or 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 Q/E shall certify that such a provision shall be included in all contracts and subcontracts in connection with the Project.

3. RECAPTURE PROVISIONS FOR PUBLIC MONIES

A. If any Economic Development Goal set forth in Paragraph 2.A is not met and documented in a manner deemed satisfactory by the City, the Q/E shall be deemed in default (“Default”) and within 60 days of the City receiving the quarterly report with the information of such Default, the City shall send a written Notice of Default to the Q/E informing the Q/E how many days it has to cure the Default or repay the Grant Monies disbursed in proportion to the Economic Development Goals not yet achieved.

B. If the Q/E remains noncompliant after any applicable cure period, then the City may elect to pursue any and all remedies available in law or equity, including but not limited to initiating foreclosure of the security interest and/or demanding timely repayment by the Q/E of the Grant Monies in proportion to the unmet goals, as the City in its sole discretion may determine subject to reasonable calculations.

C. In the event the Q/E ceases operations and closes its facility before the end of year three of this Agreement, the Q/E shall be deemed in Default and the Q/E shall reimburse 100% of all Grant Monies disbursed to the Q/E to the City of Santa Fe Economic Development Fund as identified in SFCC 1987 11-14.

4. Q/E BUYOUT

A. The Q/E may, at its election, buyout and thereby terminate this Agreement by repaying in full to the City all Grant Monies. Such repayment by the Q/E shall be without penalty until and unless the City initiates claw back of the Grant Monies, at which point costs, expenses (including City staff time) and attorney’s fees will accrue to the repayment amount. The City shall not initiate such a claw back during the period from the time the Q/E sends the notice described in Section 4(c) until the time that the repayment contemplated by the notice is not made in accordance with the notice.

B. The Q/E must send prior written notice to the City of the Q/E’s intent to repay in full the Grant Monies at least 45 days prior to the Q/E’s repayment. The City’s receipt of the Q/E’s repayment of all disbursed Grant Monies (including any costs, fees and expenses resulting from claw back proceedings) constitutes satisfaction of the Q/E under this Agreement, upon which the Q/E may request release of the security interest, and the City will release the security interest within a reasonable time after receiving the Q/E’s written request.

C. Within 30 days of receiving such notice from the Q/E, the City will notify the New Mexico Economic Development Department of the Q/E’s intent to exercise the buyout clause. The City will reimburse the New Mexico Economic Development Department its portion of the repaid Grant Monies within 60 days after the City receives the repaid monies from the buyout.

5. SECURITY FOR CITY’S INVESTMENT; CLAWBACK

A. This is a grant project only, with the City acting as fiscal agent. The Q/E has no loan obligations for repayment to the City or State, but is obligated to fulfill the Economic Development Goals of this Agreement; however, if the Q/E is found by the City to be in Default, then the City may elect to demand financial reimbursement by the Q/E.

B. The Grant Monies must be secured in a manner that it may be clawed back if the Q/E fails to meet its performance goals under this PPA. As security for fulfilling the Economic Development Goals, before the City may disburse any appropriations to the Q/E, the amount of Public Monies to be reimbursed shall be securitized in a manner satisfactory to the City.

C. A condition precedent to this PPA is securitization of the Grant Monies which may be if the Q/E fails to meet its performance goals under this PPA. Before the City may distribute any appropriations to the Q/E the amount of Public Monies to be reimbursed shall be securitized in a manner satisfactory to the City. The securitization method is an irrevocable stand-by letter of credit from an issuing financial institution, with the City as beneficiary, from which the City shall have the right to draw down funds upon the City's presentation of a demand for payment and evidence of Q/E's Default ("Irrevocable Letter of Credit"). The Irrevocable Letter of Credit shall have a term that extends to the term of this Agreement (either via the full duration in the base term or via automatic one-year extensions terminable at the sole option and discretion of the City). At any given time, the Irrevocable Letter of Credit must secure an amount, and the City shall be able to draw down an amount, at least equal to the amount of appropriations made to the Q/E for the Project, the maximum being \$125,000. Funds from the Irrevocable Letter of Credit may be drawn in one drawing or from time-to-time in one or more partial drawings on or before the expiration date. Attached hereto and incorporated herein is **Attachment C**, which sets forth the claw back terms.

D. During the term of this Agreement, the Q/E may request a full or partial release of the security interest with the substitution of collateral, repayment of the disbursed appropriation, or proof that the Q/E has met the Economic Development Goals, in part or in whole, under this Agreement. Any full or partial release of the security interest will be proportional to the value of the substitute collateral, repayment, or the portion of Economic Development Goals met which are no longer subject to claw back and according to Attachment A.

E. Acceptance of a method of securitization and of substitute collateral or proof of performance goals shall be within the City's sole and absolute discretion.

6. **TERM; SUNSET**

This Agreement shall remain in force for 10 years from the execution date of the Agreement, or until conditions of the Agreement are performed in full or to the reasonable satisfaction of the City, whichever is earlier. In the event the Q/E performs or exceeds the required performance levels contained in this Agreement, as may be reasonably determined by the City, this Agreement may be terminated at that time in writing by the City pursuant to Paragraph 7, below.

This Agreement will not be deemed terminated and this Agreement will remain in effect unless and until the City reasonably determines that the objectives under this Agreement have been fulfilled, in which case the City will provide a closure letter to the Q/E.

7. **TERMINATION**

This Agreement may be terminated by the City upon written notice delivered to the Q/E at least 45 days prior to the intended date of termination in the event that the Q/E ceases to operate the Project in accordance with the terms of this Agreement. If the Q/E is found to not be in substantial compliance with the Agreement, the City reserves the right to terminate the Agreement and recall in full the Grant Monies.

The Q/E may terminate the Agreement by pre-paying in full to the City and without penalty any Grant Monies disbursed to the Q/E. The Q/E must send a written letter to the City giving notice of its intent to pre-pay the Grant Monies in full within 45 days prior to the Q/E's intent to repay in full the Grant Monies.

8. **STATUS OF THE Q/E**

The Q/E, and its agents and employees are not employees of the City. The Q/E, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles or any other benefits afforded to employees of the City as a result of this Agreement. The Q/E shall be solely responsible for payment of wages, salaries, and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

9. **ASSIGNMENT AND SUCCESSORS; BINDING EFFECT**

A. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors in interest by way of merger, acquisition, or otherwise and their permitted assigns.

B. The Q/E shall not assign or transfer any of its rights, privileges, obligations or other interest under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other matter, including any claims for money due or to become due under this Agreement, without prior written approval of the City.

C. Any purported assignment of rights in violation of subsection (B) is void.

10. **INDEMNIFICATION; LIABILITY**

It is expressly understood and agreed by and between the Q/E and the City that the Q/E shall defend, indemnify, and hold harmless the City for all losses, damages, claims or judgments on account of any suit, judgment, execution, claims, actions, or demands whatsoever resulting from the Q/E's actions or inactions as a result of this Agreement, as well as the actions or

inactions of Q/E's employees, agents, representatives and subcontractors as a result of this agreement. The Q/E shall maintain adequate insurance in at least the aggregate maximum amounts which the City could be liable consistent with the provisions of the New Mexico Tort Claims Act. It is the sole responsibility of the Q/E to be in compliance with the law.

11. **INSURANCE**

A. The Q/E, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability with respect to the Project, in a form and with an insurance company reasonably acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City shall be notified no less than 30 days in advance of cancellation for any reason. The Q/E shall furnish the City with a copy of a "Certificate of Insurance" with respect to such coverage as a condition prior to performing under this Agreement.

B. The Q/E shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Q/E's employees throughout the term of this Agreement. The Q/E shall provide the City with evidence of its compliance with such requirement.

12. **NEW MEXICO TORT CLAIMS ACT**

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, *et seq.* NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

13. **THIRD PARTY BENEFICIARIES**

By entering into this Agreement, the parties do not intend to create any right, title, or interest in or for the benefit of any person other than the City and the Q/E. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

14. **RECORDS AND AUDITS**

The Q/E shall maintain and keep in its possession throughout the term of this Agreement and for a period of six years thereafter, all related records, including but not limited to, all financial records, requests for proposals (RFPs), invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources

budgeted hereunder, the purpose for which such funds were used, and other such records as the City or the State shall proscribe. The Q/E shall be strictly liable for receipts and disbursements related to the Project Grant Monies. These records shall be subject to inspection by the City, the New Mexico Economic Development Department, and the State Auditor upon notice within five business days. The City shall have the right to audit billings both before and after payment; payments under this Agreement shall not foreclose the right of the City to recover excessive illegal payments.

15. **APPROPRIATIONS**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Governing Body and the New Mexico Economic Development Department on behalf of the Q/E to the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Governing Body and the New Mexico Economic Development Department on behalf of the Q/E to the City, this Agreement shall terminate upon written notice being given by the City to the Q/E.

16. **RELEASE**

The Q/E, upon final fulfillment by the City of its obligations under this Agreement, releases the City, its officers and employees, from all liabilities, claims, and obligations whatsoever arising from or under this Agreement. The Q/E agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Q/E has express written authority to do so, and then only within the strict limits of that authority.

17. **CONFIDENTIALITY**

Any confidential information provided to or developed by the Q/E in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Q/E without the prior written approval of the City.

18. **CONFLICT OF INTEREST**

The Q/E warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement. The Q/E further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

19. **APPLICABLE LAW; CHOICE OF LAW; VENUE**

The Q/E shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Q/E agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or

suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

20. **AMENDMENT**

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

21. **SCOPE OF AGREEMENT**

This Agreement incorporates all the agreements, covenants, and understanding between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said performance. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the Agreement.

22. **REPRESENTATIONS AND WARRANTIES**

A. The Q/E hereby warrants the Q/E is and will remain in compliance with the Americans with Disabilities Act of 1990 (the “ADA”) and the regulations promulgated thereunder, 29 CFR 1630. The Q/E hereby agrees to defend, indemnify and hold harmless the City from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of the Q/E, its contractors and subcontractors, agents, successors, assigns, officers or employees to comply with provisions of the ADA or the rules and regulations promulgated thereunder.

B. The Q/E agrees to comply with the applicable provisions of local, state and federal equal employment opportunity statutes and regulations.

C. The Q/E shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

23. **APPLICABLE LAW**

This Agreement shall be governed by the ordinances of the City of Santa Fe and the laws of the State of New Mexico.

24. **NON-DISCRIMINATION**

During the term of this Agreement, the Q/E shall not discriminate against any employee or applicant for an employment position to be used in the performance by the Q/E hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

25. **SEVERABILITY**

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

26. **NOTICES**

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

If to the CITY OF SANTA FE:
City of Santa Fe
Attn: Director of Office of Economic Development
P.O. Box 909
Santa Fe, NM 87504

If to QUALIFYING ENTITY:
Attn: Laura Esteves De Irlanda
Earth Traveler Teardrop Trailers LLC
3217 Richards Lane, Unit B
Santa Fe, NM 87507

26. **HEADINGS**

The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

27. **ATTACHMENTS**

All attachments are fully incorporated herein and made a part of this Agreement.

28. **COUNTERPARTS**


This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

29. **REPRESENTATION ON AUTHORITY OF SIGNATORIES**

The signatory for the Q/E represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. The Q/E represents and warrants that the execution and delivery of the Agreement and the performance of the Q/E's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CITY OF SANTA FE:



Martin Webber, Mayor

ATTEST:



Kristina Bustos Mihelich, City Clerk

APPROVED AS TO FORM:



[Andrea Salazar \(Apr 29, 2022 10:18 MDT\)](#)
Andrea Salazar, Assistant City Attorney

APPROVED AS TO FINANCE:



[Alexis Lotero \(Apr 29, 2022 15:00 MDT\)](#)
Mary McCoy, Finance Director

Business Unit Line Item

QUALIFYING ENTITY:
Earth Traveler Teardrop Trailers LLC

By: _____
Laura Esteves De Irlanda
Owner

Employer ID Number: _____
City of Santa Fe Business ID Number: _____

[ACKNOWLEDGEMENT FOLLOWS]

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

Notarized Affidavit

This instrument was acknowledged before me on this ____ day of _____, 2022,
by LAURA ESTEVES DE IRLANDA, as the owner of Earth Traveler Teardrop Trailers LLC a
domestic for profit corporation.

Notary Public

My commission expires:

Attachment C

<i>Job Creation Commitment and Schedule (Net New Jobs)* ❖</i>						
<u>Year</u>	<u>Net New Jobs Hiring Target</u>	<u>Min new Job target*</u> <small>*representing 90% of total net new jobs</small>	<u>Payroll for New Jobs</u>	<u>Job Determination Period</u>		<u>Clawback % on Job Creation Shortfall^{^^^}</u>
1	3	2	\$183,840	Ordinance Date	1/31/22	100%
2	3+3=6	2+3=5	\$375,034	01/01/22	1/31/23	100%
3	6+3=9	5+3=8	\$573,801	01/01/23	1/31/24	100%
4	9+3=12	8+3=11	\$780,370	01/01/24	1/31/25	100%
5	12+2=14	11+2=13	\$915,374	01/01/25	1/31/26	75%
6	14+2=16	13+2=15	\$933,681	01/01/26	1/31/27	50%
7	16+2=18	15+2=17	\$952,355	01/01/27	1/31/28	50%
8	18+2=20	17+1=18	\$971,402	01/01/28	1/31/29	25%
9	20	18	\$990,830	01/01/29	1/31/30	25%
10	20	18	\$1,010,647	01/01/30	1/31/31	25%
Add'l Notes:						
<ol style="list-style-type: none"> 1. 2. Clawback is the shortfall of jobs created below the minimum against the amount of money received – see sample calculation below. 						
Starting Headcount: 0 as of February 2022						

^{^^^} Clawback percentage is calculated on job creation shortfall at expiration or termination of the PPA, whichever is earlier. Clawback formula = (Job Creation % Shortfall) x (Cumulative Grant Monies Distributed), where Job Creation % Shortfall is $(1 - (\text{actual jobs} / \text{cumulative hiring target})) * 100\%$.

❖ Cumulatively, the retained and new jobs must maintain a minimum average wage of \$24.29 per hour not including additional benefits (“Average Wage”). Wages of jobs retained from prior years must equal or exceed the wage requirements for those jobs as described herein. Only New Mexico-based employees (only employees paying New Mexico income taxes) count towards job creation.

Attachment D
Earth Traveler Teardrop Trailers, LLC
Sample Affidavit Quarterly Report

Exhibit D – Example Affidavit

Whereas agreed by the Project Participation Agreement (PPA), dated XXX between the City of Santa Fe (City) and Earth Traveler Teardrop Trailers, LLC (QE), the QE will provide quarterly reports in the form of a signed affidavit indicating how the QE has met the Job Creation Schedule in **Attachment C**. I, Laura Esteves de Irlanda, Co-Founder, make an oath and say that:

1. As of XXX (date) the QE had fully occupied the facility.
2. See attached schedule of new hires in xxx (quarter). The average annual salary for full-time equivalent employee (FTE) new hires is XXX. Note: an FTE is defined as 32 hours per week in **Attachment C** of the project participation agreement.
3. As of XXX (date) the QE has a cumulative number of new employees of XXX (number of newly hired employees).
4. As of XXX (date) the QE has retained XXX number of employees for a total head count of XXX (employees).
5. Certification of Conflict of Interest: I, Laura Esteves de Irlanda, certify to the City that 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 year thereafter, shall have any interest (direct or indirect), in the QE or any contract or subcontract, or the process thereof, for work to be performed in conjunction with the Project that is the subject of this agreement.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF.

Print Name of Representative

Date

Signature of Representative

SUBSCRIBED AND SWORN TO ME

On the ___ day of _____

Notary Public

Attachment D
Earth Traveler Teardrop Trailers, LLC
Sample Affidavit Quarterly Report

My commission expires: _____