

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT
AND DOÑA ANA COUNTY**

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 Doña Ana County (the “County”), a political subdivision of the State of New Mexico, and collectively referred to as “the Parties” with reference to the following facts.

RECITALS:

WHEREAS, the legislature of the State of New Mexico appropriated funds to the Economic Development Department for 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 §5-10-14 (2020) (“LEDA”), is to provide “public support for economic development to foster, promote and enhance local economic development efforts”; and

WHEREAS, the County has adopted LEDA by Ordinance No. 246-2009, which established the Doña Ana County Economic Development Plan that promotes economic development within the County; and

WHEREAS, Oro, LLC (hereinafter “Qualifying Entity”) has entered into a Local Economic Development Project Participation Agreement (hereinafter “PPA”) with the County. A copy of the County’s Ordinance and PPA are attached hereto and incorporated herein; and

WHEREAS, pursuant to the terms of that PPA, the Qualifying Entity will construct and occupy a value-added agricultural processing facility in Santa Teresa in Doña Ana County, New Mexico (the “Project”) and will employ at least 49 full-time persons by December 31, 2028; and

WHEREAS, EDD and the County 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.

SECTION 1. PURPOSE OF AGREEMENT:

The purpose of this Agreement is to define the responsibilities of the County and EDD for the oversight and administration of up to \$750,000 of the Appropriation for the Project. It is the intent of the parties that the County will receive an amount up to Seven Hundred Fifty thousand dollars (\$750,000) to implement the Project. The Parties agree that any and all State funds received will be accounted for by the County as the fiscal agent for EDD in accordance with the procedures the County will use to account for its own funds and property used to implement the project, or any properties acquired or developed by the County as a result of implementation of the Project will be used by the County for economic development purposes only.

SECTION 2. SCOPE OF WORK:

The County will act as fiscal agent for up to \$750,000 of the Appropriations for the Project. Pursuant to Section 5-10-3(D) of LEDA, EDD will transfer up to \$750,000 to the County for costs and expenses associated with the Project. In exchange for the contribution, the Qualifying Entity certifies it will employ at least 49 full-time employees at the facility by December 31, 2028.

All the terms, conditions, and requirements set forth under the PPA are incorporated into this Agreement. EDD and the County agree that failure of the Qualifying Entity to create the number of new full-time jobs described in the PPA or otherwise meet its obligations set forth under the PPA shall require the County to apply the applicable Clawback as provided for by the PPA. In the event that the Qualifying Entity does not remit to the County the monies owned as provided for by the PPA then such violation will require that the County foreclose

on the security interest after any cure period granted to the Qualifying Entity. Any monies recovered by the County as a result of payment made by the Qualifying Entity from the application of the applicable Clawbacks shall be returned to EDD within 30 calendar days. Any foreclosure of the security interest shall be returned to EDD. The Qualifying Entity will deliver to the County contemporaneously with the execution of the PPA a form of security acceptable to all parties, which will be incorporated into this Agreement (the "Security").

SECTION 3. DOÑA ANA COUNTY RESPONSIBILITIES:

The County shall:

- A. Pay the costs and expenses incurred for the Project from the Appropriation;
- B. Provide to EDD supporting documentation in a format acceptable to EDD for activities associated with the Project. Any funds recaptured by the County as the result of enforcing the provisions of the PPA shall be returned to EDD;
- C. The County shall notify EDD in writing of any failure to meet requirements (default) of the PPA by the Qualifying Entity within 15 business days of learning of the event of default;
- D. Serve as Fiscal Agent for the funds transferred to it under this Agreement;
- E. Distribute the funds transferred to the County by EDD to the Project; account for receipts and disbursements of said monies; and provide EDD with the required financial documentation pertaining to this disbursement;
- F. Submit all required and reasonably requested documentation to EDD including the endorsed LEDA Ordinance approved by the County Commission accepting the Project as qualifying entity for LEDA, with the accompanying endorsed Project Application and PPA entered into by the County and the Qualifying Entity, a fully executed copy of the Security, and copies of invoices and other documentation as required by EDD within the time required;

- G. Not impose any obligations on EDD with respect to the administration of this Project, other than the transfer of funds as described herein; and
- H. Initiate and prosecute litigation as necessary to enforce the terms of the PPA, at EDD's cost, if necessary.

SECTION 4. COUNTY CERTIFICATIONS:

As Fiscal Agent, the County 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 the Appropriation;
- B. It has the legal authority to receive and expend the Appropriation;
- C. It will enforce the provisions of Ordinance No. 246-2009 and the County's Economic Development Plan;
- D. It has exercised due diligence in confirming that the Project is a viable economic development initiative with potential long term economic development benefits based on information provided by EDD;
- E. It will provide to EDD upon request all documentation and references to expertise it has relied upon in approving this Project upon receipt thereof or reliance thereupon and also with copies of all reports and documentation County receives from the Qualifying Entity;
- F. It has entered into a PPA with the Qualifying Entity and has obtained from the NM EDD all financial documentation necessary to protect the County's and State's investments in the Project;
- G. 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;
- H. It will notify EDD of any default on the part of the Qualifying Entity within 15 business days of learning of any 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 County or its designees or agents, no member of the governing body of the locality of which the Project 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 County shall incorporate in all contracts or subcontracts a provision prohibiting such interest pursuant to this certification; and
- J. It has complied with Article IX, Section 14, of the New Mexico Constitution known as the “anti-donation clause.”

SECTION 5. EDD RESPONSIBILITIES:

EDD shall:

- A. Transfer to the County for costs and expenses incurred for the Project an amount not to exceed seven hundred fifty thousand dollars (\$750,000). The funds shall be used only for the purpose stated in this Agreement;
- B. Monitor job creation by the Qualifying Entity and report the number of jobs created to the County each quarter up to December 31, 2028.
- C. At its discretion, review and audit the Project if it is deemed to be necessary or desirable; and
- D. Reimburse the County for any costs associated with litigation to enforce the terms of the Security and the Clawback provisions.

SECTION 6. TERM OF AGREEMENT:

This Agreement shall become effective on the date it is fully executed and shall terminate on January 31, 2029 or when all of the obligations of the PPA have been fulfilled.

SECTION 7. 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 County 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 8. 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 County 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 the County, the County shall return said funds to EDD for disposition in accordance with law.

SECTION 9. STRICT ACCOUNTABILITY:

The County 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 10. REPORTS:

The Qualifying Entity shall submit quarterly reports regarding employment to the EDD during the life of this Agreement and EDD shall share those reports and any

other information obtained respecting job retention and creation attributable to the State appropriation with the County. The County shall coordinate with EDD to conduct an annual performance review of the Project.

SECTION 11. 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 Department
PO Box 20003
Santa Fe, New Mexico 87504

To the COUNTY:

Christina Ainsworth
Director- Community Development
Doña Ana County
845 N. Motel Blvd.
Las Cruces, NM 88007

SECTION 12. AMENDMENTS:

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

SECTION 13. GOVERNING LAW/VENUE:

This Agreement shall be governed by the laws of the State of New Mexico. The venue for any litigation shall be a competent court of jurisdiction located in New Mexico.

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

DOÑA ANA COUNTY, NEW MEXICO

By: _____

Name: Fernando R. Macias

Title: County Manager

Date: _____

APPROVED AS TO FORM

By: _____

Doña Ana County Attorney

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

By: _____

Alicia J. Keyes
Cabinet Secretary

Date: _____

APPROVED AS TO FORM

By: _____

Jesika Ulibarri
General Counsel