

CITY of ALBUQUERQUE

TWENTY SIXTH COUNCIL

COUNCIL BILL NO. O-25-96 ENACTMENT NO. _____

SPONSORED BY: Nichole Rogers, by request

ORDINANCE

APPROVING A PROJECT INVOLVING PACIFIC FUSION, LLC PURSUANT TO THE LOCAL ECONOMIC DEVELOPMENT ACT AND CITY ORDINANCE F/S O-04-10, THE CITY'S IMPLEMENTING LEGISLATION FOR THAT ACT, TO SUPPORT THE ACQUISITION, CONSTRUCTION AND IMPROVEMENT OF A FACILITY FOR THE COMMERCIALIZATION OF FUSION ENERGY PRODUCTION TO BE LOCATED IN ALBUQUERQUE, NEW MEXICO; AUTHORIZING THE EXECUTION OF A PROJECT PARTICIPATION AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE PROJECT INCLUDING THE APPROPRIATION OF FUNDS; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

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

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

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

WHEREAS, pursuant to the LEDA Ordinance, Pacific Fusion, LLC (the "Company"), has submitted to the Council and the Albuquerque Development

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1 Commission (the "Commission") an application (the "Application") requesting certain
2 economic development assistance for the acquisition, construction and improvement of
3 a facility for the commercialization of fusion energy production to be located in
4 Albuquerque, New Mexico, and which will include the addition of 174 new employees
5 (the "Project"); and

6 WHEREAS, the City will administer and disburse to the Company funds totaling
7 up to \$10,000,000, of which \$9,000,000 is to be received by the City from the State
8 Economic Development Department and \$1,000,000 are to be City funds; and

9 WHEREAS, the Act and the LEDA Ordinance require that the City and the
10 Company enter into a project participation agreement meeting the requirements of the
11 Act and the LEDA Ordinance; and

12 WHEREAS, City staff has worked with the Company to prepare, and has
13 negotiated the terms of, a project participation agreement (the "Agreement") and related
14 documents that will govern the relationship between the City and the Company with
15 respect to the Project; and

16 WHEREAS, the form of the proposed Agreement has been filed with the City
17 Clerk and presented to the Council; and

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

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

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

31 WHEREAS, the Commission has considered the Project and the proposed
32 Agreement and has recommended that the Council approve the Company's proposal;
33 and

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

5 WHEREAS, the City anticipates that the State will transfer to it, for subsequent
6 transfer to or on behalf of the Company pursuant to an intergovernmental agreement
7 between the City and the State, certain funds of the State that are available for the
8 Project; and

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

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

18 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
19 ALBUQUERQUE:

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

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

29 Section 3. THE PROJECT. The Project will consist of the acquisition,
30 construction and improvement of a facility for the commercialization of fusion energy
31 production to be located in Albuquerque, New Mexico, and which will include the
32 addition of 174 new employees, and the Company's commitment to operate the facility
33 within the City for a minimum of ten years.

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

7 Section 5. AUTHORIZATION AND APPROVAL OF THE PROJECT AND THE
8 AGREEMENT; APPROPRIATION OF FUNDS. The City hereby approves the Project
9 and the Agreement, which provides, among other things, that the City will administer
10 and disburse to the Company funds totaling up to \$10,000,000, of which \$9,000,000 is
11 to be received by the City from the State Economic Development Department and
12 \$1,000,000 are to be City funds, in exchange for which the Company will complete the
13 Project as specified in the Agreement. There is hereby appropriated for the Project up to
14 \$9,000,000 of funds received from the State Economic Development Department and
15 up to \$1,000,000 of City funds.

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

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

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

26 (C) The Mayor, Chief Administrative Officer, Chief Financial Officer,
27 City Treasurer, and City Clerk are further authorized to execute, authenticate and
28 deliver such certifications, instruments, documents, letters and other agreements,
29 including an intergovernmental agreement with the State Economic Development
30 Department, and any appropriate security agreements, and to do such other acts and
31 things, either prior to or after the date of delivery of the executed Agreement, as are
32 necessary or appropriate to consummate the transactions contemplated by the
33 Agreement.

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

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

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

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

