

# **CITY of ALBUQUERQUE**

## **TWENTY SIXTH COUNCIL**

**COUNCIL BILL NO. F/S O-25-106 ENACTMENT NO.**

**SPONSORED BY: Nichole Rogers, by request**

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, Indus Synergies Inc. (the "Company"), has submitted to the Council and the Albuquerque Development Commission (the "Commission") an application (the "Application") requesting certain

1 economic development assistance for a business accelerator project to be located in  
2 Albuquerque, New Mexico, and which will include the creation of 1,200 new  
3 employment opportunities (the "Project"); and

4 WHEREAS, the City will administer and disburse to the Company funds totaling  
5 up to \$5,750,000, of which \$5,000,000 is to be received by the City from the State  
6 Economic Development Department and \$750,000 are to be City funds; and

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

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

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

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

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

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

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

32 WHEREAS, the total amount of public money expended and the value of credit  
33 pledged in each fiscal year in which money is expended by the City for the Project (and

1 any other approved projects) pursuant to the Act does not and will not exceed ten  
2 percent of the general fund expenditures of the City in such fiscal year; and

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

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

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

16 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
17 ALBUQUERQUE:

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

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

27 Section 3. THE PROJECT. The Project will consist of the completion of a  
28 business accelerator enterprise to be located in Albuquerque, New Mexico, and which  
29 will include the creation of 1,200 new employment opportunities, and the Company's  
30 commitment to operate the facility within the City for a minimum of ten years, and the  
31 Company's commitment to hire New Mexico residents and encourage businesses  
32 benefitting from the Company's business accelerator to hire New Mexico residents.

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, 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 \$5,750,000, of which \$5,000,000 is to  
11 be received by the City from the State Economic Development Department and  
12 \$750,000 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  
14 to \$5,000,000 of funds received from the State Economic Development Department and  
15 up to \$750,000 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.

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

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

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

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

**Project Participation Agreement**

**City of Albuquerque and Indus Synergies Inc.**

**Local Economic Development Act Project**

This Project Participation Agreement is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2026 by and between the CITY OF ALBUQUERQUE, NEW MEXICO (the "City"), and INDUS SYNERGIES INC., a New Mexico corporation, d/b/a NMexus Center, with a place of business at 5700 University Boulevard SE, Suite 200, Albuquerque, New Mexico ("Indus Synergies"). Together, the City and Indus Synergies are the "Parties," and individually each a "Party."

WHEREAS, it is the policy of the City to aid and encourage the location of desirable business enterprises in the City and to facilitate a favorable governmental atmosphere for enriching the lives of its citizens by supporting the development of a healthy economy; and

WHEREAS, pursuant to the Local Economic Development Act, Sections 5-10-1 to 5-10-13 NMSA 1978 ("LEDA"), the City has adopted Ordinance No. F/S O-04-10 (the "LEDA Ordinance"), approving an economic development plan for the City and authorizing the City to consider applications for economic development assistance; and

WHEREAS, Indus Synergies has submitted to the City an application in the form attached to this Agreement as Exhibit A (the "Indus Synergies Application") proposing that, in exchange for certain LEDA assistance described below, Indus Synergies will undertake and complete a certain project, which is defined to include the following elements (the "Project"):

Indus Synergies, doing business as NMexus Center, is a state-supported innovation and business acceleration initiative designed to attract foreign direct investment, facilitate global technology transfer, and create high-value jobs across New Mexico's strategic sectors – advanced manufacturing, clean energy, aerospace, cybersecurity, biosciences, and ag-tech. The NMexus Center will be a world-class business accelerator and soft-landing platform for international companies seeking to establish and expand their presence in the United States (the "Facility"). Located strategically in the Mesa del Sol innovation district of Albuquerque, New Mexico, the NMexus Center offers a robust ecosystem of support services, including incubation, acceleration, infrastructure, government contracting assistance, and U.S. market entry guidance. Its primary goal is to catalyze foreign direct investment and foster global innovation. NMexus Center is a gateway for high-growth enterprises from Asia, Europe, and the Middle East. NMexus Center will connect businesses with market opportunities, incentive programs, capital sources, top-tier research institutions, and a growing talent pool across New Mexico. Upon finalization, the Project will bring more than 1,200 long-term, high-paying jobs to Albuquerque workforce development

programs, and increased regional economic activity. NMexus Center commits to hiring New Mexico residents, when possible, and encourage the businesses benefitting from the business accelerator to hire New Mexico residents. NMexus Center will have 42 employees, and the cohort companies will create over 1,150 jobs over the next five years. The average salary will be \$62,438.

WHEREAS, Indus Synergies estimates a total investment of approximately \$13,500,000 for the business accelerator initiative; and

WHEREAS, the Indus Synergies Application proposes that in exchange for Indus Synergies undertaking and completing the Project, the City funds obtained from the State Economic Development Department (the “State EDD”), pursuant to LEDA, in addition to local City LEDA funds, will be used to reimburse a portion of Indus Synergies’ lease payments at its facility in Mesa del Sol located in the City; and

WHEREAS, the City has determined that the cost benefit analysis with respect to the Project, based on assessments obtained by the City on the basis of information provided to the City by Indus Synergies, shows that the City will recoup the value of its contribution within ten (10) years; and

WHEREAS, the Indus Synergies Application clearly demonstrates that Indus Synergies, by completing the Project, will be making a substantive contribution to the community, as required by the LEDA Ordinance; and

WHEREAS, the total amount of public money expended and the value of credit pledged in each fiscal year in which that money is expended by the City for economic development projects pursuant to LEDA does not and will not exceed ten percent of the general fund expenditures of the City in that fiscal year; and

WHEREAS, the City anticipates receiving an appropriation of funds allocated from the State EDD with the direction of the State EDD to convey these funds to the benefit of Indus Synergies via LEDA; and

WHEREAS, LEDA and the LEDA Ordinance require the Parties to enter into a Project Participation Agreement meeting the requirements of LEDA and the LEDA Ordinance; and

WHEREAS, the City adopted Ordinance No. F/S O-25-106 on January 5, 2025 (the “Project Ordinance”) (i) finding that Indus Synergies is a qualifying entity as defined in Section 5-10-3(G) NMSA, (ii) approving the Indus Synergies Application for assistance with the Project pursuant to the LEDA Ordinance, which Application proposed that the City direct up to \$5,000,000.00 in funds

to be received from the State EDD (the “State Contribution”) and \$750,000.00 in funds to be committed by the City (the “City Contribution”), all to finance certain statutorily eligible expenses of the Project, and (iii) approving this Agreement.

NOW, THEREFORE, in consideration of these premises and the agreements by the Parties set forth herein, Indus Synergies and the City further agree as follows:

1. Goals and Objectives. The goals and objectives of the Project are to create and support an economic development project that fosters, promotes and enhances local economic development efforts. The goal is that the Project will provide job growth and career opportunities for Albuquerque-area residents and otherwise make a substantive contribution to the community as set forth in this Agreement and in the Indus Synergies Application.

2. Company Contribution. Indus Synergies shall complete the Project at an estimated cost of approximately \$16,000,000, and will facilitate the hiring and retention of employees as contemplated by this Agreement all in accordance with the schedule and other terms and conditions set forth in this Agreement. Indus Synergies will maintain the Project’s operations in Albuquerque for a minimum of ten (10) years. Indus Synergies will comply with all applicable laws in connection with the operation of the Project and will timely pay all personal property taxes with respect thereto.

3. The State Contributions; Procedure for Disbursement of the State Contributions. The City anticipates that the State Contribution of up to \$5,000,000 will be delivered to the City for subsequent disbursement to Indus Synergies following enactment of the Project Ordinance and execution of this Agreement and an intergovernmental agreement between the State and the City. The City will submit an invoice to the State and request transfer of the State funds. Upon receipt, the City will place the State Contribution into a separate account established in connection with the Project, as required by law. If, and only if, the City receives the State Contribution, the City will disburse the State Contribution to Indus Synergies in the following manner:

<b><i>State LEDA Disbursement Schedule</i></b>		
<u>Tranche</u>	<u>Amount of State Contribution Available for Disbursement/Tranche</u>	<u>Disbursement Performance Milestone</u>

1	\$1,000,000	Upon Execution of this Agreement, incurrence of LEDA-eligible expenses and Indus Synergies being current with all required reporting under this Agreement.
2	\$1,000,000	Facilitate hiring 200 new full-time employees for a total of 200 employees hired through the Project, maintained for one quarterly reporting period, incur LEDA eligible expenses, and be current with all reporting.
3	\$1,000,000	Facilitate hiring 300 new full-time employees for a total of 600 employees hired through the Project, maintained for one quarterly reporting period, incur LEDA eligible expenses, and be current with all reporting.
4	\$1,000,000	Facilitate hiring 300 new full-time employees for a total of 900 employees hired through the Project, maintained for one quarterly reporting period, incur LEDA eligible expenses, and be current with all reporting.
5	\$1,000,000	Facilitate hiring 300 new full-time employees for a total of 1,200 employees hired through the Project, maintained for one quarterly reporting period, incur LEDA eligible expenses, and be current with all reporting.

4. The City Contribution. Pursuant to the Project Ordinance and the LEDA Ordinance, the City has committed the amount of \$750,000 for use in connection with the Project. As required by the LEDA Ordinance, the City will deposit the proceeds of the City Contribution into a clearly identified separate account, which account will be subject to an annual independent audit. City funds will be disbursed to Indus Synergies in the following manner:

<b><i>City LEDA Disbursement Schedule</i></b>		
<u><i>Tranche</i></u>	<u><i>Amount of City Contribution</i></u>	<u><i>Disbursement Performance Milestone</i></u>
<u><i>Available for Disbursement/Tranche</i></u>		
1	\$400,000	Facilitate hiring 300 new full-time employees for a total of 300 employees hired through the Project, maintained for

		one quarterly reporting period, incur LEDA eligible expenses, and be current with all reporting.
2	\$350,000	Facilitate hiring 300 new full-time employees for a total of 600 employees hired through the Project, maintained for one quarterly reporting period, incur LEDA eligible expenses, and be current with all reporting.

5. Time Commitment. Indus Synergies intends to invest approximately \$13,500,000 for the Project. Operations at the Facility are expected to begin in the first quarter of calendar year 2026 or as soon thereafter as possible. Indus Synergies will continue to operate the Facility and diligently conduct operations in the Facility in the manner contemplated by this Agreement at least through \_\_\_\_\_, 2036.

6. Use of Public Contributions. Indus Synergies will be eligible for reimbursement of up to \$5,750,000 for lease payments incurred after February 1, 2026, subject to the receipt by the City of the State Contribution. The City will make payment to Indus Synergies following submission to the City of documentation reasonably satisfactory to the City evidencing payment of eligible expenses related to leasing the Facility related to the Project.

No Project funds will be used to reimburse expenses from any individuals or a company that has a financial interest in Indus Synergies or its employees.

7. Job Commitment and Clawbacks.

A. Number of Jobs. Indus Synergies will facilitate creation of (i) 10 new Jobs in Albuquerque, New Mexico by December 31, 2025, (ii) an additional 600 new Jobs in Albuquerque, New Mexico by December 31, 2029, for a total of 600 Jobs; and (iii) an additional 600 new Jobs in Albuquerque, New Mexico, by December 31, 2034, for an aggregate total of 1,200 Jobs (each, a “Job Target”). A “Job” will represent an employment position for a person for at least one pay period consisting of at least 32 hours of work per week and offering the employee the full range of benefits. Positions filled by contract, part-time and temporary workers will not be considered Jobs. All references herein to “employees” mean employees in Jobs as contemplated by this Section 7.A. Indus Synergies commits to hiring New Mexico residents, when possible, and encourage the businesses benefitting from the business accelerator to hire New Mexico residents.

B. Wages and Benefits. Indus Synergies anticipates that the Jobs will fall within the wage ranges and will come with the benefits shown on Exhibit B. However, failure to meet the wage and benefit projections shown on Exhibit B shall not constitute an Event of Default (defined below) or form the basis for any clawback payment..

C. Performance Clawbacks. If Indus Synergies does not employ and maintain at least 90% of the required number of full-time employees of its Job Targets, as set forth in Section 7.A herein, by close of business on the respective Job Determination Date set forth in the below Performance Clawback Table, then, subject to the remainder of this Section 7.C, Indus Synergies will repay to the City, within ten (10) days of the expiration of the due date of the Cure Period (defined below), the Clawback Penalty (defined below), which shall be a portion of the City Contribution paid on behalf of Indus Synergies pursuant to this Agreement that has already been disbursed to Indus Synergies as of the date of repayment (the “Performance Clawback”) in accordance with the following table:

<u>Performance Clawback Table</u>			
<u>Cumulative Full Time Job Creation Target</u>	<u>Minimum Job Number</u>	<u>Job Determination Date</u>	<u>%-Clawback</u>
10	9	12/31/26	100%
600	540	12/31/29	50%
1,200	1,080	12/31/34	25%

For the purposes of this table:

(i) The “Clawback Penalty” is a penalty that Indus Synergies will be required to pay to the City upon Indus Synergies’ failure to meet the Job Target on or before the conclusion of the applicable Job Determination Date, if such Job Target is not otherwise reached by Indus Synergies during the Cure Period. The Clawback Penalty shall be equal to the product of the Percentage Hiring Shortfall (as defined herein), multiplied by the total amount of funds paid under this Agreement to Indus Synergies as of that time, multiplied by the respective %-Clawback for the applicable Job Determination Date contained in the above Performance Clawback Table. For purposes of this subsection, the “Percentage Hiring Shortfall” shall be the quotient of (i) the respective Minimum Job Number for the applicable Job Determination Date, minus the actual number of Jobs Indus Synergies maintains at the Facility at that time, divided by (ii) the Minimum

Full-Time Job Creation for the applicable Job Determination Date. See Exhibit C hereto for examples of Clawback Penalty calculations. Notwithstanding anything herein to the contrary, in no event shall the aggregate Clawback Penalty paid by Indus Synergies exceed the total amount of funds paid under this Agreement.

(ii) “Cure Period” is the period of 180 days after the end of each Job Determination Date during which time Indus Synergies shall have the opportunity to cure any shortfall in meeting the Minimum Job Number. For the avoidance of doubt, if Indus Synergies meets the Minimum Job Number at any time during the Cure Period, Indus Synergies shall have no obligation to pay a Clawback Penalty corresponding to the applicable Job Determination Date. If Indus Synergies fails to reach the Job Target during the Cure Period, then Indus Synergies shall pay the City a Clawback Penalty determined in accordance with the Performance Clawback Table set forth above.

Notwithstanding the foregoing, if Indus Synergies fails to employ the required full-time employees as identified in Section 7.A herein, and Indus Synergies believes Business Climate Changes were the cause for the failure to meet such requirements, Indus Synergies will so advise the City in writing describing the Business Climate Changes in detail. “Business Climate Changes” mean substantial changes outside of the control of Indus Synergies, in the segment of the industry in which Indus Synergies operates, that cause a significant decrease in the amount of production Indus Synergies is able to achieve. The shifting of Indus Synergies’ operations to another project, whether within or outside of Albuquerque, will not constitute a Business Climate Change.

If the City determines that Business Climate Changes affect Indus Synergies’ ability to maintain employment levels, it may waive or modify the Performance Clawback, but only related to the City Contribution and the City shall consult with the State EDD as to any potential waiver of the Performance Clawback or a portion thereof related to the State Contribution. Any Performance Clawback due will be paid within the later of ten (10) days after the expiration of the Cure Period or thirty (30) days after the City notifies Indus Synergies of its decision or the decision of the State EDD. If Indus Synergies does not attribute the failure to meet employment requirements to Business Climate Changes, the payment of any Performance Clawback due will be submitted to the City within ten (10) days after the expiration of the Cure Period.

D. Project Closure Clawback. Should Indus Synergies cease operations, or notify the City of its intent to cease operations, of the Project (i.e., cease to conduct operations at the Project) before December 31, 2035, Indus Synergies shall, within ninety (90) days of the cessation of operations at the Facility, pay to the City, in cash, an amount equal to a specified percentage of the amount of the City Contribution and State Contribution paid pursuant to this Agreement, with the specific percentage based on the date of cessation of operations in accordance with the

following Closure Clawback Table (each percentage inclusive of any Performance Clawback already paid by Indus Synergies):

<b><u>Closure Clawback Table</u></b>	
<i>Date of Cessation of Operations</i>	<i>Percent of Public Contributions to be Repaid</i>
On or before December 31, 2031	100%
January 1, 2032 through December 31, 2032	80%
January 1, 2033 through December 31, 2033	70%
January 1, 2034 through December 31, 2034	60%
January 1, 2035 through December 31, 2035	50%

Winding down of Indus Synergies' operations at the Facility in preparation for a cessation of operations may be considered a cessation of operations. "Winding down" operations may include layoffs by Indus Synergies of greater than or equal to 75% of employees at the Facility.

E. Maximum Clawback; Unpaid Payments. Notwithstanding anything herein to the contrary, the maximum aggregate clawback and reimbursement payable hereunder will be \$5,750,000, not including interest. Any clawbacks not paid when due shall bear interest at the Prime Rate plus 2% per annum from the due date until paid. "Prime Rate" means the U.S. prime rate as reported from time to time in *The Wall Street Journal* in its Bonds, Rates and Yields table, or successor table.

8. Security. To secure the performance of its obligations under this Agreement, prior to the payment of any portion of the State Contribution or the City Contribution to Indus Synergies, Indus Synergies shall provide the City an acceptable form of security in favor of the City (the "Security") in the form of (i) an annually renewable surety bond/letter of credit; and/or (ii) UCC financing statement in a form and with collateral of a type and of a value reasonably acceptable to the City. See Exhibit D. If Indus Synergies chooses to provide an annually renewable surety bond/letter of credit, non-renewal from the surety company/bank does not constitute a claim under the surety bond or letter of credit, as applicable. The amount of the Security posted will be equal to the amount of funds provided by the State and the City or the liability of the clawbacks as provided in Section 7, herein, whichever is less.

9. Events of Default and Remedies.

A. Failure to Comply With Obligations. Except to the extent otherwise stated, failure by Indus Synergies to comply with any material obligation under this Agreement, including without limitation, the failure to make timely payment of any clawback payment due hereunder, shall be an “Event of Default.” Notwithstanding the foregoing, failure to meet employment projections or failure to meet wage and benefit projections shall not be considered an Event of Default; however, the failure to make timely payment of any clawback payment due as a result thereof shall be an Event of Default.

B. Notice of Event of Default. If any Event of Default occurs, the City shall notify Indus Synergies in writing specifying the alleged failure’s nature and, where appropriate, how the alleged failure may be cured, and Indus Synergies shall have thirty (30) days in which to cure such Event of Default; but if the Event of Default is of a nature requiring more than thirty (30) days to cure, Indus Synergies shall have up to an additional sixty (60) days to cure the alleged failure unless the City agrees to provide Indus Synergies with additional time to cure the alleged failure. If the Event of Default is not cured within such thirty-day period, the City shall have and may exercise any remedies available at law or in equity.

10. Fees. Indus Synergies will promptly pay or reimburse the City for all reasonable third-party expenses incurred by the City in connection with this Agreement and the Project, provided, however, that Indus Synergies shall not be liable for costs incurred by the City that are the responsibility of the City in the ordinary course of business. If so determined by the City, in its sole discretion, such third-party expenses may be offset against or reimbursed from the City Contribution or the State Contribution. Although the City does not anticipate incurring significant third-party expenses during the term of this Agreement, such expenses could include, without limitation, expenses associated with performance reviews or audits with respect to the Project and legal fees for outside counsel in the event of any proposed amendment to this Agreement or any necessary enforcement action with respect to this Agreement.

11. Reporting Requirement, Performance Review and Termination. Quarterly, on or before each January 31, April 30, July 31 and November 31, until January 31, 2036, Indus Synergies will provide to the City and to State EDD the company’s 903A or its equivalent filed with New Mexico’s Department of Workforce Solutions for the previous quarter regarding the workforce for Indus Synergies and such other information necessary for the City or its independent contractor to determine whether Indus Synergies has met its obligations under this Agreement. The annual EIA report provided by State EDD must be completed by February 28 of each year beginning in 2026, and failure to complete such report by April 15<sup>th</sup> of any year during the term of this Agreement shall result in a 10% clawback of the amount of State Contribution

and City Contribution paid pursuant to this Agreement. As required by the LEDA Ordinance, the Project will be subject to an annual performance review conducted by City staff, which will evaluate whether the Project is attaining the requirements of this Agreement. In this annual report, Indus Synergies will include a summary of its efforts and quantifiable results related to the commitment to hire New Mexico residents. This review shall be presented to the City administration and the City Council. If the requirements of this Agreement are not being satisfied, the City Council at a public hearing may cause the enforcement of this Agreement, including the right of the City to any Performance Clawbacks and other remedies set forth herein. In addition, pursuant to LEDA, if Indus Synergies has ceased operations and paid all amounts due to the City as provided herein, the City may enact an ordinance terminating the LEDA Ordinance.

12. Dispute Resolution. The Parties will work in good faith to resolve any disputes that arise hereunder. In the event of a dispute between the Parties, the Chief Executive Officer of Indus Synergies, or his/her designee, and the Director or Deputy Director of the City's Economic Development Department shall meet and attempt in good faith to resolve the dispute. If they are unable to resolve the dispute, the Chief Executive Officer of Indus Synergies and the City's Chief Administrative Officer shall meet and attempt in good faith to resolve the dispute. Nothing contained in this Agreement constitutes a waiver of any Party's right to seek judicial relief.

13. ADA Compliance. In performing the Services required hereunder, Indus Synergies agrees to meet all the requirements of the Americans with Disabilities Act of 1990, and all applicable rules and regulations (ADA), which are imposed directly on Indus Synergies or which would be imposed on the City as a public entity. Indus Synergies agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said Parties as a result of any acts or omissions of Indus Synergies or its agents in violation of the ADA.

14. Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of Indus Synergies' records with respect to all matters covered by this Agreement. Indus Synergies shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. Indus Synergies understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide

requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

15. Indemnity. Indus Synergies agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from the Services performed by Indus Synergies or Indus Synergies' agents under this Agreement or by reason of any asserted act or omission, neglect or misconduct of Indus Synergies or Indus Synergies' agents or employees or any subcontractor or its agents or employees. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

16. No Collusion. Indus Synergies represents that this Agreement is entered into by Indus Synergies without collusion on the part of Indus Synergies with any person or firm, without fraud and in good faith. Indus Synergies also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be offered or given by Indus Synergies or any agent or representative of Indus Synergies to any officer or employee of the City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

17. Applicable Law and Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque. The venue for actions arising out of this Agreement is Bernalillo County, New Mexico.

18. Enforcement. Indus Synergies agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

19. Electronic Signatures. Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The Parties agree that this Agreement may be electronically signed and that the electronic signatures appearing on the Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

20. Further Assurances and Mutual Cooperation. Each Party agrees to deliver and execute any and all notices, certificates, instruments and other such documents and take any and all actions as any Party hereto reasonably may require to carry out this Agreement and such

transactions hereby contemplated, and no Party will take any action that may deprive the other Party of the enjoyment of the rights this Agreement secures. Each Party further agrees to select its own legal counsel and to retain such legal counsel at that Party's expense.

21. Severability. If any part or provision of this Agreement is found to be or becomes unenforceable or illegal for any reason, such part or provision may be modified as necessary to render this Agreement enforceable and legal. If such part or provision cannot be modified as such, the part or provision shall be severed from this Agreement, and the remaining parts and provisions of this Agreement shall remain in full force and effect.

22. 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 to perform is caused by or results directly or indirectly from Force Majeure. "Force Majeure" means any cause beyond the reasonable control of a Party affected, including but not limited to, any acts of God, fire, flood, storm, strike, riot or civil disturbance, war, earthquake, lightning, epidemic, pandemic, labor disturbance, sabotage, or restraint by court or public authority, or any other cause beyond the reasonable control of a Party affected whether similar or dissimilar to the ones listed, which makes it impossible or unreasonably difficult for a Party to perform its obligations under this Agreement. Nothing contained in this Section shall be construed to require either Party to prevent or settle a strike against its will. The Party unable to perform its obligations due to Force Majeure will provide notice to the other Party within fifteen (15) days of its becoming aware of the Force Majeure of its inability to perform and its expectations as to when, if ever, it will be able to resume its obligations.

23. 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 in the signature block of this Agreement. 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.

24. Assignment by the Company. Should Indus Synergies move, sell, lease or transfer its leasehold or operation duties in the Facility before the expiration of this Agreement and desire to transfer its right hereunder to such assignee, the City retains the right to deny any and all

assignments, sales, or transfers of any interests in the Agreement until adequate assurances are made that the transferee, assignee or lessee is a qualifying entity and that the terms of this Agreement shall be satisfied by the transferee, assignee or lessee or Indus Synergies terminates this Agreement and pays any Clawback or reimbursement amounts due hereunder as of such date. At its discretion, the City may choose to deny said assignment, sale or transfer of this Agreement or may negotiate a new agreement with the new operator.

25. Miscellaneous. This Agreement, together with the Letter or Credit, represents the entire agreement of the parties on the subject hereof and supersedes all prior agreements or understandings between the parties, whether written or verbal. 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.

26. Effective Date. This Agreement will be effective on \_\_\_\_\_, 2026 (the "Effective Date").

[Signature Page Follows]

CITY OF ALBUQUERQUE,  
NEW MEXICO

INDUS SYNERGIES CORPORATION, a New Mexico  
corporation

By \_\_\_\_\_

Name: Samantha Sengel

Title: Chief Administrative Officer

Date:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

Address for notice:

Attention:

Indus Synergies, LLC

Tel:

Email:

Address for notice:

One Civic Plaza NW

Albuquerque, NM 87102

Attention: Economic Development  
Director

Tel: (505)768-3000

Email:

With a copy to:

City Attorney

One Civic Plaza NW

Albuquerque, NM 87102

Tel: (505)768-3000

Email: eaj@cabq.gov

Mailing Address:

P.O. Box 1293

Albuquerque, NM 87103

## Exhibits

Exhibit A Application for LEDA Assistance

Exhibit B Wages and Benefits

Exhibit C Clawback Example

Exhibit D Security