

**CITY of ALBUQUERQUE  
TWENTY-FIRST COUNCIL**

**COUNCIL BILL NO.**   O-14-4   **ENACTMENT NO.** \_\_\_\_\_

**SPONSORED BY:**     Rey Garduño and Dan Lewis

**ORDINANCE**

**APPROVING A PROJECT INVOLVING ECLIPSE AEROSPACE, INC. 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 CONTINUED OPERATION AND EXPANSION OF OPERATIONS AT A FACILITY FOR AIRCRAFT ASSEMBLY AND ADMINISTRATIVE OPERATIONS; 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; 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, Eclipse Aerospace, Inc., a Delaware company with its principal place of business at 2503 Clark Carr Loop SE, Albuquerque, New Mexico (the "Company"), the State of New Mexico (the "State"), and the City, are parties to a certain

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1 letter of intent dated September 16, 2013 (the “letter of intent”), in which each party  
2 committed, subject to legislative approval in the case of the City, to make certain  
3 contributions towards the Project, as defined below; and

4 WHEREAS, the letter of intent stated that the City’s and State’s contributions  
5 would be in exchange for certain commitments made by the Company; and

6 WHEREAS, pursuant to the LEDA Ordinance, the Company has submitted to the  
7 Council and the Albuquerque Development Commission (the "Commission") an  
8 application (the "Application") requesting certain economic development assistance  
9 consisting of a credit toward the rent payable for its facility, which is leased from the  
10 City’s Aviation Department, in exchange for certain employment commitments (the  
11 "Project"); and

12 WHEREAS, the Act and the LEDA Ordinance require that the City and the  
13 Company enter into a project participation agreement (the “Project Participation  
14 Agreement”) meeting the requirements of the Act and the LEDA Ordinance; and

15 WHEREAS, City staff has worked with the Company to prepare, and has  
16 negotiated the terms of, a Project Participation Agreement and a security agreement  
17 (the “Security Agreement” and, collectively with the Project Participation Agreement, the  
18 “Agreements”) that will govern the relationship between the City and the Company with  
19 respect to the Project; and

20 WHEREAS, the forms of the proposed Agreements have been filed with the City  
21 Clerk and presented to the Council; and

22 WHEREAS, the proposed Agreements contain the provisions required by the Act  
23 and the LEDA Ordinance and, among other things, provide that the City will obtain a  
24 security interest in certain assets of the Company to secure the Company's obligations  
25 under the Agreements; and

26 WHEREAS, the Application included a cost-benefit analysis with respect to the  
27 Project obtained by the City on the basis of information provided to the City by the  
28 Company, which cost-benefit analysis shows that the City will recoup the value of its  
29 contribution within ten (10) years; and

30 WHEREAS, the Application demonstrates the benefits that will accrue to the  
31 community as a result of the donation of public resources and demonstrates that the  
32 Company, by completing the Project, will be making a substantive contribution to the  
33 community, as required by the LEDA Ordinance; and

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1 WHEREAS, the Commission has considered the Project and the proposed  
2 Agreements and has recommended that the Council adopt the Company's proposal;  
3 and

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

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

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

18 WHEREAS, there has been published in the Albuquerque Journal, a newspaper  
19 of general circulation in the City, public notice of the Council's intention to adopt this  
20 Ordinance, which notice contained certain information pertaining to the Project and was  
21 published at least fourteen (14) days prior to hearing and final action on this Ordinance.

22 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
23 ALBUQUERQUE:

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

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

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1 Section 3. THE PROJECT. The Project will consist of the continued operation  
2 and expansion of employment at a facility located at Albuquerque International Sunport  
3 at which the Company will conduct aircraft assembly, administrative and managerial  
4 operations, including occupancy of the facility by the Company, the hiring of up to 100  
5 employees (in addition to existing base employment of 175 employees) in accordance  
6 with the schedule set forth in the Project Participation Agreement, which employees will  
7 be engaged in positions which will cross a wide range of skill levels from entry level to  
8 managerial positions, and the maintenance of at least 248 employees through at least  
9 December 31, 2018 and the maintenance of operations through at least December 31,  
10 2023.

11 Section 4. FINDINGS.

12 (A) General. The Council hereby declares that it has considered all  
13 relevant information presented to it relating to the Project and the Agreements and  
14 hereby finds and determines that the provision of economic development assistance for  
15 the Project is necessary and advisable and in the interest of the public and will promote  
16 the public health, safety, morals, convenience, economy, and welfare of the City and its  
17 residents.

18 Section 5. AUTHORIZATION AND APPROVAL OF THE PROJECT AND THE  
19 AGREEMENTS. The City hereby approves the Project and the Agreements, which  
20 provide, among other things, that the City will contribute to the Project up to \$238,200,  
21 such amount to be payable in installments as additional employees are hired, and that  
22 the City will administer and disburse to the Company funds totaling up to \$397,014 to be  
23 received by the City from the State Economic Development Department, in exchange  
24 for which the Company will complete the Project.

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

26 (A) The form, terms, and provisions of the Agreements in the forms  
27 presented to the Council are in all respects approved, authorized, and confirmed, and  
28 the City shall enter into the Agreements in substantially the forms thereof, with only  
29 such changes as are not inconsistent with this Ordinance or such other changes as may  
30 be approved by supplemental resolution of the Council.

31 (B) The Council authorizes the Mayor or the Chief Administrative  
32 Officer of the City to execute and deliver the Agreements in the name and on behalf of

1 the City, with only such changes therein as are not inconsistent with this Ordinance or  
2 such changes as may be approved by supplemental resolution of the Council.

3 (C) The Mayor, Chief Administrative Officer, City Treasurer and City  
4 Clerk are further authorized to execute, authenticate and deliver such certifications,  
5 instruments, documents, letters and other agreements, and to do such other acts and  
6 things, either prior to or after the date of delivery of the executed Agreements, as are  
7 necessary or appropriate to consummate the transactions contemplated by the  
8 Agreements.

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

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

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

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

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