

# CITY of ALBUQUERQUE

## TWENTY-FIFTH COUNCIL

COUNCIL BILL NO. O-22-13 ENACTMENT NO. O-2022-014

SPONSORED BY: Brook Bassan, by request

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### ORDINANCE

1  
2 APPROVING A PROJECT INVOLVING ASPEN & AUTUMN, LLC PURSUANT TO  
3 THE LOCAL ECONOMIC DEVELOPMENT ACT AND CITY ORDINANCE F/S O-04-  
4 10, THE CITY'S IMPLEMENTING LEGISLATION FOR THAT ACT, TO SUPPORT  
5 THE ACQUISITION, CONSTRUCTION AND IMPROVEMENT OF A WAREHOUSE  
6 AND OFFICE FACILITY FOR DISTRIBUTION OF NEW MEXICO RELATED FOODS  
7 AND TOURIST ITEMS, WHICH FACILITY WILL BE LOCATED IN ALBUQUERQUE,  
8 NEW MEXICO; AUTHORIZING THE EXECUTION OF A PROJECT PARTICIPATION  
9 AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE PROJECT;  
10 MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE  
11 PROJECT INCLUDING THE APPROPRIATION OF FUNDS; RATIFYING CERTAIN  
12 ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT  
13 WITH THIS ORDINANCE.

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

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

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

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1 WHEREAS, pursuant to the LEDA Ordinance, Aspen & Autumn, LLC (the  
2 "Company"), has submitted to the Council and the Albuquerque Development  
3 Commission (the "Commission") an application (the "Application") requesting certain  
4 economic development assistance for the acquisition, construction and improvement of  
5 a warehouse and office facility for distribution of New Mexico related foods and tourist  
6 items, which will include the addition of 71 new employees, within the City (the  
7 "Project"); and

8 WHEREAS, the City will administer and disburse to the Company funds totaling  
9 up to \$1,000,000, of which \$750,000 is to be received by the City from the State  
10 Economic Development Department and \$250,000 are to be City funds; and

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

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

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

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

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

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

1 WHEREAS, the Commission has considered the Project and the proposed  
2 Agreement and has recommended that the Council approve 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 ten  
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 Agreement, 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 Agreement, and that the City's provision of the assistance contemplated  
16 by the Agreement will constitute a valid public purpose under the Act; and

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

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

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

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

32 Section 3. THE PROJECT. The Project will consist of the acquisition,  
33 construction and improvement of a warehouse and office facility for distribution of New

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1 Mexico related foods and tourist items, the addition of 71 new employees, and the  
2 operation of the facility within the City for a minimum of ten years.

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

9 Section 5. AUTHORIZATION AND APPROVAL OF THE PROJECT AND THE  
10 AGREEMENT; APPROPRIATION OF FUNDS. The City hereby approves the Project  
11 and the Agreement, which provides, among other things, that the City will administer  
12 and disburse to the Company funds totaling up to \$1,000,000, of which \$750,000 is to  
13 be received by the City from the State Economic Development Department and  
14 \$250,000 are to be City funds, in exchange for which the Company will complete the  
15 Project as specified in the Agreement. There is hereby appropriated for the Project up  
16 to \$750,000 of funds received from the State Economic Development Department and  
17 up to \$250,000 of City funds.

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

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

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

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

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1 necessary or appropriate to consummate the transactions contemplated by the  
2 Agreement.

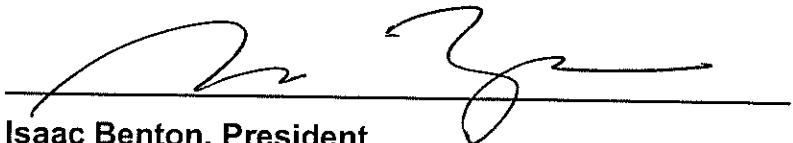
3 (D) City officials shall take such action as is necessary in conformity  
4 with the Act, the LEDA Ordinance and this Ordinance to effectuate the provisions of the  
5 Agreement and carry out the transactions as contemplated by this Ordinance and the  
6 Agreement, including, without limitation, the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

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

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

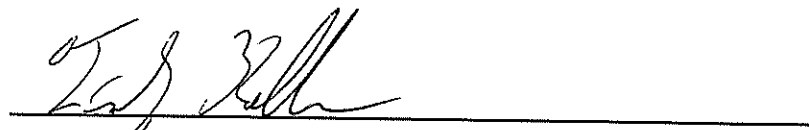
16 Section 9. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE  
17 DATE. This Ordinance, immediately upon its final passage and approval, shall be  
18 recorded in the ordinance book of the City, kept for that purpose, and shall be there  
19 authenticated by the signature of the Mayor and the presiding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

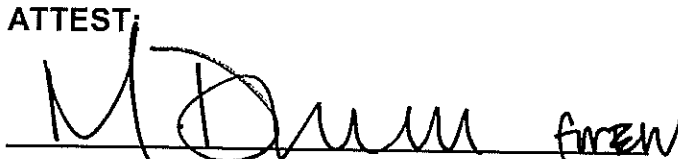
1 PASSED AND ADOPTED THIS 21<sup>st</sup> DAY OF March, 2022  
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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7   
8 Isaac Benton, President  
9 City Council

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12 APPROVED THIS 4 DAY OF April, 2022

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17 Bill No. O-22-13

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22 Timothy M. Keller, Mayor  
23 City of Albuquerque

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26 ATTEST:  
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29 Ethan Watson, City Clerk

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