

**ALBUQUERQUE DEVELOPMENT COMMISSION
Local Economic Development Act Hearing**

March 11, 2021

Case #2021-5

LEDA-21-3: Bueno Foods Project

REQUEST: Approval of the City of Albuquerque to be a fiscal agent for Local Economic Development Act (LEDA) funds is requested.

PROJECT SUMMARY: Bueno Foods is a 70-year-old local company, located in the South Barelás Industrial Park at 2001 4th St. SW in Albuquerque. Bueno Foods plans to invest \$10,000,000 in construction of a 25,000-square-foot freezer warehouse adjacent to the existing 110,000-square-foot manufacturing facility. This addition will allow the company to increase its frozen foods sales in new and expanded markets outside of New Mexico. In addition to industrial revenue bonds used to fund this project, the company is requesting \$500,000 in LEDA grant funding from the State of New Mexico, with the City of Albuquerque acting as fiscal agent.

This project will create 49 full-time equivalent jobs over a five-year period. It will also add 80 to 100 construction jobs for approximately nine months, 80% of which are expected to be filled from the Albuquerque area. Construction employees hired from outside the Albuquerque area will contribute revenue to the lodging and restaurant industries. The 49 full-time jobs are in addition to the current 286 full-time employees.

The proposed project would be constructed on vacant land at 2001 4th St. SW, which Bueno Foods owns. The site is in an industrial area in proximity to a wholesale refinery and a granite warehouse. The current facility, which will be linked to the new freezer, is in use to manufacture New Mexican foods, such as tortillas, dried chile, and spices, frozen green and red chile, and frozen prepared foods. The existing freezer warehouse space for the storage of frozen finished goods and raw materials is not sufficient for the company's production volume. The expansion of the facility would not require a change in zoning from its current non-residential, general manufacturing designation (NR-GM). There are also no particular environmental impacts associated with this project.

The majority of the 49 new employee positions range from production line workers and technicians, to professionals with an average annual salary of over \$117,000. The production positions' annual salary is \$25,000 to \$40,000. All 49 jobs are considered full-time, with full employee benefits. Employee benefits offered by Bueno Foods include paid time off (PTO), paid holidays, a group health plan, a dental and vision discount plan, basic life and AD&D insurance, a 401(k) retirement plan with employer match, funeral leave, long-term disability for managers, company discounts on product purchases, credit union and membership banking services, and a tuition reimbursement program.

The company is exploring the State's Job Training Incentive Program as an option for training its employees. The company expects to spend approximately \$10 million on construction and improvements and expects to work with local contractors. The company also expects to continue to spend at least \$30 million on local goods and services annually.

The State of New Mexico and its local governments are empowered to offer discretionary incentives to companies that support economic development projects that foster, promote, and enhance local economic development efforts. Qualifying entities for these projects include:

A corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or a combination of two (2) or more of the following:

- 1) An industry for the manufacturing, processing, or assembling of any agricultural or manufactured products;**
- 2) A commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but not including any enterprise for sale of goods or commodities at retail or for the distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities, except as provide by subsection (5) of this definition;**

The LEDA application, as shown in Exhibit 1, provides details of the project and the number and types of jobs to be created.

Exhibit 2 delineates the required Project Participation Agreement (“PPA”) between Bueno Foods and the City. The PPA is summarized in Section V.

This project includes a fiscal impact analysis provided to the City from the New Mexico Economic Development Department, utilizing the IMPACT DataSource economic impact model. The fiscal impact determination of the project is from information the company provided. The analysis shows that the company will be making a substantive contribution to the community, and that the City could realize net present value of \$7.6 million in taxes from the direct and indirect spending associated with this project over the next 10 years. The project plan as shown in Exhibit 1 provides details of the project.

FINDINGS:

1. LEDA 21-3 is a qualified project as defined by the State’s Local Economic Development Act and the City enabling legislation (F/S O-04-10); and
2. LEDA 21-3 would make positive substantive contributions to the local economy and community by creating 49 base jobs; and
3. Subject to the development of acceptable security documents, LEDA 21-3 would comply with the adopted City plans and policies, and meet community economic development priorities and objectives, including remaining in operation for 10 years; and
4. Subject to the development of acceptable security documents, LEDA 21-3 would adequately meet the evaluation criteria established by the City for Local Economic Development Act projects, including the requirement that the City recoup the value of its investment within 10 years.

PROJECT ANALYSIS: The project, as proposed in the project application, will be analyzed in accordance with the City’s LEDA project evaluation criteria.

I. PROJECT ELIGIBILITY

1. QUALIFYING ENTITY

City enabling legislation (F/S O-04-10), as well as the State Local Economic Development Act, establishes a definition for a “Qualifying Entity” eligible for LEDA funding assistance. Bueno Foods qualifies under the Act and the Ordinance by meeting the following definition:

As stated in the Summary, qualifying entities for these projects include

A corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or a combination of two (2) or more of the following:

- 1) An industry for the manufacturing, processing, or assembling of any agricultural or manufactured products;**
- 2) A commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but not including any enterprise for sale of goods or commodities at retail or for the distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities, except as provide by subsection (5) of this definition;**

2. ECONOMIC DEVELOPMENT POLICIES AND OBJECTIVES

The City’s enabling legislation also states that applications for LEDA assistance, which meet the policies and objectives of the City’s community economic development plans, shall receive priority. Bueno Foods qualifies as the type of project that meets the City’s identified economic development priorities under (F/S O-04-10) in the following categories:

- (2) Private companies seeking to build, expand or relocate facilities;**
- (4) Projects in industry clusters listed above are particularly encouraged,**

II. LAND USE, PLAN AND DESIGN ELEMENTS

1. PLAN & ZONING:

The proposed project would be constructed on owned vacant land at 2001 4th St. SW. The project will be built at the convergence of three tracts: A1A1 & B1A of South Barelás Industrial Park, and CA-1-A of Municipal Addition #6. The tracts total approximately 26.3 acres.

The site is zoned for NR-GM under the new Integrated Development Ordinance (zoning code). No changes are anticipated to the external character of the facility. In fact, Bueno Foods will be expanding its existing facility, which has operated successfully at that location for many years.

As stated in the IDO, “The purpose of the NR-GM zone district is to accommodate a wide variety of industrial, manufacturing, and heavy commercial uses, particularly those with noise, glare, or heavy traffic impacts, in areas separated from Residential and Mixed-use areas and less intense, lighter impact businesses.” Bueno Foods does not have any surrounding residential areas, and has, in fact, few other impacts.

2. LAND USE:

Surrounding the existing 110,000-square-foot manufacturing facility are numerous mixed-use developments and warehouse and industrial buildings. The 25,000-square-foot freezer will expand Bueno Foods’ prepared foods processing capabilities and its ability to purchase manufacturing equipment. This will help to improve efficiency and enable Bueno Foods to increase production to meet the increasing demand for its products. As a frozen food manufacturer, freezing and frozen storage is integral to its food processing operation. The additional freezing capacity will allow Bueno Foods to produce all products throughout the year and increase its frozen food sales in new and expanded markets outside of New Mexico.

The post-construction impact on existing industry and commerce is anticipated to be favorable: Approximately \$10 million will be spent on construction and tenant improvements, and the project is expected to be done by local construction companies, infusing capital into the local economy. More detail is provided in the fiscal impact analysis.

The project would support: a) an economic development strategy for Albuquerque/Bernalillo County to attract, develop, and retain responsible and responsive businesses; nourish expansion of existing and new local businesses; and emphasize economic base companies; and b) the comprehensive plan economic development policies to: encourage expansion of export-based business to customers across the country that strengthen the economy; encourage prospective employers that are willing to hire local residents and are able to diversify the employment base; develop local business enterprises as well as recruit outside firms. The project also supports the economic development priorities and objectives of the City’s Local Economic Development Act.

The Bueno Foods project further supports the Economic Development Department’s criteria for the use of incentives by implementing place-based strategies (expanding upon a large existing

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manufacturing building), supporting focused and positive return-on-investment projects, and creating 49 jobs.

3. INFILL:



The 25,000-square foot freezer warehouse project involves connection to an existing building. A map of the area is above. Infrastructure, parking, and utilities are already developed. As mentioned, no extension or relocation of utility or road systems is anticipated. There are adequate utilities and roads to the facility.

4. DESIGN AND CONSERVATION:

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A new frozen storage facility, measuring approximately 25,000 square feet, will be built on the site. Construction will be concrete pad, steel frame, and prefabricated insulated freezer panels. No demolition will be required.

Water consumption will not change. Bueno Foods consumes an average of 1.5 million gallons per month during non-peak processing periods. In the peak season, Bueno Foods consumes an average of 8 million gallons per month.

The operation is in an arid climate, and the company recognizes that water conservation is necessary to the long-term sustainability of the community. Bueno Foods has an aggressive water conservation program even though its production rates continue to increase.

No historic properties are involved.

No individuals, families, or businesses will be displaced by the activities outlined in this plan. The project is to be located within an existing manufacturing facility.

5. RENEWABLE ENERGY:

The company will not create or produce renewable energy from the facility.

III. ECONOMIC BENEFITS

6. COMPETITION:

The only local company that could potentially be considered as competitive with Bueno Foods is Foods of New Mexico. However, Foods of New Mexico is a contract manufacturer, thus not a direct competitor.

7. JOBS:

The salaries for the jobs profiled meet or exceed the average for similar positions within the community.

All 49 jobs are considered full-time positions, with employee benefits. Employee benefits include paid holidays, a group health plan, a dental and vision discount plan, basic life and AD&D insurance, and a 401(k) retirement plan with employer match. The company pays at least 50% of the health insurance premiums for employees who opt for its coverage.

These employment classifications, salaries, and benefits are more fully detailed below and attached as an exhibit to the application.

Permanent jobs that will be created:

	# of Employees	Average Annual Salary
Production Line	20	24,960.00
Prod Support/Technicians	15	40,092.00
Clerical	5	53,240.00
Sales	5	64,000.00
Professional	4	117,500.00

- 1) Bueno Foods estimates close to 100% of the new permanent jobs will be filled by current Albuquerque residents. No jobs will be relocated from another location.
- 2) As the majority of the anticipated new jobs in the production’s support/technician section will have wages ranging from \$24,000 to \$40,000 per year, there will be a significant benefit to low- and moderate-income residents.
- 3) Yes, the jobs will exceed the median wages for the industry within the community.
- 4) Bueno Foods’ new jobs will match the skills of current city residents.
- 5) During the onboarding process, employees receive general company training as well as position-specific training. The duration of the training can vary from one to six months and is based on the specific requirements of the position.
- 6) Bueno Foods provides training to encourage employees to remain with their team and improve their skills. Bueno Foods offers its employees opportunities to expand their skills through lateral movements into different programs, as well as advancement into supervisory and higher-skilled positions.
- 7) Bueno Foods is exploring the Job Training Incentive Program to train new employees.
- 8) Yes, Bueno Foods offers health insurance options to its employees and covers at least 50% of the premiums for employees. Bueno Foods provides benefits valued at 21%-46% of employee salary.

The company anticipates adding annual payroll of more than \$2.1 million. Its current annual payroll is \$11.9 million. After the expansion, Bueno Foods expects that its total payroll will be \$14 million. The estimated annual pay increases will follow the company’s trend of approximately 1%-3% per year.

8. LOCAL PURCHASES

The company anticipates spending \$10 million on construction and tenet improvements. The annual purchases are estimated at \$30 million per year. From year to year, Bueno Foods has seen consistent growth, and its approximate future growth rate is estimated at 4%.

All project costs will be funded through a bank commitment letter.

IV. PROJECT FEASIBILITY

9. COST/ FEASIBILITY/ FINANCING:

As stated above, the company intends to spend approximately \$10 million in a new freezer facility and renovations, with completion and occupancy planned in 2022.

Upon completion of the project, the anticipated appraised value of the freezer facility is \$12 million.

Funding is subject to City Council approval. Bueno Foods intends to use the LEDA funds for the construction of the new facility.

10. DEVELOPER'S RECORD:

Bueno Foods will celebrate its 70th anniversary in May 2021. Bueno Foods has been located in the South Barelás Industrial Park since 1984. The company was the first business to locate its operations in this industrial park. Bueno Foods has invested millions of dollars in this economically depressed area of Albuquerque. Over the years it has expanded its operation and increased regional and national sales. More than 55% of its sales are outside of New Mexico, thereby bringing money back into the state economy. Its employment and purchases of goods and services contribute to the local economy.

Bueno Foods customers include retail and food service accounts throughout the Southwest, including Kroger, Walmart, Target, Whole Foods, and other regional and local retail outlets. Food service customers include national, regional, and local restaurants and institutions.

Additional information is available on www.BuenoFoods.com.

11. EQUITY:

The State of New Mexico LEDA funds will not be used to acquire land since the lot is owned by Bueno Foods. However, the funds will be used to assist in financing the construction of the freezer storage addition.

Based upon financial information provided, the company appears capable of managing and completing the project.

12. MANAGEMENT:

That leadership team includes:

Jacqueline "Jackie" Baca, an M.B.A. graduate of the University of New Mexico, has been president since 1986 and in a leadership role since 1979. Jackie started work in the plant at the age of 16 on the production line. She has led the company through three successful expansions and the company's growth outside the New Mexico market.

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Gene Baca, a 1986 graduate of the Harvard School of Law, is senior vice president. He has led the company through two successful expansions. Gene, along with two other members of the chile industry, founded the New Mexico Chile Association. The statewide organization works to preserve the state's \$325 million-dollar chile industry, which provides 4,100 jobs. Gene served as its first president and conceptualized the association's purpose and direction. He has served multiple times as president and now serves as vice president.

Catherine Baca, who holds a biology degree and a medical doctorate from the University of New Mexico, and a master's degree in public health from Harvard University, is a pediatrician who brings to the company's food product and workplace a focus on health. She is vice president of technical services and has led the company's research and development since 1989.

Ana Baca, a published author and graduate of Stanford University and the University of New Mexico, is vice president of marketing and communications. She has led the company's marketing efforts since 1995.

Based on the description given in the project plan, management appears to be qualified to manage the project.

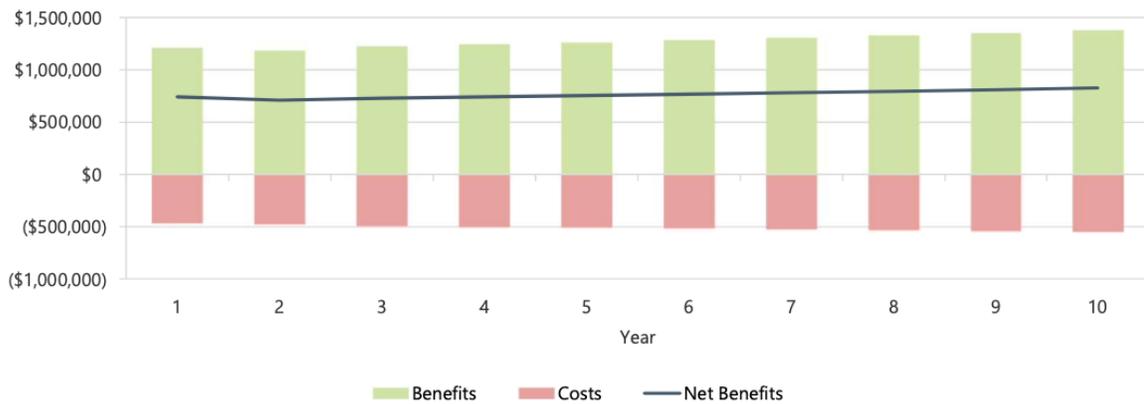
13. FISCAL IMPACT ANALYSIS

This project includes a fiscal impact analysis provided to the City from the New Mexico Economic Development Department, utilizing the IMPACT DataSource economic impact model.

Table 10. Albuquerque: Benefits, Costs, and Net Benefits Over the Next 10 Years

	Amount
Gross Receipts Taxes, after IRB rebate	\$7,300,863
Real Property Taxes - Project, after abatement	\$153,543
FF&E Property Taxes - Project, after abatement	\$215,997
Property Taxes - New Residential	\$16,033
Utility Revenue	\$4,514,007
Utility Franchise Fees	\$323,444
Building Permits and Fees	\$39,634
Lodgers Taxes	\$0
Miscellaneous Taxes & User Fees	\$213,038
Subtotal Benefits	\$12,776,558
Cost of Providing Municipal Services	(\$246,191)
Cost of Providing Utility Services	(\$4,875,128)
Subtotal Costs	(\$5,121,319)
Net Benefits	\$7,655,239
<i>Present Value (5% discount rate)</i>	<i>\$5,875,383</i>

Figure 3. Annual Fiscal Net Benefits for the Albuquerque



The fiscal impact analysis demonstrates that the City will receive approximately \$7,655,200 in net benefits over the 10-year period, and the project will generate \$40,671,400 in total for all local taxing districts.

V. PROJECT PARTICIPATION AGREEMENT

Pursuant to the Local Economic Development Act, Sections 5-10-1 to 5-10-13 NMSA 1978 ("LEDA"), the City adopted Ordinance No. F/S 04-10 (the "LEDA Ordinance"), approving an economic development plan for the City and authorizing the City to consider applications for economic development assistance. The Ordinance calls for the preparation and approval of a Project Participation Agreement (PPA), which is the formal document, which states the contributions and obligations of all parties in the LEDA project. The agreement must clearly state the following items:

- (1) The economic development goals of the project;**
- (2) The contributions of the City and the qualifying entity;**
- (3) The specific measurable objectives upon which the performance review will be based;**
- (4) A schedule for project development and goal attainment;**
- (5) The security being offered for the City's investment;**
- (6) The procedures by which a project may be terminated and the City's investment recovered; and,**
- (7) The time period for which the City shall retain an interest in the project. Each project agreement shall have a "sunset" clause after which the City shall relinquish interest in and oversight of the project.**

B. Each project participation agreement shall be adopted as an ordinance and adopted by the Council at a public hearing.

The primary terms of the Bueno Foods Project Participation Agreement are summarized and attached as an Exhibit.

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 El Encanto Application.

2. Company Contribution. El Encanto shall undertake construction and improvements to the Project Facility; and anticipates occupying and operating the Project Facility commencing in January 2022, contingent upon the requisite Certificate of Occupancy from the City; will use the Project Facility as a freezer warehouse; and will hire and retain employees as contemplated by this Agreement, all in accordance with the schedule and other terms and conditions set forth in this Agreement. El Encanto will maintain the Project's operations in Albuquerque for a minimum of ten (10) years. El Encanto will comply with all applicable laws in connection with the operation of the Project Facility and will timely pay all applicable property taxes with respect thereto.

3. The State Contributions; Procedure for Disbursement of the State Contributions. The City anticipates that the State Contribution of \$500,000 will be delivered to the City for subsequent disbursement to El Encanto, 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 El Encanto in the manner described in this Agreement. The State Contribution will be distributed upon achieving certain benchmarks.

A. Up to \$250,000 distributed upon El Encanto (i) obtaining an occupancy permit for the Project Facility, and (ii) hiring an additional 32 employees, for total employment of 311 employees, on or before January 31, 2022.

B. Up to \$150,000 distributed upon El Encanto hiring an additional 5 employees, for total employment of 316 employees, on or before January 31, 2023.

C. Up to \$100,000 distributed upon El Encanto hiring an additional 16 employees, for total employment of 332 employees, on or before January 31, 2024.

Pursuant to Section 11, reimbursement requests shall include a copy of El Encanto's most recent quarterly Department of Workforce Solutions 903A, or its equivalent, to substantiate current employment levels. Payments may be withheld if El Encanto is not in good standing with City, State, or Federal agencies.

4. Time Commitment. El Encanto will commence construction and improvements to the Project Facility on or about May 31, 2021. Operations at the Project Facility to begin following completion of construction and improvements or as soon thereafter as possible. El Encanto will continue to occupy the Project Facility and diligently conduct operations in the Project Facility in the manner contemplated by this Agreement at least through January 31, 2031.

5. Use of Public Contributions. EL Encanto will be eligible for reimbursement of up to \$500,000 related to the Project Facility actually incurred after the date hereof and paid for by El Encanto, subject to the receipt by the City of the State Contribution. The City will make payment to El Encanto following submission to the City of documentation satisfactory to the City and the State EDD evidencing payment of eligible expenses related to lease reimbursements with respect to the Project Facility.

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

6. Job Commitment and Clawbacks.

A. Number of Jobs. El Encanto current employs 286 employees with the projected growth of 55 employees over five years as follows: 2022-311 employees, 2023-316 employees, 2024-332 employees, 2025-335 employees, and maintaining 335 employees through

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January 31, 2031, with an annual total payroll of approximately \$3,257,375 plus benefits, and maintenance of at least 301 full-time employees (90% of total) through January 31, 2031. 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 6.A.

B. Wages and Benefits. El Encanto 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 as long as the wage and benefit projections fall within 90% of those projected in Exhibit B.

C. Performance Clawbacks. If El Encanto does not employ and maintain at least 90% of the required number of full-time employees as set forth in Section 8.A herein by January 31, 2022, or by January 31 of any year thereafter through the year 2031, then subject to the remainder of this Section 8.C, El Encanto will repay to the City, within sixty (60) days of the due date of the annual report referred to in Section 12 below, the State Contribution paid on behalf of El Encanto pursuant to this Agreement that has already been disbursed to El Encanto for such year as of the date of repayment (the “Performance Clawback”) in accordance with the following table:

Period	Cumulative FT Job Creation Target	Min Job (90% of target)	Gross Wages (annualized payroll based on period end)	Job Determination Period		Clawback % Penalty if Min Job Number not Achieved
			New EE			
1	286+25=311	280	\$912,000	Ordinance Date	1/31/22	100%
2	311+5=316	284	\$3,293,000	01/01/22	1/31/23	100%
3	316+16=332	299	\$1,431,000	01/01/23	1/31/24	100%
4	332+3=335	301	\$3,162,500	01/01/24	1/31/25	100%
5	335	301	\$3,257,375	01/01/25	1/31/26	75%
6	335	301	\$3,355,096	01/01/26	1/31/27	50%
7	335	301	\$3,455,749	01/01/27	1/31/28	50%
8	335	301	\$3,559,421	01/01/28	1/31/29	25%
9	335	301	\$3,666,204	01/01/29	1/31/30	25%
10	335	301	\$3,776,190	01/01/30	1/31/31	25%
Total	335	301				
Starting Headcount: 286			As of: 01/01/2021			

As an incentive to reward El Encanto for hiring above its performance goals in this agreement, beginning in year four (4), and continuing through the end of the Agreement, for every 10 additional employees El Encanto documents as having above its goal of 335 employees in a given year, the “Percent of Public Contributions to be Repaid” shall be decreased by 10%. In no case shall the “Percent of Public Contributions to be Repaid” go below 25% in years 4-7, or below 15% in years 8-10%, regardless of the number of El Encanto employees. This condition is only in effect for documented full time employment above the goal.

For the purposes of this table:

(i) The “Clawback Penalty” is a penalty that El Encanto will be required to pay to the City upon El Encanto’s failure to meet the Job Target on or before the conclusion of the applicable Job Determination Period, if such Job Target is not otherwise reached by El Encanto 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 El Encanto as of that time. For purposes of this subsection, the “Percentage Hiring Shortfall” shall be the quotient of (i) the Minimum Full-Time Job Creation for the applicable Job Determination Period, minus the actual number of jobs El Encanto maintains at the Facility at that time, divided by (ii) the Minimum Full-Time Job Creation for the applicable Job Determination Period. See Exhibit D hereto for examples of Clawback Penalty Calculations. Notwithstanding anything herein to the contrary, in no event shall the aggregate Clawback Penalty paid by El Encanto 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 Period during which time El Encanto shall have the opportunity to cure any shortfall in meeting the Minimum Full-Time Job Creation. For the avoidance of doubt, if El Encanto meets the Minimum Full-Time Job Creation at any time during the Cure Period, El Encanto shall have no obligation to pay a Clawback Penalty corresponding to the applicable Job Determination Period. If El Encanto fails to reach the Job Target during the Cure Period, the El Encanto shall pay the City a Clawback Penalty determined in accordance with the table set forth above.

(iii) A “Job” means a permanent, full-time employment position (at least 32 hours per week) offering the employee the full range of benefits offered to other full-time employees of El Encanto.

Notwithstanding the foregoing, if El Encanto fails to employ the required full-time employees as identified in Section 6.A herein, and believes Business Climate Changes were the cause for its failure to meet such requirements, El Encanto will so advise the City and State EDD in writing describing the Business Climate Changes in detail. “Business Climate Changes” mean substantial changes outside of the control of El Encanto, in the segment of the business industry in which El Encanto operates, that cause a significant decrease in the amount of sales El Encanto is able to achieve. The shifting of El Encanto operations to another project, whether within or outside of Albuquerque, will not constitute a Business Climate Change.

If the State determines that Business Climate Changes affect the ability of El Encanto to maintain employment levels, it may waive or modify the Performance Clawback. Any Performance Clawback due will be paid within 15 days after the State EDD notifies El Encanto of its decision. If El Encanto 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 due date of the annual report reflecting the failure to maintain the required employment level.

D. Project Closure Clawback. Should El Encanto cease operation, or notify the City and State of its intent to cease operation, of the Project (i.e., cease to conduct operations at the Project Facility) before January 31, 2031, El Encanto shall, within ninety (90) days of the cessation of operations, pay to the City, in cash, an amount equal to a specified percentage of the amount of the State Contribution paid pursuant to this Agreement, with the specific percentage based on the date of cessation of operations in accordance with the following table:

Date of Cessation of Operations	Percent of Public Contributions to be Repaid
On or before December 31, 2025	100%
January 1, 2026 through December 31, 2026	75%
January 1, 2027 through December 31, 2027	50%
January 1, 2028 through December 31, 2028	25%
January 1, 2029 through December 31, 2029	25%
January 1, 2030 through December 31, 2030	25%

Winding down of the Company’s operations at the Project in preparation for a cessation of operations may be considered a cessation of operations, and any such determination will be made by the State in its sole reasonable discretion.

E. Maximum Clawback; Unpaid Payments. Notwithstanding anything herein to the contrary, the maximum aggregate clawback payable hereunder will be \$500,000, 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.

7. Security. To secure the performance of its obligations under this Agreement, prior to El Encanto receipt of any part of the State Contribution, El Encanto shall furnish the City with a surety bond, or some alternative form of security in a form mutually acceptable to the parties

(the "Security"). The maximum obligation secured by the Security (the "Maximum Obligation") will be \$500,000.

8. Events of Default and Remedies.

A. Failure to Comply with Obligations. Failure by El Encanto to comply with any 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 El Encanto in writing specifying the alleged failure's nature and, where appropriate, how the alleged failure may be cured, and El Encanto 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, El Encanto shall have up to an additional sixty (60) days to cure the alleged failure unless the City agrees to provide El Encanto 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.

9. Fees. El Encanto 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 El Encanto 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 State Contribution. Although the City does not anticipate incurring significant third-party expenses during the term of this Agreement, such expenses shall consist of 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.

10. Annual Reporting Requirement, Performance Review and Termination. Annually (beginning in 2022), on or before April 1 or other date specified by the City, El Encanto will provide to the City data for the previous calendar year regarding its workforce and such other information necessary for the City or its independent contractor to determine whether El Encanto has met its obligations under 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 goals and objectives set forth in Section 1 of this Agreement. This review shall be presented to the City administration and the City Council. If the goals and objectives are not being attained, the City Council at a public hearing may terminate assistance to the Project by passage of an ordinance which terminates this Agreement and specifies the disposition of all assets and obligations of the Project, after satisfying this Agreement and all rights of the parties arising under this Agreement through the date of such termination. In addition, pursuant to LEDA, the City may enact an ordinance terminating the LEDA Ordinance and dissolving or terminating any or all projects. In the event that the City terminates the LEDA Ordinance or this Agreement, the City will specify the disposition of all assets and obligations of the Project after satisfying this Agreement and all rights of the parties arising under this Agreement through the date of such termination.

LEDA 21-3: Bueno Foods Project

Additionally, El Encanto will provide to the State EDD their most recent quarterly Department of Workforce Solutions 903A Report or its equivalent on a quarterly basis beginning with January 31, 2022 and continuing on April 30, July 31, and October 31 of each year until the completion of this agreement. Additionally, the Project will submit employment information quarterly in a form as required by the State Economic Development Department.

FINDINGS:

1. LEDA 21-3 is a qualified project as defined by the State's Local Economic Development Act and the City enabling legislation (F/S O-04-10); and
2. LEDA 21-3 would make positive substantive contributions to the local economy and community by creating 49 base jobs; and
3. Subject to the development of acceptable security documents, LEDA 21-3 would comply with the adopted City plans and policies, and meet community economic development priorities and objectives, including remaining in operation for 10 years; and
4. Subject to the development of acceptable security documents, LEDA 21-3 would adequately meet the evaluation criteria established by the City for Local Economic Development Act projects, including the requirement that the City recoup the value of its investment within 10 years.

STAFF RECOMMENDATION:

Based on the above findings, staff recommends approval of LEDA 21-3 as proposed in the project plan application.

Economic Development Department

Project Participation Agreement
City of Albuquerque and El Encanto, Inc.
Local Economic Development Act Project 21-3

This Project Participation Agreement is made as of this _____ day of _____, 2021 by and between the CITY OF ALBUQUERQUE, NEW MEXICO (the “City”), and EL ENCANTO, INC., a New Mexico corporation with a place of business at 2001 4th Street SW, Albuquerque, New Mexico 87102 (“El Encanto”). Together the City and El Encanto are called 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, El Encanto has submitted to the City an application in the form attached to this Agreement as Exhibit A (the “El Encanto Application”) proposing that, in exchange for certain LEDA assistance described below, El Encanto will undertake and complete a certain project, which is defined to include the following elements (the “Project”):

Construction and improvement of a 25,000 square foot freezer warehouse on approximately 26.3 acres as an addition to El Encanto’s manufacturing campus located at 2001 4th Street SW in Albuquerque, New Mexico (the “Project Facility”);

Operate the Project Facility to increase capacity to store frozen food products, increase frozen food sales and expand El Encanto’s market outside of New Mexico;

Commitment to operate the Project for a minimum of ten (10) years;

Employment measured as of the close of business annually on January 31, commencing in 2022 and continuing through 2031; current employment at 286 employees with the projected growth of 49 employees over five years as follows: 2022-311 employees, 2023-316 employees, 2024-332 employees, 2025-335 employees, 335 employees through January 31, 2031, with an annual total payroll of approximately \$3,257,375 plus benefits, and maintenance of at least 301 full-time employees (90% of total) through January 31, 2031 as measured for the preceding year on an annual basis beginning January 31, 2022; and

WHEREAS, the State of New Mexico (the “State”) Economic Development Department (the “State EDD”) has committed up to \$500,000 in State LEDA funds (the “State Contribution”) for partial reimbursement for construction and improvement costs of the Project Facility; and

WHEREAS, the El Encanto Application clearly demonstrates that El Encanto, by completing the Project, will be making a substantive contribution to the community, as required by the LEDA Ordinance; 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 El Encanto 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. O-_____ on April __, 2021 (the “Project Ordinance”) (i) finding that El Encanto is a qualifying entity as defined in Section 5-10-3(G) NMSA, (ii) approving the El Encanto Application for assistance with the Project pursuant to the LEDA Ordinance, which Application proposed that the City direct \$500,000 in funds to be received from the State EDD as the State Contribution, all to finance the statutorily eligible expense of the construction and improvement of the Project Facility, and (iii) approving this Agreement;

NOW, THEREFORE, in consideration of these premises and the agreements by the parties set forth herein, El Encanto and the City further agree as follows:

11. 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 El Encanto Application.

12. Company Contribution. El Encanto shall undertake construction and improvements to the Project Facility; and anticipates occupying and operating the Project Facility commencing in January 2022, contingent upon the requisite Certificate of Occupancy from the City; will use the Project Facility as a freezer warehouse; and will hire and retain employees as contemplated by this Agreement, all in accordance with the schedule and other terms and conditions set forth in this Agreement. El Encanto will maintain the Project’s operations in Albuquerque for a minimum of ten (10) years. El Encanto will comply with all applicable laws in connection with the operation of the Project Facility and will timely pay all applicable property taxes with respect thereto.

13. The State Contributions; Procedure for Disbursement of the State Contributions. The City anticipates that the State Contribution of \$500,000 will be delivered to the City for subsequent disbursement to El Encanto, 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 El Encanto in the manner described in this Agreement. The State Contribution will be distributed upon achieving certain benchmarks.

A. Up to \$250,000 distributed upon El Encanto (i) obtaining an occupancy permit for the Project Facility, and (ii) hiring an additional 32 employees, for total employment of 311 employees, on or before January 31, 2022.

B. Up to \$150,000 distributed upon El Encanto hiring an additional 5 employees, for total employment of 316 employees, on or before January 31, 2023.

C. Up to \$100,000 distributed upon El Encanto hiring an additional 16 employees, for total employment of 332 employees, on or before January 31, 2024.

Pursuant to Section 11, reimbursement requests shall include a copy of El Encanto's most recent quarterly Department of Workforce Solutions 903A, or its equivalent, to substantiate current employment levels. Payments may be withheld if El Encanto is not in good standing with City, State, or Federal agencies.

14. Time Commitment. El Encanto will commence construction and improvements to the Project Facility on or about May 31, 2021. Operations at the Project Facility to begin following completion of construction and improvements or as soon thereafter as possible. El Encanto will continue to occupy the Project Facility and diligently conduct operations in the Project Facility in the manner contemplated by this Agreement at least through January 31, 2031.

5. Use of Public Contributions. EL Encanto will be eligible for reimbursement of up to \$500,000 related to the Project Facility actually incurred after the date hereof and paid for by El Encanto, subject to the receipt by the City of the State Contribution. The City will make payment to El Encanto following submission to the City of documentation satisfactory to the City and the State EDD evidencing payment of eligible expenses related to lease reimbursements with respect to the Project Facility.

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

6. Job Commitment and Clawbacks.

A. Number of Jobs. El Encanto current employs 286 employees with the projected growth of 55 employees over five years as follows: 2022-311 employees, 2023-316 employees, 2024-332 employees, 2025-335 employees, and maintaining 335 employees through January 31, 2031, with an annual total payroll of approximately \$3,257,375 plus benefits, and maintenance of at least 301 full-time employees (90% of total) through January 31, 2031. 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 6.A.

LEDA 21-3: Bueno Foods Project

B. Wages and Benefits. El Encanto 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 as long as the wage and benefit projections fall within 90% of those projected in Exhibit B.

C. Performance Clawbacks. If El Encanto does not employ and maintain at least 90% of the required number of full-time employees as set forth in Section 8.A herein by January 31, 2022, or by January 31 of any year thereafter through the year 2031, then subject to the remainder of this Section 8.C, El Encanto will repay to the City, within sixty (60) days of the due date of the annual report referred to in Section 12 below, the State Contribution paid on behalf of El Encanto pursuant to this Agreement that has already been disbursed to El Encanto for such year as of the date of repayment (the “Performance Clawback”) in accordance with the following table:

Period	Cumulative FT Job Creation Target	Min Job (90% of target)	Gross Wages (annualized payroll based on period end)	Job Determination Period		Clawback % Penalty if Min Job Number not Achieved
			New EE			
1	286+25=311	280	\$912,000	Ordinance Date	1/31/22	100%
2	311+5=316	284	\$3,293,000	01/01/22	1/31/23	100%
3	316+16=332	299	\$1,431,000	01/01/23	1/31/24	100%
4	332+3=335	301	\$3,162,500	01/01/24	1/31/25	100%
5	335	301	\$3,257,375	01/01/25	1/31/26	75%
6	335	301	\$3,355,096	01/01/26	1/31/27	50%
7	335	301	\$3,455,749	01/01/27	1/31/28	50%
8	335	301	\$3,559,421	01/01/28	1/31/29	25%
9	335	301	\$3,666,204	01/01/29	1/31/30	25%
10	335	301	\$3,776,190	01/01/30	1/31/31	25%
Total	335	301				
Starting Headcount: 286			As of: 01/01/2021			

As an incentive to reward El Encanto for hiring above its performance goals in this agreement, beginning in year four (4), and continuing through the end of the Agreement, for every 10 additional employees El Encanto documents as having above its goal of 335 employees in a given year, the “Percent of Public Contributions to be Repaid” shall be decreased by 10%. In no case shall the “Percent of Public Contributions to be Repaid” go below 25% in years 4-7, or below

15% in years 8-10%, regardless of the number of El Encanto employees. This condition is only in effect for documented full time employment above the goal.

For the purposes of this table:

(i) The “Clawback Penalty” is a penalty that El Encanto will be required to pay to the City upon El Encanto’s failure to meet the Job Target on or before the conclusion of the applicable Job Determination Period, if such Job Target is not otherwise reached by El Encanto 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 El Encanto as of that time. For purposes of this subsection, the “Percentage Hiring Shortfall” shall be the quotient of (i) the Minimum Full-Time Job Creation for the applicable Job Determination Period, minus the actual number of jobs El Encanto maintains at the Facility at that time, divided by (ii) the Minimum Full-Time Job Creation for the applicable Job Determination Period. See Exhibit D hereto for examples of Clawback Penalty Calculations. Notwithstanding anything herein to the contrary, in no event shall the aggregate Clawback Penalty paid by El Encanto 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 Period during which time El Encanto shall have the opportunity to cure any shortfall in meeting the Minimum Full-Time Job Creation. For the avoidance of doubt, if El Encanto meets the Minimum Full-Time Job Creation at any time during the Cure Period, El Encanto shall have no obligation to pay a Clawback Penalty corresponding to the applicable Job Determination Period. If El Encanto fails to reach the Job Target during the Cure Period, the El Encanto shall pay the City a Clawback Penalty determined in accordance with the table set forth above.

(iii) A “Job” means a permanent, full-time employment position (at least 32 hours per week) offering the employee the full range of benefits offered to other full-time employees of El Encanto.

Notwithstanding the foregoing, if El Encanto fails to employ the required full-time employees as identified in Section 6.A herein, and believes Business Climate Changes were the cause for its failure to meet such requirements, El Encanto will so advise the City and State EDD in writing describing the Business Climate Changes in detail. “Business Climate Changes” mean substantial changes outside of the control of El Encanto, in the segment of the business industry in which El Encanto operates, that cause a significant decrease in the amount of sales El Encanto is able to achieve. The shifting of El Encanto operations to another project, whether within or outside of Albuquerque, will not constitute a Business Climate Change.

If the State determines that Business Climate Changes affect the ability of El Encanto to maintain employment levels, it may waive or modify the Performance Clawback. Any Performance Clawback due will be paid within 15 days after the State EDD notifies El Encanto of its decision. If El Encanto 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 due date of the annual report reflecting the failure to maintain the required employment level.

D. Project Closure Clawback. Should El Encanto cease operation, or notify the City and State of its intent to cease operation, of the Project (i.e., cease to conduct operations at the Project Facility) before January 31, 2031, El Encanto shall, within ninety (90) days of the cessation of operations, pay to the City, in cash, an amount equal to a specified percentage of the amount of the State Contribution paid pursuant to this Agreement, with the specific percentage based on the date of cessation of operations in accordance with the following table:

Date of Cessation of Operations	Percent of Public Contributions to be Repaid
On or before December 31, 2025	100%
January 1, 2026 through December 31, 2026	75%
January 1, 2027 through December 31, 2027	50%
January 1, 2028 through December 31, 2028	25%
January 1, 2029 through December 31, 2029	25%
January 1, 2030 through December 31, 2030	25%

Winding down of the Company’s operations at the Project in preparation for a cessation of operations may be considered a cessation of operations, and any such determination will be made by the State in its sole reasonable discretion.

E. Maximum Clawback; Unpaid Payments. Notwithstanding anything herein to the contrary, the maximum aggregate clawback payable hereunder will be \$500,000, 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.

15. Security. To secure the performance of its obligations under this Agreement, prior to El Encanto receipt of any part of the State Contribution, El Encanto shall furnish the City with a surety bond, or some alternative form of security in a form mutually acceptable to the parties (the "Security"). The maximum obligation secured by the Security (the "Maximum Obligation") will be \$500,000.

16. Events of Default and Remedies.

C. Failure to Comply with Obligations. Failure by El Encanto to comply with any 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.

D. Notice of Event of Default. If any Event of Default occurs, the City shall notify El Encanto in writing specifying the alleged failure's nature and, where appropriate, how the alleged failure may be cured, and El Encanto 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, El Encanto shall have up to an additional sixty (60) days to cure the alleged failure unless the City agrees to provide El Encanto 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.

17. Fees. El Encanto 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 El Encanto 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 State Contribution. Although the City does not anticipate incurring significant third-party expenses during the term of this Agreement, such expenses shall consist of 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.

18. Annual Reporting Requirement, Performance Review and Termination. Annually (beginning in 2022), on or before April 1 or other date specified by the City, El Encanto will provide to the City data for the previous calendar year regarding its workforce and such other information necessary for the City or its independent contractor to determine whether El Encanto has met its obligations under 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 goals and objectives set forth in Section 1 of this Agreement. This review shall be presented to the City administration and the City Council. If the goals and objectives are not being attained, the City Council at a public hearing may terminate assistance to the Project by passage of an ordinance which terminates this Agreement and specifies the disposition of all assets and obligations of the Project, after satisfying this Agreement and all rights of the parties arising under this Agreement through the date of such termination. In addition, pursuant to LEDA, the City may enact an ordinance terminating the LEDA Ordinance and dissolving or terminating any or all projects. In the event that the City terminates the LEDA Ordinance or this Agreement, the City will specify the disposition of all assets and obligations of the Project after satisfying this Agreement and all rights of the parties arising under this Agreement through the date of such termination.

Additionally, El Encanto will provide to the State EDD their most recent quarterly Department of Workforce Solutions 903A Report or its equivalent on a quarterly basis beginning with January 31, 2022 and continuing on April 30, July 31, and October 31 of each year until the completion of this agreement.

19. 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 President of El Encanto, 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 President of El Encanto 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.

20. Discrimination Prohibited. In performing the Services required hereunder, the parties hereto shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended.

21. ADA Compliance. In performing the Services required hereunder, El Encanto 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 El Encanto or which would be imposed on the City as a public entity. El Encanto 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 El Encanto or its agents in violation of the ADA.

22. 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 El Encanto's records with respect to all matters covered by this Agreement. El Encanto 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. El Encanto 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.

23. Indemnity. El Encanto 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 El Encanto or El Encanto's agents under this Agreement or by reason of any asserted act or omission, neglect or misconduct of El Encanto or El Encanto's 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.

24. No Collusion. El Encanto represents that this Agreement is entered into by El Encanto without collusion on the part of El Encanto with any person or firm, without fraud and in good faith. El Encanto 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 El Encanto or any agent or representative of El Encanto 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.

25. 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.

26. Enforcement. El Encanto 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.

27. 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.

28. 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.

29. 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.

30. 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, 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 paragraph 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 five (5) days of it 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.

31. 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.

32. Assignment by El Encanto. Generally, this Agreement may not be assigned without the prior, written consent of the non-assigning Parties, and the City retains the right to determine whether any assignee is a qualifying entity pursuant to LEDA and the LEDA Ordinance. Regardless of any other provision herein, this Agreement may be assigned by El Encanto as part of a sale of all, or substantially all, of El Encanto's assets, provided, however, that if such an assignment occurs before January 31, 2031, (i) the assignee assumes, in writing, El Encanto's obligations under this Agreement, which will include (a) confirmation that the commitment of El Encanto remains in place through January 31, 2031 or (b) the assignee provides another form of security reasonably satisfactory to the City, and (ii) El Encanto provides to the City, at least five (5) days prior to such assignment's effective date, a copy of the assignment and (x) such confirmation of El Encanto's commitment or (y) such form of security reasonably satisfactory to the City. Notwithstanding any of the foregoing, El Encanto may terminate this Agreement in the event that El Encanto sells all, or substantially all, of El Encanto's assets.

33. Miscellaneous. This Agreement binds and inures to the benefit of the City and El Encanto and their respective successors and permitted assigns. This Agreement may not be assigned without the written consent of the non-assigning Party. This Agreement, together with the Surety Bond, 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.

34. Effective Date. This Agreement will be effective on _____, 2021 (the "Effective Date").

CITY OF ALBUQUERQUE,
NEW MEXICO

EL ENCANTO, INC.
a New Mexico Corporation

By _____

Name: Sarita Nair, JD, MCRP

Title: Chief Administrative Officer

Date: _____

By _____

Name:

Title:

Date: _____

Address for notice:

One Civic Plaza NW

Albuquerque, NM 87102

Attention: Economic Development Director

Tel: (505)768-3000

Email: synthiaj@cabq.gov

Address for notice:

Attention:

El Encanto, Inc.

2001 4th Street SW

Albuquerque, NM 87102

Tel: (505) 243-2722

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 Surety Bond

Exhibit D Clawback Example

APPLICATION

for

LOCAL ECONOMIC DEVELOPMENT ACT (LEDA)

Project Approval

Name of Project: Bueno Foods Freezer Storage Expansion

Location of Project: 2001 4th Street SW, Albuquerque, NM 87102

Company Name: El Encanto, Inc. (dba Bueno Foods)

Contact Person: Jacqueline J. Baca, President

Address: 2001 4th Street SW

Albuquerque, NM 87102

LEDA 21-3: Bueno Foods Project

Telephone: (505) 243-2722

Email: jackie@buenofoods.com

Counsel: Eduardo A. Duffy

Address: 6100 Uptown Blvd., Suite 400

Albuquerque, NM 87110

Telephone: (505) 883-3376

Amount Requested: \$500,000 State of NM Fee Submitted: _____

FOR STAFF USE

Staff Assigned: _____

Case Number: _____

Fee Received: \$ _____

ADC Hearing Date: _____

Council Dates (Tentative): Introduction _____

Committee _____ Council Hearing _____

PREFACE

This Application is being submitted to the Development Commission of the City of Albuquerque for review prior to consideration by the City Council of an Ordinance for the Local Economic Development Act in accordance with Council Ordinance O-04-10. Pursuant to those Council actions this is the first step towards the issuance of an ordinance pursuant to: the Local Economic Development Act (5-10-1 to 5-10-13 NMSA 1978 as amended); or, pursuant to the home rule powers of the City given by Article X, Section 6 of the New Mexico Constitution and the City's Charter.

The Plan contains the information required by City Council Ordinance O-04-10 and conforms with and compliments the policies established for the local Economic Development Act pursuant to that Council action.

The purpose of the Application is to identify the project area and to present the plan and the uses to which the LEDA proceeds will be put if issued. This Application is presented to demonstrate to the City of Albuquerque the public benefits of this project and to help the City evaluate its merit in comparison to other projects submitted. The applicant and its agent will endeavor to provide the City any additional information reasonably requested.

APPLICATION DESCRIPTION

Please prepare the LEDA application according to the following outline. Headings must be present and visible and all required information included. Please prepare the information needed for the fiscal impact analysis in the same manner but attached separately from the following outline.

I. GENERAL DESCRIPTION

Give a brief overview of the project, including general location, proposed development, use, and total amount requested. Include a statement of the benefit to be gained by the Albuquerque community from this development. The General Description should explain what will be done with the LEDA funds if approved.

LEDA 21-3: Bueno Foods Project

The Company is located in the South Barelmas Industrial Park at 2001 4th Street SW in Albuquerque. Bueno Foods plans to invest \$10,000,000 in a new 25,000 square foot freezer warehouse addition to our manufacturing campus, which will allow us to increase our frozen foods sales in new and expanded markets outside of New Mexico. The Company is requesting \$500,000 (State of NM with City of Albuquerque acting as fiscal agent) in LEDA grant funding, which along with Industrial Revenue Bonds, will be used to fund this project.

This project will enable us to continue our national expansion and create 49 full time equivalent jobs over a 5 year period, and will also create construction jobs in the city. These 49 full time jobs are in addition to the 286 full time employees that the Company currently has. Bueno Foods continues to support the community through board participation and monetary and product contributions.

II. SITE AND EXISTING CONDITIONS

Legal Description

Give both the precise and complete legal description and address or identification of location. (For example: The proposed project is located at 5300 2nd Street N.W. The site is more particularly described as Tracts B-1 and C of the Plan of Division of Lands of Mel Sanchez and Lath & Plaster Supply Company, as the same is shown and designated on the plat of said land filed in the office of the County Clerk on April 27, 1979 in Bernalillo County, New Mexico, containing approximately 11.15 acres.)

The proposed project would be constructed on owned vacant land at 2001 4th Street SW. The location will be built at the convergence of 3 tracts: A1A1 & B1A of South Barelmas Industrial Park, and CA-1-A of Municipal Addition #6. The 3 tracts total approximately 26.3 acres.

We are working with consultants to determine if the tracts should be replatted, for ease of property tax reporting and collateral documentation for the Industrial Revenue Bond.

Prevailing Site Conditions

Describe the present use and development of the site, including any improvements, vacant land, etc.

The current facility, which will be adjacent to the new facility, is in use to manufacture New Mexican foods, such as flour and corn tortillas, dried chile & spices, frozen green and red chile, and frozen

prepared foods. We have existing freezer warehouse space for the storage of our frozen finished goods and raw materials, but it is not sufficient for our production volume.

Present Assessed Value

Give the present assessed value according to the Bernalillo County Assessor's office. You may also list a current appraised value if you feel it will make the post-development value clearer.

The present assessed value (real and personal property) is \$11,316,856.

Present and Proposed Zoning

Give the current zoning of the property. If any change in zoning is required for the proposed use, give the proposed new zone. We recommend that zoning changes required be requested before the project plan reaches the Development Commission.

Current zoning is NR-GM: Non-Residential, General Manufacturing. This zoning is appropriate for our use, so there will be no changes necessary.

Renewable Energy

Indicate in detail if and how the Project will create, produce or use renewable energy and renewable energy technology.

This project will not create renewable energy.

III. PROJECT PLAN

A. Information Concerning Applicant

Describe the development entity – corporation, syndicate, individual, etc., and give information about the experience of the company or of significant individuals involved in the type of development or industry proposed. Include as an attachment resumes of main principals, or other information which will bear on the experience and credibility of the development entity.

Bueno Foods is a 70-year-old local company, born and bred in Albuquerque. Since 1951, it has grown from a small family-owned grocery store into one of the Southwest's premier producers of New Mexican and Mexican style foods, founded and continually run by a long-time New Mexican family, the Bacas. Bueno Foods has now been led by the second generation of the Baca family for 40+ years.

That leadership team includes:

Jacqueline "Jackie" Baca, an M.B.A. graduate of the University of New Mexico, has been president since 1986 and in a leadership role since 1979. Jackie started work in the plant at the age of 16 on the production line. She has led the company through three successful expansions and the company's growth outside the New Mexico market.

Gene Baca, a 1986 graduate of the Harvard School of Law, is senior vice president. He has led the company through two successful expansions. Gene, along with two other members of the chile industry, founded the New Mexico Chile Association, a statewide organization that works to preserve the chile industry in New Mexico, a \$325 million dollar industry providing 4100 jobs. Gene served as its first president as well as conceptualizing its purpose and direction. He has served multiple times as president and currently, he is serving again as vice president of the Association.

Catherine Baca, who holds a biology degree and an M.D. from University of New Mexico and a master's in public health from Harvard University, is a pediatrician who brings to the company a focus on health to both the food product and the workplace. She is vice president of technical services and has led the company's research and development since 1989.

Ana Baca, a published author and graduate of Stanford University and the University of New Mexico, is vice president of marketing & communications. She has led the company's marketing efforts since 1995.

Jackie and Gene sit on many community boards that help improve the economic climate in New Mexico including the Federal Reserve - Denver Branch representing northern New Mexico, Think New Mexico, Albuquerque Hispano Chamber of Commerce, New Mexico First, the New Mexico Chile Association and the New Mexico Restaurant Association.

Bueno's purpose is to have a positive influence on people's lives through job creation, community involvement and the production of high quality, authentic products. Bueno Foods currently employs about 300 people year-round and up to 400 people during peak seasons.

As its payroll and purchases ripple through the economy, Bueno Foods supports secondary businesses and employment. Also, Bueno Foods brings money back home for local reinvestment from its sales outside of the community. Now approximately 40% of Bueno's sales come from outside the state, impacting the local community and the local economy.

LEDA 21-3: Bueno Foods Project

B. Tax Issues

Please provide a statement declaring that the applicant has no outstanding substantive federal, state or local tax issues. If, however, there are pending issues, thoroughly describe all issues and their status.

The Company has no outstanding federal, state, or local tax issues.

C. Information Concerning Products and Process

Identify the products and/or processes involved with this project. Specifically address the question of whether the proposed development will generate air, noise, or waste pollution or traffic congestion. Include any plans for the reduction and disposal of waste and/or project emissions.

This development will not generate air, noise or water pollution. The energy source is electric only. This project will decrease highway and road traffic since over 300 truckloads of product will be stored onsite instead of shipping out for storage and return. This saves 600 truckloads of product shipping annually.

We recycle approximately 1,400 cubic yards of green chile peel annually, a byproduct of our seasonal green chile production, by providing it to a local composting facility. We recycle all of our grain byproducts, and we pre-treat our industrial waste water by solid waste separators and sediment tanks.

Our plant is located on the edge of the largest cottonwood forest in the United States. This forest abuts the Rio Grande River. We have a Storm Water Pollution Prevention Program (SWPPP) in place, employ Best Management Practices (BMP's) and work with the appropriate regulators in this endeavor.

D. Competition

Please describe any competition in the same area of commerce or industry existing in the City. Since the Development Commission and City Council do not wish to make public funds available for projects with local competition, this statement is very important.

Foods of New Mexico is the only known local competitor.

E. Effect on Existing Industry and Commerce during and after Construction

LEDA 21-3: Bueno Foods Project

Describe the predicted effects of the project including construction jobs generated, increased employment, increased sales, new industrial base, possible spin-off business, etc.

The project will add 80 – 100 construction jobs for approximately 9 months, 80% of which are expected to be filled from the Albuquerque area. Construction employees hired from outside the Albuquerque area will contribute revenue to the lodging and restaurant industries. The project will additionally add production capacity making it possible to add 49 permanent jobs over 5 years.

In addition, the project will increase capacity and out-of-state sales, as well as purchases of local goods and services.

F. Property Acquisition

Indicate if LEDA proceeds will be used to acquire real property (land and/or buildings), and whether the real property is presently owned by the applicant, or is under option.

LEDA proceeds will not be used to acquire land, since the lot is presently owned by El Encanto, Inc.; however, they will be used to assist in financing the construction of the freezer storage addition.

G. Description of Proposed Development

Describe any construction to be undertaken in the project, including square footage, construction type, and location of construction on the project site. Indicate whether existing buildings on the site will be rehabilitated or incorporated in the construction. Detail any demolition which will be required by the project, and indicate whether demolition involves any identified historic properties. If possible, attach a conceptual site plan and elevation (alternately, these may be presented at the Development Commission hearing). If project involves an existing facility, describe the facility.

A new frozen storage facility, approximately 25,000 square feet, will be built on our site. Construction will be concrete pad, steel frame, and prefabricated insulated freezer panels. No demolition will be required.

H. Infrastructure

Indicate if Project will require any extension or relocation of utility or road systems. If additional infrastructure is required, what cost sharing agreements have been reached between the applicant and the city?

Although the Company's electric power needs will increase, service is already provided to the site. We will need to provide power to the new freezer building, and that expense will be incurred by El Encanto, Inc.

I. Area Enhancement

Describe how project design and placement will enhance the area.

As Bueno Foods has done for 40 years, our plant and employment will bring economic growth and opportunities to an impoverished area of the South Valley. We are developing land that is currently vacant, and the building is consistent with the existing facility.

J. Local Purchasing

Please provide an estimated annual expenditure on goods and services locally procured that are subject to the New Mexico gross receipts tax, and an estimated annual increase in such an expenditure.

We estimate that our current annual expenditures subject to New Mexico gross receipts tax is \$6.3 million. Our annual purchases total \$30 million. From year to year, we have seen consistent growth, and we approximate our future growth rate at 4%.

K. Water Conservation

Estimate average daily and monthly water consumption and include any plans for the reduction or re-use of water.

Water consumption will not change. Currently, Bueno Foods consumes an average of 1.5M gallons per month in our non-peak processing periods. In our peak season, when we are processing green chile, we consume an average of 8.0M gallons per month.

Our operation is in an arid climate and we recognize that water conservation is necessary to the long-term sustainability of our community. We have an aggressive water conservation program even though our production rates continue to increase.

We received the Gold Award each year beginning in 2003 until the date the program ended in 2013 from our regional water authority for exceptional source reduction and pollution prevention, and total compliance with the permit discharge limits and reporting requirements. More recently we

received the 2016-2017 Award of Excellence for Industrial Pretreatment for outstanding efforts in pollution prevention through waste minimization and effective pretreatment by the Albuquerque Bernalillo Country Water Utility Authority.

L. Relocation of Individuals or Businesses

No individuals, families or businesses should be displaced by the activities outlined in this plan. If any relocation is required, detail the assistance the applicant will give in relocation.

There is no relocation required for this project.

M. Number and Types of Jobs Created

Identify the number and type (i.e., professional, clerical, assembly line, etc.) of permanent jobs which will be created in the project. If any existing jobs are to be retained to the project site, describe separately. Please include the wages of all positions to be created. The following questions must also be answered:

Permanent jobs that will be created:

	# of Employees	Average Annual Salary
Production Line	20	24,960.00
Prod Support/Technicians	15	40,092.00
Clerical	5	53,240.00
Sales	5	64,000.00
Professional	4	117,500.00

The expansion project will not only result in the addition of 49 full time jobs over a five year period, but will also allow the company to retain its current employee headcount at 286. While Company management believes that the job projections contained herein, when considered on an overall basis, are reasonable in light of current circumstances, certain business climate, regulatory changes or government actions beyond the Company's control (including, but not limited to legislation enacting increases in minimum wage, mandatory leave and executive orders issued in response to COVID-19) could have a material adverse effect on the Company and its ability to meet the projected job targets presented herein.

- 1) What percentage of the permanent new jobs is expected to be filled by current Albuquerque area residents, as opposed to people relocated from elsewhere?

All jobs are expected to be filled by Albuquerque residents.

- 2) Will jobs benefit low and moderate income residents?

Most jobs will benefit low and moderate income residents, providing economic opportunities, such as earned wages, benefits, and opportunities for growth and advancement.

- 3) Will the jobs meet or exceed median wages for the industry within the community?

Yes.

- 4) Will the jobs match skills of current city residents?

Yes.

- 5) Will new employees be trained to fill the positions?

Yes. We have a training program for new employees.

- 6) What stated advancement opportunities are there?

Bueno Foods offers an aggressive internal promotion program. There are countless examples of internal promotions, based on merit, including many women and minorities.

- 7) Will “Job Training Incentive Program” or other job training programs be used?

Yes, if we qualify.

8) Will at least 50% of health insurance premiums be covered for employees?

Yes.

N. Corporate Citizenship Policy/Plan

List any company policies/plans regarding community charitable and civic donations and volunteerism policy.

Company President, Jacqueline Baca, and Senior Vice President, Gene Baca, sit on many community boards that help improve the economic climate in New Mexico including the Federal Reserve - Denver Branch representing northern New Mexico, Think New Mexico, Albuquerque Hispano Chamber of Commerce, New Mexico First, the New Mexico Chile Association and the New Mexico Restaurant Association. In addition:

- **The company contributes thousands of dollars to New Mexico's United Way Hispano Philanthropic Society and supports a host of organizations through United Way.**
- **Jacqueline Baca served as the first chairperson for New Mexico's United Way Hispano Philanthropic Society which raises money for causes that will help the most vulnerable in our community.**
- **Bueno Foods supports organizations that serve the most vulnerable in our community including impoverished children and women, the homeless and hungry.**
- **Contributes many thousands of dollars to Catholic Charities of New Mexico.**
- **Regularly donates thousands of dollars of food to local food banks, to centers that feed the homeless and to community organizations for their fundraising activities.**
- **Continually supports many church and community fundraising activities by contributing product, money and volunteers especially for programs that benefit women and children.**
- **Participates in and sponsors local fundraising events for many causes.**

O. Positive Contributions

List all positive contributions that the project will make to the neighborhood.

Bueno Foods' purpose is to have a positive influence on people's lives through our products and organization. Our company strives to make people's lives better through the opportunities and jobs

we provide and through community involvement. From its inception, our company has always believed in giving back to its community. As a home-grown part of its community, we want to make a difference.

P. Management

Who will manage the project? If the project will be managed by someone other than the applicant, does the applicant have any long-range involvement?

Gene Baca will manage the project development and operations.

IV. *PROJECT FINANCING*

A. Cost of Project, LEDA Funding Amount and Private Financing

Provide the total cost of the project and the amount of LEDA funds requested. The amount requested should be no more than that needed to complete the project in addition to equity or conventional financing. Also provide the amount and sources of private financing (equity or conventional financing) involved in this project; this may include the value of land and existing facilities, if relevant.

Total cost of the improvements is estimated at \$10,000,000 and we are requesting LEDA funding in the amount of \$500,000. We will use Industrial Revenue Bonds to finance the rest.

B. Estimated Value After Completion

Indicate the estimated appraised value of the project after completion.

Total appraised value of the project is estimated at \$12,000,000.

C. Feasibility

Present information to show that the project can reasonably be expected to remain viable, including sufficient revenue to liquidate any related debt, and/or maintain operations for ten (10) years. This information may be an attached pro forma, and should be sufficiently detailed to show the assumptions on which the projections are based. However, a firm third party commitment to provide financing for the project will be considered sufficient evidence of feasibility, and no pro forma will be needed in such cases.

We will provide a commitment letter.

D. Construction Schedule

Give the date of anticipated beginning and completion of construction, if applicable.

Attachments: Attach to the plan a map location of the project (you may use the base maps from the City Zone Atlas if you wish), and any other information as desired to supplement the plan. If you are attaching glossy or colored printed material, please submit 20 copies.