

COUNCIL BILL NO. 16-002  
ORDINANCE NO. 2761

**AN ORDINANCE IN ACCORD WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN, TO AMEND THE FISCAL YEAR 2015/2016 BUDGET AUTHORIZE THE CITY OF LAS CRUCES TO FUND AND ACT AS FISCAL AGENT FOR A LOCAL ECONOMIC DEVELOPMENT ACT PROJECT KNOWN AS THE ARCA LEDA PROJECT**

The City Council of the City of Las Cruces is informed that:

**WHEREAS**, the City of Las Cruces (City), New Mexico, a municipal corporation, considers economic development and job creation extremely important to the livability of the community; and

**WHEREAS**, the City Council passed Ordinance 2697 on October 21 2013, adopting the Local Economic Development Plan 2013, allowing the City to use public resources for economic development projects that retain, create and attract jobs into the community; and

**WHEREAS**, ARCA Space Corp. is a qualifying entity under the Local Economic Development Act (Act) and has acquired a leasehold interest in the real property building and improvements at 715 White Lightning and 725 Leonard Bryant Alley Las Cruces, New Mexico, and is committed to developing a production facility and has applied for Act assistance from the City; and

**WHEREAS**, the City of Las Cruces Economic Development Office anticipates contributing a \$60,000.00 grant to the ARCA LEDA Project; and

**WHEREAS**, the grant will be used for lease payments for the 715 White Lightning and 725 Leonard Bryant Alley facilities and infrastructure improvements to those facilities including, but not limited to electrical and ventilation improvements; and

**WHEREAS**, the City is required to act as fiscal agent for any projects they are

participating in.

**NOW, THEREFORE,** Be it ordained by the Governing Body of the City of Las Cruces:

(I)

**THAT** the City is hereby authorized to act as fiscal agent for the Act project known as the ARCA LEDA Project as set forth in the Project Participation Agreement attached hereto as Exhibit 'A'

(II)

**THAT** the Fiscal Year 2015/2016 Budget is hereby amended as illustrated on Exhibit 'B' attached hereto.

(III)

**THAT** this choose one has been published prior to its adoption and shall be published at least once after adoption, pursuant to Sections 3-2 1 et.seq and 3-54-1 et.seq. NMSA 1978, as amended

(IV)

**THE** City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

**DONE AND APPROVED** this 21 day of September, 2015

APPROVED

\_\_\_\_\_  
Mayor

ATTEST

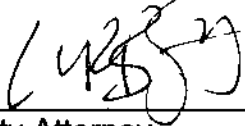
  
\_\_\_\_\_  
City Clerk (Interim)

(SEAL) -

Moved by Smith

Seconded by Sorg

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

VOTE.

Mayor Miyagishima:	<u>Aye</u>
Councillor Silva:	<u>Aye</u>
Councillor Smith:	<u>Aye</u>
Councillor Pedroza:	<u>Aye</u>
Councillor Small:	<u>Aye</u>
Councillor Sorg:	<u>Aye</u>
Councillor Levatino:	<u>Aye</u>

## PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement (this **Agreement**) entered into on \_\_\_\_\_ by and between the City of Las Cruces, a New Mexico Municipal Corporation (the "CITY"), and ARCA Space Corp. (ARCA), a New Mexico Limited Liability Company

### 1 Recitals:

A. Pursuant to the Local Economic Development Act, NMSA 1978, §§ 5-10-1 through 5-10-13, (**LEDA**); the CITY adopted the Ordinance No. 2697 authorizing the CITY to consider applications for economic development assistance; and Ordinance No. 2747 approving an Economic Development Project with ARCA (collectively the '**LEDA Ordinance**').

B. ARCA has submitted an application to the CITY for assistance under the LEDA Ordinance (the '**Application**'). In the Application, ARCA has represented that ARCA has acquired a leasehold interest in the real property building and improvements located at 715 White Lightning and 725 Leonard Bryant Alley, Las Cruces, New Mexico (the '**Site**') and committed to develop a production facility (the '**Facility**') in accordance with the Application for Development Incentives Plan (the '**Plan**'). The application also proposes that the CITY act as Fiscal Agent for approximately three to five years, five years being the maximum period granted by the CITY through the Economic Development Office ("**EDO**") to achieve maintaining 20 full time jobs for two full consecutive years at the Facility. ARCA we will then develop the Site using the grant monies ("**Grant Funds**") to build/lease/equip the Facility as described in the Plan.

C. The CITY finds that ARCA is a qualifying entity as defined in Section 5-10-3 (G) NMSA 1978 and that this Agreement meets the requirements of LEDA.

2. Substantive Contribution from the CITY. In order to implement the Plan project, the CITY will act as Fiscal Agent for the Grant Funds provided for the Project. In addition, the CITY will provide \$60,000 in local Grant Funds and act as Project Management to the Plan project after certification.

3. Substantive Contribution from ARCA. ARCA will materially participate by acting as developer and taking responsibility for economic development. The terms and obligations of the parties under the LEDA Ordinance and Application are incorporated into this Agreement by reference, and identified in the listing attached hereto as Exhibit 'A'. The economic development substantive contribution requirement obligation of ARCA is as follows:

a. The applicable five year job creation period shall commence on the earliest first day of the calendar month that occurs 90 days or more after the date that the certificate of occupancy is issued for the Facility ("**Period Commencement Date**");

b. A total of 20 full time jobs to be created at the Facility by the completion of the Company's second full year of operation (i.e. by the second anniversary of the Period

Commencement Date);

c. Maintaining 20 full time jobs for two full consecutive years at the Facility (a year for this purpose is a 12 calendar month period that commences with the Period Commencement Date month or anniversary month) (the **Jobs Requirement**”);

d. Upon satisfaction of the requirement set forth in c. immediately preceding this subparagraph d. within the five year job creation period or shorter period, the Clawback Provision (as hereinafter defined) will cease to be applicable;

e. If by the fifth anniversary of the Period Commencement Date, ARCA has not achieved Jobs Requirement, ARCA shall reimburse any percentage of the Grant Funds for the percentage of jobs that were not created and maintained (i.e. if only 90% of the requisite jobs were created and maintained, then 10% of the Grant Funds will be reimbursed; similarly if only 80% of the requisite jobs were created and maintained, then 20% of the Grant Funds will be reimbursed) (the **Clawback Provision**”).

4. Security Provided to the CITY: In order to safeguard the public resources dedicated to success of this project, the CITY will require a security from ARCA in the amount of the Grant Funds [\$60,000] to guarantee the Clawback Provision obligation of ARCA. If the ARCA has fully satisfied all or a percentage of the Jobs Requirement such that the Clawback Provision obligation is terminated or reduced, the Bond requirement will cease or the bond amount will be correspondingly reduced commencing on the second anniversary of the Period Commencement Date, as the case may be. Any funds recovered by the CITY pursuant to the Bond shall remain with the CITY

5. Review: CITY will review project timeline, progress and job creation bi-annually in May and November of each year until the earlier of the sixth anniversary of this Agreement, or until ARCA is confirmed to have fully satisfied the Jobs Requirement in full. Job creation reports shall include a copy of FORM ES-903 provided by ARCA to the CITY on file with the New Mexico Department of Workforce Solutions to demonstrate compliance with this Agreement at each review cycle, and another at thirty (30) days prior to the anniversary date of this Agreement, for a period of ending on the earlier of the sixth anniversary of this Agreement, or until ARCA is confirmed to have satisfied the Jobs Requirement in full.

6. Compliance with Statutes: CITY states that it has complied with the requirements of New Mexico Statutes and the Las Cruces Municipal Code and has authorization to enter into this Agreement.

7. Governing Laws: This Agreement is subject to the laws of the State of New Mexico.

8. Permits and Licenses: ARCA agrees that the CITY has no direct responsibility for ARCA to make application and obtain required permits and/or licenses related to use of the site and facility and is not guaranteeing any particular outcome with respect to such application, other than that the CITY agrees to cooperate with ARCA to expeditiously

process the entitlements and other approvals required by the CITY to approve the Project.

9. Ratification: CITY and ARCA hereby ratify all actions consistent with this Agreement that the CITY or ARCA or their respective agents may have taken in furtherance of the Plan project.

10. Miscellaneous: The language of the Recitals shall have the same force and effect as the agreement provisions in this Agreement. This Agreement binds and insures to the benefit of the CITY and ARCA and their respective successors and assignees. This Agreement may be amended or modified, and the performance by any party of its obligations hereunder may be waived, only in a written instrument duly executed by the 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 the State of New Mexico, without giving effect to its choice-of-law principles.

8. Term of this Agreement: The termination date of this Agreement will be agreed upon by the CITY and ARCA within ninety (90) days after ARCA has satisfied the Jobs Requirement in full, or in any event, shall terminate on the sixth (6<sup>th</sup>) anniversary of this Agreement.

In witness whereof, the parties hereto set their hands as of the date first appearing above.

CITY:

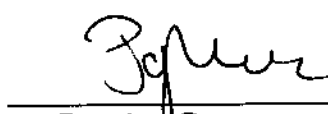
City of Las Cruces

By  \_\_\_\_\_

Robert Garza  
City Manager

PROJECT PARTY

ARCA Space Corp.

By  \_\_\_\_\_

Dumitru Popescu  
President

# CITY OF LAS CRUCES

## Fund Summary

**EXHIBIT "B"**

**Fund** 1030  
**DFA** 101

**Fund Name** ECONOMIC DEVELOPMENT PROGRAM  
**DFA Name.** General Fund

	2015 16 Budget			%
	Adopted	Adjustment	Amended	Inc / Dec.
<b>Beginning Balance</b>	\$ 5,036	3,090	8,126	61 36%
<b>Resources</b>				
Revenue	\$ 0	0	0	0.00%
Proceeds	0	0	0	0.00%
Transfers In	130,000	60,000	190,000	46.15%
<b>Total Resources</b>	\$ 130,000	60,000	190,000	46.15%
<b>Expenditures</b>				
Salaries & Benefits	\$ 0	0	0	0.00%
Operating Costs	0	0	0	0.00%
Capital Outlay	0	0	0	0.00%
Debt Service	0	0	0	0.00%
Grant / Projects	130,000	60,000	190,000	46.15%
Transfers Out	0	0	0	0.00%
<b>Total Expenditures</b>	\$ 130,000	60,000	190,000	46.15%
<b>Ending Balance</b>	\$ 5,036	3,090	8,126	61 36%

**Fund** 1500  
**DFA.** 101

**Fund Name** HHR GRT CONTINGENCY FUND  
**DFA Name:** General Fund

	2015 16 Budget			%
	Adopted	Adjustment	Amended	Inc. / Dec.
<b>Beginning Balance</b>	\$ 6,661,231	90	6,661,321	0.00%
<b>Resources</b>				
Revenue	\$ 7,933,738	0	7,933,738	0.00%
Proceeds	0	0	0	0.00%
Transfers In	0	0	0	0.00%
<b>Total Resources</b>	\$ 7,933,738	0	7,933,738	0.00%
<b>Expenditures</b>				
Salaries & Benefits	\$ 0	0	0	0.00%
Operating Costs	871,195	0	871,195	0.00%
Capital Outlay	7,300,000	0	7,300,000	0.00%
Debt Service	3,000,000	0	3,000,000	0.00%
Grant / Projects	0	0	0	0.00%
Transfers Out	0	60,000	60,000	0.00%
<b>Total Expenditures</b>	\$ 11,171,195	60,000	11,231,195	0.54%
<b>Ending Balance</b>	\$ 3,423,774	(59,910)	3,363,864	1 75%



ARCA SPACE CORPORATION,  
4611 Research Park Circle, A-144 Las Cruces, NM, 88001-5948  
Tel 1 575 556 2470 / Fax +1 575 556 2461  
contact@arcaspace.com

Robert L Garza  
City Manager  
City of Las Cruces  
700 n Main St  
Las Cruces, NM 88001

May 8, 2015

Dear Mr Garza:

ARCA Space Corp. is a newly established U S manufacturer of 'air robots' Unmanned Aerial Vehicle Systems (UAVS) and other aerospace systems, and we have identified Las Cruces as a desirable location for our U S headquarters and operations center. We have worked with the City's Economic Development Office and its partner MVEDA, in making this determination, and would like to start operations in Las Cruces, New Mexico, in the very near future.

Our immediate needs are for office/showroom space, and a facility for assembly of our flagship product, Air Strato, an innovative air robot for the international market. The City's EDO staff has identified suitable locations for ARCA, and at this time we would like to formally ask for the City's assistance through its Local Economic Development Act in locating ARCA in Las Cruces, New Mexico. Specifically we are seeking City assistance of one year's leasing expense coverage of office/showroom space and a hangar facility at the Las Cruces International Airport.

Mr. Camarano of the City's Economic Development Office has put these costs at \$37,000.00 for the office space, and \$18,000.00 for the hangar space, for a total of \$56,000.00. ARCA would be in a position to begin immediately hiring to fill our first 20 above average wage jobs, with further expansion slated for our second year and beyond.

There are several costs involved in establishing our headquarters and operations facility in Las Cruces and ARCA is prepared to meet those, but City assistance for the above is needed. ARCA Space Corp. appreciates your consideration of this request, and looks forward to a long and fruitful relationship with the City of Las Cruces and its surrounding communities.

Sincerely,

Dumitru Popescu  
President, CEO

**ECONOMIC DEVELOPMENT OFFICE  
LEDA APPLICATION****ARCA SPACE Corporation**

Id: APP-009496

Organization: ARCA SPACE Corporation

Contact: Dumitru Popescu

Phone: (415) 613-6582

Email: dumitropopescu@outlook.com

**Company Name, Address, Telephone**

*ARCA SPACE Corporation  
4611 Research Park Circle, A-144  
Las Cruces, NM 88007  
Telephone 575 556 2470*

**Contact Person:**

*Dumitru Popescu, CEO  
575 556 2470*

**Business Structure:***C-Corp***Amount of City LEDA Assistance Requested:****\$60,000.00****Purpose:**

Facility Lease and infrastructure improvements

**Job Creation:**

20 FT employees

**Company Background**

ARCA Space Corporation was established on July 9th 2014  
Shareholders of the company are: Dumitru Popescu, Teodor-Catalin Diaconu, Maria Popescu, Dragos Muresan, Paul Radut, Elena-Simona Popescu, Alexandru-Claudiu Cercel-Duca, Sorin-Sandrino-Dumitru Dinea, Mugurel Conta Ionescu, Vasile Barlaboiu, Constantin-Cosmin Diaconescu, Chris Lang

The company designs and manufactures the following products: AirStrato electrical powered unmanned aerial vehicle, Haas 2B suborbital rocket, Haas 2C orbital rocket  
Before relocating to the United States, ARCA was established as an NGO in Romania in 1999 and during 16 years of activity it succeeded to launch 15 flight missions. ARCA was one of the major contenders in the \$10 million, Ansari X Prize Competition. Following Ansari X Prize we were involved in the X Prize Cup held in Las Cruces

and in the Google Lunar X Prize, succeeding to launch the competition's only rocket up to this date, to test the Moon lander vehicle. In 2008 we secured three governmental aerospace contracts worth \$2.2 million for aerospace technologies and for military applications. In 2012 we secured a \$1.4 million contract with the European Space Agency to test the ExoMars spacecraft atmospheric re-entry parachutes.

The target of the drone market for AirStrato are users that need an airborne platform that is:

- Able to fly for long duration, up to 22 hours;
- Able to fly up to 60,000 ft altitude;
- Able to have a flight range up to 1300 miles;
- Able to take off and land without a runway;
- Global navigation capable (no direct radio link required);
- Controlled from any point on Earth (no human or equipment presence is necessary near the air robot);
- Clean (no fuel of any kind is necessary);
- Able to transport a vast array of sensors, or releasable objects (in the limit of 50 kg);
- Extremely cost effective;

AirStrato target market is related only to high endurance, long range, low and high altitude segment.

On this segment, there are extremely few products that are competing with AirStrato. One of the most relevant example is the General Atomics Predator and while the Predator is more capable to carry high loads, of around 400 lbs, compared with AirStrato's only 100 lbs, the Predator can fly only at 25,000 ft, compared with AirStrato's ceiling of 60,000 ft. The sale price difference between the Predator and AirStrato is also high, with the Predator sale price of around 4 mil \$, compared with AirStrato Explorer's price of less than 300,000 \$ with all accessories included.

Basically, we can state that there is no other equivalent product of AirStrato on the market.

The following marketplace needs, could be satisfied by AirStrato line of products:

- Border protection, both land and sea;
- Disasters monitoring and management;
- Contaminated areas monitoring;
- Remote areas exploration, as Antarctic areas, ocean, mountains, forests, deserts;
- Rescue missions;
- Military reconnaissance;
- Oil pipes and power lines monitoring;
- Communication relay;
- High atmosphere scientific research;
- Meteorology;
- Traffic control;
- TV and cinema;
- Internet delivery network over remote areas;
- Hobbyists.

ECONOMIC DEVELOPMENT OFFICE  
LEDA APPLICATION

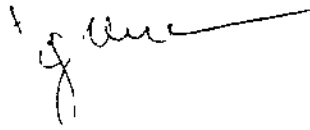
Our office is at Arrowhead Executive Office Center

4611 Research Park Circle, A-144

Las Cruces, NM, 88001-5948

Our production facility is located at Las Cruces Airport, in two hangars (14,000 sq.ft.)

Submitted by:



Signature: \_\_\_\_\_ Date: August 13, 2015

Title: President and CEO

Print Name: Dumitru Popescu





# City of Las Cruces

PEOPLE HELPING PEOPLE

## COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of September 8, 2015  
(Ordinance First Reading Date)

For Meeting of September 21, 2015  
(Adoption Date)

TITLE:

AN ORDINANCE IN ACCORD WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN, TO AMEND THE FISCAL YEAR 2015/2016 BUDGET, AUTHORIZE THE CITY OF LAS CRUCES TO FUND AND ACT AS FISCAL AGENT FOR A LOCAL ECONOMIC DEVELOPMENT ACT PROJECT KNOWN AS THE ARCO LEDA PROJECT

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes  No

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact		541-2286	
Department Director			
Other			
Assistant City Manager /CAO Management & Budget Manager		3401 541-2106	8-25-15 8/24/15
Assistant City Manager/COO			8/26/15
City Attorney		EX 2128	28 August 2015
City Clerk - Interim		X2115	8/28/15



# City of Las Cruces

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item #26 \_

Ordinance# 2761

For Meeting of **September 8, 2015**  
(Ordinance First Reading Date)

For Meeting of **September 21, 2015**  
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL


LEGISLATIVE

ADMINISTRATIVE

**TITLE: AN ORDINANCE IN ACCORD WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN, TO AMEND THE FISCAL YEAR 2015/2016 BUDGET AUTHORIZE THE CITY OF LAS CRUCES TO FUND AND ACT AS FISCAL AGENT FOR A LOCAL ECONOMIC DEVELOPMENT ACT PROJECT KNOWN AS THE ARCA LEDA PROJECT**

### PURPOSE(S) OF ACTION:

Approve a LEDA project.

<b>COUNCIL DISTRICT 4</b>		
<b>Drafter/Staff Contact:</b> Gary Camarano	<b>Department/Section:</b> Administration / Economic Development	<b>Phone:</b> 541-2286
<b>City Manager Signature:</b>		

### BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Economic development in its most basic sense means job creation by the private sector of the economy. Additionally, economic development is understood to refer to specific governmental efforts which are intended to encourage private investment.

One of the tools available to the City in its economic development efforts is the Local Economic Development Act. Known as LEDA (Act), the Act authorizes local government to use public resources for economic development projects. Public resources that may be used for an economic development project include land, buildings, infrastructure, and direct loans and grants for land, buildings and infrastructure. As required by the Act, the City has produced and adopted an Economic Development Plan 2013 that allows it to implement the authority provided by the Act.

The purpose of local economic development is to create a dynamic local economy with increasingly abundant and rewarding employment and investment opportunities for all Las Cruces residents and an economy diversified toward sectors and industries that are near the leading edge of technology likely to thrive into the future, and likely to provide improved returns

(Continue on additional sheets as required)

to employees and investors. Currently the City has an opportunity to advance its economic plan and assist a qualified entity ARCA Space Corp (ARCA). ARCA has applied for Act assistance of \$60,000.00 from the City

The ARCA LEDA Project (Project) is considered a promising project as it:

- 1 Will create high paying jobs in Las Cruces
2. Is in an industry sector (aerospace) targeted for recruitment
3. Will locate at the West Mesa Industrial Park/Las Cruces Airport Industrial Complex
- 4 Represents a Foreign Direct Investment in Las Cruces

The Project located at 715 White Lightning and 725 Leonard Bryant Alley Las Cruces, New Mexico is expected to create over 100 full time jobs. ARCA utilizes state of the art design, equipment and techniques in their aerospace manufacturing facility. Aerospace is an industry sector that the City desires to expand on. ARCA has the potential to emerge as a leader in a growing aerospace sector both domestically and internationally

Although the Project is expected to create over 100 jobs, the job creation criteria to support this funding is (1) a total of 20 jobs to be created at the 715 White Lightning and 725 Leonard Bryant Alley Las Cruces, New Mexico facilities by ARCA's third consecutive year of operation and (2) the maintaining of 20 jobs for two full consecutive years. If ARCA meets these two conditions at any time during the first five years of operation, then any City Clawbacks against the \$60,000.00 Act funding are removed.

The first step in completing the Project is to authorize the City to act as Fiscal Agent for the Project. This will allow the City to allocate funds to the Project, administer the Project and monitor the Project for job creation.

#### **SUPPORT INFORMATION:**

- 1 Ordinance.
2. Exhibit A Project Participation Agreement.
3. Exhibit 'B' Budget Adjustment Request.
- 4 Attachment 'A' Letter of Request for City Assistance.
5. Attachment 'B' City of Las Cruces LEDA Application – Capital Outlay Project Application.

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>	Yes	<input type="checkbox"/>	See fund summary below
	No	<input checked="" type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input checked="" type="checkbox"/>	Expense reallocated from: 1500
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund
<b>Does this action create any revenue?</b>	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

A grant from the City of Las Cruces for the ARCA LEDA Infrastructure Improvement Project in the amount of \$60,000.00 will be allocated from Fund 1500, Gross Receipts Tax Income, Economic Development in accord with the City of Las Cruces Local Economic Development Plan.

**FUND EXPENDITURE SUMMARY**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
1030	10100220- 722190- 10949	\$60,000.00	\$60,000.00*	.00	N/A

\*Upon approved budget adjustment

**OPTIONS / ALTERNATIVES.**

1. Vote "Yes" this will allow the City to fund this stage of the Project, act as fiscal agent for this Project, and to allow this Project to proceed and ultimately create jobs.
2. Vote "No" this will deny the necessary economic development assistance required for the Project to be completed and create jobs for the community
3. Vote to "Amend" this could delay the Project or cause the Project to terminate.
4. Vote to "Table" this could delay the Project and the desired economic development and job creation.

(Continue on additional sheets as required)

**REFERENCE INFORMATION:**

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits

- 1 Ordinance No. 2697

(Continue on additional sheets as required)

## GUARANTY

GUARANTY (the 'Guaranty'), dated as of September 21, 2015 by ARCA Space Corporation, a New Mexico Corporation having its principal place of business at 715 White Lightning and 725 Leonard Bryant Alley, Las Cruces, New Mexico (the 'Company'), in favor of the City of Las Cruces, New Mexico (the 'City').

## RECITALS

(A) Pursuant to the Project Participation Agreement (the 'Contract'), dated as of September 21 2015, between ARCA Space Corp. a New Mexico State corporation (the 'Company'), and the City City has agreed to pay \$60,000.00 US dollars to the Company towards expenses arising from Subsidiary's LEDA type project (as defined in the Contract), as authorized by the City of Las Cruces, Ordinance No. 2761 ("Economic Development Plan Ordinance' and

(B) Company has agreed to certain obligations as provided in the Contract which, if not fulfilled, shall require a pro-rata return of the \$60,000.00; and

(B) The City has required, as a condition precedent to entering into the Contract that the Company execute and deliver this Guaranty. The City would not enter into the Contract with the Company but for the execution and delivery of this Guaranty by the Company

(C) Desires to guaranty all obligations of the Company pursuant to the Contract.

(D) In furtherance of the business purposes of the Company the Guarantor

NOW THEREFORE, based upon the foregoing, and in order to induce the Entity to enter into the Contract, the Company hereby agrees as follows:

## ARTICLE 1

### DEFINITIONS

*ARTICLE 1 SECTION 1.1 Definitions.* Capitalized terms not otherwise defined in this Guaranty shall have the meanings ascribed to them in the Contract, as the same may be amended, supplemented or otherwise modified from time to time. As used in this Guaranty the following terms have the following meanings unless the context otherwise requires:

'Guaranteed Obligations' has the meaning ascribed to such term in Section 2.1

'Guaranty' means this Guaranty, as it may be amended, supplemented or otherwise modified from time to time in writing signed by the Company and the Entity

ARTICLE 2  
THE GUARANTY

SECTION 2.1 *The Guaranty* Except as expressly set forth herein (and subject in particular to the limitations set forth in Section 4.5 below), the Company hereby unconditionally guarantees to Entity the full and punctual performance by the Subsidiary of its obligations under the Contract including but not limited to the payment of damages (excluding indirect and consequential damages or losses), in each case subject to the conditions and limitations expressly set forth in the Contract (the "Guaranteed Obligations"). The Company and the Entity expressly acknowledge that, subject to Section 2.5 below default by the Subsidiary or the failure of the Subsidiary to perform any Guaranteed Obligation in the time required in each case under the Contract, is a condition of the exercise of this Guaranty

SECTION 2.2. *Termination of Guaranty* This Guaranty shall remain in full force and effect until the earliest date on which (i) all of the Guaranteed Obligations have been completely performed and paid in full, or (ii) a replacement guarantor shall have assumed all the rights and obligations of the Company under this Guaranty (whose appointment shall be subject to the prior written consent of the Entity provided that such consent shall not be unreasonably withheld or delayed, and shall not be necessary for a replacement guarantor with a net worth of at least 1 Billion United States Dollars). The Company's payment of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge the Company's liability as set forth herein, for any portion of the Guaranteed Obligations that has not been completely performed or indefeasibly paid in full. Notwithstanding anything to the contrary this Guaranty shall expire at the latest on September 21, 2021

SECTION 2.3 *Guaranty Unconditional* Except as expressly set forth herein and subject in particular to Section 4.5 below the Guarantor agrees that the obligations of the Company hereunder shall be unconditional and absolute. Notwithstanding any provision of this Guaranty to the contrary the Guarantor shall be entitled to assert as a defense to any claim for payment of the Guaranteed Obligations, that (i) such Guaranteed Obligations are not currently due under the terms of the Contract or (ii) that such Guaranteed Obligations have previously been paid in full

SECTION 2.4. *Waivers of Notices and Defenses.* The Company hereby waives acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken by any corporation or person against the Subsidiary or any other corporation or person, except that no payment shall be sought from the Company under this Guaranty unless a notice of default has been served to the Subsidiary with a copy to the Company providing for a minimum cure period of 15 days to remedy such default and indicating the Entity's intention to claim under this Guaranty in the absence of remedy within such cure period.

SECTION 2.5 *Slay* The Company agrees that, notwithstanding anything to the

contrary herein, if the City is stayed upon the insolvency bankruptcy or reorganization of the Subsidiary from exercising its rights to enforce or exercise any right or remedy with respect to the Guaranteed Obligations, or is prevented from giving any notice or demand for payment or performance or taking any action to realize on any security or collateral or is prevented from collecting any of the Guaranteed Obligations, in any such case, by such proceeding or action, the Company shall pay or render to the Entity upon demand therefor the amount that would otherwise have been due had such rights and remedies been permitted to be exercised by the Entity

SECTION 2.6. *No Enforcement of Subrogation.* Upon making any payment or performance with respect to any Guaranteed Obligation hereunder, the Company shall be subrogated to the rights of the Entity against the Subsidiary with respect to such payment; *provided* that the Company shall not enforce any payment right by way of subrogation until all Guaranteed Obligations have been paid in full.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES

The Company hereby represents and warrants to the Entity that the following statements are true and correct:

SECTION 1 *Binding Obligation* This Guaranty has been duly and validly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy insolvency or other similar laws affecting the enforcement of creditors rights generally and by equitable principles relating to the availability of equitable remedies.

### ARTICLE 4

#### MISCELLANEOUS

SECTION 4.1 *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including bank wire, facsimile transmission or similar writing) and shall be given to such party at its address or telecopy number set forth, in the case of the Company on the signature pages hereof, or in the case of the City in the Contract, or such other address or telecopy number as such party may hereafter specify for the purpose by notice to the other party. Each such notice, request or other communication shall be effective (i) if given by facsimile transmission, when such telecopy is transmitted to the telecopy number specified in this Section and answerback has been received, (ii) if given by any other means (which in the case of mail shall be registered mail or airmail for international mail), when delivered at the address specified in this Section.

SECTION 4.2. *Wavers* No failure or delay by the Entity in exercising any right, power or privilege hereunder or under the Contract shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof

or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law

SECTION 4.3. *Amendments and Waivers* This Guaranty constitutes the complete agreement of the City and the Company with respect to the subject matter hereof and supersedes all prior or contemporaneous negotiations, promises, covenants, agreements or representations. No amendment, modification, termination or waiver of any provision of this Guaranty shall in any event be effective without the written consent of the Entity and Company

SECTION 4.4. *Successors and Assigns* This Guaranty is a continuing Guaranty and shall be binding upon the Company or its successors and assigns. This Guaranty shall inure to the benefit of the City or its successors and assigns permitted under the Contract. Nothing contained in this Guaranty shall be deemed to confer upon anyone other than the parties hereto (and their permitted successors and assigns) any right to insist upon or to enforce the performance or observance of any of the obligations contained herein

SECTION 4.5. *Limitation on Liability* Notwithstanding anything to the contrary contained or implied herein, the maximum aggregate liability of Company hereunder shall not in any event exceed the lower of (i) the actual outstanding liability of the Company under the Contract, or (ii) \$60,000.00, less amounts previously paid under the Contract to the City and/or its successors and assigns by the Subsidiary and/or its successors, assigns and affiliates.

SECTION 4.6. *APPLICABLE LAW* THIS GUARANTY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW MEXICO.

SECTION 4.7 *JURISDICTION*. ANY ACTION OR PROCEEDING AGAINST THE COMPANY RELATING IN ANY WAY TO THIS GUARANTY MAY BE BROUGHT AND ENFORCED IN THE COURTS OF THE STATE OF NEW MEXICO OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW MEXICO, AND THE COMPANY IRREVOCABLY CONSENTS TO THE JURISDICTION OF EACH SUCH COURT IN RESPECT OF ANY SUCH ACTION OR PROCEEDING. THE COMPANY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID RETURN RECEIPT REQUESTED, TO THE COMPANY AT ITS ADDRESS AS PROVIDED FOR NOTICES HEREUNDER. THE FOREGOING SHALL NOT LIMIT THE RIGHT OF THE ENTITY TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING ANY ACTION OR PROCEEDING, OR TO OBTAIN EXECUTION OF ANY JUDGMENT IN ANY OTHER JURISDICTION.

THE COMPANY HEREBY IRREVOCABLY WAIVES ANY OBJECTION THAT IT

MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING UNDER THIS GUARANTY IN ANY COURT LOCATED IN THE STATE OF NEW MEXICO, AND HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY COURT LOCATED IN THE STATE OF NEW MEXICO IS NOT A CONVENIENT FORUM FOR ANY SUCH ACTION OR PROCEEDING.

SECTION 4.8. *Severability.* If any provision in or obligation under this Guaranty shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

SECTION 4.9. *Interpretation.* Section headings in this Guaranty are included herein for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose or be given any substantive effect.

SECTION 4.10 *Further Assurances.* At any time or from time to time, upon the request of the City, the Company shall execute and deliver such further documents and do such other acts and things as the City may reasonably request in order to effect fully the purposes of this Guaranty in accordance with its terms and subject to all limitations. The Company agrees to be liable for any reasonable expenses incurred by Entity and/or its successors and assigns with respect to any reasonable action or proceeding to enforce this Guaranty.

SECTION 4.11 *Effectiveness.* This Guaranty shall become effective upon the Contract becoming effective.

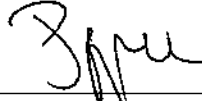
[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF the Company has executed this Guaranty by its duly authorized officer as of the date first above written.

GUARANTOR.

ARCA Space Corp.

By



\_\_\_\_\_  
Name: Dumitru Popescu

Title: President/CEO

# Legal Advertising Affidavit

Jamie Pfannenstiel, who being duly sworn as the Advertising Assistant of the Las Cruces BULLETIN a weekly newspaper of general distribution published in the City of Las Cruces, County of Doña Ana, State of New Mexico disposes and states that the legal advertising for

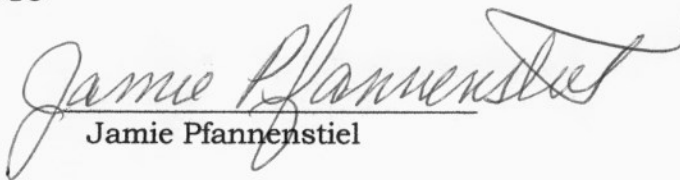
## **CITY OF LAS CRUCES - CITY ATTORNEY**

In the matter of:

### **NOTICE OF INTENT TO ADOPT**

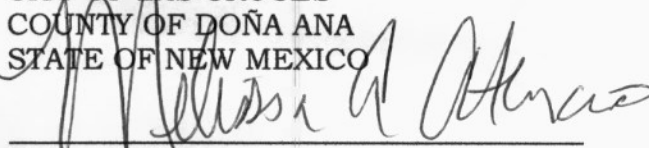
**Council Bill No 16-002; Ordinance No 2761**

In accordance with the laws of the State of New Mexico the attached was published in its entirety **One** time in the **Las Cruces BULLETIN**, the first and only publication date being 09/11/2015

  
Jamie Pfannenstiel

Sworn to and subscribed  
before me this 11th day  
of September 2015  
in the

CITY OF LAS CRUCES  
COUNTY OF DOÑA ANA  
STATE OF NEW MEXICO

  
Notary Public



OFFICIAL SEAL  
MELISSA A. ATENCIO  
NOTARY PUBLIC STATE OF NEW MEXICO

My commission expires: 5-12-16

\$47.18

Advertising Costs

### **NOTICE OF INTENT TO ADOPT**

The City Council of The City of Las Cruces, New Mexico, Hereby Gives Notice of Its Intent to Adopt The Following Ordinance at a City Council Meeting to be Held on September 21 2015:

**1 Council Bill No. 16-002; Ordinance No 2761:** An Ordinance in Accord with the City of Las Cruces Local Economic Development Plan, to Amend the Fiscal Year 2015/2016 Budget, Authorize the City of Las Cruces to Fund and Act as Fiscal Agent for a Local Economic Development Act Project Known as the ARCO LEDA Project.

Copies Are Available for Inspection During Working Hours at the Office of the City Clerk. Witness My Hand and Seal of the City of Las Cruces on this the 8th day of September 2015.

Linda Lewis, CMC  
City Clerk

Date: 09/11 2015

**NOTICE OF INTENT  
TO ADOPT**

The City Council of The City of Las Cruces, New Mexico, Hereby Gives Notice of Its Intent to Adopt The Following Ordinance at a City Council Meeting to be Held on September 21 2015:

**1 Council Bill No. 16-001; Ordinance No. 2760:** An Ordinance Authorizing the Issuance and Sale of up to \$28,500,000 City of Las Cruces, New Mexico Hold Harmless Gross Receipts Tax Improvement Revenue Bonds, in One or More Series, for Construction, Acquisition and Improvement of Streets, Roadways, Public Facilities and Infrastructure and Economic Development Purposes.

Copies Are Available for Inspection During Working Hours at the Office of the City Clerk. **Witness My Hand and Seal** of the City of Las Cruces on this the **8th day of September 2015.**

**Linda Lewis, CMC  
City Clerk**

Date: 09/11 2015

THE LAS CRUCES  
**Bulletin**

840 N. Telshor Blvd. Suite E Las Cruces, NM 88011  
Phone: 575-524-8061

## Advertising Invoice

CITY OF LAS CRUCES CITY ATTORN  
PO BOX 20000  
ATTN LINDA LEWIS  
LAS CRUCES, NM 88004

Cust#:977669  
Ad#:242018  
Phone#:575-541-2115  
Date:09/08/2015

Salesperson: Jamie Pfannenstiel  
62.00

Classification: Legal Notice New Mexico

Ad Size 1.0 x

### Advertisement Information

Description	Start	Stop	Ins.	Cost/Day	Total
Las Cruces Bulletin	09/11/2015	09/11/2015	1	42.68	42.68
Affidavit Charge		-			2.50
Mail Processing Fee LCB					2.00

### Payment Information

Date: 09/08/2015      Order#: 242018      Type: BILLED ACCOUNT

Total Amount 43.56

Tax: 3.62

Amount Due 47.18

Attention: Requests for credits or refunds for early cancellations must be made within 90 days.

Ad Copy

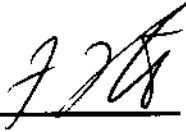
# LAS CRUCES SUN-NEWS

## PROOF OF PUBLICATION

I, being duly sworn, Frank Leto deposes and says that he is the Publisher of the Las Cruces Sun -News, a newspaper published daily in the county of Dona Ana, State of New Mexico; that the notice 55673 is an exact duplicate of the notice that was published once a week/day in regular and entire issue of said newspaper and not in any supplement thereof for 1 consecutive week(s)/day(s), the first publication was in the issue dated September 27, 2015, the last publication was September 27, 2015

Despondent further states this newspaper is duly qualified to publish legal notice or advertisements within the meaning of Sec. Chapter 167, Laws of 1937.

Signed



Publisher  
Official Position

STATE OF NEW MEXICO

ss.

County of Dona Ana

Subscribed and sworn before me this

2nd day of October 2015



Notary Public in and for  
Dona Ana County, New Mexico

August 6, 2016  
My Term Expires

## NOTICE OF ADOPTION

The City Council of the City of Las Cruces, New Mexico, Hereby Gives Notice of Its Adoption of the Following Ordinances at the Regular City Council Meeting Held on September 21, 2015:

1. Council Bill No. 16-001; Ordinance No. 2760: An Ordinance Authorizing the Issuance and Sale of up to \$28,500,000 City of Las Cruces, New Mexico Hold Harmless Gross Receipts Tax Improvement Revenue Bonds, in One or More Series, for Construction, Acquisition and Improvement of Streets, Roadways, Public Facilities and Infrastructure and Economic Development Purposes.

2. Council Bill No. 16-002; Ordinance No. 2761: An Ordinance in Accord with the City of Las Cruces Local Economic Development Plan, to Amend the Fiscal Year 2015/2016 Budget, Authorize the City of Las Cruces to Fund and Act as Fiscal Agent for a Local Economic Development Act Project Known as the ARCO LEDA Project.

Copies Are Available for Inspection During Working Hours at the Office of the City Clerk. Witness My Hand and Seal of the City of Las Cruces on this the 22th day of September 2015.

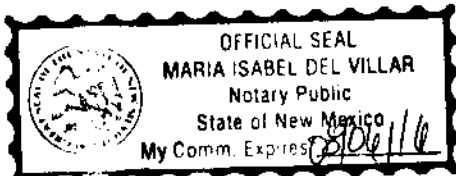
Linda Lewis, CMC

Interim City Clerk

Pub#55673

Run Date:

September 27, 2015



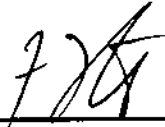
# LAS CRUCES SUN-NEWS

## PROOF OF PUBLICATION

I, being duly sworn, Frank Leto deposes and says that he is the Publisher of the Las Cruces Sun -News, a newspaper published daily in the county of Dona Ana, State of New Mexico; that the notice 55894 is an exact duplicate of the notice that was published once a week/day in regular and entire issue of said newspaper and not in any supplement thereof for 1 consecutive week(s)/day(s), the first publication was in the issue dated September 13, 2015, the last publication was September 13, 2015

Despondent further states this newspaper is duly qualified to publish legal notice or advertisements within the meaning of Sec. Chapter 167, Laws of 1937.

Signed



Publisher  
Official Position

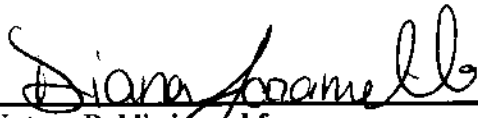
STATE OF NEW MEXICO

ss.

County of Dona Ana

Subscribed and sworn before me this

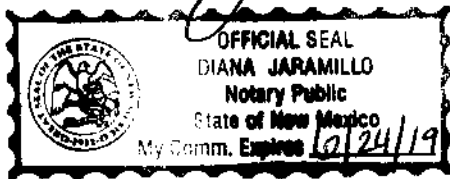
22nd day of September 2015



Notary Public in and for  
Dona Ana County, New Mexico

My Term Expires

June 24, 2019



## NOTICE OF INTENT TO ADOPT

The City Council of The City of Las Cruces, New Mexico, Hereby Gives Notice of Its Intent to Adopt The Following Ordinance at a City Council Meeting to be Held on September 21, 2015:

1. Council Bill No. 16-002; Ordinance No. 2761: An Ordinance in Accord with the City of Las Cruces Local Economic Development Plan, to Amend the Fiscal Year 2015/2016 Budget, Authorize the City of Las Cruces to Fund and Act as Fiscal Agent for a Local Economic Development Act Project Known as the ARCO LEDA Project.

Copies Are Available for Inspection During Working Hours at the Office of the City Clerk. Witness My Hand and Seal of the City of Las Cruces on this the 8th day of September 2015.

Linda Lewis, CMC

City Clerk

Pub#55894

Run Date:

September 13, 2015



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INTER-DEPARTMENTAL MEMORANDUM

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**TO:** FILE

**FROM:** David Weir, Community Development Director *DW*

**DATE:** December 1, 2015 **FILE NO.** M-15-263

**SUBJECT:** 425 Leonard Bryant and 715 White Lightning, Las Cruces International Airport

The purpose of this memo is to address the requirements of a Local Economic Development Agreement (LEDA) between the City of Las Cruces and ARCA for the use of buildings at the Las Cruces International Airport. The structures in question were constructed for S-1 Occupancy, Aircraft Hangar. All information related to the occupancy of the structures indicate their occupancy and use has been as aircraft hangars.

The City of Las Cruces will issue ARCA a business registration for the subject hangars for the storage and maintenance of aircraft per the building standards for an S-1 Occupancy. For the purpose of the LEDA, a business registration will act in lieu of a certificate of occupancy of the hangars.

Any change in occupancy group or use will necessitate a building code analysis and possible modifications to meet the building occupancy requirements of the new use. A certificate of occupancy can be issued for the modified buildings with appropriate plan, permit and inspection approvals.

*ARCA Ordinance  
#2761*

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney