

1 alternative to conventional ash as a product from cremation, and meets the definition of Qualifying
2 Entity under the LEDA, NMSA 1978, Section 5-10-3 (L)(1), and incorporated into the Santa Fe
3 City Code at SFCC 1987, Section 11-11.4. The Qualifying Entity creates economic-based jobs
4 using a process that solidifies the full amount of remains into forms resembling smooth stones.

5 D. The design, development, and construction of tenant improvements, lease
6 payments, and expansion of a corporate headquarters, "Project," will utilize \$150,000 in grant
7 monies from the State of New Mexico LEDA Fund and \$25,000 from the City of Santa Fe's LEDA
8 Fund. Parting Stone, Inc., intends to create twenty-eight (28) new jobs within the first year of its
9 five-year job creation plan and to have a total job count of ninety-nine (99) by the end of the plan.
10 The twenty-eight (28) new workers directly employed by the Project are each projected to earn
11 approximately \$48,473 per year initially with an estimated payroll of \$1,357,244 for the first year
12 of the five-year job creation schedule and an estimated payroll of \$5,283,557 by the end.

13 Accounting for various taxable sales and purchases, including activity associated with the
14 Project, worker spending, and visitors' spending in the state, it is estimated that the Project will
15 support approximately fifty-four million, nine hundred thirty-three thousand, two hundred seventy-
16 three dollars (\$54,933,273) in total economic impact sales over the next 10 years.

17 **Section 3. Findings. The Governing Body hereby finds:**

18 A. It is in the interest of the welfare of the citizens of Santa Fe to enter into an
19 Economic Development Project Participation Agreement for the purposes of effectuating the City's
20 Economic Development Plan and the Project.

21 B. In compliance with the City's Economic Development Fund Ordinance, SFCC
22 1987, Section 11-11.11, the Project Participation Agreement (Exhibit A) between the Qualifying
23 Entity and the City clearly states the following:

24 (1) Parting Stone is a Qualifying Entity;

25 (2) The contributions of the City, the City as a fiscal agent of the State, and the

1 Qualifying Entity;

2 (3) The specific measurable objectives upon which the performance review will be
3 based;

4 (4) A schedule for Project development and goal attainment;

5 (5) The security being offered for the City's investment;

6 (6) The procedures by which the Project may be terminated and the City's investment
7 recovered;

8 (7) The time period for which the City shall retain an interest in the Project;

9 (8) The economic development goals of the project; and

10 (9) A "sunset" clause after which the City shall relinquish interest in and oversight of
11 the project.

12 **Section 4. Approval and Adoption of the Project Participation Agreement.** The
13 Governing Body hereby approves the Project Participation Agreement, whereby the City will be
14 the fiscal agent for the State legislative appropriation of one hundred fifty thousand dollars
15 (\$150,000) and the City designates twenty-five thousand dollars (\$25,000) from its funds. The
16 City will receive and appropriate the state legislative appropriation of \$150,000.00 and provide
17 City funds of \$25,000.00 to the Qualifying Entity, and the funds will be used to increase headcount
18 per the Project Participation Agreement. The Qualifying Entity will expand the tax base and
19 generate more taxes, fees, and other revenues for the State of New Mexico and the City of Santa
20 Fe.

21 **Section 5. Severability Clause.** If any section, paragraph, clause, or provision of
22 this ordinance; or any section, paragraph, clause, or provision of any regulation promulgated
23 hereunder, shall for any reason be held to be invalid, unlawful, or unenforceable; the invalidity,
24 illegality, or unenforceability of such section, paragraph, clause, or provision shall not affect the
25 validity of the remaining portions of this ordinance or the regulation so challenged.

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Section 6. Effective Date. This ordinance shall become effective immediately upon adoption.

PASSED, APPROVED, and ADOPTED this 10th day of May, 2023.



ALAN WEBBER, MAYOR



KRISTINE MIHELIC, CITY CLERK

APPROVED AS TO FORM:



ERIN K. McSHERRY, CITY ATTORNEY

Bill No. 2023-13

Legislation/2023/Ordinances/2023-15 (O) Parting Stone LEDA Project

**CITY OF SANTA FE
ECONOMIC DEVELOPMENT
PROJECT PARTICIPATION AGREEMENT**

THIS PROJECT PARTICIPATION AGREEMENT (hereinafter the “Agreement”) is made and entered into this ____ day of _____, 2023, by and between the City of Santa Fe, an incorporated municipality in the State of New Mexico, (hereinafter the “City”) and Parting Stone Inc., (hereinafter the “Qualifying Entity”, “Q/E”,).

WHEREAS, the State of New Mexico has deemed it in the best interest of the citizens of New Mexico to enact the Local Economic Development Act (LEDA) NMSA 1978 §§ 5-10-1, et seq., to provide public support for economic development to foster, promote and enhance local economic development efforts);

WHEREAS, LEDA explicitly permits local governments to assist qualifying entities with economic development projects through the use of public resources;

WHEREAS, the City has complied with LEDA requirements by adopting an economic development plan ordinance and incorporating within that ordinance its community economic development plan (SFCC 1987 § 11-11), called the Community Economic Development Plan and Economic Development Strategy for Implementation dated May 21, 2008;

WHEREAS, Parting Stone, is a “qualifying entity” under LEDA in that it is an “industry for the manufacturing, processing or assembling manufactured products” (NMSA 1978, § 5-10-3(K)(1) and (2)) and also a “qualifying entity” under the City’s Economic Development Plan Ordinance which incorporates by reference the above LEDA definitions, SFCC 1978 § 11-11.4;

WHEREAS, all requirements under the Economic Development Plan Ordinance to enter into this Agreement have been fulfilled;

WHEREAS, the Q/E has submitted an application (hereinafter the “Application”) to the City for assistance under the Economic Development Plan Ordinance (SFCC 1978 §11-11) and for the City to act as fiscal agent for the grant monies (hereinafter the “Grant Monies”) granted by the City through its Economic Development Department and through the New Mexico Economic Development Department;

WHEREAS, in the Application, the Q/E proposed an “economic development project” compliant with LEDA, in that it will use the Grant Monies for the expansion of a manufacturing and production facility (hereinafter the “Project”), to be located at 9 Plaza de Prensa Santa Fe, New Mexico, 87507;

WHEREAS, the City has determined that it is in the interest of the welfare of the citizens of the City to enter into this Agreement for the purposes of effectuating its economic development plan;

WHEREAS, the State of New Mexico’s maximum contribution to the Project will not exceed One Hundred Fifty Thousand Dollars (\$150,000) from the New Mexico LEDA Fund (hereinafter

the “NM LEDA Fund”) and the City’s maximum contribution will not exceed Twenty-Five Thousand Dollars (\$25,000) pursuant to an intergovernmental agreement between the City and the State to be executed soon after the execution of this Agreement; and the Q/E shall contribute up to One Million One Hundred Ninety-Three Thousand Dollars (\$1,066,500.00) or more in matching funds to complete the Project;

WHEREAS, the Project addresses the following objectives from the Santa Fe Economic Development Implementation Strategy as adopted by City Resolution 2008-42: “Diversify the Santa Fe Economy with an emphasis on high wage jobs and career paths;” “Pursue overall affordability where local wages can support living in Santa Fe (reduce leakage);” and “Bolster Santa Fe's leadership position and/or potential in innovation”; and

WHEREAS, this Agreement clearly provides the following as required by LEDA and the Economic Development Plan Ordinance: (1) the economic development goals of the Project; (2) the contributions of the City, State and the Q/E; (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 and State’s investment; (6) the procedures by which the project may be terminated and the City’s investment recovered; (7) the time period for which the City shall retain an interest in the Project; (8) a “sunset” clause after which the City shall relinquish interest in and oversight of the Project; and (9) that the Qualifying Entity is a qualifying entity.

NOW THEREFORE, in consideration of the foregoing, the following and other good and valuable consideration, the receipt of which is hereby acknowledged the undersigned parties hereby agree as follows.

1. CONTRIBUTIONS OF THE CITY, THE STATE, AND THE Q/E

A. Contributions of the State and the City. The maximum Grant Monies that may be disbursed under this Agreement shall be One Hundred Seventy-Five Thousand Dollars (\$175,000) as described below:

City Contributions: This Agreement governs the City’s contribution to the Project. The City shall reimburse the Q/E in the amount of up to Twenty-Five Thousand Dollars (\$25,000) from the City LEDA Fund for LEDA eligible expense reimbursements in accordance with the disbursement milestones delineated below in the Disbursement Schedule.

State Contributions: This Agreement governs the State’s contribution of up to One Hundred Fifty Thousand Dollars (\$150,000) from the NM LEDA Fund by way of the New Mexico Economic Development Department. The City will serve as fiscal agent pursuant to the Intergovernmental Agreement between the City and State, which is in substantial form as **Attachment A** hereto, the terms of which are incorporated into this Agreement in accordance with the disbursement milestones delineated below in the Disbursement Schedule.

Disbursement of Grant Monies: Disbursement of the NM LEDA Funds by the State and the City’s Economic Development Funds are contingent upon the following:

The City and the New Mexico Economic Development Department shall execute an intergovernmental agreement for the State to grant up to One Hundred Fifty Thousand dollars (\$150,000) to the City as fiscal agent for the Project;

The City to grant up to Twenty-Five Thousand Dollars (\$25,000) in LEDA funds from the Economic Development Fund for the Project; and

(c) The Q/E shall submit to the City and State for review, a cover letter, invoice, and proof of payment as necessary for reimbursement as set forth in the Table below. Disbursement shall be made on a reimbursement basis of eligible costs under LEDA:

<i>State of New Mexico and City of Santa Fe LEDA Disbursement Schedule</i>		
<i>Tranche</i>	<i>Amount of State and City Contributions Available for Disbursement/Tranche</i>	<i>Disbursement Performance Milestone</i>
1	State of New Mexico \$100,000 disbursement through the City of Santa Fe	Obtain Lease Agreement, LEDA eligible expenses following execution of ordinance.
2	State of New Mexico \$25,000 disbursement through the City of Santa Fe, plus City of Santa Fe \$12,500 disbursement	By December 31, 2023, retain 8 and hire 20 additional employees between the execution of the ordinance and December 31, 2023, for a total employee headcount of 28 and submit proof of payment invoices for LEDA eligible expenses and current with all reporting.
3	State of New Mexico \$25,000 disbursement, plus City of Santa Fe \$12,500 disbursement through the City of Santa Fe	By December 31, 2024, retain 28 employees and hire 15 additional employees between January 1, 2024, and December 31, 2024, for a total employee headcount of 43 and submit proof of payment invoices for LEDA eligible expenses and current with all reporting.

It is expressly understood that any costs eligible for reimbursement must be incurred after this Agreement is in effect.

B. Contributions of the Q/E.

(1) Financial Investment: The Q/E shall contribute up to One Million One Hundred Ninety-Three Thousand Dollars (\$1,066,500.00) or more in matching funds to complete the Project.

(2) Project Management: Unless otherwise specified in this Agreement, the Q/E shall be responsible for managing all parts of the Project.

Direct Economic Output: The Project is anticipated to generate Five Million Two Hundred Eighty-Three Thousand Five Hundred Fifty-Seven Dollars (5,283,557) in direct salaries for existing and expanded operations over five years. As reflected in the LEDA Term Sheet. (See **Attachment C**). The total estimated direct economic output for the expansion of the facility is Fifty-Four Million Nine Hundred Thirty-Three Thousand Two Hundred Seventy-Three Dollars (\$54,933,273) over ten years, as is further described in the Fiscal Impact Analysis. (See p. 5 of **Attachment B**).

Expanded Tax Base: As a result of the completion of the Project, the Q/E is expected to generate contributions to the City's tax base, as projected in the Fiscal Impact Analysis. Net benefits for the City generated by the project (including property taxes, gross receipts taxes, utility fees, utility franchise fees, lodger's taxes, and other use taxes) are estimated to be Five Hundred Seventy Two Thousand, Eight Hundred seventeen Dollars (\$572,817) over ten years. (See p. 14 of **Attachment B**.)

Proportional Investment: The Q/E at its discretion may decide to not accept the entire One Hundred Seventy-Five Thousand Dollars (\$175,000) in Grant Monies for the Project. If the Q/E does not accept the entire Grant Monies, then the capital investment and job creation requirements would then decrease proportionally to the level of Grant Monies accepted. The Q/E shall notify the City 30 days prior to its decision.

2. PERFORMANCE REVIEW AND CRITERIA – ECONOMIC DEVELOPMENT GOALS

A. Economic Development Goals. The following Economic Development Goals shall be fulfilled by the Q/E:

- (1) The Q/E shall hire new employees in accordance with the schedule set forth in the Job Creation Commitment and Schedule. See **Attachment C**. The Q/E presently employs Twenty (20) full-time workers and by December 31, 2023, the Q/E shall employ at least Eight (8) new employees in the City of Santa Fe, for a total of Twenty-Eight (28) employees. The average wage of new employees will be \$48,473.
- (2) By December 31, 2027, the Q/E shall employ no fewer than Eighty (80), new employees, while retaining the prior employment figures, for a total of One Hundred and Nine (109) jobs in the City of Santa Fe. All new employees shall be paid in accordance with the payroll data points in **Attachment C**.
- (3) The Q/E's contribution as set forth in Paragraph 1. B herein is incorporated into the Economic and Development Goals.

B. Reports; Certifications; Review.

- (1) Quarterly Reports. During the term of this Agreement, the Q/E shall provide to the Office of Economic Development quarterly reports due on January 31st, April 30th, July 31st, and October 31st of each year for the preceding quarter's job report filed to the New Mexico Department of Workforce Solutions. The Q/E's quarterly reports shall clearly indicate how the Q/E has met the job creation prerequisites in **Attachment A** Quarterly reports shall be in the form of an affidavit signed by an officer of the Q/E, see example **Attachment D**. Quarterly reports shall include a copy of FORM ES-903a or an equivalent. document as required by the New Mexico Department of Workforce Solutions, provided by the Q/E to the City to demonstrate compliance with this Agreement at each review cycle. In the quarterly report, the Q/E shall include the number of new jobs created and filed that quarter, the average minimum annual salary of the new jobs, the total number of jobs, the total payroll, and the amount of the Q/E's total capital investment, with line items of building improvements and lease payments, to date. The first quarterly report shall certify the number of baseline jobs as of December 31, 2023.

Additionally, Project Party will provide to the State of New Mexico Economic Development Department their most recent quarterly Department of Workforce Solutions 903A Report or its equivalent on a quarterly basis beginning with December 31, 2023, and continuing on April 30, July 31, and October 31 of each year until the completion of this agreement.

- (2) Annual Reports. The City may require the Q/E to provide annual reports or a presentation to the City's governing body and the Economic Development Advisory Committee (EDAC). The City will give the Q/E a minimum of 30 days' notice if a report or presentation to the governing body or EDAC is required. City staff shall review these reports to ensure the Q/E's compliance with this Agreement in accordance with the Job Creation Commitment and Schedule.
- (3) Expanded Tax Base Report: Within a reasonable time after completion of the construction of the facilities, but in any event by the next quarterly report, the Q/E shall provide to the City a written report on the construction jobs and wages created by the construction portion of the project.
- (4) Certification of Non-Interest. The Q/E shall certify to the City that to the Q/E's best information, knowledge and belief and after reasonable inquiry, no member, officer, or employee of the City or its designees or agents, no member of the governing body of the locality of which the program is situated, and no other public official that exercises any functions or responsibilities with respect to the Project during his/her tenure, or for one year thereafter, has any interest, direct or indirect, in the Q/E or any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement. The Q/E shall certify that such a provision shall be included in all contracts and subcontracts in connection with the Project.

3. RECAPTURE PROVISIONS FOR PUBLIC MONIES

Clawback

Full closure of the facility will result in a clawback based on the number of years the Q/E has operated under this agreement as per the following table:

2023	100%
2024	100%
2025	100%
2026	80%
2027	60%

The Q/E has provided the following job ramp for this project.

<i>Job Creation Commitment and Schedule</i>					
<i>Year</i>	<i>Cumulative Full Time Job Creation Target</i>	<i>Minimum Job Number</i>	<i>Payroll</i>	<i>Job Determination Period</i>	
1	28	28	\$1,357,244	Ordinance Date	12/31/23
5	28 + 81= 109	99	\$5,283,557	1/1/27	06/30/27
Additional Notes: Only New Mexico based employees count towards job creation target. ES903A or its equivalent will be provided for 3 rd quarter of 2022 to verify starting headcount.					
^ Clawback calculator attached for illustrative purposes.					

For the purposes of this Section:

(1) The “Clawback Penalty” is a penalty that the Q/E will be required to pay the City upon the Q/E’s failure to meet the Minimum Job Number on the applicable Job Determination Date.

(2) “Cure Period” is the period of one hundred eighty (180) days after each Job Determination Date during which time the Q/E shall have the opportunity to cure any shortfall in meeting the Minimum Job Number. If the Q/E meets the Minimum Job Number at any time during the Cure Period, the Q/E shall have no obligation to pay a Clawback Penalty corresponding to the applicable Job Determination Date. If the Q/E fails to reach the Minimum Job Number during the Cure Period, the Q/E shall pay the City a Clawback Penalty determined in accordance with the table set forth above at a rate of 50% (see attached clawback calculator)

(3) A “Job” for this purpose of this section will mean an employment position that consists of at least thirty-two (32) paid hours of work per week and which provides the employee with a full range of benefits offered to other similarly situated Q/E employees.

(4) **SECURITY FOR CITY'S INVESTMENT**

A. This is a grant project only, with the City acting as fiscal agent. The Q/E has no loan obligations for repayment to the City or State, but is obligated to fulfill the Economic Development Goals of this Agreement; however, if the Q/E is found by the City to be in Default, then the City may elect to demand financial reimbursement by the Q/E.

B. The Grant Monies must be secured in a manner that it may be clawed back if the Q/E fails to meet its performance goals under this PPA. As security for fulfilling the Economic Development Goals, before the City may disburse any appropriations to the Q/E, the amount of Public Monies to be reimbursed shall be securitized in a manner satisfactory to the City.

C. This grant is secured by a Letter of Credit from an issuing financial institution, with the City as beneficiary, from which the City shall have the right to draw down funds upon the City's presentation of a demand for payment and evidence of Q/E's Default ("Irrevocable Letter of Credit"). The Irrevocable Letter of Credit shall have a term that extends to the term of this Agreement (either via the full duration in the base term or via automatic one-year extensions terminable at the sole option and discretion of the City). At any given time, the Irrevocable Letter of Credit must secure an amount, and the City shall be able to draw down an amount, at least equal to the amount of appropriations made to the Q/E for the Project.

D. During the term of this Agreement, the Q/E may request a full or partial release of the security interest with the substitution of collateral, repayment of the disbursed appropriation, or proof that the Q/E has met the Economic Development Goals, in part or in whole, under this Agreement. Any full or partial release of the security interest will be proportional to the value of the substitute collateral, repayment, or the portion of Economic Development Goals met which are no longer subject to claw back and according to Attachment A.

E. Acceptance of a method of securitization and of substitute collateral or proof of performance goals shall be within the City's sole and absolute discretion.

(5) **TERM; SUNSET**

A. This Agreement shall remain in force for 5 years from the execution date of the Agreement, or until conditions of the Agreement are performed in full or to the reasonable satisfaction of the City, whichever is earlier. In the event the Q/E performs or exceeds the required performance levels contained in this Agreement, as may be reasonably determined by the City, this Agreement may be terminated at that time in writing by the City pursuant to Paragraph 6, below.

B. This Agreement will not be deemed terminated and this Agreement will remain in effect unless and until the City reasonably determines that the objectives under this Agreement have been fulfilled, in which case the City will provide a closure letter to the Q/E.

(6) **TERMINATION**

- A. This Agreement may be terminated by the City upon written notice delivered to the Q/E at least 45 days prior to the intended date of termination in the event that the Q/E ceases to operate the Project in accordance with the terms of this Agreement. If the Q/E is found to not be in substantial compliance with the Agreement, the City reserves the right to terminate the Agreement and recall in full the Grant Monies.
- B. The Q/E may terminate the Agreement by pre-paying in full to the City and without penalty any Grant Monies disbursed to the Q/E. The Q/E must send a written letter to the City giving notice of its intent to pre-pay the Grant Monies in full within 45 days prior to the Q/E's intent to repay in full the Grant Monies.

(7) **STATUS OF THE Q/E**

The Q/E, and its agents and employees are not employees of the City. The Q/E, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles or any other benefits afforded to employees of the City as a result of this Agreement. The Q/E shall be solely responsible for payment of wages, salaries, and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

(8) **ASSIGNMENT AND SUCCESSORS; BINDING EFFECT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors in interest by way of merger, acquisition, or otherwise and their permitted assigns.

The Q/E shall not assign or transfer any of its rights, privileges, obligations or other interest under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other matter, including any claims for money due or to become due under this Agreement, without prior written approval of the City.

(9) **INDEMNIFICATION; LIABILITY**

It is expressly understood and agreed by and between the Q/E and the City that the Q/E shall defend, indemnify, and hold harmless the City for all losses, damages, claims or judgments on account of any suit, judgment, execution, claims, actions, or demands whatsoever resulting from the Q/E's actions or inactions as a result of this Agreement, as well as the actions or inactions of Q/E's employees, agents, representatives and subcontractors as a result of this agreement. The Q/E shall maintain adequate insurance in at least the aggregate maximum amounts which the City could be liable consistent with the provisions of the New Mexico Tort Claims Act. It is the sole responsibility of the Q/E to be in compliance with the law.

(10) **INSURANCE**

- A. The Q/E, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability with respect to the Project, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each

person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City shall be notified no less than 30 days in advance of cancellation for any reason. The Q/E shall furnish the City with a copy of a "Certificate of Insurance" with respect to such coverage as a condition prior to performing under this Agreement.

- B. The Q/E shall also obtain and maintain Workers' Compensation insurance, as required by law, to provide coverage for Q/E's employees throughout the term of this Agreement. The Q/E shall provide the City with evidence of its compliance with such requirement.

(11) **NEW MEXICO TORT CLAIMS ACT**

Any liability incurred by the City in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, *et seq.* NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

(12) **THIRD PARTY BENEFICIARIES**

By entering into this Agreement, the parties do not intend to create any right, title, or interest in or for the benefit of any person other than the City and the Q/E. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third-party beneficiary of this Agreement.

(13) **RECORDS AND AUDITS**

The Q/E shall maintain and keep in its possession throughout the term of this Agreement and for a period of six years thereafter, all related records, including but not limited to, all financial records, requests for proposals (RFPs), invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted hereunder, the purpose for which such funds were used, and other such records as the City or the State shall proscribe. The Q/E shall be strictly liable for receipts and disbursements related to the Project Grant Monies. These records shall be subject to inspection by the City, the New Mexico Economic Development Department, and the State Auditor upon notice within five business days. The City shall have the right to audit billings both before and after payment; payments under this Agreement shall not foreclose the right of the City to recover excessive illegal payments.

(14) **APPROPRIATIONS**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Governing Body and the New Mexico Economic Development Department on behalf of the Q/E to the Town for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Governing

Body and the New Mexico Economic Development Department on behalf of the Q/E to the City, this Agreement shall terminate upon written notice being given by the City to the Q/E.

(15) **RELEASE**

The Q/E, upon final fulfillment by the City of its obligations under this Agreement, releases the City, its officers and employees, from all liabilities, claims, and obligations whatsoever arising from or under this Agreement. The Q/E agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Q/E has express written authority to do so, and then only within the strict limits of that authority.

(16) **CONFIDENTIALITY**

Any confidential information provided to or developed by the Q/E in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Q/E without the prior written approval of the City.

(17) **CONFLICT OF INTEREST**

The Q/E warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement. The Q/E further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

(18) **APPLICABLE LAW; CHOICE OF LAW; VENUE**

The Q/E shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City. In any action, suit or legal dispute arising from this Agreement, the Q/E agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

(19) **AMENDMENT**

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

(20) **SCOPE OF AGREEMENT**

This Agreement incorporates all the agreements, covenants, and understanding between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said performance. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid

or enforceable unless embodied in the Agreement.

(21) **REPRESENTATIONS AND WARRANTIES**

A. The Q/E hereby warrants the Q/E is and will remain in compliance with the Americans with Disabilities Act of 1990 (the “ADA”) and the regulations promulgated thereunder, 29 CFR 1630. The Q/E hereby agrees to defend, indemnify and hold harmless the City from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of the Q/E, its contractors and subcontractors, agents, successors, assigns, officers or employees to comply with provisions of the ADA or the rules and regulations promulgated thereunder.

B. The Q/E agrees to comply with the applicable provisions of local, state and federal equal employment opportunity statutes and regulations.

(22) **APPLICABLE LAW**

This Agreement shall be governed by the ordinances of the City and the laws of the State of New Mexico.

(23) **NON-DISCRIMINATION**

During the term of this Agreement, the Q/E shall not discriminate against any employee or applicant for an employment position to be used in the performance by the Q/E hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

(24) **SEVERABILITY**

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein, and any other application thereof shall not in any way be affected or impaired thereby.

(25) **NOTICES**

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

If to the CITY OF SANTA FE:
City of Santa Fe
Attn: Johanna Nelson – Director, Office of Economic Development
P.O. Box 909
Santa Fe, NM 87504

If to QUALIFYING ENTITY:
Attn: Justin Crowe
Parting Stone Inc.

9 Plaza de Prensa
Santa Fe, NM 87507

(26) **HEADINGS**

The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

(27) **ATTACHMENTS**

All attachments are fully incorporated herein and made a part of this Agreement.

(28) **COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(29) **REPRESENTATION ON AUTHORITY OF SIGNATORIES**

The signatory for the Q/E represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. The Q/E represents and warrants that the execution and delivery of the Agreement and the performance of the Q/E's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CITY OF SANTA FE:

Alan Webber, Mayor

ATTEST:

Kristine Bustos Mihelcic, City Clerk

CITY ATTORNEY'S OFFICE:

Marcos Martinez

Marcos Martinez (Feb 15, 2023 13:27 MST)

Senior Assistant City Attorney

APPROVED FOR FINANCES:

Emily Oster, Finance Director

QUALIFYING ENTITY:

Parting Stone Inc.

By: _____
Justin Crowe

[ACKNOWLEDGEMENT FOLLOWS]

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

Notarized Affidavit

This instrument was acknowledged before me on this ____ day of _____, 2023, by _____ on behalf of Parting Stone Inc.

Notary Public

My commission expires: