

Sandoval County Board of County Commissioners

Agenda Item Summary

AGENDA ITEM # 4-3-14.7A

1. REQUESTED MOTION

ACTION REQUESTED:

Approve to Publish and Post an Ordinance to Recognize DHF Technical Products, Inc., as a Qualified Entity to Receive Local Economic Development Act Funding

WHY ACTION IS NECESSARY (Summary):

The County wishes to serve as a local government conduit for an appropriation of \$200,000 from the Legislature of the State of New Mexico LEDA Funds (Local Economic Development Act) for tenant improvements at the recently purchased building at 545 Vortex in Rio Rancho, which will accommodate the newly relocated company, DHF Technical Products, Inc., to Rio Rancho from Los Angeles, CA.

2. REQUESTOR

COMMISSIONER SPONSORED: YES NO

DISTRICT: DISTRICT 1 DISTRICT 4
 DISTRICT 2 DISTRICT 5
 DISTRICT 3

DIRECTOR / ELECTED: Dianne Maes

DIVISION: County Development

ELECTED OFFICE:

ATTACHMENTS: YES NO

3. MEETING DATE

April 3, 2014

4. AGENDA (To be completed by County Manager)

- PROCLAMATION
- PRESENTATION
- CONSENT
- REGULAR
- APPEAL

5. RECOMMENDATIONS

Recommend approval.

6. FISCAL IMPACT

The County will act as fiscal agent and project management for LEDA funds for DHF's renovations for \$200,000.

7. RECOMMENDED APPROVAL (Initials & Date)

| Department Director/Elected Official | Human Resources | Purchasing | Attorney As to Form PFT | Finance Budget CCH | County Manager PPR | Other |
|--|--------------------|------------|-------------------------------|--------------------------|--------------------------|-------|
| DM 3/26/14 | _____ | _____ | 3/26/14 | 3/26/14 | 3/27/14 | _____ |

8. COMMISSION ACTION

Approved Denied Deferred Other

WHY ACTION IS NECESSARY (Summary) continued:

In January 2011 Sandoval County adopted Ordinance No. 11-1-13.10 the Local Economic Development Act/Plan. Pursuant to the LEDA Act and Plan, this ordinance allows public support of economic development projects to foster, promote and enhance local economic development efforts in any legally permissible manner including but not limited to the provision of land, building and infrastructure in the interest of created jobs within the county.

The Los Angeles based company, DHF Technical Products Inc., specializes in precious metal manufacturing and refining is relocating its operations to Rio Rancho. DHF is under contract to purchase the 22,000 sq. ft. former Xynatech building at 545 Vortex road, west of Northern Boulevard. The building must undergo tenant improvements in order to accommodate DHF's operations.

Sandoval County will utilize its LEDA Ordinance to assist in the interior building renovation with an appropriation of \$200,000.00. The county will act as a fiscal agent for use of the \$200,000.00 which will be utilized for contractor expenses. The funds will be paid to DHF from Sandoval County after review and approval of contractor's invoices. The county will then request reimbursement from the N.M. State Economic Development's Capital Outlay funds for the total amount of \$200,000.00 paid to DHF for the renovation costs. The State Economic Development funds are set aside for the purpose of allowing cities and counties in New Mexico to support regional economic development projects.

Adoption of the ordinance is required to utilize the aforementioned Economic Development Capital Outlay funding.

Attached to the ordinance is a Draft Project Participation Agreement with DHF Technical Products Inc. for the use of Economic Development Capital Outlay funds.

ATTACHMENTS:

1. DHF Project Ordinance
2. Sandoval County LEDA Ordinance
3. DRAFT Copy of Project Participation Agreement



Sandoval County, New Mexico

Ordinance No. 11-1-13.10

LOCAL ECONOMIC DEVELOPMENT ACT PLAN

WHEREAS, The County of Sandoval is a political subdivision of the State of New Mexico under the laws of the State of New Mexico (the "State"); and,

WHEREAS, Article 9, Section 14 of the State Constitution permits counties to create new job opportunities by providing land, building or infrastructure for facilities to support new or expanding businesses, provided that adequate safeguards are employed to protect public monies and resources; and,

WHEREAS, Pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978 (the "Act"), no assistance may be provided until a county has adopted by ordinance and economic development plan, or a comprehensive plan which includes an economic development component, which plan may be specific to a single economic development goal or strategy or may include several goals or strategies; and,

WHEREAS, the County of Sandoval desires to adopt an economic development plan and encourage economic development of areas within its limits by use of authority available under the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE SANDOVAL COUNTY BOARD OF COUNTY COMMISSIONERS:

Section 1. Short Title. This ordinance is cited as the "Local Economic Development Act Plan Ordinance."

Section 2. Purpose. This ordinance is adopted as part of the County's economic development plan. In accordance with the Act, the purpose of the Local Economic Development Plan Ordinance is to allow public support of economic development projects to foster, promote and enhance local economic developments efforts while continuing to protect against the unauthorized use of public money and other public resources.

Section 3. Economic Development Plan. The County hereby adopts an economic development plan as described in this Local Economic Development Plan Ordinance. The County may assist economic development projects in any legally permissible manner, including but not limited to the provision of land, building and infrastructure. The County will provide/sell County-owned land, buildings and infrastructure it already owns, or it may build, purchase or lease the facilities needed for an economic development project. The County may also contribute to the payment of costs for professional services contracts, including industry feasibility studies and planning and design services with respect to the project.

The County may consider offering all forms of assistance allowed under this section and any other form of assistance allowed under the Act, as amended from time to time; however, the County has no obligation to offer any specific type or level of assistance.

Section 4. Application for Assistance. Any qualifying entity, as such term is defined in the Act, may propose an economic development project to the County and apply for assistance from the County. The applicant's proposal shall describe the proposed project including the name and the addresses of the

person with an interest in the project, the number and types of jobs to be created, wages and benefits associated with the jobs to be created, the type and amount of assistance sought from the County, and all other information requested by the County. The County will evaluate the applications, the form and extent of assistance proposed projects on a case-by-case basis. The County may accept or reject proposals at its sole discretion.

Section 5. Substantive Contribution: Project Participation Agreement. If the County approves a request for assistance, it will do so by ordinance. In addition, the County and the recipient of the assistance will enter into a project participation agreement in accordance with the Act. The County may require that all recipients of the assistance, pursuant to the Act and the Ordinance, provide the County with prescribed reports with respect to the project for which assistance was received.

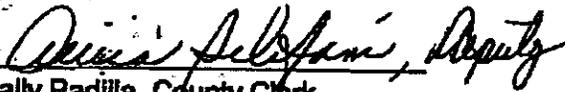
Section 6. Severability. If any section, paragraph, sentence, clause or word or phrase of this Ordinance is for any reason held to be invalid or unenforceable, by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance.

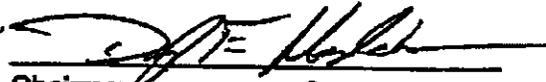
Section 7. All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repeal shall not be construed to revive an ordinance, or resolution, or part thereof, heretofore repealed.

Section 8. Effective Date. This ordinance shall become effective thirty (30) days after adoption by the Sandoval County Board of Commissioners.

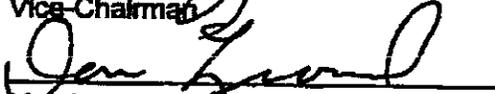
DONE this 13th day of January, 2011.

SANDOVAL COUNTY BOARD OF
COUNTY COMMISSIONERS


Sally Padilla, County Clerk


Chairman


Vice-Chairman


Member


Member


County Attorney


Member

SANDOVAL COUNTY ORDINANCE NO.: _____

AN ORDINANCE APPROVING THE DHF TECHNICAL PRODUCTS INC.
PROPOSAL FOR AN ECONOMIC DEVELOPMENT PROJECT
AND PROJECT PARTICIPATION AGREEMENT

WHEREAS, the County of Sandoval (the “County”), acting through its Board of County Commissioners, is a political subdivision duly organized and existing under the laws of the State of New Mexico (the “State”); and

WHEREAS, Article 9. Section 14 of the State Constitution permits counties to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses, provided that adequate safeguards are employed to protect public monies and resources; and

WHEREAS, pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978 (the “Act”), no public support for economic development may be provided until the governmental entity has adopted, by ordinance, an economic development plan and has approved, by a second ordinance, an application for a project in keeping with such plans; and

WHEREAS, pursuant to Sandoval County Ordinance No. 11-1-13.10 (“hereinafter EDP Ordinance”) the County established the Sandoval County Economic Development Plan as required by Section 5-10-6 NMSA 1978; and

WHEREAS, in accordance with the EDP Ordinance, the County considered an application from DHF TECHNICAL PRODUCTS INC. (“DHF”) which proposed that the County serve as local government conduit for an appropriation of \$200,000.00 from the Legislature of the State of New Mexico (the “LEDA Funds”) to go towards DHF’s renovation and expansion of the 22,000 sq. ft. former Xynetech building at 545 Vortex, Rio Rancho, N.M. Which will result in a creation of 35 jobs; and

WHEREAS, the County has determined that DHF is a “qualifying entity” and that the Project is an “economic development project” as those terms are defined by the Act.

NOW, THEREFORE, BE IT ORDAINED by the SANDOVAL COUNTY BOARD OF COUNTY COMMISSIONERS:

Section 1. Short Title.

This Ordinance may be cited as the DHF TECHNICAL PRODUCTS INC. Economic Development Project Ordinance.

Section 2. Purpose

This DHF Economic Development Project Ordinance is adopted to approve the Project and the Project Participation Agreement related to and incidental to the Project.

Section 3. The Project

The County hereby approves DHF as a qualifying entity and the Project as an economic development project under the Act and Section 4 of the EDP Ordinance. This approval is conditioned upon those matters set forth in the Project Participation Agreement to be entered into by the County and DHF, and all applicable local, state and federal laws.

Section 4. Project Revenue Fund

The DHF Fund (the "Project Revenue Fund") is hereby established pursuant to the Economic Development Plan Ordinance. All revenue related in any way to the Project shall be deposited into the Project Revenue Fund and any such revenue deposited into the Project Revenue Fund shall be expended only for the Project. Any unexpended and unencumbered balances in the Project Revenue Fund from monies provided by the County shall be transferred to the County general fund upon termination of the Project as set forth in Section 6 herein. Any unexpended and unencumbered balances in the Project Revenue Fund from monies provided by the State shall be returned to the State.

Section 5. Project Participation Agreement

The County hereby authorizes the County Manager to negotiate and enter into and execute a project participation agreement in substantially the form attached to this Ordinance as Exhibit A. The Project Participation Agreement is hereby incorporated into this Ordinance by reference and made a part of this Ordinance.

Section 6. Termination

At any time after approval of an Economic Development Plan, and before full completion of the Project, the Board of County Commissioners may enact an ordinance repealing the plan which ordinance shall provide for satisfying existing contracts and the rights of the parties arising from those contracts.

Section 7. Ratification

The County hereby ratifies and accepts all actions consistent with this Ordinance that the County or its agents may have taken in furtherance of the Project.

Section 8. Severability

If any action, paragraph, sentence, clause or word or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance.

Section 9. Effective Date

This Ordinance shall become effective thirty (30) days after it is recorded in the Office of the County Clerk, as provided in Section 4-37-9 NMSA 1978.

ADOPTED this _____ day of _____, 2014.

BOARD OF COUNTY COMMISSIONERS OF SANDOVAL COUNTY, NEW MEXICO

Darryl F. Madalena, Chair

Orlando J. Lucero, Vice-Chair

Nora Scherzinger, Member

APPROVED AS TO FORM:

Glenn Walters, Member

Patrick F. Trujillo
County Attorney

Don Chapman, Member

ATTEST:

Eileen Garbagni
County Clerk

DRAFT

PROJECT PARTICIPATION AGREEMENT

SANDOVAL COUNTY, NEW MEXICO and DHF TECHNICAL PRODUCTS INC.
(hereinafter "DHF") agree:

1. Recitals:

A. Pursuant to the Local Economic Development Act, NMSA 1978, §§ 5-10-1 through 5-10-13 ("LEDA"); SANDOVAL COUNTY adopted Ordinance No. _____, authorizing SANDOVAL COUNTY to consider applications for economic development assistance; and Ordinance No. ____ approving an Economic Development Project.

B. The New Mexico Economic Development Department will grant \$200,000.00, for which SANDOVAL COUNTY will act as Fiscal Agent for DHF through June 30, 2019. The grant will be expended for tenant improvements at the site for DHF. DHF will develop the site and hire employees to work at the site in accordance with DHF's Application for Development Incentives Plan.

C. SANDOVAL COUNTY has adopted Ordinance No. _____ finding that DHF is a qualifying entity as defined in NMSA 1978, § 5-10-3(G) and approving this Project Participation Agreement (this agreement) as meeting the requirements of LEDA.

2. Contribution by DHF: In order to implement the Project, SANDOVAL COUNTY will act as Fiscal Agent and Project Manager to the Project entity after certification.

3. Substantive Contribution from DHF: DHF will materially participate by acting as developer and taking responsibility for economic development. The terms and obligations of the parties under the Ordinance and Application are incorporated into this Agreement by reference. (identify as schedule a,b,c, etc)

4. Security Provided to SANDOVAL COUNTY. SANDOVAL COUNTY will require a revocable standby letter of credit as security for DHF's performance of its substantive contribution. Should DHF cease operation of the project on or before June 30, 2019, DHF shall, within ninety (90) days of the cessation of operations, begin paying SANDOVAL COUNTY, for each month that DHF prematurely ceases operations, an equal amount to 1/60th of the EDD Appropriation. Any claw-backs not paid when due shall bear interest at the rate of prime plus 2% per annum from the due date until paid. In the event that DHF cannot satisfy its obligation to repay SANDOVAL COUNTY pursuant to this Agreement, DHF agrees to draw on the revocable standby letter of credit in the amount necessary to repay SANDOVAL COUNTY as required herein. Any funds recovered by SANDOVAL COUNTY pursuant to said revocable standby letter of credit shall be returned to EDD within thirty (30) days after they are received by SANDOVAL COUNTY, and any property acquired or developed by SANDOVAL COUNTY as a result of this Project, shall be used by SANDOVAL COUNTY for future economic development purposes only.

5. Review: SANDOVAL COUNTY will review project timeline, progress and job creation bi-annually for the term of this agreement. Job creation reporting will be supported by reports and documentation from the New Mexico Department of Workforce Solutions Form ES-903 demonstrating the headcount of the operation to demonstrate compliance with this Agreement at

DRAFT

each review cycle bi-annually, and another at thirty (30) days prior to the anniversary date of this Agreement for the term of this agreement.

6. Ratification: SANDOVAL COUNTY and DHF hereby ratify all actions consistent with this Agreement that SANDOVAL COUNTY or DHF or their respective agents may have taken in furtherance of the Project.

7. Miscellaneous: This Agreement binds and inures to the benefit of SANDOVAL COUNTY, DHF and their respective successors and assigns. 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 Participation Agreement: Will be agreed upon through June 30, 2019.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature below,

SANDOVAL COUNTY, NEW MEXICO

By: _____
Darryl F. Madalena, Chair

By: _____
Orlando J. Lucero, Chair

By: _____
Nora Scherzinger, Member

By: _____
Glenn Walters, Member

By: _____
Don Chapman, Member

Date: _____

By: _____
Patrick F. Trujillo, County Attorney
Its: Attorney for SANDOVAL COUNTY

DHF TECHNICAL PRODUCTS INC

By: _____