

Sandoval County Board of County Commissioners

Agenda Item Summary

AGENDA ITEM # 4-17-14.7

1. REQUESTED MOTION

ACTION REQUESTED:

Authorize the County Manager to Negotiate and enter into Two Agreements in Substantially the Same Form as those Attached for LEDA Activities:

1. Intergovernmental Agreement between the NM Economic Development Department and Sandoval County; and
2. Project Participation Agreement between DHF Technical Products Inc. and Sandoval County.

WHY ACTION IS NECESSARY (Summary):

The two agreements are part of the LEDA process. The IGA for the purpose of defining the administration of the LEDA Capital funds from the State and the PPA to define the substantive contribution from DHF as a qualifying entity for LEDA funds.

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 17, 2014

4. AGENDA (To be completed by County Manager)

- PROCLAMATION
- PRESENTATION
- CONSENT
- REGULAR
- APPEAL

5. RECOMMENDATIONS

Recommend Board of County Commission approval.

6. FISCAL IMPACT

The funding will flow from the State to DHF Technologies through the County.

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 4/9/14	_____	_____	4/10/14	4/11/14	4/11/14	_____

8. COMMISSION ACTION

Approved Denied Deferred Other

WHY ACTION IS NECESSARY (Summary) continued:

At the April 3, 2014 Commission Meeting the Commission approved the posting and publishing of an Ordinance to recognize DHF Technical Products, Inc. as a qualified entity to receive LEDA funding. As part of the LEDA process, capital outlay funds are provided from the state to the participating entity (Sandoval County) for use by the qualifying entity (DHF Technical Products, Inc.) to allow public support of economic development.

The Project Participation Agreement outlines contributions of each entity, security, performance review, schedule for project development and default remedies. The County will be the fiscal agent to verify the tenant improvements in order to reimburse DHF with the state LEDA funds. The County will also be responsible to verify that DHF develops the site and hires employees to work at the site in accordance with DHF's Application for Development Incentives Plan.

The Intergovernmental Agreement governs the powers and duties associated with the utilization of funds and implementation of the project. Sandoval County is overseeing and administering NM Economic Development Department's use of the appropriation for the project for economic development purposes only.

Attachments:

1. New Mexico Economic Development and Sandoval County Intergovernmental Agreement
2. Project Participation Agreement between Sandoval County and DHF Technical Products, Inc.
- 2.(a) Letter of Standby Irrevocable Credit

**NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT AND
SANDOVAL COUNTY
INTERGOVERNMENTAL AGREEMENT**

This Intergovernmental Agreement (“Agreement”) entered into as of the date of the last signature affixed below by and between the New Mexico Economic Development Department (“EDD”), acting through its cabinet secretary, and **SANDOVAL COUNTY**, and collectively referred to as “the Parties” with reference to the following facts.

SECTION 1: RECITALS:

WHEREAS, the New Mexico State Legislature, pursuant to Laws 2009, Chapter 125, Section 22(6) has committed: “to provide grants to political subdivisions of the state for infrastructure improvements necessary to attract new companies or expand existing businesses to achieve job growth pursuant to the Local Economic Development Act statewide”; and

WHEREAS, the New Mexico State Legislature, pursuant to Laws has committed “to provide grants to political subdivisions of the state to achieve job growth by attracting new companies or expanding existing businesses pursuant to the Local Economic Development Act”; and

WHEREAS, the purpose of the Local Economic Development Act, NMSA 1978 §§ 5-10-1 through 5-10-13 (2007) (“LEDA”), is to provide “public support for economic development to foster, promote and enhance local economic development efforts...”; and

WHEREAS, **SANDOVAL COUNTY** has adopted LEDA by Ordinance No. 11-1-13.10 which established the Sandoval County Economic Development Act Plan that promotes economic development within **SANDOVAL COUNTY**; and

WHEREAS SANDOVAL COUNTY has adopted Ordinance No. _____ to approve the economic development project (“Project”) proposed by **DHF TECHNICAL PRODUCTS INC.** (hereinafter “DHF”) it is understood by the Parties that the source of the Appropriation is severance tax bond proceeds appropriated by the New Mexico Legislature to DFA as described above.

SECTION 1. PURPOSE OF AGREEMENT:

The purpose of this Agreement is to place the primary responsibility on SANDOVAL COUNTY for overseeing and administering EDD's use of the appropriation for the Project. It is the intent of the parties that EDD will transfer two hundred thousand dollars (\$200,000) to SANDOVAL COUNTY for expenditures made to implement the Project. The Parties agree that any and all State funds received will be accounted for by SANDOVAL COUNTY as the fiscal agent for EDD in accordance with the procedures SANDOVAL COUNTY will use to account for its own funds and property used to implement the project, or any properties acquired or developed by SANDOVAL COUNTY as a result of implementation of the Project will be used by SANDOVAL COUNTY for economic development purposes only.

SECTION 2. SCOPE OF WORK:

SANDOVAL COUNTY will act as fiscal agent for the Appropriation supporting the Project. EDD will transfer to SANDOVAL COUNTY \$200,000.00, pursuant to Section 5-10-3(D) of LEDA, for costs and expenses incurred to make tenant improvements specific to the business location for DHF. In exchange for the Appropriation, DHF will create a minimum of 35 jobs within SANDOVAL COUNTY by June 30, 2016.

EDD and SANDOVAL COUNTY agree that failure of the Qualifying Entity to create and/or maintain the minimum number of jobs, and failure of the qualifying entity to meet its obligations set forth under the PPA entered into by and between SANDOVAL COUNTY and DHF on _____ will result in a violation of the terms and conditions of this Agreement. Such violation requires that SANDOVAL COUNTY enforce the security provisions of the PPA, including but not limited to demanding that DHF draw on the irrevocable standby letter of credit in an amount sufficient to repay SANDOVAL COUNTY as required by the PPA. Any monies received by SANDOVAL COUNTY as a result of the security provisions of the PPA shall be returned to EDD within thirty (30) days after they are received by SANDOVAL COUNTY. Any property acquired or developed by SANDOVAL COUNTY as a result

of this Project, shall be used by the **SANDOVAL COUNTY** for future economic development purposes only. All the terms, conditions and requirements set forth under the PPA are incorporated into this Agreement by reference. **PPA is Attachment #1**

SECTION 3. SANDOVAL COUNTY'S RESPONSIBILITIES:

SANDOVAL COUNTY shall:

1. Pay the costs and expenses incurred for the development of the tenant improvements from the LEDA Appropriation, for economic development purposes as set forth in the Ordinance, the PPA, and this Agreement;
2. Provide to EDD all supporting documentation for activities associated with the Project. Any funds recaptured by **SANDOVAL COUNTY** as a result of enforcing the provisions of the PPA shall be returned to EDD. **SANDOVAL COUNTY** shall notify EDD in writing of any default by the Qualified Entity within 10 days of the event of the default;
2. Serve as Fiscal Agent for the funds transferred to it under this Agreement;
3. Complete all of the following goals identified in this Agreement within the time limits agreed upon by the Parties:
 - a. distribute the funds transferred to **SANDOVAL COUNTY** to the **DHF** Project
 - b. account for receipts and disbursements of said monies; and
 - c. provide **EDD** with the required financial documentation pertaining to this disbursement.
 - d. submit all required and reasonably requested documentation to **EDD** including the endorsed LEDA Ordinance approved by **SANDOVAL COUNTY** Commission accepting **DHF's** Project as a qualifying entity for LEDA, with the accompanying

endorsed Project Application and PPA entered into by **SANDOVAL COUNTY and DHF**, a fully executed and copy of the security interest by way of an Irrevocable Standby Letter of Credit, and copies of invoices and other documentation as required by **EDD** within the time required;

4. Not impose any obligations on **EDD** with respect to the administration of this Project, other than the reimbursement of funds described in this agreement; and
5. Monitor job creation by the Qualified Entity and report bi-annually, in May and November of each year, the number of jobs created annually to **EDD** for a period of three or five (need final term) years following the date of commencement of operations at the building, Job reports shall include a copy of FORM-903 provided by the Qualified Entity to **SANDOVAL COUNTY**, on file with the New Mexico Department of Workforce Solutions.

SECTION 4. SANDOVAL COUNTY CERTIFICATIONS:

As Fiscal Agent, **SANDOVAL COUNTY** hereby assures and certifies that:

- A. It will comply with all applicable State laws, regulations, policies, guidelines, and requirements with respect to the acceptance and use of State funds, including but not limited to Article IX, Section 14, of the New Mexico Constitution known as the “anti-donation clause”;
- B. It has the legal authority to receive and expend the funds;
- C. It will enforce the provisions of Ordinance No. _____ approving a LEDA Project for **DHF and SANDOVAL COUNTY’s Economic Development Plan**. The project involves use of the funds to make tenant improvements needed for **DHF’S** operation;
- D. It has exercised due diligence in certifying that **DHF** Project is a viable

economic development initiative with potential long term economic development benefits, **SANDOVAL COUNTY** will provide **EDD** all documentation and references to expertise it has relied upon in approving this Project;

E. It has entered into a PPA requiring (1) a substantive contribution of value from the qualifying entity, (2) the security provided to **SANDOVAL COUNTY** by the qualifying entity in the form of an Irrevocable Standby Letter of Credit (3) the pledge of the qualifying business's financial or material participation and cooperation to guarantee the qualifying entity's performance pursuant to the project participation agreement, (4) a schedule for project development and completion, including measurable goals and time limits for those goals, and (5) provisions for performance review and actions to be taken upon a determination that project performance is unsatisfactory. The qualifying entity's substantive contribution may be paid in money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion of the economy;

F. It has obtained all financial documentation necessary to protect **SANDOVAL COUNTY'S** investment under this project;

G. It shall not at any time during the life of this Agreement convert any property acquired or developed pursuant to this Agreement to uses other than those within the Project description as defined in Section 1 - Recitals and Section 2 - Scope of Work stated above;

H. It will comply with the State Procurement Code and local procurement codes and will keep files of all related procurement documents, including but not limited to requests for professional services, advertisements, minutes of pertinent meetings, selection and award criteria, contacts, subcontracts and agreements; and

I. No member, officer or employee of **SANDOVAL COUNTY** or its designees or agents, no member of the governing body of the locality of which the program is situation, and no other public official that exercises any functions or

responsibilities with respect to the Project during his/her tenure, or for one (1) year thereafter, shall have any interests, direct or indirect, in 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. **SANDOVAL COUNTY** shall incorporate in all contracts or subcontracts a provision prohibiting such interest pursuant to this certification.

SECTION 5. EDD RESPONSIBILITIES:

- A. **EDD** shall transfer \$200,000.00 to **SANDOVAL COUNTY** to be expended on the project.
- B. **EDD** shall, at their discretion, review and audit the Project if it is deemed to be necessary or desirable.

SECTION 6. TERM OF AGREEMENT:

This Agreement shall become effective on the date it is fully executed and shall terminate on June 30, 2016, or when the Qualifying Entity demonstrates through certified reports from the New Mexico Department of Workforce Solutions that it has created 35 jobs, or unless earlier terminated by **SANDOVAL COUNTY** pursuant to its termination of the PPA and Project Ordinance.

SECTION 7. LIABILITY:

No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act. **SANDOVAL COUNTY** and **EDD** may agree to reimburse one another under these liability provisions, subject to sufficient appropriation by the New Mexico Legislature or sufficient funds being available to the party, as determined by the party responsible for payment.

SECTION 8. DISPOSITION OF PROPERTY; RECORDS; RETURN OF SURPLUS FUNDS:

- A. Property purchased under this Agreement for the Project shall remain with the purchasing party unless otherwise agreed upon.

B. **SANDOVAL COUNTY** shall keep such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the Project, the purposes for which such funds were used and such other records as **EDD** may require,

C. If, upon the expiration of the Project or the termination date of this Agreement, any surplus funds are possessed by **SANDOVAL COUNTY**, **SANDOVAL COUNTY** shall return said funds shall revert in accordance with law.

SECTION 9. STRICT ACCOUNTABILITY:

SANDOVAL COUNTY shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to **EDD** and the New Mexico State Auditor upon request, and shall maintain all such records for a period of six (6) years following completion of all the records and any audits.

SECTION 10. REPORTS:

SANDOVAL COUNTY shall submit bi-annual reports of each calendar year during the life of this Agreement to **EDD** respecting direct and indirect job creation attributable to the State appropriation and a Final Report to **EDD** either on or before the termination of this Agreement or upon final reimbursement to **SANDOVAL COUNTY** of an amount equal to all the Public Contributions, whichever occurs first. The Final Report shall contain a certified report from the New Mexico Department of Workforce Solutions indicating the job performance count has been met, a description of work accomplished, the methods and procedures used, a detailed budget breakdown of expenditures, a description of any problems or delays encountered and the reasons therefore, and such other information as may be requested by **EDD**.

SECTION 11. NOTICES; REPRESENTATIVES OF THE PARTIES:

Any notice required to be given to either party by this Agreement. shall be in writing and shall be delivered in person, by courier service or by U.S. Mail, either first class or

certified, return receipt requested, postage prepaid, as follows. The parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

To: EDD:
Antoinette Vigil, Finance Development Team
Leader
Joseph M. Montoya State Office Building
1100 St. Francis Drive
Santa Fe, New Mexico 87505

To: Sandoval County, New Mexico
c/o Phillip Rios, County Manager
1500 Idalia Road, Building D
Bernalillo, New Mexico 87004-0040

SECTION 12. AMENDMENTS:

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

SECTION 13. GOVERNING LAW:

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

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

SANDOVAL COUNTY, NEW MEXICO

By: _____
Phillip Rios, County Manager

Date: _____

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

ATTEST:

Eileen Garbagni, County Clerk

Economic Development Department

By: _____
Its: Jon Barela,
Cabinet Secretary

Date: _____

By: _____
Wade Jackson
Its: General Counsel

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. 11-1-13.10 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, 2016. 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. DHF will create a minimum of 35 jobs within SANDOVAL COUNTY by the end of June 30, 2016.

4. Security Provided to SANDOVAL COUNTY. SANDOVAL COUNTY will require an irrevocable letter of credit as security for DHF's performance of its substantive contribution. Should DHF cease operation of the project or fail to create 35 jobs on or before June 30, 2016, 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 1/24th 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 irrevocable standby letter of credit in the amount necessary to repay SANDOVAL COUNTY as required herein. Any funds recovered by SANDOVAL COUNTY pursuant to said irrevocable 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 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: This agreement will terminate on June 30, 2016 or when the Qualifying Entity demonstrates through certified reports from the New Mexico Department of Workforce Solutions that it has created 35 jobs.

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

SANDOVAL COUNTY, NEW MEXICO

By: _____
Phillip Rios, County Manager

Date: _____

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

ATTEST:

Eileen Garbagni, County Clerk

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

DHF TECHNICAL PRODUCTS INC

By: _____

Date: _____



APPLICATION FOR IRREVOCABLE STANDBY LETTER OF CREDIT

To: HSBC Bank USA, National Association
Trade and Supply Chain
2 Hanson Place, 14th Floor
Brooklyn, NY 11217

L/C NO. (FOR BANK USE ONLY)

DATE:

Please issue for our account an irrevocable Standby Letter of Credit as set forth below by:

APPROVED

Table with 2 columns: IN FAVOR OF (BENEFICIARY) and FOR ACCOUNT OF (APPLICANT). Includes fields for AMOUNT, TYPE OF CURRENCY, and AMOUNT IN NUMBERS AND WORDS. Includes a note: DRAFTS MUST BE PRESENTED TO DRAWEE'S COUNTERS (AS INDICATED ABOVE) ON OR BEFORE THE EXPIRATION DATE OF:

- Checkboxes for AIRMAL AIRMAIL, VIA COURIER AIRMAIL, WITH SHORT PRELIMINARY CABLE ADVICE FULL CABLE
AVAILABLE BY DRAFTS AT SIGHT DRAWN ON YOURSELVES ACCOMPANIED BY THE FOLLOWING DOCUMENTS:
NONE

BENEFICIARY'S SIGNED STATEMENT, WORDED AS FOLLOWS (KINDLY STATE EXACT WORDING THAT IS TO APPEAR ON THE STATEMENT ACCOMPANYING THE DRAFT).

- Checkboxes for additional document requirements

OTHER DOCUMENTS:

SPECIAL INSTRUCTIONS TO BE AN INTEGRAL PART OF THIS APPLICATION IF NECESSARY, ATTACH ADDENDUM AND SIGN IN ADDITION TO THIS APPLICATION).

We hereby certify that the transactions covered by the Credits are not prohibited under the Foreign Assets Control Regulations of the United States Treasury Department or Tax Reform Act of 1976 as amended or the Export Administration Act of 1977 as amended or related laws and regulations thereto and that any transfer of moneys covered by the Credits conforms in every respect with all existing United States laws and Government regulations.

Each Credit shall be subject to the Uniform Customs and Practice for Documentary Credits (UCP) most recently published by the International Chamber of Commerce (ICC) or if so elected by the Applicant in this application, by International Standby Practices 1998, ICC Publication 590 in effect at the same time of the issuance of such Credit (ISP 98). The provisions herein are supplemental to, and not in substitution of said UCP (or, as applicable, ISP 98) to the extent consistent with the provisions of this Agreement. This Agreement shall be construed under the laws of New York State, as the same may be in effect from time to time, except to the extent such laws are inconsistent with said UCP (or, as applicable, ISP 98).

Check the Box Election Each Credit shall be subject to (check one): International Standby Practices 1998, ICC Publication 590
Uniform Customs and Practice for Documentary Credits

STANDBY LETTER OF CREDIT AGREEMENT

To: HSBC Bank USA, National Association Dear Sirs:

For the purpose of inducing you to issue your standby Letters of Credit (herein called the "Credits") upon application by the Applicant who has executed the application on the reverse side and for other valuable consideration, receipt of which is hereby duly acknowledged, the Applicant hereby agrees as follows with respect to the Credits:

1. As to drafts, demands or drawings under, or purporting to be under the Credits which are payable in United States Currency, we agree in the case of each sight draft, to reimburse you at your office in immediately available funds on demand, and in the case of each time draft, at the date of maturity of such time draft, the amount due on such draft, or, if so demanded by you, to pay at your office in advance the amount to pay such draft. If no draft is to be presented under any Credit, we agree to pay you upon demand for any amounts paid by you under any Credit in conformity with the terms of such Credit. In all instances you have the right to set-off any amount due you under any Credit against any account at any branch of yours, your subsidiaries or affiliates.
2. As to drafts, demands or drawings under, or purporting to be under, the Credits which are payable in currency other than United States Currency we agree: in the case of each sight draft, demand or drawing to reimburse you at your office, on demand, the equivalent of the amount paid in United States Currency as determined by your rate of exchange, on the day such draft, demand or drawing was paid, for the purchase of the currency in which such draft, demand or drawing is drawn.
3. We agree to pay you, on demand, your usual commission and all charges and expenses paid or incurred by you or your correspondents in connection therewith, including costs of reserve requirements, if any.
4. If for any reason you make payment under the Credits prior to your receipt of the aforementioned funds from the undersigned, we agree to pay you interest per annum at a rate equal to the then publicly announced HSBC Bank USA, National Association Prime Rate, as it may change from time to time, plus 3% covering the period commencing from the day of your payment and ending upon your receipt of the funds we remit to you for the actual days elapsed on the basis of a 360-day year.
5. We agree that in the event of any extension of the maturity or time for presentment of drafts, or documents, or any other modification of the terms of any Credits, at the request of any of us, with or without notification to the others, or in the event of any increase in the amount of any Credits at our request, this agreement shall be binding upon us with regard to such Credits so increased or otherwise modified, to drafts, documents and property covered thereby, and to any action taken by you or any of your correspondents in accordance with such extension, increase or other modification.
6. Applicant agrees that failure of the applicant to object in writing to the issuers payment and/or acceptance of any drawings under a credit by the earlier of (A) 5 days after the date the applicant receives the documents and (B) 5 days after the date the applicant receives any notice including but not limited to advices of payment that the Issuer has paid and/or accepted a conforming presentation under the documentary credit shall be conclusively deemed to be an acceptance by the applicant that the presentation is in conformity with the terms and conditions of the credit. Both the Issuer and the applicant agree that 5 days is a reasonable time.
7. The users of the Credits shall be deemed our agents and we assume all risk for their acts or omissions. Neither you nor your correspondents shall assume any liability to anyone for failure to pay or to accept if such failure is due to any restriction in force at time and place of presentment, and we agree to indemnify you and hold you harmless from any consequences that may arise therefrom. Neither you nor your correspondents shall be responsible for verifying the existence of any act, condition or statement made by any party in relation to their drawing or presentment under the Credits or in verifying or passing judgment on the reasonableness of

any statement made by any party in relation to their drawing or presentment under the Credits; for the validity, sufficiency or genuineness of documents, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; for failure to give any notice; for any breach of contract between the

beneficiary of the Credits, and ourselves or any of us. Furthermore, neither you nor your correspondents shall be responsible for errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, wireless or otherwise, whether or not they be in cipher, nor shall you be responsible for any error, neglect, or default of any of your correspondents; and none of the above shall affect, impair, or prevent the vesting of any of your rights or powers hereunder. In furtherance and extension and not in limitation of the specific provisions hereinbefore set forth, we agree that any action taken or not taken by you or by any correspondent of yours, under or in connection with the Credits or the relative drafts, documents or property if taken or not taken in good faith, shall be binding on us and shall not put you or your correspondents under any resulting liability to us, except if due solely to your gross negligence or willful misconduct.

1. We agree to procure promptly any licenses or certificates that may be required in the execution of the contract, agreement or understanding underlying the Credits, and to provide you, as you may anytime require or request, with copies of documents, agreements or other information and evidence. Such requests may extend to financial or other information regarding the undersigned which the undersigned agrees to provide in a prompt manner.
2. As security for the payment or performance of all our present or future obligations or liabilities of any and all kinds to you, whether incurred by us as maker, endorser, drawer, acceptor, guarantor, accommodation party or otherwise, due or to become due, secured or unsecured, absolute or contingent, joint or several, and howsoever or whensoever acquired by us (all of which are herein collectively referred to as "Obligations"), we hereby grant to you a security interest and a lien in and upon any of our property, or property in which we may have an interest, which is now or may at any time hereafter come into your possession or control, or in the possession or control of your subsidiaries or affiliates, or into the possession or control of any other party acting in your behalf, whether for the express purpose of being used by you as collateral security or for safekeeping or for any other different purpose, including such property as may be in transit by mail or carrier for any purpose or covered or affected by any documents in your possession or control or in the possession or control of your subsidiaries or affiliates, or in the possession or control of any third party acting in your behalf.
3. Upon our failure to pay any Obligations when becoming or made due, as aforesaid, you shall have, in addition to all other rights and remedies allowed by law, the rights and remedies of a secured party under the Uniform Commercial Code as in effect in the State of New York at any time and, without limiting the generality of the foregoing, you may immediately, without demand of performance and without notice of intention to sell or of time or place of sale or of redemption or other notice or demand whatsoever to us, all of which are hereby expressly waived, and without advertisement, sell at public or private sale grant options to purchase or otherwise realize upon, in New York or elsewhere, the whole or from time to time any part of the collateral upon which you shall have a security interest or lien as aforesaid, or any interest which the undersigned may have therein, and after deducting from the proceeds of sale or other disposition of said collateral all expenses (including but not limited to reasonable attorney's fees for legal services of every kind and other expenses as set forth below) shall apply the residue of such proceeds toward the payment of any of the Obligations, in such order as you shall elect, we remaining liable for any deficiency remaining unpaid after such application. If notice of any sale or other disposition is required by law to be given, we hereby agree that a

notice sent at least five days before the time of any intended public sale or of the time after which any private sale or other disposition of the said collateral is to be made, shall be reasonable notice of such sale or other disposition. At any such sale or other disposition you may yourself purchase the whole or any part of the said collateral

sold, free from any right of redemption on the part of us, which right is hereby waived and released. We agree that the said collateral secures, and further agree to pay on demand, all expenses (including but not limited to reasonable

attorney's fees for legal services of every kind and cost of any insurance and payment of taxes or other charges) of, or incidental to, the custody, care, sale or collection of, or realization upon, any of the said collateral or in any way relating to the enforcement or protection of your rights hereunder. We further agree that if at any time or from time to time you shall retain an attorney for the enforcement or protection of your rights hereunder, then such reasonable attorney's fees shall be 20% of the amounts then owing on the Obligation or Obligations with respect to which such attorney was retained and that upon each such retention said attorney's fees will be immediately due and owing.

1. You shall not be deemed to have any of your rights waived hereunder unless you or your authorized agent shall have signed such waiver in writing. No failure on your part to exercise and no delay in exercising any right, remedy or power hereunder shall operate as a waiver thereof nor shall any single or partial exercise by you of any right, remedy or power hereunder preclude any other or future exercise of any other right, remedy or power.
2. The word "property" as used in this agreement includes cash proceeds, deposit accounts, goods and documents relative thereto, securities, funds, and any and all other forms of property, whether real, personal or mixed and any right or interest therein.
3. If this agreement is signed by one individual, the terms "we", "us", shall be read throughout as "I", "my", "me" as the case may be. If this agreement is signed by two or more parties, it shall be the joint and several agreement of such parties.
4. The Obligations hereof shall continue in force, and apply, notwithstanding any change in the membership or ownership of any partnership or corporation undersigned, and the Obligations hereof shall bind the personal representatives successors and assigns of the undersigned, and all rights, benefits and privileges hereby conferred on you shall be and hereby are extended to and conferred upon and may be enforced by your successors and assigns.
5. We further agree that your rights, remedies, powers, security interests and liens hereunder shall continue unimpaired and that we shall be and remain obligated in accordance with the terms hereof notwithstanding the partial exercise by you of any right, remedy or power, or the release or substitution of any of the said collateral hereunder, at any time or times, or of any rights or interests therein,

or any delay, extension of time, renewal, release, substitution or addition of parties, compromise or other indulgence granted by you, in reference to any of the Obligations, or any promissory note, draft, document, bill of

exchange or other instrument given in connection therewith, the undersigned hereby waiving all notice of any delay, extension, release, substitution, renewal, compromise or other indulgence, and hereby consenting to be bound as fully and effectually as if we had expressly agreed thereto in advance.

1. We agree that all Obligations of the undersigned to you, although contingent and not matured, shall become due and payable upon the occurrence of any one of the following events: admission in writing or telex of our inability to pay any debt when due; a violation of any of the terms and conditions of this Agreement, be it willful or involuntary, not expressly waived by you; a default in the payment of any interest or fee due and payable to you, your assigns or successors; a default under any borrowed money obligation; the existence of a condition which would materially and adversely affect the ability of the undersigned to operate its business as an ongoing venture; the dissolution or the complete or partial liquidation of the undersigned; or if the undersigned generally shall not pay its debts as they become due (within the meaning of the Bankruptcy Code of 1978 and any amendments thereto) or be the subject of any insolvency proceedings, or if the undersigned shall make an assignment for the benefit of its creditors or a trustee, receiver, intervenor, or custodian appointed for the purposes of reorganization or liquidation of the undersigned.
2. Each and every right, remedy and power hereby granted to you or allowed you by law or other agreement shall be cumulative and not exclusive the one of any other and may be exercised by you from time to time.
3. Notices and demands under this agreement shall be in writing and will be sufficient if delivered by hand, by first class mail postage prepaid or by registered mail addressed to the undersigned or to you at our respective principal places of business.
4. We agree that all Credits issued under this Agreement shall be irrevocable.

IN CONSIDERATION OF THE ESTABLISHMENT OF THE CREDIT SUBSTANTIALLY AS APPLIED FOR HEREIN, WE HAVE READ THE TERMS AND CONDITIONS SET FORTH IN THE AGREEMENT ON THE REVERSE SIDE OF THIS APPLICATION AND WE AGREE THAT THEY ARE MADE PART OF THIS APPLICATION FOR A STANDBY LETTER OF CREDIT AND ARE HEREBY ACCEPTED BY US.

To: HSBC Bank USA, National Association
 Trade and Supply Chain
 2 Hanson Place, 14th Floor
 Brooklyn, NY 11217

Please issue for our account an irrevocable Standby Letter of Credit as

APPROVED		
SIGNATURE		
PRINT NAME		
CAP/WLI OFFICER CODE		
DEPARTMENT		
TELECOMM		
CIN NO. OR TIN/SSN		
FACILITY NO		
COST CENTER		PURPOSE CODE
PER ANNUM RATE %	CHARGE DDA	SEND BILL
UP FRONT	ARREARS	MONTHLY
QUARTERLY	SEMI-ANNUAL	ANNUAL
OTHER CHARGES Issuance Fee (Preparation Commission) \$		
AMENDMENT FEE \$		PAYMENT COMMISSION \$
PARTICIPATION If Yes, Attach Yes No Separate Memo <input type="checkbox"/> <input type="checkbox"/>		
SIC CODE		COUNTRY OF ULTIMATE RISK

ACCOUNT NUMBER		

APPLICANT ADDRESS

AUTHORIZED SIGNATURE(S)

PLEASE SIGN OFFICIALLY

(The following is to be executed if the applicant is not also the account party)
AUTHORIZATION AND AGREEMENT OF ACCOUNT PARTY

To: HSBC Bank USA, National Association (Bank)

We join in the request to Bank to issue the Credit described above (Credit), naming us as Account Party. In consideration thereof, we irrevocably agree that: (i) the above Applicant has the sole right to give instructions and make agreements and amendments with respect to the foregoing application, the Credit and the disposition of documents, (ii) we shall have no right, claim, set off or defense against Bank or

Bank's correspondents respecting any matter arising in connection therewith; and (iii) we shall be jointly and severally liable with Applicant for all obligations owing to Bank in connection with the foregoing application, the agreement executed by Applicant with respect thereto, and the Credit. We agree that Applicant is authorized to assign or transfer to Bank all or any part of our obligations arising in connection with this transaction and any security therefor. Upon such assignment or transfer, Bank will be vested with all power and rights in respect of the obligations and security transferred or rights in respect of the obligations and security transferred or assigned to Bank.

Name _____ ACCOUNT PARTY — AS INDICATED ON FRONT

Address _____

By _____

PLEASE READ AGREEMENT CAREFULLY