



## Economic Development Fund Policy and Procedures

Any future changes, additions or deletions to any portion of this document is at the discretion of the County Manger and/or Economic Development Director, who may consider exceptions to these Policies and Procedures subject to governing body approval.

Approved: November 2017

# *PREFACE*

**In April of 2013**, the county commission and county manager appointed a task force and contracted with Lautman Economic Architecture to conduct an economic development assessment and strategy process. The contractor, members of the task force, and county staff met regularly each month through the middle of September, at which time the commission received an assessment document and presentation at a commission work session on September 16th, 2013.

**In October**, the county commission and county manager asked the contractor and county staff to author two addendums to the report, dealing with the potential for retail recruitment and for retirement as economic development strategies and asked the contractor to convene a series of public briefing sessions to socialize the assessment's findings and take input. The contractor and staff conducted 19 public and private meetings from mid-October through late-December.

**The final report** was submitted to the county commission as a final work product on January 9th, 2014.

**In August of 2014**, the county commission secured Employer Development & Economic Development Services through an RFP and awarded the Sandoval Economic Alliance to provide services of:

- ❖ Economic base business recruitment, economic base retention and expansion services and the development of an Economic Data Repository and Real Estate Database for the region of Sandoval County,
- ❖ Marketing, Lead Generation & Recruiting to include a selection of target markets competitive advantage analysis, data base development and program planning,
- ❖ Serve as the region's lead on research, inventory development, business climate improvement, marketing, sales and deal structuring activities related to helping economic base employers create or retain jobs.
- ❖ Focus on the following set of targeted industries: Back-office and Tele-service Centers; Health and Social Services; Manufacturing; Independent/SoloWork; Agriculture; Integrated IT and Cyber; Digital Media; Energy and Extraction; Visitor Driven Services; Transportation and Warehousing

**In May of 2017**, the county enacted and adopted Ordinance No. 5-18-17.10, establishing policies and procedures for evaluating proposals to finance projects with Revenue Bonds, including Industrial Revenue Bonds. This included a new IRB application and certification document.

**In June of 2017**, the county elected to continue Employer Development & Economic Development Services and awarded the Sandoval Economic Alliance to provide such services and increased its level of support to enhance its efforts on target markets and labor shed.

**In June of 2017**, the county adopted and enacted two (2) ED Fund Resolutions, specifically 6-1-17.7A and 6-1-17.7B, committing unrestricted funds from certain accounts for use by the county to assist funding various projects designed to further economic development endeavors within the county and improve transit for its citizens.

Both Resolutions state “prior to any distribution of funds from the accounts, the county commissioners must be presented with a comprehensive plan for the use of any of the funds and the county commission must approve of such distribution in writing”.

Hence, the foregoing ED Fund Process and Policy document is developed for this purpose.

## OVERVIEW

The County and the County's Economic Development Department recognizes the need to establish a well-managed ED Fund Policy. Guidance Documents outline the strategy to implement and these procedures are in place to

- ❖ *Impose order, consistency and continuity in the decision making process*
- ❖ *Provide guidance to decision makers for short and long range planning*
- ❖ *Promote transparency and accountability*
- ❖ *Mitigate risk to ensure high-quality economic development financing decisions*
- ❖ *Provide clear guidance to the staff and public*
- ❖ *Set parameters for issuing and monitoring funds*
- ❖ *Meet economic development and business development objectives*
- ❖ *Benchmark fiscal impacts*
- ❖ *Institute interdepartmental collaboration and purpose of service*

### COUNTY INDEMNIFICATION

This policy expressly permits the County to issue funds in accordance with the ED Fund Policy and Procedure. In order for the County to fulfill its statutory role, all companies must provide for indemnification of the County.

### COUNTY APPROPRIATION

The County's obligation, monetary or otherwise, shall be subject to and contingent upon the availability and sufficiency of resources for appropriations and for obligations. If sufficient funds are not appropriated or sufficient authority is not given to perform such obligations, the County's decision as to whether sufficient appropriations are available shall be final.

### OTHER LEDA FUNDING SOURCES

The LEDA statute contemplates local governments funding LEDA projects and is drafted accordingly. In particular, NMSA 1978, §5-10-10(A) requires the local government to enter into a PPA with the applicant/qualifying entity. If the state contributes to a project as well, EDD will enter into an intergovernmental agreement with the County. Even when the state contributes to a project, the state does not have a direct contractual relationship with the company. Only the local government, through the PPA, has a relationship with the company; therefore the County provides oversight as

fiscal agent.

# *ED FUND - LOCAL ECONOMIC DEVELOPMENT ACT (LEDA)*

## **A. GENERAL INFORMATION**

1. The purpose of the Local Economic Development Act is to implement the provisions of the 1994 constitutional amendment to Article 9, Section 14 of the Constitution of New Mexico to allow public support of economic development to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. Further, the purpose of that act is to allow municipalities and counties to enter into joint powers agreements to plan and support regional economic development projects, including investments in arts and cultural districts.
2. The County is also granted authority to administer grants to local organizations that stimulate economic development and/or comply with the Local Economic Development Act (LEDA).
3. All projects must comply with all legal facets of LEDA
4. Included in the Appendix Section, is a copy of the State of New Mexico Local Economic Development Act State Statute and a Copy of the County's LEDA Ordinance No. 11-1-13.10 to assist in understanding the legal basis of LEDA and its process.

## **B. COUNTY POLICY**

1. Funding is strictly based on the approval from the Sandoval County Commission AND on a reimbursement basis.
2. In any case all materials obtained by the County in the public domain shall be available to the applicant/applicant/qualifying entity. Information that is subject to the Inspection of Public Records Act is dutifully required; however, any propriety or confidential information shall be submitted only to the Sandoval Economic Alliance as the County's Economic Development

Organization.

### C. APPLICATION

The County and the County's Economic Development Department has designed and implement a systematic, transparent approach to prioritizing projects that meet the over-arching goals of the County for financial evaluation and structuring. These provide guidance for funding on project impact qualifications, application review criteria, and concentration factors.

Projects are considered based on the following goals:

- ❖ "County" Impact and Support
- ❖ Impact to unincorporated or rural areas of the County
- ❖ Increased Wages and Job Creation
- ❖ Wealth Creation and Capital Investment
- ❖ Environmentally Sustainable Outcomes
- ❖ Financial Soundness and Readiness to Proceed.

#### Criteria:

Pursuant to LEDA, any applicant/applicant/qualifying entity or funding award must be a "Applicant/qualifying entity", which is defined as: a Corporation, Limited Liability Company, Partnership, Joint Venture, Syndicate, Association or other person that is one or a combination of two or more of the following:

1. An industry for the manufacturing, processing or assembling of agricultural or manufactured products;
2. A commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but not including any enterprise for sale of goods or commodities at retail or for distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;
3. A business in which all or part of the activities of the business involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but, other than as provided in Paragraph (5) of this subsection, not including businesses primarily engaged in the sale of goods or commodities at retail;

4. An Indian nation, tribe or pueblo or a federally chartered tribal corporation;
5. A telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico;
6. A facility for the direct sales by growers of agricultural products, commonly known as farmers' markets;
7. A business that is the developer of a metropolitan redevelopment project; and
8. A cultural facility;

***\*\*Sections I (9) and (K) of Article 10, Section 5-10-3 are excluded from the County's ED Fund Policy***

Program Funding Uses: ED Funds are only for costs associated with the scope of work elements; and may be used for direct or indirect assistance which may include:

- the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure;
- public works improvements essential to the location or expansion of a qualified entity
- payments for professional services contracts
- technical assistance to cultural facilities;
- loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from the municipal infrastructure gross receipts tax or the county infrastructure gross receipts tax;
- purchase of land for a publicly held industrial park or a publicly owned cultural facility and the construction of a building for use by a applicant/qualifying entity

Program Application Requirements: In order to apply for ED Funds, the following is required:

- A complete application. Included in the Appendix Section, is a copy of the formal application noting the required information and documentation.
- Also included in the Appendix Section is an Authorization Form that



provides for the County and/or its EDO to perform its due diligence. This is considered part of a completed application and the formal review process begins upon receipt of a complete application.

- A Project Participation Agreement (PPA) outlines the performance and security interest information from the applicant/qualifying entity. The County and the qualified entity must enter into a PPA. The Security Interest document is part of that Agreement. The types of security interest instruments accepted vary; however, providing both performance provisions and security interest is required by State Statute. *Included in the Appendix Section is a sample PPA Template.*
- Once in final form, the County must adopt the project by ordinance and issue a project ordinance number which is to include the final application, the project participation agreement in draft (conditional approval is allowable), the security interest document (if available, and can be a conditional approval) and the notice of public hearing. The County must publish for a public hearing process on the ordinance. Following is that timeline:
  - ✓ 10 day “Notice to Publish and Post” Ordinance
  - ✓ 14 to 30 day public meeting notice for the final passage of the Ordinance.
  - ✓ 14 to 30 day public comment period for approval of Project
  - ✓ Ordinance
- A minimum of 90 days is required to fund. The Ordinance must be adopted prior to incurring any costs associated with the project that are due reimbursements per the scope of work and use of funds. *A timeline flow chart is included in the Appendix Section.*
- Each completed application will be reviewed and evaluated within twenty (20) days of receipt.
- The applicant/applicant/qualifying entity is required to meet with the Economic Development Director. The purpose of this meeting is to discuss the project and determine if the proposal is a likely candidate for the County’s ED Fund. This is useful to establish a schedule to for inducement and approval timelines.



Reviews and Financial Credit AnalysisAPPLICATION REVIEW AND DEVELOPMENT COMMITTEE REVIEW

- The applicant/applicant/qualifying entity will be required to provide adequate information at each review stage to enable County staff and the County Commission to make responsible decisions about the merits of the County's investment.
- For projects that are CAP-EX intensive (i.e. build to suit, construction developments) the applicant/applicant/qualifying entity shall provide detailed information outlined in the Development Site Specification Form, if requested. This is intended to aid the applicant/applicant/qualifying entity, answer questions, and familiarize county representatives with the project to avoid unnecessary problems or delays in both the development of the project and the ED Fund process. Additionally, the committee may suggest potential plan revisions, additional county permits, or meetings with neighborhood groups, possible competitors, and other county agencies.
- Economic Development staff will prepare a Summary Review Form for Management's review. This intended to aid in the evaluation process of meeting ED Fund goals and objectives.

FINANCIAL AND CREDIT ANALYSIS

The County or the County's Economic Development Organization will analyze the credit quality of the applicant/applicant/qualifying entity, taking into consideration:

- Educational and work history of the officers, managers, members or partners of the applicant/applicant/qualifying entity
- The applicant/applicant/qualifying entity's experience and position in the industry and in managing similar projects
- Assets and liabilities of the applicant/applicant/qualifying entity
- Existence of liens or encumbrances on the applicant/applicant/qualifying entity's assets, and debt to equity or other applicable ratios.

Financial Position: Financial performance and liquidity are key factors in the evaluation of any applicant/applicant/qualifying entity and the County's evaluation will include the following:

- All internal reserve funds to determine whether the applicant/applicant/qualifying entity has sufficient resources to cover unexpected costs,
- Applicable revenue projections and the timing of all receivables to determine the ability of the applicant/applicant/qualifying entity to service debt, and
- Predictability of cash flow, and
- Revenues to determine affordability of the project and the level of flexibility that exists.

The financial analysis results will factor into the recommendation to fund, a recommendation not to fund, or a conditional recommendation pending additional info provided.

Submit all financial and propriety information to:  
Sandoval Economic Alliance - 1201 Rio Rancho Blvd, Rio Rancho, NM 87124  
ATTN: Steve Jenkins, President & CEO  
505-891-4305 or [steve.jenkins@sandovaleconomicalliance.org](mailto:steve.jenkins@sandovaleconomicalliance.org)

#### SEA Confidentiality Commitment

The Sandoval Economic Alliance (SEA), will protect the privacy and confidentiality of non-public personal or business-related information which you may provide in the course of using SEA services. It is understood that SEA may disclose your information to its employees who require such information for the purpose of providing SEA services. Non-public personal or business-related information which you provide will not be disclosed to a third party without your permission. At no time will confidential information be placed on cloud-based servers.

#### **D. LEDA PROJECT PARTICIPATION AGREEMENT (PPA); DUTIES AND REQUIREMENTS**

1. Upon the completion of the vetting process and a favorable outcome to proceed, the drafting of the PPA will ensue.

2. The county shall require a substantive contribution from the applicant/qualifying entity for each economic development project. Public support provided for an economic development project shall be in exchange for a substantive contribution from the applicant/qualifying entity. The contribution shall be of value and 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.
2. The applicant/qualifying entity shall provide security to the county for providing public support for an economic development project. The security shall secure the applicant/qualifying entity's obligations based on terms stated in the project participation agreement with the county and shall reflect the amount of public support provided to the applicant/qualifying entity and the substantive contribution expected from the applicant/qualifying entity.
3. If a applicant/qualifying entity fails to perform its substantive contribution, the county shall enforce the project participation agreement to recover that portion of the public support for which the applicant/qualifying entity failed to provide a substantive contribution. The recovery shall be proportional to the failed performance of the substantive contribution and shall take into account all previous substantive contributions for the economic development project performed by the applicant/qualifying entity, based on the terms stated in the project participation agreement.
4. The project participation agreement shall set out, at a minimum:
  - a. The contributions to be made by the county and the qualified entity to the participation agreement,
  - b. The security provided to the county that provides public support for an economic development project by the applicant/qualifying entity in the form of a lien, mortgage or other indenture and the pledge of the qualifying business's financial or material participation and cooperation to guarantee the applicant/qualifying entity's performance pursuant to the project participation agreement,
  - c. A schedule for project development and completion, including

- measurable goals and time limits for those goals, and
- d. Provisions for performance review and actions to be taken upon a determination that project performance are unsatisfactory.

**E. REPORTING PROVISIONS IN THE PROJECT PARTICIPATION AGREEMENT (PPA)**

5. The applicant/applicant/qualifying entity shall provide to County Economic Development Department the following annual reports for the life of the project:
- a. Job creation reports which shall include the following information:
- ❖ Number of newly created jobs
  - ❖ Quarterly records of unemployment insurance payment for newly created jobs, namely a copy of the ES903 Form filed with the Department of Workforce Solutions
  - ❖ Statement of Compliance from company (self reporting statement) outlining compliance with terms, provisions, and conditions of the performance agreement with the County;

**.F. SUBMITTAL**

- Once in the formal process, the applicant/qualifying entity will need to provide responses to the Economic Impact Analysis Questionnaire (EIAQ) that will be provided to the applicant/qualifying entity when appropriate. The EIAQ and its result is a major factor in assessing the impact of the project. The independent analysis evaluates the benefits of the proposed project according to the Project Criteria. At the same time, the Sandoval County Attorney will provide a legal review.
- The County Manager/Economic Development Director may reject an incomplete proposal and request further information to arrive at a decision.
- Upon receipt of the analysis' and legal review, the County Manager/Economic Development Director maintains discretion on timing and placement of the project for formal action.

- All documentation relating to the project must be supplied to the Economic Development Director 10 days before the County Commission Meeting.
- The ED Resolutions state specifically that prior to any distribution of funds from the accounts, the county commissioners must be presented with a comprehensive plan for the use of any of the funds and the county commission must approve of such distribution in writing. Upon setting the project on the agenda, The County Manager/Economic Development Director has the duty of submitting a recommendation to approve, conditionally approve, or reject the proposed plan.
- The County Economic Development staff will provide oversight for the entire process, which may include:
  - ❖ Execute all waivers of confidentiality required for public consideration of the ED Fund application
  - ❖ Provide the applicant/applicant/qualifying entity with written confirmation of the structure and readiness to proceed requirements
  - ❖ Review all closing documents and agreements, facilitate the final documents, and obtain the signature of the authorized officers of the County once all conditions have been met, and
  - ❖ After closing, authorize disbursements, track payments and monitor the ED Fund covenants and quarterly financial reports.

## **G. CHANGES TO PLAN**

- Once submitted, minor changes in the Project Plan can be made by letter/in writing to the Economic Development Department Director, specifically stating the changes and by reference, incorporate them into the plan. Major changes may require submission of an amended plan. Staff may recommend deferral or even resubmittal, if the amended plan is substantially different from the one described in the legal ad and required notices.

## **H. BOARD OF COUNTY COMMISSIONERS- FINAL ACTION**

1. Scheduling of the inducement action occurs at the direction of the

Economic Development Director.

2. Upon request for inducement action, the County Commission will first take action on a “Motion to Publish and Post” said project Ordinance. At the meeting, staff briefly summarizes the project and provides analysis. The applicant/qualifying entity and/or a representative is required to attend the meeting to answer questions \*(depending on the nature of the project, the applicant/qualifying entity may wish to have the project’s architect, fiscal officer, lawyer, or leasing agent at the meeting. A large-scale version of the conceptual site plan is also helpful). Others in attendance may speak for or against the project.
3. The County Manager/Economic Development Director will make a final recommendation to the board. \*(county staff attends the Commission meetings should a need arise to advise the Commission on legal and technical questions).
4. Following passage of the “Notice to Publish and Post” and the public input period, the County Commission may consider passing a Project Ordinance.

#### **G. MEETINGS, SCHEDULES AND FORMS**

1. All forms are available at the Sandoval County Economic Development Department located at 1500 Idalia Road, Bldg D. 3<sup>rd</sup> Floor or call 505-867-8687. Applications are accepted on a rolling, ongoing basis.
2. The County Commission Meeting Schedule is available at [www.sandovalcountynm.gov](http://www.sandovalcountynm.gov)

Submit application and corresponding application attachments to:  
 Dora M. Dominguez, Director - Sandoval County Economic Development  
 Department P.O. Box 40, Bernalillo, NM 88004.  
 505.404.5825 or [ddominguez@sandovalcountynm.gov](mailto:ddominguez@sandovalcountynm.gov)



# APPENDIX

Exhibit documents follow

**Local Economic Development Act****Article 10 5-10-1. Short title. (1993)**

This act [5-10-1 to 5-10-13 NMSA 1978] may be cited as the "Local Economic Development Act".

**History:** Laws 1993, ch. 297, § 1.

**5-10-2. Findings and purpose of act. (2007)**

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- A. The legislature finds that:
- 1) development of the New Mexico economy is vital to the well-being of the state and its residents;
  - 2) it is difficult for municipalities and counties in New Mexico to attract and retain businesses capable of enhancing the local and state economy without the resources necessary to compete with other states and locales;
  - 3) municipalities and counties may need to be able to provide land, buildings and infrastructure as a tool for basic business growth and the introduction of basic business ventures into the state;
  - 4) it is in the best interest of the state, municipalities and counties to encourage local or regional solutions to economic development; and
  - 5) the access to public resources needs to be carefully controlled and managed for the continued and future benefit of New Mexico citizens.
- B. The purpose of the Local Economic Development Act is to implement the provisions of the 1994 constitutional amendment to Article 9, Section 14 of the constitution of New Mexico to allow public support of economic development to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. Further, the purpose of that act is to allow municipalities and counties to enter into joint powers agreements to plan and support regional economic development projects,

including investments in arts and cultural districts created pursuant to the Arts and Cultural District Act [15-5A-1 to 15-5A-7 NMSA 1978].

**History:** Laws 1993, ch. 297, § 2; 2007, ch. 160, § 8.

### **5-10-3. Definitions. (2013)**

As used in the Local Economic Development Act:

- A. "arts and cultural district" means a developed district of public and private uses that is created pursuant to the Arts and Cultural District Act [15-5A-1 through 15-5A-7 NMSA 1978];
- B. "cultural facility" means a facility that is owned by the state, a County, a municipality or a applicant/qualifying entity that serves the public through preserving, educating and promoting the arts and culture of a particular locale, including theaters, museums, libraries, galleries, cultural compounds, educational organizations, performing arts venues and organizations, fine arts organizations, studios and media laboratories and live-work housing facilities;
- C. "department" means the economic development department;
- D. "economic development project" or "project" means the provision of direct or indirect assistance to a applicant/qualifying entity by a local or regional government and includes the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure; public works improvements essential to the location or expansion of a applicant/qualifying entity; payments for professional services contracts necessary for local or regional governments to implement a plan or project; the provision of direct loans or grants for land, buildings or infrastructure; technical assistance to cultural facilities; loan guarantees securing the cost of land, buildings or infrastructure in an

amount not to exceed the revenue that may be derived from the municipal infrastructure gross receipts tax or the County infrastructure gross receipts tax; grants for public works infrastructure improvements essential to the location or expansion of a applicant/qualifying entity; grants or subsidies to cultural facilities; purchase of land for a publicly held industrial park or a publicly owned cultural facility; and the construction of a building for use by a applicant/qualifying entity;

- E. "governing body" means the city council, city commission or board of trustees of a municipality or the board of County commissioners of a County;
- F. "local government" means a municipality or County;
- G. "municipality" means an incorporated city, town or village;
- H. "person" means an individual, corporation, association, partnership or other legal entity;
- I. "applicant/qualifying entity" means a corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or a combination of two or more of the following:
  - 1) an industry for the manufacturing, processing or assembling of agricultural or manufactured products;
  - 2) a commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but, other than as provided in Paragraph (5), (6) or (9) of this subsection, not including any enterprise for sale of goods or commodities at retail or for distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;
  - 3) a business in which all or part of the activities of the business involves the supplying of services to the

- general public or to governmental agencies or to a specific industry or customer, but, other than as provided in Paragraph (5) or (9) of this subsection, not including businesses primarily engaged in the sale of goods or commodities at retail;
- 4) an Indian nation, tribe or pueblo or a federally chartered tribal corporation;
  - 5) a telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico;
  - 6) a facility for the direct sales by growers of agricultural products, commonly known as farmers' markets;
  - 7) a business that is the developer of a metropolitan redevelopment project;
  - 8) a cultural facility; and
  - 9) a retail business;
- J. "regional government" means any combination of municipalities and counties that enter into a joint powers agreement to provide for economic development projects pursuant to a plan adopted by all parties to the joint powers agreement; and
- K. "retail business" means a business that is primarily engaged in the sale of goods or commodities at retail and that is located in a municipality with a population of ten thousand or less.

**History:** Laws 1993, ch. 297, § 3; 1998, ch. 90, § 3; 1999, ch. 245, § 1; 2000, ch. 103, § 5; 2007, ch. 160, § 9; 2013, ch. 201, § 1.

#### **5-10-4. Economic development projects; restrictions on public expenditures or pledges of credit. (2013)**

- A. No local or regional government shall provide public support for economic development projects as permitted pursuant to Article 9, Section 14 of the constitution of New Mexico except as provided in the Local Economic Development Act or as otherwise permitted by law.

- B. The total amount of public money expended and the value of credit pledged in the fiscal year in which that money is expended by a local government for economic development projects pursuant to Article 9, Section 14 of the constitution of New Mexico and the Local Economic Development Act shall not exceed ten percent of the annual general fund expenditures of the local government in that fiscal year. The limits of this subsection shall not apply to:
- 1) the value of any land or building contributed to any project pursuant to a project participation agreement;
  - 2) revenue generated through the imposition of the municipal infrastructure gross receipts tax pursuant to the Municipal Local Option Gross Receipts Taxes Act [Chapter 7, Article 19D NMSA 1978] for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act [Chapter 6, Article 25 NMSA 1978]; provided that no more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body;
  - 3) revenue generated through the imposition of a County infrastructure gross receipts tax pursuant to the County Local Option Gross Receipts Taxes Act [Chapter 7, Article 20E NMSA 1978] for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act; provided that no more than the greater of fifty thousand dollars (\$50,000) or ten percent of the

- revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body;
- 4) the proceeds of a revenue bond issue to which municipal infrastructure gross receipts tax revenue is pledged;
  - 5) the proceeds of a revenue bond issue to which County infrastructure gross receipts tax revenue is pledged; or
  - 6) funds donated by private entities to be used for defraying the cost of a project.
- c. A regional or local government that generates revenue for economic development projects to which the limits of Subsection B of this section do not apply shall create an economic development fund into which such revenues shall be deposited. The economic development fund and income from the economic development fund shall be deposited as provided by law. Money in the economic development fund may be expended only as provided in the Local Economic Development Act or the Statewide Economic Development Finance Act.
- d. In order to expend money from an economic development fund for arts and cultural district purposes, cultural facilities or retail businesses, the governing body of a municipality or County that has imposed a municipal or County local option infrastructure gross receipts tax for furthering or implementing economic development plans and projects, as defined in the Local Economic Development Act, or projects, as defined in the Statewide Economic Development Finance Act, by referendum of the majority of the voters voting on the question approving the ordinance imposing the municipal or County infrastructure gross receipts tax before July 1, 2013 shall be required to adopt a resolution. The resolution shall call for an election to approve arts and cultural districts as a qualifying purpose and cultural facilities

or retail businesses as a applicant/qualifying entity before any revenue generated by the municipal or County local option gross receipts tax for furthering or implementing economic development plans and projects, as defined in the Local Economic Development Act, or projects, as defined in the Statewide Economic Development Finance Act, can be expended from the economic development fund for arts and cultural district purposes, cultural facilities or retail businesses.

- E. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of approving arts and cultural districts as a qualifying purpose and cultural facilities or retail businesses as a applicant/qualifying entity eligible to utilize revenue generated by the Municipal Local Option Gross Receipts Taxes Act or the County Local Option Gross Receipts Taxes Act for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act.
- F. The question shall be submitted to the voters of the municipality or County as a separate question at a regular municipal or County election or at a special election called for that purpose by the governing body. A special municipal election shall be called, conducted and canvassed as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. A special County election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections.
- G. If a majority of the voters voting on the question approves the ordinance adding arts and cultural districts and cultural facilities or retail businesses as an approved use of the local option municipal or County economic development infrastructure gross receipts tax fund, the ordinance shall become effective on July 1 or January 1, whichever date



occurs first after the expiration of three months from the date of the adopted ordinance. The ordinance shall include the effective date.

**History:** Laws 1993, ch. 297, § 4; 1998, ch. 90, § 4; 2003, ch. 349, § 17; 2007, ch. 160, § 10; 2009, ch. 172, § 1; 2013, ch. 201, § 2.

**5-10-5. Economic development department; technical assistance. (2007)**

At the request of a local or regional government, the department shall provide technical assistance in the development of an economic development plan or economic development project or technical assistance to cultural facilities with respect to economic development projects.

**History:** Laws 1993, ch. 297, § 5; 2007, ch. 160, § 11.

**5-10-6. Economic development plan; contents; publication. (2007)**

- A. Every local or regional government seeking to pursue economic development projects shall adopt an economic development plan or a comprehensive plan that includes an economic development component, and an economic development plan or comprehensive plan may include an analysis of the role of arts and cultural activities in economic development. The plan may be specific to a single economic development goal or strategy or may include several goals or strategies, including any goals or strategies relating to economic development through arts and cultural activities. Any plan or plan amendment shall be adopted by ordinance of the governing body of the local government or each local government of a regional government proposing the plan or plan amendment.
- B. The economic development plan or the ordinance adopting the plan

may:

- 1) describe the local or regional government's economic development and "County" goals, including any economic development goals with an arts and cultural component, and assign priority to and strategies for achieving those goals;
- 2) describe the types of qualifying entities and economic activities that will qualify for economic development projects;
- 3) describe the criteria to be used to determine eligibility of an economic development project and a applicant/qualifying entity to participate in an economic development project;
- 4) describe the manner in which a applicant/qualifying entity may submit an economic development project application, including the type of information required from the applicant/qualifying entity sufficient to ensure its solvency and ability to perform its contractual obligations, its commitment to remain in the "County" and its commitment to the stated economic development goals of the local or regional government;
- 5) describe the process the local or regional government will use to verify the information submitted on an economic development project application;
- 6) if an economic development project is determined to be unsuccessful or if a applicant/qualifying entity seeks to leave the area, describe the methods the local or regional government will use to terminate its economic assistance and recoup its investment;
- 7) identify revenue sources, including those of the local or regional government, that will be used to support economic development projects;
- 8) identify other resources the local or regional government is prepared to offer qualifying entities, including specific land or buildings it is willing to lease, sell or grant a applicant/qualifying entity; "County"

- infrastructure it is willing to build, extend or expand, including roads, water, sewers or other utilities; and professional services contracts by local or regional governments necessary to provide these resources;
- 9) detail the minimum benefit the local or regional government requires from a applicant/qualifying entity, including the number and types of jobs to be created; the proposed payroll; repayment of loans, if any; purchase by the applicant/qualifying entity of local or regional government-provided land, buildings or infrastructure; the public to private investment ratio; and direct local tax base expansion;
  - 10) describe the safeguards of public resources that will be ensured, including specific ways the local or regional government can recover any costs, land, buildings or other thing of value if a applicant/qualifying entity ceases operation, relocates or otherwise defaults or reneges on its contractual or implied obligations to the local or regional government; and
  - 11) if a regional government, describe the joint powers agreement, including whether it can be terminated and, if so, how the contractual or other obligations, risks and any property will be assigned or divided among the local governments who are party to the agreement.
- c. The economic development plan shall be printed and made available to the residents within the local or regional government area.

**History:** Laws 1993, ch. 297, § 6; 1998, ch. 90, § 5; 2007, ch. 160, § 12.

**5-10-7. Regional plans; joint powers agreement; regional government. (1993)**

- A. Two or more municipalities, two or more counties or one or more municipalities and counties may enter into a joint

powers agreement pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] to develop a regional economic development plan which may consist of existing local plans. The parties to the agreement shall be deemed a regional government for the purposes of the Local Economic Development Act.

- B. The joint powers agreement shall require that the governing body of each local government approve each economic development project. The agreement may also provide for appointment of a project manager who shall be responsible for the management of projects and project funds. The agreement may provide for a regional body consisting of representatives from the governing bodies of each local government that is a party to the agreement and may determine the powers and duties of that body in implementing the regional government's plan and projects.

**History:** Laws 1993, ch. 297, § 7.

#### **5-10-8. Economic development project applications. (1993)**

- A. After the adoption of an economic development plan by a local or regional government, a applicant/qualifying entity shall submit to the local or regional government an economic development project application.
- B. The application shall be on a form and require such information as the local or regional government deems necessary.

**History:** Laws 1993, ch. 297, § 8.

#### **5-10-9. Project evaluation; department. (2007)**

- A. The local or regional government shall review each project application, and projects shall be approved by ordinance.
- B. The local or regional government's evaluation of an application

shall be based on the provisions of the economic development plan, the financial and management stability of the applicant/qualifying entity, the demonstrated commitment of the applicant/qualifying entity to the “County”, a cost-benefit analysis of the project and any other information the local or regional government believes is necessary for a full review of the economic development project application.

- c. The local or regional government may negotiate with a applicant/qualifying entity on the type or amount of assistance to be provided or on the scope of the economic development project.

**History:** Laws 1993, ch. 297, § 9; 2007, ch. 160, § 13.

**5-10-10. Project participation agreement; duties and requirements. (2013)**

- A. The local or regional government and the applicant/qualifying entity shall enter into a project participation agreement.
- B. The local or regional government shall require a substantive contribution from the applicant/qualifying entity for each economic development project. Public support provided for an economic development project shall be in exchange for a substantive contribution from the applicant/qualifying entity. The contribution shall be of value and 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.
- c. The applicant/qualifying entity shall provide security to each local or regional government, the state or any other New Mexico governmental entity providing public support for an economic development project. The security shall secure the applicant/qualifying entity's obligations based on terms stated in the project participation agreement with the local or regional government and shall reflect the amount of public

support provided to the applicant/qualifying entity and the substantive contribution expected from the applicant/qualifying entity.

- D. If a applicant/qualifying entity fails to perform its substantive contribution, the local or regional government shall enforce the project participation agreement to recover that portion of the public support for which the applicant/qualifying entity failed to provide a substantive contribution. The recovery shall be proportional to the failed performance of the substantive contribution and shall take into account all previous substantive contributions for the economic development project performed by the applicant/qualifying entity, based on the terms stated in the project participation agreement. The project participation agreement for an economic development project that uses public support provided by the state to a local or regional government shall include a recapture agreement for the state.
- E. The project participation agreement at a minimum shall set out:
- 1) the contributions to be made by each party to the participation agreement;
  - 2) the security provided to each governmental entity that provides public support for an economic development project by the applicant/qualifying entity in the form of a lien, mortgage or other indenture and the pledge of the qualifying business's financial or material participation and cooperation to guarantee the applicant/qualifying entity's performance pursuant to the project participation agreement;
  - 3) a schedule for project development and completion, including measurable goals and time limits for those goals; and
  - 4) provisions for performance review and actions to be taken upon a determination that project performance is unsatisfactory.

History: Laws 1993, ch. 297, § 10; 2013, ch. 43, § 1.

### **5-10-11. Project revenues; special fund; annual audit. (1993)**

- A. Local or regional government revenues dedicated or pledged for funding or financing of economic development projects shall be deposited in a separate account. Separate accounts shall be established for each separate project. Money in the special account shall be expended only for economic development project purposes, which may include the payment of necessary professional services contract costs.
- B. In the case of a regional government, revenues of each local government dedicated or pledged for economic development purposes shall be deposited in a special account of that local government and may be expended only by that local government as provided by the regional government's economic development plan and joint powers agreement.
- C. The local or regional government shall provide for an annual independent audit in accordance with the Audit Act [12-6-1 to 12-6-14 NMSA 1978] of each special fund and project account. The audit shall be submitted to the local or regional government. The audit is a public record.

History: Laws 1993, ch. 297, § 11.

### **5-10-12. Plan and project termination. (1993)**

- A. At any time after approval of an economic development plan, the governing body of the local government or the governing body of each local government in a regional government may enact an ordinance terminating the economic development plan and dissolving or terminating any or all projects. An ordinance repealing an economic development plan shall not be effective unless the ordinance provides for satisfying existing contracts and the rights of the parties arising from those contracts.

- B. Any unexpended and unencumbered balances remaining in any project fund or account upon repeal of a plan and termination or dissolution of a project may be transferred to the general fund of the local government holding the fund or account. In the case of funds or accounts of a regional government, the unexpended and unencumbered balances shall be divided among the local governments as provided in the joint powers agreement.

History: Laws 1993, ch. 297, § 12.

**5-10-13. Limitations. (1993)**

Nothing in the Local Economic Development Act shall be construed to affect any other requirements of the constitution or other laws regarding local government debt, issuance of bonds, use of tax revenues or the grant, lease or sale of land or other property.

History: Laws 1993, ch. 297, § 13.



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ORDINANCE Pg. 1 of 3  
Gally D. Pasilla, Sandoval County Clerk



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.

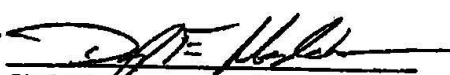
**Section 7.** All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repeal shall not be construed to revive an ordinance, or resolution, or part thereof, heretofore repealed.


**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.

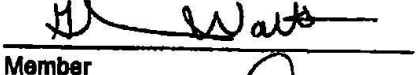
SANDOVAL COUNTY BOARD OF COUNTY COMMISSIONERS

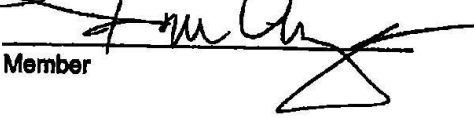
  
Sally Padilla, County Clerk


  
Chairman

  
Vice-Chairman

  
Member

  
Member

  
Member

  
County Attorney

**AUTHORIZATION FOR CREDIT CHECK**

As part of our due diligence in processing your request for the ED Fund, Sandoval County and/or the EDO may elect to obtain credit reports in relation to you and your business.

I hereby authorize the County of Sandoval and/or the EDO to obtain such personal or business credit reports.

\_\_\_\_\_  
Applicant Name

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Business Name

\_\_\_\_\_  
Federal Tax ID #

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

**\* PLEASE INCLUDE A PHOTO COPY OF THE INDIVIDUAL'S PHOTO ID.**

Scribed and sworn to me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ County,  
New Mexico

Signed \_\_\_\_\_  
Notary Public

My Commission  
Expires: \_\_\_\_\_

## **PROJECT PARTICIPATION AGREEMENT**

Sandoval County Board of County Commission, NEW MEXICO, hereinafter referred to as “the County” and [Project Party Name], a New Mexico corporation, hereinafter referred to as the “Project Party, agree:

1. Recitals:

A. Pursuant to the Local Economic Development Act, NMSA 1978, §§ 5-10-1 through 5-10-13, (LEDA); the “County” adopted the Ordinance # [Note Ordinance Number], authorizing the “County” to consider applications for economic development assistance; and Ordinance No. [Note New Ordinance Number] approving an Economic Development Project.

B. The Project Party has submitted an application to the “County” for assistance under the LEDA Ordinance. In the application, the Project Party has proposed that the project will [DESCRIBE HERE] and develop in accordance with the Application for Development Incentives Plan. The Project Party will then develop the property using the grant monies to [DESCRIBE HERE].

C. The “County” has adopted Ordinance No. [\_\_\_\_\_] finding that the Project Party is a qualifying entity as defined in Section 5-10-3 (G) NMSA 1978 and approving this Project Participation Agreement (this agreement) as meeting the requirements of LEDA.

2. Substantive Contribution from the Project Party: The Project Party 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 Exhibit # or letter)

3. Security Provided to: The “County” will require a [DESCRIBE TYPE OF SECURITY]. Should the Project Party cease operation during the term of this agreement, clawback provisions are [x]. Any funds reverted or unused pursuant to the security agreement shall be maintained by the “County” for future economic development purposes.

4. Review: “County” will review project timeline and progress [QUARTERLY, BI-ANNUALLY, ANNUALLY] until [term decided] anniversary of this agreement.

5. Ratification: The “County” and [the Project Party] hereby ratify all actions consistent with this Agreement that the “County” or the Project Party or their respective agents may have taken in furtherance of the Project.

6. Miscellaneous: This Agreement binds and insures to the benefit of the “County”, the [Project] 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 the “County” and the [Project Party] by the [anniversary date) until the [anniversary date].

Adopted by the “County” this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

[signature lines and titles for all party’s to the transaction]

\_\_\_\_\_

# ED FUND APPLICATIONS

TIMELINE FLOW CHART  
FOR  
PUBLIC PROCESS

