

AN ORDINANCE      2008-11-20-1050

**ADOPTING THE ECONOMIC DEVELOPMENT INCENTIVE FUND GUIDELINES; APPROVING AN AGREEMENT FOR THE SOUTH TEXAS BUSINESS FUND TO SERVE AS FISCAL AGENT FOR A \$500,000.00 BUSINESS ASSISTANCE AND COMMUNITY INVESTMENT PROGRAM ADMINISTERED BY THE WESTSIDE DEVELOPMENT CORPORATION AND SAN ANTONIO FOR GROWTH ON THE EASTSIDE; AND APPROPRIATING FUNDS.**

\*           \*           \*           \*           \*

**WHEREAS**, in FY 2004, City Council appropriated \$12 million to create an Economic Development Incentive Fund (the "EDIF") for economic development projects and used these funds to help attract 21 Toyota suppliers to San Antonio, creating 2,000 new jobs, as well as Washington Mutual (1,700 jobs) and to assist two local companies, Maxim Integrated Products and DPT Laboratories, expand in San Antonio, adding another 700 jobs; and

**WHEREAS**, two years later, the balance of uncommitted dollars (\$4,000,000.00) in the EDIF was transferred to the Street Maintenance Fund; however, the FY 2009 Adopted Budget recapitalized the EDIF with \$4 million; and

**WHEREAS**, the primary purpose of the EDIF is to provide the City with a funding source to offer financial incentives, through grants or loans, to qualifying projects that can be used in combination with other City incentive programs to create/retain jobs and new investment in the community in targeted industries; and

**WHEREAS**, new EDIF Guidelines for the administration and use of the appropriated \$4 million in funds would allow the use of EDIF funds for the following purposes:

- Attract, retain or expand jobs in targeted industries;
- Promote development around military bases;
- Attract corporate and regional headquarters;
- Stimulate development in distressed areas, such as the Federal Empowerment Zone and State Enterprise Zone census tracts;
- Conduct studies/planning efforts that directly promote growth in targeted industries;
- Promote development projects at educational institutions and other economic development entities that help grow the targeted industries; and
- Promote multi-family, market-rate housing and mixed-use development in the Downtown area and other targeted areas; and

**WHEREAS**, the proposed EDIF Guidelines also outline eligibility requirements and the potential amount of EDIF funding per project, all of which encompass the following criteria:

- Amount of assistance is based on a determination of financial need for public assistance, as well as the level of investment, job creation and project area;
- Jobs must meet City's living wage as specified in Joint Tax Abatement Guidelines;
- Funds cannot be used for projects over the Edwards Recharge Zone, retail operations, hotels/motels, or outbound contract call centers;
- Grants are limited to \$2 million for any one project;
- Loans are limited to \$1 million or amount of new taxes over 5 years, whichever is less, except for downtown corporate headquarters where the limit is \$2.5 million; and
- Create a small business assistance and community investment fund of \$500,000.00, allocating \$250,000.00 each for Westside Development Corporation ("WDC") and San Antonio for Growth on Eastside ("SAGE") with the South Texas Business Fund ("STBF") serving as fiscal agent by agreement; and

**WHEREAS**, the agreement between WDC, SAGE and the STBF will provide for these funds to be used to create a combination of loans, grants, investment and endowment funds for facilitating economic development in these targeted areas, upon final review and approval by the WDC and SAGE Boards of Directors, that may also generate revenue for these economic development entities; and

**WHEREAS**, the City Council finds that it is in the best interest of the City to approve the proposed Guidelines and agreement; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Council approves the Economic Development Incentive Fund Guidelines, a copy of which is included as Attachment I.

**SECTION 2.** The City Council also approves the agreement between the Westside Development Corporation, San Antonio for Growth on the Eastside and the South Texas Business Fund, a copy of which is attached in substantially final form as Attachment II, and the City Manager or her designee is authorized to execute the agreement.

**SECTION 3.** The amount of \$500,000 is appropriated for this ordinance in Fund 29059000, Internal Order 390000000747 From 29059000 to 29605000, General Ledger 6102100 transfers out and the FY09 budget is amended to reflect this change.

**SECTION 4.** The transfer of \$500,000 is authorized from Fund 29059000 to 29605000.

**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 6.** This ordinance shall be effective immediately upon at least eight (8) affirmative votes; if passed by less than eight affirmative votes, then this ordinance shall be effective on the tenth (10th) day after passage.

PASSED AND APPROVED this 20<sup>th</sup> day of November, 2008.



M A Y O R

**PHIL HARDBERGER**

ATTEST:



City Clerk

APPROVED AS TO FORM: \_\_\_\_\_



for City Attorney

<b>Agenda Item:</b>	<b>38 ( in consent vote: 9, 10, 11, 12, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30A, 30B, 30C, 30D, 30E, 30F, 30G, 30H, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 (Revised by Councilman Rowe at 12/11/08 meeting) )</b>						
<b>Date:</b>	11/20/2008						
<b>Time:</b>	05:35:26 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance adopting the Economic Development Incentive Fund Guidelines; approving an agreement for the South Texas Business Fund to serve as fiscal agent for a \$500,000.00 business assistance and community investment program administered by the Westside Development Corporation and San Antonio for Growth on the Eastside; and appropriating funds. [A.J. Rodriguez, Deputy City Manager; Robert Peche, Director, Economic Development]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3	x					
Philip A. Cortez	District 4	x					
Lourdes Galvan	District 5		x				x
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7	x					
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

## **ATTACHMENT I**

**Proposed  
City of San Antonio Guidelines  
Economic Development Incentive Fund (EDIF)**

**1. Background and Eligibility:**

The primary purpose of the Economic Development Incentive Fund ("EDIF") is to provide a financial incentive in the form of economic development grants and/or loans to help do the following:

- Attract, retain and/or expand companies in targeted industries, including green tech, clean tech and corporate and regional headquarters;
- Assist development projects at and around military bases, particularly those bases affected by Base Realignment and Closure, such as Fort Sam Houston and Lackland Air Force Base.
- Promote development projects at educational institutions, and other nongovernmental institutions which create jobs and support growth in the targeted industries;
- Promote commercial and mixed-use development projects in targeted areas, particularly in the Downtown area;
- Attract a corporate or regional headquarters to the Downtown area;
- Promote multi-family, market rate housing Downtown; and
- Stimulate development and investment in distressed areas, such as the federal Empowerment Zone and State Enterprise Zone census tract areas.

**2. Definitions:**

Targeted Industry - Those industries identified and defined in the City and County Joint Tax Phase-In Guidelines as having the most potential for growing the economy and providing good jobs for the citizens of San Antonio and Bexar County. These industries include: Aerospace, Creative Services, Green and Clean Technology, Finance, Information Technology, Logistics/Distribution, Telecommunications, Manufacturing, and Biotechnology/Healthcare.

Targeted Areas - Includes Downtown and the areas covered by the federal Empowerment Zone, all State Enterprise Zone census tracts (except those north of Loop 410), the Westside Development Corporation, Brooks City-Base, Port of San Antonio, Texas Research Park, San Antonio International Airport, Stinson Municipal Airport, the Medical Center area, the Inner City TIRZ #11, the River North TIRZ #27 and the proposed Midtown TIRZ area if approved.

Downtown - The area managed by the Center City Development Office which encompasses the CRAG which is the inner-city area defined by the Community Revitalization Action Group as the San Antonio city limits prior to 1940. This area includes a 36 square mile area, with the center being the dome of the San Fernando Cathedral. The area is defined by Hildebrand Avenue to the north, Division Street to the south, Rio Grande Street to the east, and 24th Street to the west.

Market-Rate Housing – A project with the majority of housing units available at market rate for rent or for sale.

Mixed-Use Project – A project with market-rate residential housing units constituting at least 75 percent of the usable project space and the remaining space commercial retail space.

Corporate and Regional Headquarters - The company's corporate or regional legal principal place of business is located in San Antonio.

### **3. EDIF Eligibility Requirements:**

The amount of EDIF assistance for a particular project will be based on a determination of financial need for public assistance to ensure the execution of desired projects in San Antonio. For each application, staff will conduct a cost-benefit analysis and review the project's financial information to determine if there is a gap in project financing that requires City assistance. In this analysis, staff will include the benefit to the project from other available financial incentive programs the City might provide. If EDIF incentives are offered to a qualifying project, the project must, at a minimum, meet the following requirements:

- Meet one or more of the eligible project categories listed in Para 1 above.
- All jobs must meet the City's minimum wage requirements specified in the City's Tax Phase-In Guidelines, except for mixed-use and residential-only projects.
- Demonstrate that a gap in financing exists which requires public assistance to ensure execution or that EDIF assistance is necessary for the City to favorably compete with other cities for a targeted project.
- Result in a positive cost-benefit to the City over at least a 20-year period.

### **4. Use of EDIF Funds:**

4.1. The EDIF may be used in combination with other incentive tools and programs in the development of a proposed incentive package for a specific project.

4.2. The EDIF may be used to provide economic development loans and grants pursuant to Chapter 380, Texas Local Government Code to help fund the following type of projects and project-related expenditures:

- Public improvements associated with the project;
- Training for new or retained jobs;
- Real property (e.g., land) acquisition;
- Site development;
- Facility construction and/or real property improvements;
- Studies or planning that promote growth in the targeted industries;
- Marketing of mixed-use and market-rate housing projects;
- Equity participation by a City-created Economic Development Corporation;
- Utility infrastructure costs not funded by CPS Energy Community Infrastructure and Economic Development funds; and
- Creation of a business assistance and community investment fund of \$500,000 equally distributed at \$250,000 to the Westside Development Corporation (WDC) and San Antonio for Growth on the Eastside (SAGE) for economic development with the South Texas Business Fund serving as the fiscal agent.

#### **5. Ineligible and Restricted Areas or Uses:**

The following types of projects or uses are not eligible for EDIF assistance:

- Projects located in whole or in part over the Edwards Aquifer Recharge Zone.
- Retail stores, retail centers or businesses that primarily provide goods and services directly to consumers, except for such projects approved by the respective boards of the WDC and SAGE.
- Outbound or contract call centers whose primary business operations are to make outbound calls for the purpose of selling goods or services directly to consumers, except for such projects approved by the respective boards of the WDC and SAGE.
- Hotels and motels.
- Projects that will negatively impact military missions and/or installations.

#### **6. Authorization for Use:**

The City Manager is authorized to offer and negotiate the use of some or all of the EDIF funds for projects meeting the eligibility requirements. All agreements and allocations for the use of funds from the EDIF must receive City Council approval.

## 7. Amount of EDIF Incentive per Project:

The amount of EDIF Incentive for a specific project will be based on need as addressed in Paragraph 3 above. The total amount of the EDIF incentive will vary based on whether the type of assistance provided is an economic development grant or loan or a combination of both grant and loan assistance. The maximum amount of EDIF assistance is limited to \$2 million for a grant and \$1 million for a loan. The amount of EDIF assistance is limited to a total of \$2 million for any combination loan and grant, except for a corporate or regional headquarters locating Downtown. The City will enter into a separate multi-party agreement with the WDC, SAGE and STBF which will establish the roles, responsibilities and requirements for the use of those funds (\$500,000) allocated from the EDIF to the WDC and SAGE.

7.1 Grant Funding: The total amount of EDIF grant funding for any one project is limited to \$2 million. The amount of incentive per project will generally be based on the amount of capital investment, location of the project, job creation and type of project. Staff will use the following formula when recommending the amount of EDIF funding for a project:

- Up to one percent (1%) of the initial investment not to exceed \$2 million
  - Up to an additional \$500,000 if one of the following applies:
    - Between 1,000 - 2,000 jobs; or
    - Over 300 jobs in the Downtown area; or
    - A Downtown mixed-use project or market-rate housing project with investment of at least \$40 million.
  - Up to another \$500,000 if one of the following applies:
    - Project creates over 2,000 jobs; or
    - Over 500 jobs in the Downtown area; or
    - A Downtown mixed-use project or market-rate housing project with investment of at least \$60 million.
- Up to \$2 million for a corporate or regional headquarters locating Downtown.
- Projects locating in the WDC or SAGE areas would also be eligible for EDIF assistance through the business assistance and community investment program.

7.2 Loan Funding: The total amount of an EDIF loan for any one project will be limited to the amount of new taxes generated by the proposed development over a five-year period, or \$1 million, whichever is less. However, a corporate or regional headquarters locating in the Downtown area could receive a loan up to \$2.5 million with terms separately negotiated and recommended for City Council approval. The terms of any loan will include an interest rate based on COSA's average rate of return at the time of the loan (as determined by the Finance Department). Loan payments will normally not be disbursed until the issuance of a Certificate of Occupancy, unless otherwise negotiated. Loan repayments with interest will be made annually in equal installments over six years beginning within twelve months of initial loan disbursement. All loan repayments will be deposited back into the EDIF.

**8. Administration of the EDIF:**

The Economic Development Department will administer the EDIF program and coordinate with other Departments such as the Center City Development Office, Office of Military Affairs and the Finance Department.

## **ATTACHMENT II**

STATE OF TEXAS  
  
COUNTY OF BEXAR

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**AGREEMENT TO USE FUNDS OF  
THE CITY OF SAN ANTONIO**

This Agreement ("AGREEMENT") is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_, dated November 20, 2008 and the San Antonio Local Development Company, Inc. *dba* South Texas Business Fund (the "STBF", hereinafter referred to as "CONTRACTOR"), acting by and through its Board of Directors, and duly authorized Executive Director on behalf and as an administrative and fiscal agent of the Westside Development Corporation (the "WDC") and San Antonio for Growth on the Eastside ("SAGE"), collectively, the "Parties". However, when reference is made in this AGREEMENT to "CONTRACTOR" it is understood that the WDC and SAGE are also being named and may be held responsible, jointly and severally with the STBF, for any and all obligations, duties and defaults stated herein.

**WHEREAS**, the City Council (the "Council") of the CITY has recognized the community revitalization efforts and mission of the WDC and SAGE to promote economic development in historically underutilized areas of the City; and

**WHEREAS**, in furtherance of these efforts, the Council expressed support for the WDC and SAGE in their efforts to form a business assistance and community investment program for economic development purposes (the "Program"); and

**WHEREAS**, to further assist the WDC and SAGE in their Program efforts, the CONTRACTOR has agreed to serve as the administrative and fiscal agent of the WDC and SAGE for the Program; and

**WHEREAS**, CONTRACTOR agrees by the execution of this AGREEMENT to act as WDC's and SAGE's administrative and financial agent and to act on behalf of WDC and SAGE and to ensure WDC's and SAGE's compliance with all requirements of this AGREEMENT; and

**WHEREAS**, CITY has provided certain funds from its General Fund for use by CONTRACTOR on behalf of WDC and SAGE and has adopted a budget for the expenditure of such funds, including an allocation of funds for use by CONTRACTOR as a one-time allocation from the CITY's adopted budget; and

**WHEREAS**, CITY designates its Economic Development Department as the City Department, acting for its City Manager, responsible for the evaluation and monitoring of this AGREEMENT (hereinafter referred to as "CITY's RESPONSIBLE DEPARTMENT"). The Department of Finance and other City departments will function in a supporting role; and

**WHEREAS**, CITY now wishes to engage CONTRACTOR to carry out the purpose and intent of the WDC and SAGE on behalf of WDC and SAGE meeting such objectives and following such procedures as described in ATTACHMENT 1 of this Contract; **NOW THEREFORE**:

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

**I. GENERAL PROVISIONS**

1. CONTRACTOR is a community development corporation governed by a Board of Directors with the mission of advocating for the building and sustaining of a diverse and prosperous economy to the area business community.

2. CONTRACTOR, in furtherance of its mission, provides loans to small, diverse businesses that are unable to obtain full or partial financing through standard banking institutions.
3. CONTRACTOR agrees by the execution of this AGREEMENT to act as the administrative and financial agent for the WDC AND SAGE, ensuring compliance with any and all provisions of this AGREEMENT and accepting administrative and fiscal responsibility for the use and documentation of expenditures of funds provided by CITY.
4. CONTRACTOR represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this AGREEMENT and to perform the responsibilities herein required.
5. The signer of this AGREEMENT for CONTRACTOR represents, warrants, assures and guarantees that he or she has full legal authority to execute this AGREEMENT on behalf of CONTRACTOR and to bind CONTRACTOR to all terms, performances and provisions herein contained.
6. In the event that a dispute arises as to the legal authority of either the CONTRACTOR, or the person signing on behalf of CONTRACTOR, to enter into this AGREEMENT, CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this AGREEMENT. Should CITY suspend or permanently terminate this AGREEMENT pursuant to this paragraph, however, CONTRACTOR shall be liable to CITY for any money it has received from CITY for performance of any of the provisions hereof.
7. The CONTRACTOR understands that the funds provided it pursuant to this AGREEMENT are funds which have been made available by CITY's General Fund and CONTRACTOR will, therefore, comply with all rules, regulations, policies and procedures applicable to these funds as directed by CITY.
8. CONTRACTOR and CITY agree that CONTRACTOR is an independent contractor, that CONTRACTOR shall be responsible to all Parties for its respective acts and omissions, and that CITY shall in no way be responsible therefore, and that neither has authority to bind the other, or hold out to third parties that it has the authority to bind the other.
9. CONTRACTOR understands and agrees that this AGREEMENT is subject to mutual termination. Therefore, any Party shall have the option of terminating this AGREEMENT by giving the other Parties no less than thirty (30) days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent. If any Party exercises the option of terminating this AGREEMENT, any and all unused funds either allocated and in possession of CONTRACTOR or unallocated and in the possession of CITY shall be the sole property of CITY and CITY shall have the right to: (1) reclaim any and all funds unused but distributed to CONTRACTOR under the terms of this AGREEMENT; or (2) retain any and all funds allocated but not distributed to CONTRACTOR.
10. CONTRACTOR understands and agrees that this AGREEMENT may be revised and updated by and at the discretion of the City Council of the City of San Antonio. Therefore, CONTRACTOR agrees that, at such time as any revisions are so made during the term hereof, this AGREEMENT will be amended to include such

revisions. In the event CONTRACTOR does not agree to any changes, CONTRACTOR shall have the option of terminating this AGREEMENT by giving thirty (30) days written notice to CITY. CONTRACTOR shall have the right to exercise such option within thirty (30) days of receipt of notice of any such revisions.

11. CONTRACTOR understands and agrees that this AGREEMENT is subject to a general reduction in funding. If and when CITY implements a reduction in General Fund expenditures, agreements funded by CITY's General Fund, including this AGREEMENT, may, at CITY's option, be reduced in a like manner. CITY will attempt to provide CONTRACTOR with as much advance notice of a potential funding reduction as is possible to allow CONTRACTOR to make budget adjustments.
12. In no event shall CITY be liable for any expense of CONTRACTOR not eligible or allowable hereunder.
13. Should CONTRACTOR fail to fulfill in a timely and proper manner the obligations under this AGREEMENT, as determined solely by the Director of the City's RESPONSIBLE DEPARTMENT or if CONTRACTOR should violate any of the covenants, conditions or stipulations of this AGREEMENT, CITY shall have the right to terminate this AGREEMENT by sending written notice to CONTRACTOR of such termination and specifying the effective date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent.
  - a. Previous breach of any of the terms or conditions herein shall not be construed as a waiver of same nor preclude CITY's termination right for successive breach of the same condition.
  - b. Notwithstanding the above, CONTRACTOR shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT and CITY may withhold funds otherwise due as damages.
  - c. In addition to the above provisions, the City Council shall have the right to terminate this Agreement at any time upon a finding by ordinance that CONTRACTOR's activities, programs or operations no longer are in the best interest of the City of San Antonio or its citizens. Adequate provisions shall be made for CONTRACTOR to be heard by the City Council prior to voting on such an ordinance. The effective date of the termination shall be set in the ordinance.
14. Should this AGREEMENT be terminated by any Party for any reason and the program requirements not fully completed as stated in Section II, Scope of Services of this AGREEMENT as determined solely by CITY after consultation with CONTRACTOR, CONTRACTOR shall refund any remaining and unused sums of money paid by CITY to CONTRACTOR.
15. Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on December 1, 2008 and shall terminate on November 30, 2008.
16. CONTRACTOR shall establish and use internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action and to prevent frauds and program abuse. CITY shall review CONTRACTOR's system of internal administrative and accounting controls, as it deems necessary to ensure financial responsibility.

17. CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon any other agreement or understanding for a commission, percentage, brokerage, or contingent fee, and further that no such understanding or agreement exists or has existed, with any employee of CONTRACTOR or CITY.
18. CONTRACTOR may use funds provided hereunder either directly or indirectly as a contribution in order to obtain any federal funds under any federal program that is consistent with the program objectives herein, upon prior written approval by CITY's RESPONSIBLE DEPARTMENT.
19. CONTRACTOR is authorized to publicly acknowledge that the City of San Antonio is supportive of the objectives as described in ATTACHMENT I and has contributed to the cause of realizing such objectives.
20. CONTRACTOR acknowledges that this AGREEMENT cannot be assigned without the express written consent of CITY.
21. CONTRACTOR shall not use funds from this AGREEMENT for purposes other than those listed in Section II of this Contract without prior written consent of the CITY's RESPONSIBLE DEPARTMENT.

## II. SCOPE OF SERVICES

1. CONTRACTOR shall utilize up to two hundred fifty thousand dollars (\$250,000.00) for the funding or partial funding of WDC toward its Program. CONTRACTOR shall utilize up to two hundred fifty thousand dollars (\$250,000.00) for the funding or partial funding of SAGE toward its Program. All funds utilized shall be in compliance with the CITY's Economic Development Incentive Fund Guidelines and shall be used for economic development purposes. These funds shall be advanced and distributed to CONTRACTOR in one amount, to be distributed soon after the effective date of a duly passed ordinance by the City Council of the City of San Antonio authorizing the execution of this AGREEMENT. The respective Board of Directors for WDC and SAGE will have final review and approval authority for any qualifying projects and expenditures. CONTRACTOR shall also fulfill the following requirements:
  - a. CONTRACTOR shall provide CITY's RESPONSIBLE DEPARTMENT with proper documentation verifying receipt of year 2008 and 2009 funding commitments from all other specified sources for WDC AND SAGE toward the Program, if any.
  - b. CONTRACTOR shall provide CITY's RESPONSIBLE DEPARTMENT semiannual budget reports outlining contributions and expenditures (to include all sources of funding).
  - c. CONTRACTOR shall retain all required and requested documents and if requested, make such documents available to CITY's RESPONSIBLE DEPARTMENT for proper review of WDC AND SAGE expenditures and activities. Any requests for Fiscal Year 2009 funding must be submitted to CITY's RESPONSIBLE DEPARTMENT by June 1, 2009.
2. In consideration of funds received under this AGREEMENT, CONTRACTOR may receive an administrative servicing fee for loans processed, pursuant to loan

guidelines developed with and on behalf of WDC AND SAGE, for the Program in the amount of .75%.

3. The City's Economic Development Department is assigned monitoring responsibility for this AGREEMENT. CONTRACTOR will provide CITY's staff, including internal auditors, EEO officers and other persons as designated by CITY, such as independent public accountants, access during regular business hours, as deemed necessary by CITY for the purposes of auditing, monitoring, evaluating, coordinating, investigating and making excerpts and/or copies of any and all of CONTRACTOR's books, records and files on the objectives covered by this AGREEMENT. CONTRACTOR understands that CITY may require any and all books, records and files of CONTRACTOR necessary to ensure CONTRACTOR's compliance and use of generally accepted governmental accounting principles.
  - a. All such records shall continue to be available for inspection and audit for a period of three (3) years after the termination date hereof. However, if during the course of this three-year period, an audit or investigation of the CONTRACTOR begins, then CONTRACTOR is required to maintain said records until such time as the audit or investigation is completely finished.
  - b. CONTRACTOR agrees that during the term of this AGREEMENT, any duly authorized representative of CITY's RESPONSIBLE DEPARTMENT shall have the right to conduct on-site inspections at reasonable times and to interview personnel and clients for the purposes of evaluating and monitoring the objectives for compliance with this AGREEMENT.
  - c. The submission of falsified information or the failure to timely submit all information by CONTRACTOR as requested by CITY is grounds for termination of this AGREEMENT.
4. CONTRACTOR agrees to abide by the CITY's current Ethics Code or any amendment or revisions thereto. However, CITY acknowledges that this requirement is only enforceable on CONTRACTOR staff funded by this AGREEMENT. CONTRACTOR will establish safeguards to prohibit anyone whose position is funded or partially funded by this AGREEMENT from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family, business or other ties. CITY may, at its option, cancel this AGREEMENT for any violation of this section.
5. CONTRACTOR agrees to establish internal procedures that assure employees funded or partially funded by this AGREEMENT of an established complaint and grievance policy.
  - a. Such grievance policy will include procedures to receive, investigate and resolve complaints and grievances in an expeditious manner.
  - b. In the event no complaint and grievance policy has been established, CONTRACTOR will follow the procedures outlined in the San Antonio Municipal Civil Service rules in regards to employees funded or partially funded by this AGREEMENT.

### III. FISCAL MANAGEMENT

1. An accounting system using generally accepted accounting principles for governmental entities which accurately reflects all costs chargeable (paid and unpaid) to this AGREEMENT is mandatory.
2. CONTRACTOR will establish an account in a commercial bank as a depository for receipt and expenditure of all funds provided hereunder. A separate account shall be maintained for funds under this AGREEMENT to assure separation of funds, unless otherwise approved by the CITY's RESPONSIBLE DEPARTMENT.
3. No fees may be charged to or donations requested from participants in any CITY-funded agreement without the prior written approval of the CITY's RESPONSIBLE DEPARTMENT.
4. **CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature including, but not limited to, personal or bodily injury, death and property damage made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR that is known to CONTRACTOR, related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

5. Upon completion or termination of the objectives as described in this AGREEMENT any unused funds, rebates or credits must immediately be returned by CONTRACTOR to CITY.
6. CONTRACTOR shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT and CITY may withhold funds otherwise due as damages.

7. Should any expense or charge that has been paid with funds from this AGREEMENT be subsequently disapproved or disallowed as a result of any site review or audit, CONTRACTOR will immediately refund such amount to CITY. CONTRACTOR further authorizes CITY, if CITY so elects, to deduct such amount or charge as a claim against future payments, if any. The CITY's RESPONSIBLE DEPARTMENT has the express authority to deduct such claims from subsequent reimbursements.
8. Audit Conditions and Requirements:
  - a. CITY, a political entity, unlike a business for profit, is more interested in knowing if agencies have accomplished or achieved the objectives as stipulated in their contracts and/or agreements, as opposed to certifications that the Balance Sheet fairly represents the financial position at a given date. Therefore, it is essential that City is made aware of progress made upon this AGREEMENT. Following 30 days after a written request by City, Contractor shall submit a written report stating what has been accomplished to date and the most current percentage of completion of the total contract that has been performed.
  - b. It is imperative any auditor performing an audit of CONTRACTOR read the entire AGREEMENT, including all attachments, between the CITY and CONTRACTOR, since the budget and financial compliance of the AGREEMENT is only a portion of the total contractual obligation.
  - c. All CITY-funded contracts and agreements, including this AGREEMENT, are subject to periodic audits at any reasonable hour of the day by CITY auditors. This includes the auditing of both the Contractor and subcontractors related to this AGREEMENT.
  - d. If CONTRACTOR expends \$50,000.00 or more in general fund dollars during the term of this contract, the CONTRACTOR shall furnish the CITY'S RESPONSIBLE DEPARTMENT and other City Departments designated by the RESPONSIBLE DEPARTMENT with audited financial statements, prepared by an independent auditor (CPA), within one hundred and twenty (120) days of the close of the CONTRACTOR's fiscal year or within thirty days of the completion of any audit performed. In addition to the audited financial statements, a copy of any internal controls review, audit exceptions, and management letter should be submitted. The audited financial statements must include a schedule of receipts and disbursements by budgeting cost category and a certification from the Contractor stating whether or not the terms and conditions of the contract were met. If the CITY determines, in its sole discretion, that CONTRACTOR is in violation of the above requirements, the CITY shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the CONTRACTOR pay for such audit. In addition, when the CONTRACTOR has expended federal or state funds that exceed the single audit threshold amount in effect during the period of this contract, the audit shall be conducted in accordance with the Single Audit Act Amendments of 1996 and the U.S. Office of Management and Budget Circular A-133 (latest revision), and/or the State of Texas Single Audit Circular.
9. CONTRACTOR understands and agrees to abide by and adhere to applicable federal, state and CITY provisions regarding financial accounting..

**IV. INSURANCE REQUIREMENTS**

1. CONTRACTOR shall furnish a completed Certificate of Insurance to CITY's RESPONSIBLE DEPARTMENT, with a copy sent to Risk Management and the City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. CITY shall have no duty to pay or perform under this AGREEMENT until such certificate is delivered to CITY's RESPONSIBLE DEPARTMENT, Risk Management, and the City Clerk's Office. No CITY officer or employee shall have authority to waive this requirement.
2. CITY reserves the right to review the insurance requirements of this section during the effective period of this AGREEMENT and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.
3. A CONTRACTOR's financial integrity is of interest to the CITY, therefore, subject to CONTRACTOR's right to maintain reasonable deductibles in such amounts as are approved by the CITY, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at CONTRACTOR's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the CITY, in the following types and minimum amounts:

<u>TYPE</u>	<u>AMOUNT</u>
a. Workers' Compensation	Statutory
b. Employers' Liability	\$500,000.00/\$500,000.00/\$500,000.00
c. Commercial General (public) Liability Insurance to include coverage for the following:	
(1) Premises/Operations	
(2) Independent contractors	<u>Bodily Injury and</u>
(3) Products/completed operations	<u>Property Damage of</u>
(4) Contractual liability	\$1,000,000.00 per occurrence
(5) Broad form property damage, to include fire legal liability	
(6) Personal Injury	
d. Excess Liability (umbrella form) (Excess liability insurance shall follow the form of the Primary insurance).	\$1,000,000.00 each occurrence and \$1,000,000.00 aggregate
e. Business Automobile Liability	
(1) Owned/leased vehicles	<u>Combined Single Limit for</u>
(2) Non-owned vehicles	<u>Bodily Injury and Property</u>
(3) Hired vehicles	<u>Damage of 1,000,000.00 per</u>
	occurrence or its equivalent.
f. Errors and Omissions Policy	\$1,000,000.00

4. At least annually on the anniversary date of this Agreement, if any, CONTRACTOR and the CITY's Risk Manager will meet to mutually determine the appropriate CONTRACTOR insurance coverage limits based upon actual and anticipated development activities for the upcoming year. Any unresolved disputes will be referred to the CITY Council for final determination. CITY and its officers, employees and elected representatives individually or collectively will be endorsed as "Additional Insureds" on the CONTRACTOR's commercial general liability policy.
5. The CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, the CONTRACTOR shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.
6. CONTRACTOR agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.
  - a. Name CITY and its officers, employees, and elected representatives as "Additional Insureds" by endorsement with respect to operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the errors and omissions, workers' compensation, commercial crime policies, and E & L policies;
  - b. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where CITY is an additional insured shown on the policy;
  - c. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of CITY.
7. CONTRACTOR shall notify the CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the CITY at the two (2) following address:

**City of San Antonio  
 Risk Management Division  
 P.O. Box 839966  
 San Antonio, Texas 78283-3966**

**City of San Antonio  
 City Clerk's Office  
 P.O. Box 839966  
 San Antonio, Texas 78283-3966**

8. If CONTRACTOR fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under this AGREEMENT; however, procuring of said insurance by the CITY is an alternative to other remedies the CITY may have, and is not the exclusive remedy for failure of CONTRACTOR to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may, upon CONTRACTOR's failure to provide and maintain any insurance or policy endorsements and to the extent and within the time herein required, have the right to order CONTRACTOR to stop work hereunder, and/or withhold any payment(s) which become due, to CONTRACTOR

hereunder until CONTRACTOR demonstrates compliance with the requirements hereof.

**V. EQUAL EMPLOYMENT OPPORTUNITY POLICY**

1. CONTRACTOR agrees to post in a conspicuous place available to employees and applicants for employment funded or partially funded under this AGREEMENT, notices to be provided by the contracting officer setting forth the provisions of this Nondiscrimination Clause.
2. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive fair consideration for employment without regard to race, color, national origin, religion, sex, age, disability, or political belief or affiliation.
3. CONTRACTOR agrees to affirmatively abide by and cooperate in the implementation of the policies and practices set forth in this Nondiscrimination Clause and any additional policies as may be required as a result of local, state or federal initiatives. CONTRACTOR will furnish all information and reports requested by CITY and will permit access to books, records and accounts for purpose of review and investigation to ascertain compliance with such rules and regulations.
4. In the event of CONTRACTOR's failure or refusal to comply with this Nondiscrimination Clause, this AGREEMENT may be canceled, terminated or suspended in whole or in part, and CONTRACTOR may be debarred from further contracts with CITY.

**VI. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS**

1. CONTRACTOR further represents and warrants that:
  - a. All information, data or reports heretofore or hereafter provided to CITY shall be and shall remain complete and accurate as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY;
  - b. Any supporting financial statements heretofore or hereafter provided to CITY are, shall be and shall remain complete, accurate and fairly reflective of the financial condition of CONTRACTOR on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to CITY, there has been no material change, adverse or otherwise, in the financial condition of CONTRACTOR;
  - c. No litigation or proceedings are presently pending or threatened against CONTRACTOR or if pending have been disclosed by CONTRACTOR in writing to CITY;
  - d. None of the provisions contained herein contravene or in any way conflict with the authority under which CONTRACTOR is doing business, or with the provisions of any existing indenture or agreement of CONTRACTOR;
  - e. CONTRACTOR has the legal authority to enter into this AGREEMENT and accept payments hereunder, and has taken all necessary measures to

authorize such execution of AGREEMENT and acceptance of payments pursuant to the terms and conditions hereof; and

- f. None of the assets of CONTRACTOR are subject to any lien or encumbrance of any character, except as shown in the financial statements provided by CONTRACTOR to CITY.

## **VII. LEGAL/LITIGATION EXPENSES**

1. Under no circumstances will the funds received under this AGREEMENT or any other funds received from CITY be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the CITY. CONTRACTOR must obtain the written approval of the City Attorney's Office before any funds received under this AGREEMENT may be used in any adversarial proceeding against any other governmental entity or any other public entity.
2. During the term of this AGREEMENT, if CONTRACTOR files and/or pursues an adversarial proceeding against the CITY then, at the CITY's option, this AGREEMENT and all access to the funding provided for hereunder may terminate if it is found that CONTRACTOR has violated this Article.
3. CONTRACTOR, at the CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the CITY remains unresolved.
4. For purposes of this Article, "adversarial proceedings" include any cause of action filed by the CONTRACTOR in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

## **VIII. CHANGES AND AMENDMENTS**

1. Except when the terms of this AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and CONTRACTOR.
2. It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

## **IX. SEVERABILITY OF PROVISIONS**

If any clause or provision of this AGREEMENT is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this AGREEMENT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this AGREEMENT that is invalid, illegal, or unenforceable, there be added as a part of this AGREEMENT a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

**X. NON-WAIVER OF PERFORMANCE**

1. No waiver by CITY of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of CITY to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by any Party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.
2. No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege, or remedy available to CITY hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.
3. No representative or agent of CITY may waive the effect of the provisions of this Article.

**XI. SPECIAL CONDITIONS**

All CONTRACTOR invoices for eligible expenditures pursuant to this AGREEMENT must be submitted to CITY's RESPONSIBLE DEPARTMENT by CONTRACTOR no later than ninety (90) days after CONTRACTOR incurs the expense.

**XII. ENTIRE AGREEMENT**

This AGREEMENT constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind the Parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the Parties.

**XIII. NOTICE**

1. For purposes of this AGREEMENT, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

<p>CITY:</p> <p>Director Economic Development Department P.O. Box 839966 San Antonio, Texas 78283-3966</p> <p>and</p> <p>City Attorney's Office Commerce &amp; Visitor's Services City Hall, 3<sup>rd</sup> Floor San Antonio, Texas 78205</p>	<p>CONTRACTOR:</p> <p>Manager South Texas Business Fund P.O. Box 830505 San Antonio, Texas 78283-0505</p> <p>and</p> <p>Executive Director Westside Development Corp. P.O. Box 839966 San Antonio, Texas 78283-3966</p>
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and

Board Chairman  
San Antonio for Growth on the Eastside  
1149 East Commerce Street  
San Antonio, Texas 78205

- 2. Notice of changes of address by any Party must be made in writing and delivered (or mailed, registered or certified mail, postage prepaid) to the other Parties' last known address within five (5) business days of such change.

**XIV. PARTIES BOUND**

This AGREEMENT shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided for herein.

**XV. GENDER**

Words of gender used in this AGREEMENT shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**XVI. RELATIONSHIP OF PARTIES**

Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties hereto.

**XVII. TEXAS LAW TO APPLY**

THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

**XVIII. CAPTIONS**

The captions contained in this AGREEMENT are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this AGREEMENT.

EXECUTED IN DUPLICATE ORIGINALS this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

CITY OF SAN ANTONIO

SAN ANTONIO LOCAL  
DEVELOPMENT COMPANY,  
DBA SOUTH TEXAS BUSINESS  
FUND

\_\_\_\_\_  
A. J. Rodriguez  
Deputy City Manager

\_\_\_\_\_  
Robert Peche  
Executive Director

ATTEST:

WESTSIDE DEVELOPMENT  
CORPORATION

---

Leticia Vacek  
City Clerk

---

Ramon Flores  
Executive Director

APPROVED AS TO FORM:

SAN ANTONIO FOR GROWTH  
ON THE EASTSIDE

---

Michael Bernard  
City Attorney

---

Leonard Young  
Board Chairman

# ATTACHMENT I

Business Assistance and  
Community Investment Program (the "Program")  
Utilizing Appropriated EDIF Funds

**Fiscal Agent:** San Antonio Local Development Company, dba South Texas Business Fund

**Potential Use of Funds for Economic Development Purposes:**

1. Loans to businesses/projects (pursuant to Loan Guidelines and in compliance with EDIF Guidelines)
2. Direct investment in real estate projects (acquisition, development, construction, joint ventures, etc.)
3. Leveraged investments to secure contributions for projects cited above or other Program initiatives
4. Grants to businesses/projects

**Process Flow of Funds:**

*Loan Program -*

1. WDC and SAGE establish Loan Guidelines and parameters in partnership with STBF.
  - a. Secure approval of WDC, SAGE and STBF Boards of Directors (if required)
2. WDC and SAGE staff source loan opportunities in their respective areas of responsibility in the Westside and Eastside of San Antonio.
3. Once identified, loan is presented for approval to:
  - a. STBF Loan Officers (for review and recommendation)
  - b. WDC Project Development Committee and SAGE Planning and Design Committee
  - c. WDC and SAGE Boards of Directors for final approval\*.
4. If approved, STBF funds the loan and serves as Loan Administrator to service loans and maintain accounting reports evidencing loan performance. WDC and SAGE staff will be available to STBF staff to assist in servicing.

\*As part of the approval request to WDC and SAGE Boards for the Loan Guidelines, staff will request delegated approval authority to the Project Development Committees.

*Direct Investments in real estate projects -*

1. WDC and SAGE establish Investment Guidelines. Investments may include real estate acquisition, development, construction, joint venture projects, equity investments, etc.
  - a. Secure approval of WDC and SAGE Boards of Directors (if required)
2. WDC and SAGE staff source investment opportunities in their respective areas of responsibility in the Westside and Eastside of San Antonio,
3. Once identified, investment is presented for approval to:
  - a. WDC Project Development Committee and SAGE Planning and Design Committee
  - b. WDC and SAGE Boards of Directors, for final approval
4. If approved and funded, STBF will remit funds to WDC or SAGE, as applicable for direct investment.
5. WDC and SAGE use its own legal counsel, if any, for legal work necessary for acquisition of property, development agreements with third parties, joint venture agreements, etc.

*Leverage Investments to secure contributions for WDC and SAGE in furtherance of Program -*

1. WDC and SAGE may establish a relationship with a third party entity with a tax-exempt 501c3 designation to receive contributions on behalf of the WDC and/or SAGE (e.g. SA Area Foundation or similar organization).
2. Initial commitment will serve as leverage investment as part of a fundraising strategy to secure contributions to WDC and/or SAGE for the benefit of the Program.
3. Any contributions received will be held by the third party partner.

4. If 501c3 status is secured by WDC and/or SAGE, any money raised and/or held by the third party is returned to the WDC and/or SAGE.

*Grant Program –*

1. WDC and SAGE identify economic development grant opportunities for businesses or projects in their respective areas of responsibility in the Westside and Eastside of San Antonio.
2. Once identified, grant is proposed to:
  - a. WDC Project Development Committee and SAGE Planning and Design Committee
  - b. WDC and SAGE Boards of Directors approve grants (Board Resolution required)
  - c. If approved, grant is made to business/project under an Economic Development Grant Agreement with performance measures. STBF remits funds to grantee upon execution of Grant Agreement.

4. If 501c3 status is secured by WDC and/or SAGE, any money raised and/or held by the third party is returned to the WDC and/or SAGE.

*Grant Program –*

1. WDC and SAGE identify economic development grant opportunities for businesses or projects in their respective areas of responsibility in the Westside and Eastside of San Antonio.
2. Once identified, grant is proposed to:
  - a. WDC Project Development Committee and SAGE Planning and Design Committee
  - b. WDC and SAGE Boards of Directors approve grants (Board Resolution required)
  - c. If approved, grant is made to business/project under an Economic Development Grant Agreement with performance measures. STBF remits funds to grantee upon execution of Grant Agreement.

**City of San Antonio Guidelines  
Economic Development Incentive Fund (EDIF)**

**1. Background and Eligibility:**

The primary purpose of the Economic Development Incentive Fund (“EDIF”) is to provide a financial incentive in the form of economic development grants and/or loans to help do the following:

- Attract, retain and/or expand companies in targeted industries, including green tech, clean tech and corporate and regional headquarters;
- Assist development projects at and around military bases, particularly those bases affected by Base Realignment and Closure, such as Fort Sam Houston and Lackland Air Force Base.
- Promote development projects at educational institutions, and other nongovernmental institutions which create jobs and support growth in the targeted industries;
- Promote commercial and mixed-use development projects in targeted areas, particularly in the Downtown area;
- Attract a new corporate or regional headquarters to the Downtown area or the retention and/or expansion of an existing corporate or regional headquarters into the Downtown area;
- Promote multi-family, market rate housing Downtown; and
- Stimulate development and investment in distressed areas, such as the federal Empowerment Zone and State Enterprise Zone census tract areas.

**2. Definitions:**

Targeted Industry - Those industries identified and defined in the City and County Joint Tax Phase-In Guidelines as having the most potential for growing the economy and providing good jobs for the citizens of San Antonio and Bexar County. These industries include: Aerospace, Creative Services, Green and Clean Technology, Finance, Information Technology, Logistics/Distribution, Telecommunications, Manufacturing and Biotechnology/Healthcare.

Targeted Areas - Includes Downtown and the areas covered by the federal Empowerment Zone, all State Enterprise Zone census tracts (except those north of Loop 410), the Westside Development Corporation, Brooks City-Base, Port of San Antonio, Texas Research Park, San Antonio International Airport, Stinson Municipal

Airport, the Medical Center area, the Inner City TIRZ #11, the River North TIRZ #27 and the proposed Midtown TIRZ area if approved.

Downtown - The area managed by the Center City Development Office which encompasses the CRAG which is the inner-city area defined by the Community Revitalization Action Group as the San Antonio city limits prior to 1940. This area includes a 36 square mile area, with the center being the dome of the San Fernando Cathedral. The area is defined by Hildebrand Avenue to the north, Division Street to the south, Rio Grande Street to the east, and 24th Street to the west.

Market-Rate Housing – A project with the majority of housing units available at market rate for rent or for sale.

Mixed-Use Project – A project with market-rate residential housing units constituting at least 75 percent of the usable project space and the remaining space commercial retail space.

Corporate and Regional Headquarters - The company's corporate or regional legal principal place of business is or will be located in San Antonio.

### **3. EDIF Eligibility Requirements:**

The amount of EDIF assistance for a particular project will be based on a determination of financial need for public assistance to ensure the execution of desired projects in San Antonio. For each application, staff will conduct a cost-benefit analysis and review the project's financial information to determine if there is a gap in project financing that requires City assistance. In this analysis, staff will include the benefit to the project from other available financial incentive programs the City might provide. If EDIF incentives are offered to a qualifying project, the project must, at a minimum, meet the following requirements:

- Meet one or more of the eligible project categories listed in Para 1 above.
- All jobs must meet the City's minimum wage requirements specified in the City's Tax Phase-In Guidelines, except for mixed-use and residential-only projects.
- Demonstrate that a gap in financing exists which requires public assistance to ensure execution or that EDIF assistance is necessary for the City to favorably compete with other cities for a targeted project.
- Result in a positive cost-benefit to the City over at least a 20-year period.

### **4. Use of EDIF Funds:**

4.1. The EDIF may be used in combination with other incentive tools and programs in the development of a proposed incentive package for a specific project.

4.2. The EDIF may be used to provide economic development loans and grants pursuant to Chapter 380, Texas Local Government Code to help fund the following type of projects and project-related expenditures:

- Public improvements associated with the project;
- Training for new or retained jobs;
- Real property (e.g., land) acquisition;
- Site development;
- Facility construction and/or real property improvements;
- Studies or planning that promote growth in the targeted industries;
- Marketing of mixed-use and market-rate housing projects;
- Equity participation by a City-created Economic Development Corporation;
- Utility infrastructure costs not funded by CPS Energy Community Infrastructure and Economic Development funds; and
- Creation of a business assistance and community investment fund of \$500,000 equally distributed at \$250,000 to the Westside Development Corporation (WDC) and San Antonio for Growth on the Eastside (SAGE) for economic development with the South Texas Business Fund serving as the fiscal agent.

#### **5. Ineligible and Restricted Areas or Uses:**

The following types of projects or uses are not eligible for EDIF assistance:

- Projects located in whole or in part over the Edwards Aquifer Recharge Zone.
- Retail stores, retail centers or businesses that primarily provide goods and services directly to consumers, except for such projects approved by the respective boards of the WDC and SAGE.
- Outbound or contract call centers whose primary business operations are to make outbound calls for the purpose of selling goods or services directly to consumers, except for such projects approved by the respective boards of the WDC and SAGE.
- Hotels and motels.
- Projects that will negatively impact military missions and/or installations.

#### **6. Authorization for Use:**

The City Manager is authorized to offer and negotiate the use of some or all of the EDIF funds for projects meeting the eligibility requirements. All agreements and allocations for the use of funds from the EDIF must receive City Council approval.

## **7. Amount of EDIF Incentive per Project:**

The amount of EDIF Incentive for a specific project will be based on need as addressed in Paragraph 3 above. The total amount of the EDIF incentive will vary based on whether the type of assistance provided is an economic development grant or loan or a combination of both grant and loan assistance. The maximum amount of EDIF assistance is limited to \$2 million for a grant and \$1 million for a loan. The amount of EDIF assistance is limited to a total of \$2 million for any combination loan and grant, except for a corporate or regional headquarters locating Downtown. The City will enter into a separate multi-party agreement with the WDC, SAGE and STBF which will establish the roles, responsibilities and requirements for the use of those funds (\$500,000) allocated from the EDIF to the WDC and SAGE.

**7.1 Grant Funding:** The total amount of EDIF grant funding for any one project is limited to \$2 million. The amount of incentive per project will generally be based on the amount of capital investment, location of the project, job creation and type of project. Staff will use the following formula when recommending the amount of EDIF funding for a project:

- Up to one percent (1%) of the initial investment not to exceed \$2 million
  - Up to an additional \$500,000 if one of the following applies:
    - Between 1,000 - 2,000 jobs; or
    - Over 300 jobs in the Downtown area; or
    - A Downtown mixed-use project or market-rate housing project with investment of at least \$40 million.
  - Up to another \$500,000 if one of the following applies:
    - Project creates over 2,000 jobs; or
    - Over 500 jobs in the Downtown area; or
    - A Downtown mixed-use project or market-rate housing project with investment of at least \$60 million.
- Up to \$2 million for a corporate or regional headquarters locating Downtown.
- Projects locating in the WDC, SAGE or other targeted areas would be eligible for financial assistance of up to \$3,000 per job from the EDIF or for other financial assistance provided through the programs administered by the STBF.

**7.2 Loan Funding:** The total amount of an EDIF loan for any one project will be limited to the amount of new taxes generated by the proposed development over a five-year period, or \$1 million, whichever is less. However, a corporate or regional headquarters locating in the Downtown area could receive a loan up to \$2.5 million with terms separately negotiated and recommended for City Council approval. The terms of any loan will include an interest rate based on COSA's average rate of return at the time of the loan (as determined by the Finance Department). Loan payments will normally not be disbursed until the issuance of a Certificate of Occupancy, unless otherwise negotiated. Loan repayments with interest will be made annually in equal installments over six years beginning within twelve months of initial loan disbursement. All loan repayments will be deposited back into the EDIF.

## **8. Recapture Provisions**

EDIF Agreements will include a provision for the recapture of City EDIF financial incentives (e.g. grants and loans) in the event Agreement terms and requirements are not met. These recapture provisions will survive any subsequent assignment of the Agreement.

## **9. Administration of the EDIF:**

The Economic Development Department will administer the EDIF program and coordinate with other Departments such as the Center City Development Office, Office of Military Affairs and the Finance Department.