

AN ORDINANCE 2013 - 11 - 21 - 0816

AUTHORIZING A CHAPTER 380 ECONOMIC DEVELOPMENT GRANT AGREEMENT WITH THE SAN ANTONIO ECONOMIC DEVELOPMENT CORPORATION (SAEDC) IN THE AMOUNT OF \$500,000.00 TO ESTABLISH AN SAEDC INVESTMENT FUND.

* * * * *

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City of San Antonio (the “City”) is authorized to establish and provide for the administration of one or more programs, including programs for making grants of public money to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, in accordance with City Ordinance No. 100684, the City created an Economic Development Program (the “Program”) for the purpose of making grants available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

WHEREAS, the City established the San Antonio Economic Development Corporation (the “SAEDC”), a Type B corporation created pursuant to the authority of the Development Corporation Act, Title 12, Subtitle C1, as amended, Texas Local Government Code, for the purpose of undertaking certain economic development projects approved by the City’s governing board; and

WHEREAS, the City has authorized the SAEDC to undertake an economic development project consisting of the establishment of SAEDC Investment Fund (the “Fund”) to fund economic development projects in accordance with the SAEDC Investment Fund Guidelines; and

WHEREAS, the City finds that the goals of Chapter 380 will be met by assisting the SAEDC in establishing the Fund and has identified economic development funds for use in carrying out this purpose; **NOW THEREFORE**:

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

SECTION 1. The terms and conditions of a Chapter 380 Economic Development Grant Agreement (the “Agreement”) in the amount of \$500,000.00 with the SAEDC are hereby approved.

SECTION 2. The City Manager, or her designee, is authorized to execute the Agreement, a copy of which, in substantially final form, is set out in “**Attachment I**” and made a part of this ordinance. A final copy of the Agreement will be attached when executed.

RR
11/21/13
Item #38

SECTION 3. The SAEDC is hereby authorized to undertake economic development projects in accordance with the SAEDC Investment Fund Guidelines.

SECTION 4. Funding in the amount of \$500,000.00 is available in Fund 29059000, Cost Center 1604010001 and General Ledger 5201040, as part of the Fiscal Year 2012 Budget.

SECTION 5. Payment not to exceed the budgeted amount is authorized to San Antonio Economic Development Corporation and should be encumbered with a purchase order.

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO 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 7. This Ordinance shall become effective immediately upon its passage by eight (8) affirmative votes of the City Council.

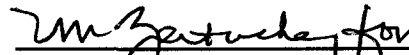
PASSED AND APPROVED this 21st day of November, 2013.


M A Y O R
Julián Castro

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


Michael D. Bernard, City Attorney

Agenda Item:	38 (in consent vote: 5, 6, 7, 8, 10A, 10B, 11, 12, 13, 14, 15, 16B, 19, 20, 21, 22, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 40, 41, 42, 43, 44, 45, 46)
Date:	11/21/2013
Time:	12:17:52 PM
Vote Type:	Motion to Approve
Description:	An Ordinance approving a Chapter 380 Economic Development Program Grant Agreement with the San Antonio Economic Development Corporation to provide \$500,000.00 in funding for the establishment of an SAEDC Investment Fund, and authorizing the SAEDC Board to approve projects at \$50,000 or less from the Fund. [Carlos Contreras, Assistant City Manager, Rene Dominguez, Director, Economic Development]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				x
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Carlton Soules	District 10		x				

ATTACHMENT I

STATE OF TEXAS

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**ECONOMIC DEVELOPMENT
PROGRAM GRANT AGREEMENT
OF THE CITY OF SAN ANTONIO**

COUNTY OF BEXAR

This Economic Development Grant Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas, (hereinafter referred to as "GRANTOR"), acting by and through its City Manager or her designee, and the San Antonio Economic Development Corporation, a Type B corporation created pursuant to the authority of the Development Corporation Act, Title 12, Subtitle C1, as amended, Texas Local Government Code (hereinafter referred to as "GRANTEE"), and together referred to as the "Parties.

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to establish and provide for the administration of one or more programs, including programs for making grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, in accordance with City of San Antonio City Ordinance No. 100684, GRANTOR created such a program for the purpose of making grants available for economic development projects that the GRANTOR finds will accomplish the purpose and goals of Chapter 380; and

WHEREAS, the City established GRANTEE for the purpose of undertaking certain economic development projects approved by the City's governing board; and

WHEREAS, the City has authorized GRANTEE to establish an investment fund for the purpose of undertaking economic development projects in accordance with established Investment Guidelines; and

WHEREAS, the City finds that the goals of Chapter 380 will be met by assisting GRANTEE in establishing the Project and has identified economic development funds for use in carrying out this purpose; **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:

SECTION 1. AGREEMENT PURPOSE

GRANTOR is seeking to promote local economic development and stimulate business and commercial activity in the City of San Antonio and is entering into this Agreement as a component part of an incentive package intended to attract and retain companies, as well as support the expansion of local startup companies, that support the GRANTOR's targeted industries.

SECTION 2. AGREEMENT PERIOD

This Agreement shall commence upon the Effective Date of this Agreement as indicated on the signature page and shall terminate upon the earlier of: 1) the exhaustion of funds allocated through this Agreement; or 2) upon termination of the Agreement as provided in Section 8 herein (the "Term").

SECTION 3. GRANTEE OBLIGATIONS

Grantee covenants and agrees that it shall perform the following obligations:

A. **Investment Guidelines.** GRANTEE shall approve and provide funding in the amount of \$50,000.00 or less to economic development projects in accordance with the SAEDC Investment Guidelines (Exhibit A), and GRANTEE shall request the approval of the GRANTOR for any economic development projects over \$50,000.00.

B. **Subsequent Agreements.** Upon execution, GRANTEE shall provide a copy to GRANTOR of any and all agreements executed between GRANTEE and third-parties receiving funds in accordance with the SAEDC Investment Guidelines and allocated through this Agreement.

SECTION 4. ECONOMIC DEVELOPMENT CHAPTER 380 PROGRAM GRANT

A. **Economic Development Chapter 380 Program Grant.** GRANTOR has agreed to provide GRANTEE with an Economic Development Program Grant in a total cumulative amount of FIVE HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$500,000.00) (the "Grant Funds").

1. **Grant Disbursement.** Following the execution of this Agreement, the GRANTOR will make available to GRANTEE the Grant Funds from time to time and in amounts not to exceed FIFTY THOUSAND DOLLARS (\$50,000.00) per project undertaken in accordance with the SAEDC Investment Guidelines and approved by the GRANTEE'S governing board or in the amount approved by the GRANTOR for projects exceeding FIFTY THOUSAND DOLLARS (\$50,000.00). Such disbursement shall be no later than forty-five (45) days from the time GRANTEE has submitted documentation indicating a binding contract has been executed with a third-party for the undertaking of an economic development project.

2. **Grant Use.** GRANTEE shall provide the Grant Funds to third-parties and shall ensure that Grant Funds are used only for the purpose of undertaking economic development projects.

B. **Reimbursement and Repayment of Funds.** Should GRANTOR'S governing board authorize GRANTEE to undertake a project and take an equity interest in the project to potentially receive a repayment of grant funds and should GRANTEE realize a return on its investment resulting in a monetary payment to GRANTEE, then GRANTEE shall reserve the monetary payment in a separate account for GRANTEE'S benefit and use. Such amount shall not be restricted to the amount of Grant Funds received from the GRANTOR, but shall continue in any amounts GRANTEE is entitled to receive through the project. The GRANTEE'S use of such funds shall be as approved by GRANTEE'S governing board, and shall be subject to GRANTOR'S approval.

C. **Payment.** GRANTEE acknowledges that the payment of funds hereunder shall be subject to, and made solely from, annual appropriations of the GRANTOR in the budget year in which they are to be paid as may be legally set aside for the implementation of ARTICLE III, Section 52A of the Texas Constitution, Chapter 380 of the Texas Local Government Code, or any other economic development or financing program authorized by statute or home-rule powers of the GRANTOR under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that GRANTOR does not appropriate funds necessary to pay the Grants in any budget year (as reflected in the GRANTOR'S adopted budget for such year), GRANTOR shall not be liable to GRANTEE for such payments or expenditures unless and until such appropriation of funds is made provided, however, that, in such event, GRANTEE may, in its sole discretion, terminate this Agreement, in which event GRANTEE and

GRANTOR shall have no further obligations under this Agreement including, but not limited to any obligations for the year in respect to which said unappropriated funds relate

SECTION 5. WITHHOLDING, FORFEITING AND REFUNDING GRANT FUNDS.

A. It is expressly understood and agreed by the parties hereto that if GRANTEE fails to submit to GRANTOR in a timely and satisfactory manner any information or report required under this Agreement, GRANTOR may, at its sole option and in its sole discretion, withhold any or all payments otherwise due or requested by GRANTEE hereunder. If GRANTOR withholds such payments, it will notify GRANTEE in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by the GRANTOR until such time as the delinquent obligations for which funds are withheld are fulfilled by GRANTEE.

B. GRANTEE shall refund to GRANTOR any sum of money paid to GRANTEE by GRANTOR, which the GRANTOR determines is an overpayment to GRANTEE, or in the event GRANTOR determines funds disbursed on behalf of GRANTEE were not made in response to an allowable cost of this Agreement. "Allowable costs" will be determined in accordance with this Agreement and are defined as direct costs incurred in the Project. Such refund shall be made by GRANTEE to GRANTOR within ninety (90) calendar days after such refund is requested in writing by the GRANTOR, or within thirty (30) calendar days of a notice from GRANTOR indicating the request is the result of a final determination that the refund is owed.

SECTION 6. DEFAULT AND GRANTOR'S REMEDIES

A. **Default Events.** Any one of the following which occurs and continues shall constitute a Default Event:

1. The dissolution or liquidation of GRANTEE or the filing by GRANTEE of a voluntary petition in bankruptcy, or failure by GRANTEE to promptly cause to be lifted any execution, garnishment or attachment of such consequence as will impair GRANTEE's ability to carry on its obligations under this Agreement; and/or
2. The commission by GRANTEE of any act of voluntary or involuntary bankruptcy under any state or federal law; and/or
3. The admittance of GRANTEE, in writing, of its inability to pay its debts generally as they become due, or a receiver, trustee or liquidator of GRANTEE shall be appointed in any proceeding brought against GRANTEE and shall not be discharged within ninety (90) days after such appointment.

B. **Non-Waiver of Default.** It is expressly understood and agreed by the parties hereto that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any contract between GRANTEE and GRANTOR or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 7. SUSPENSION

A. In the event GRANTEE fails to comply with the terms of this Agreement, GRANTOR shall provide GRANTEE with written notification as to the nature of the non-compliance. GRANTOR shall grant GRANTEE a sixty (60) day period from the date of the GRANTOR's written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this period of time, the GRANTOR may at its sole discretion and upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part and withhold further payments to GRANTEE and prohibit GRANTEE from incurring additional obligations of funds under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

B. In the case of non-compliance for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the GRANTOR may, in its sole discretion, extend the cure period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Suspension advise GRANTOR of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this Section 7 may be lifted only at the sole discretion of the GRANTOR upon a showing of compliance with or written waiver by GRANTOR of the term(s) in question.

D. GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 8. TERMINATION

A. GRANTOR shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of termination of this Agreement should GRANTOR determine that GRANTEE has failed to comply with any material term of this Agreement. GRANTOR will provide GRANTEE with written notification as to the nature of the non-compliance, and grant GRANTEE a sixty (60) day period from the date of the GRANTOR's written notification to cure any issue of non-compliance under this Agreement. Should GRANTEE fail to cure any default within this period of time, the GRANTOR may, upon issuance to GRANTEE of a written Notice of Termination, terminate this Agreement in whole or in part and withhold further payments to GRANTEE.

B. In the case of default for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the GRANTOR may, in its sole discretion, extend the cure period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Termination advise GRANTOR of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C.. Other Remedies Available. GRANTOR shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and repayment of funds, if GRANTEE defaults under the material terms of this Agreement. However, such termination and repayment shall be subject to any and all lawful offsets, settlements, deductions or credits to which GRANTEE may be entitled.

SECTION 9. RETENTION AND ACCESSIBILITY OF RECORDS

A. GRANTEE shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. GRANTEE shall retain such records, and any supporting documentation,

for the greater of: (1) Four [4] years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

B. GRANTEE shall, following reasonable advance written notice from the GRANTOR, give the GRANTOR, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by GRANTEE pertaining to the Economic Development Loan (the "Records"). The GRANTOR's access to GRANTEE's books and records will be limited to information needed to verify that GRANTEE is and has been complying with the terms of this Agreement and to verify advances made by the GRANTOR and re-payments made by GRANTEE and to verify that the proceeds of the Economic Development Loan are or were used in connection with the development and operation the Project. Any information that is not required by law to be made public shall be kept confidential by GRANTOR. GRANTEE shall not be required to disclose to the GRANTOR any information that by law GRANTEE is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the GRANTOR reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The rights to access the Records shall continue as long as the Records are retained by GRANTEE. Failure to provide reasonable access to the Records to authorized GRANTOR representatives shall give the GRANTOR the right to suspend or terminate this Agreement as provided for in Section 15 and 16 below, or any portion thereof, for reason of default. All Records shall be retained by GRANTEE for a period of four (4) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. GRANTEE agrees to maintain the Records in an accessible location and to provide citizens reasonable access to the Records consistent with the Texas Public Information Act on the same terms as the Records are made available to the GRANTOR as set forth above. All of the above notwithstanding, the GRANTOR and the citizens shall have no right to access any confidential or proprietary records of GRANTEE, including but not limited to the ownership and capital structure of GRANTEE.

SECTION 10. AUDIT

A. GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement through a performance or financial audit. Should such audit be performed, GRANTOR shall provide GRANTEE with a copy of any reports or findings that may be presented. If the audit notes deficiencies in GRANTEE's performances under the terms of this Agreement, the audit shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which to attain compliance. Failure by GRANTEE to take action specified in the audit may be cause for suspension or termination of this Agreement.

SECTION 11. NOTICE

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective upon its deposit into the custody of the United States Postal Service or such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for

all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO GRANTOR:

TO GRANTEE:

(Whether personally delivered or mailed):

- If mailed:

Economic Development Department
Attn: Director
P.O. Box 839966
San Antonio, Texas 78283-3966

San Antonio Economic Dev. Corpo
Attn: Executive Director

- If by personal or overnight delivery:

Economic Development Department
Attn: Director
City Hall, 4th Floor
Military Plaza
San Antonio, Texas 78205

SECTION 12. RESERVED.

SECTION 13. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

GRANTOR may grant temporary relief from performance of this Agreement if the GRANTEE is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the GRANTEE. The burden of proof for the need for such relief shall rest upon the GRANTEE. To obtain release based upon *force majeure*, the GRANTEE must file a written request with the GRANTOR. Should GRANTOR grant temporary relief to GRANTEE, it shall in no case relieve GRANTEE from any repayment obligations as specified in Section 3(B) and 3(C) of this Agreement.

SECTION 14. CONFLICT OF INTEREST

A. GRANTEE shall use reasonable business efforts to ensure that no employee, officer, or individual agent of GRANTEE shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. GRANTEE shall comply with Chapter 171, Texas Local Government Code as well as the City of San Antonio's Code of Ethics.

SECTION 15. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. GRANTEE shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to

discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

B. None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the funds received by GRANTEE under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. GRANTEE shall include the substance of this Section 12 in all agreements associated with the funds made available through this Agreement.

SECTION 16. CHANGES AND AMENDMENTS

A. Except as provided in herein, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement upon GRANTOR approval and authorization of GRANTEE.

B. It is understood and agreed by the parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

C. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

SECTION 17. SPECIAL CONDITIONS AND TERMS

GRANTEE understands and agrees that if GRANTEE is a "business" and if the GRANTOR's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then GRANTEE is required to refund money, pursuant to 80(R) HB 1196, GRANTEE has received from GRANTOR through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.

SECTION 18. SUBCONTRACTS

A. GRANTEE shall use reasonable business efforts to ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Agreement as if such performance were rendered by GRANTEE.

B. GRANTEE, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, GRANTOR is in no way liable to GRANTEE's subcontractor(s).

C. GRANTEE assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

D. As subcontracts and supplier agreements become necessary to carry out the requirements of this Agreement, GRANTEE covenants to comply with the GRANTOR's SBEDA Program, currently identified under Ordinance No. 100873, and as amended.

SECTION 19. NON-ASSIGNMENT

This Agreement is not assignable without the written consent of GRANTOR and the passage of a City Ordinance by GRANTOR's governing body approving such assignment. Any and all future assignees shall be bound by all terms and/or provisions and representations of this Agreement. Any attempt to assign the Agreement shall not relieve GRANTEE from liability under this Agreement and shall not release GRANTEE from performing any of the terms, covenants and conditions herein. Additionally, upon any attempt to assign this Agreement without GRANTOR's consent shall enable GRANTOR to terminate this Agreement and seek recapture of all disbursed funds as fully described in Section 17. GRANTEE shall be responsible for all funds received under this Agreement.

SECTION 20. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

SECTION 21. LEGAL AUTHORITY

A. Each party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

C. GRANTOR will have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority, of either GRANTEE or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. GRANTEE is liable to GRANTOR for any money it has received from GRANTOR for performance of the provisions of this Agreement if GRANTOR suspends or terminates this Agreement.

Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE as of _____, 2013:

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2013-__-__, dated _____, 2013, and the San Antonio Economic Development Corporation pursuant to the authority of its Board of Directors.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

**SAN ANTONIO ECONOMIC
DEVELOPMENT CORPORATION**
a Type B Texas Corporation

Sheryl L. Sculley
CITY MANAGER

Name:
Title:

ATTEST:

ATTEST:

Leticia Vacek
CITY CLERK

Name:
Title:

APPROVED AS TO FORM:

Michael D. Bernard

CITY ATTORNEY

DRAFT

EXHIBIT A: SAEDC INVESTMENT GUIDELINES

Section 1. Background

On May 13, 2010, the City Council of San Antonio approved the Bylaws and Certificate of Formation authorizing the creation of the San Antonio Economic Development Corporation (SAEDC or the Corporation). On June 15, 2010, the Texas Secretary of State issued a Certificate of Filing for the corporation. The SAEDC is a nonprofit corporation created under the Development Corporation Act established for the purpose of promoting, assisting and enhancing economic development activities for the City. In accordance with the SAEDC Bylaws, the Corporation may, on behalf of the City and with the consent of City Council, may, among other things, enter into contracts, acquire, maintain, lease, sell or convey real property and/or make loans to or make equity investments in third party projects or companies.

Section 2. Purpose

These Guidelines are designed to support the development and/or attraction of ventures and startup companies who are developing new technologies and products that will create high-wage jobs in key industries, such as the life sciences, renewable energy and cyber security industries, as well as help grow the city's entrepreneurial talent and research capacity. These companies may be based in San Antonio or have a commitment to locate significant operations in San Antonio. It is the intent of the SAEDC to invest in such economic development projects, whereby the SAEDC would have a financial interest in certain projects with an objective to achieve a return on its investment.

Section 3. Funding Sources and Authority

The SAEDC Board has entered into a Grant Agreement with the City of San Antonio to receive initial funding of \$500,000 from the City to establish the SAEDC Investment Fund ("the Fund"). These funds will be available to the SAEDC for investment in economic development projects evaluated and approved in accordance with these Guidelines. City Council has granted the SAEDC the authority to approve projects up to \$50,000 from the Fund. Any project approved by the SAEDC Board for funding exceeding \$50,000 from the Fund must still be approved by City Council. It is the intent of the SAEDC to primarily invest in economic development projects which have been evaluated and approved for funding by local venture funds, such as the Texas Research and Technology Fund (TRTF) and the Targeted Technology Fund (TT), as well as projects approved for funding by the Texas Emerging Technology Fund (ETF).

Section 4. Investment Guidelines Criteria

4.1. In general, the SAEDC will employ a conservative and selective approach to investing in companies and will focus primarily, but not exclusively, on investing in local startup companies formed by local entrepreneurs and primarily funded by local investors and funds. Staff will evaluate and utilize the criteria outlined below in determining which projects to consider and recommend as investment candidates to the SAEDC Board. Companies must generally meet the following criteria for consideration by the SAEDC for investment:

- a. A proven, innovative technology or intellectual property, preferably in the area of life sciences, healthcare, renewable energy, biotechnology, cyber security and other new technology opportunity industries.
- b. Potential for rapid growth, significant market share and earning a profit with revenues projected to exceed costs in 3 – 5 years.
- c. Completed a successful round(s) of early stage financing and seeking a subsequent round of financing (see Exhibit A).
- d. An experienced management team.

- e. A well-developed business model and sound business plan to include a planned exit strategy.
- f. The existence of local business activities or the commitment to locate business activities, including full time jobs, in San Antonio.
- g. Demonstrated investment by local individual investors, institutions or funds with a minimum amount equal to or exceeding the planned SAEDC investment. The SAEDC will consider local investment in previous rounds of financing as evidence of a local matching investment.
- h. Long term potential for the creation and maintenance of high-wage jobs in the City's targeted SA 2020 industries of Healthcare/Bioscience (i.e., the life sciences), Information/Cyber Security, or Renewable Energy.
- i. Evaluated, recommended and approved for funding by the TRTF, TT and/or the ETF or any new future local venture funds established in San Antonio.

4.2. The SAEDC intends to consider local companies who seek to develop and grow their businesses in San Antonio and to partner with the TRTF and TT or with any other future local venture fund in reviewing companies for SAEDC funding who meet these Guidelines and are applying for and/or have been approved for funding from local venture funds or from the Texas ETF or the Cancer Prevention and Research Institute of Texas (CPRIT).

4.3. The SAEDC does not intend to invest in high risk companies as a "first-in" seed or pre-seed investor in companies not yet demonstrating the ability to obtain early stage financing, particularly those not able to obtain funds from local investors. SAEDC will generally be looking for investment opportunities in companies that have achieved a successful first round of early stage financing and seeking a second round of financing, with significant participation or investment commitments by local investors.

Section 5. Confidentiality

All information will be kept confidential during discussions with potential investment candidates and throughout contract negotiations. If a project is recommended for investment by the SAEDC, all information will become subject to the Open Records Act, unless excluded from disclosure by the Texas Attorney General. SAEDC staff is authorized to sign Nondisclosure Agreements approved by the City Attorney's Office and to provide confidential information to SAEDC Board members and officers for review and consideration.

Section 6. Application, Evaluation and Approval Process

6.1. The SAEDC staff will meet with the key management of investment candidates to determine eligibility and evaluate each potential investment opportunity. Potential investment candidates may be asked to fill out a pre-application and/or application and provide certain financial information, unless such information has already been provided to the TRTF, TT or ETF and is available to the SAEDC. SAEDC staff will also conduct its own due diligence on a company and its principals if the company is asked to apply for potential SAEDC funding and investment.

6.2. The SAEDC Investment Review Committee (IRC) will evaluate all investments recommended for consideration by the SAEDC staff. The Committee will make a recommendation to the SAEDC Board on those projects which merit investment consideration.

6.3. The SAEDC Board may enter into a professional services contract with one or more investment management entities or subject matter experts to assist the SAEDC staff in evaluating investment opportunities/applicants and making recommendations to the IRC and SAEDC Board. For projects recommended for funding at \$50,000 or less, the SAEDC staff may rely on the due diligence and evaluation of the TRTF or TT. For projects over \$50,000, the SAEDC staff will obtain its own third party consultant review.

6.4. SAEDC staff will follow these steps in evaluating potential investment opportunities:

- a. Initially meet with the potential applicant to obtain project information, assess eligibility and determine whether the company is willing to allow the SAEDC to have an equity position in the company.
- b. Conduct due diligence on the company and key senior company officials/principals to include, as a minimum, the following potential sources of information:
 1. The company's web site and keyword searches on the internet for information on financials, lawsuits, criminal activity, etc.
 2. City Attorney Office review of "Westlaw," an online legal research service, to look for any significant lawsuits, claims or other legal action pending against the company and/or its principals.
 3. A report from Dun and Bradstreet on credit history/risk, trade, financials, net worth, cash on hand, liens, law suits and liabilities.
 4. A report from Hoover's on sales, marketing, any parent company or affiliates, subsidiaries, competitors, markets and customers.
 5. Due diligence packages or information provided to other investors and/or lenders, particularly local investors.
- c. If staff determines the project is a viable investment opportunity, it will ask the company to submit an application to include documentation such as the company's business plan, financials, intellectual property, licenses/patents, cash flow statements and current investors, unless such information is already available to the SAEDC staff through the TRTF, TT or ETF.
- d. Staff and a third party consultant, if required, will review project documentation, prepare an assessment of the investment opportunity and develop a recommendation, to include proposed terms.
- e. If the project is recommended for potential funding, staff will present a recommendation and proposed terms to the IRC, to include a review of the investment terms by the SAEDC legal counsel.
- f. If the IRC does not support staff's recommendation, staff will notify the company it will not be considered by the SAEDC for investment.
- g. If the IRC supports the recommendation, SAEDC staff will present proposed terms to the company for consideration. The SAEDC intends to loan funds to companies in exchange for a 5-year Convertible Promissory Note with options for conversion during the term of the Note. The SAEDC will also seek a lien on equipment or other tangible assets, if appropriate, to mitigate the risks of the SAEDC.
- h. If the company accepts the proposed terms, staff will convene the SAEDC Board to consider the economic development project and investment for approval. The Board may approve any recommended investment at \$50,000 or less from the SAEDC Investment Fund subject to the availability of funds. If sufficient funds are not available in the SAEDC Investment Fund or the project is recommended for funding over \$50,000, then the SAEDC must seek approval and appropriation of grant funds from the City Council for the project. If the project is not recommended for investment by the SAEDC Board, then staff will notify the company.

Section 7. Amount of Investment per Project

The SAEDC intends to utilize the Fund to invest in 3-5 projects annually at levels of \$50,000 up to \$100,000. Any project recommended for funding above \$100,000 will likely require the SAEDC to seek additional grant funding and approval from the City Council subject to the availability of funds. The amount of investment in any one project will be determined based on the demonstrated need of the company for financial assistance, the potential direct and indirect economic impact of the project in terms of jobs and investment, the level of local investment and partnership with local entities, and the potential for long term success and growth of the company in San Antonio.

Projects locating in the Inner City Reinvestment/Infill Policy area (Exhibit B) will receive greater consideration for funding than projects located outside of this area.

EXHIBIT A

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Financing Cycle for Startup Companies

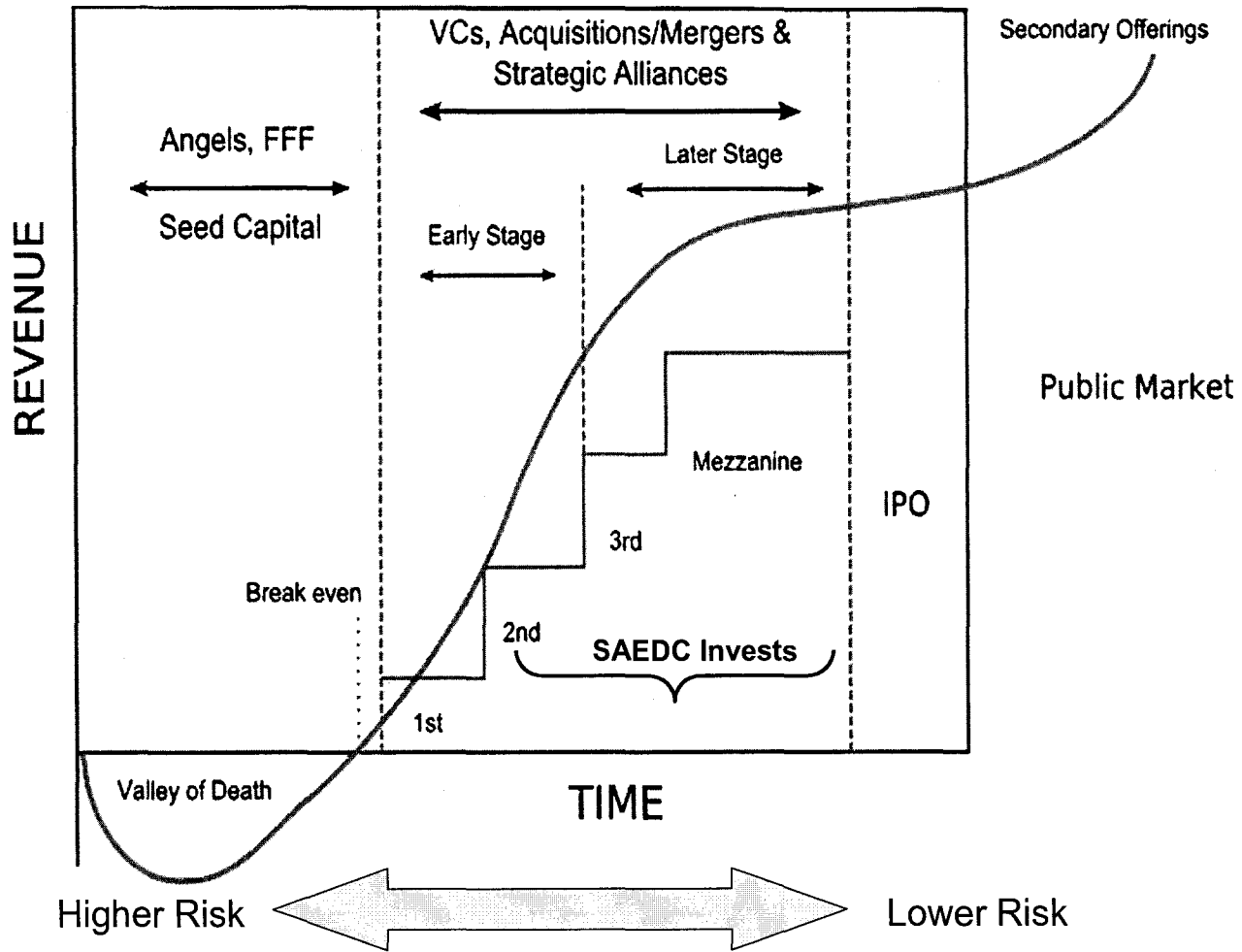
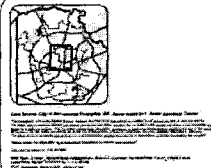
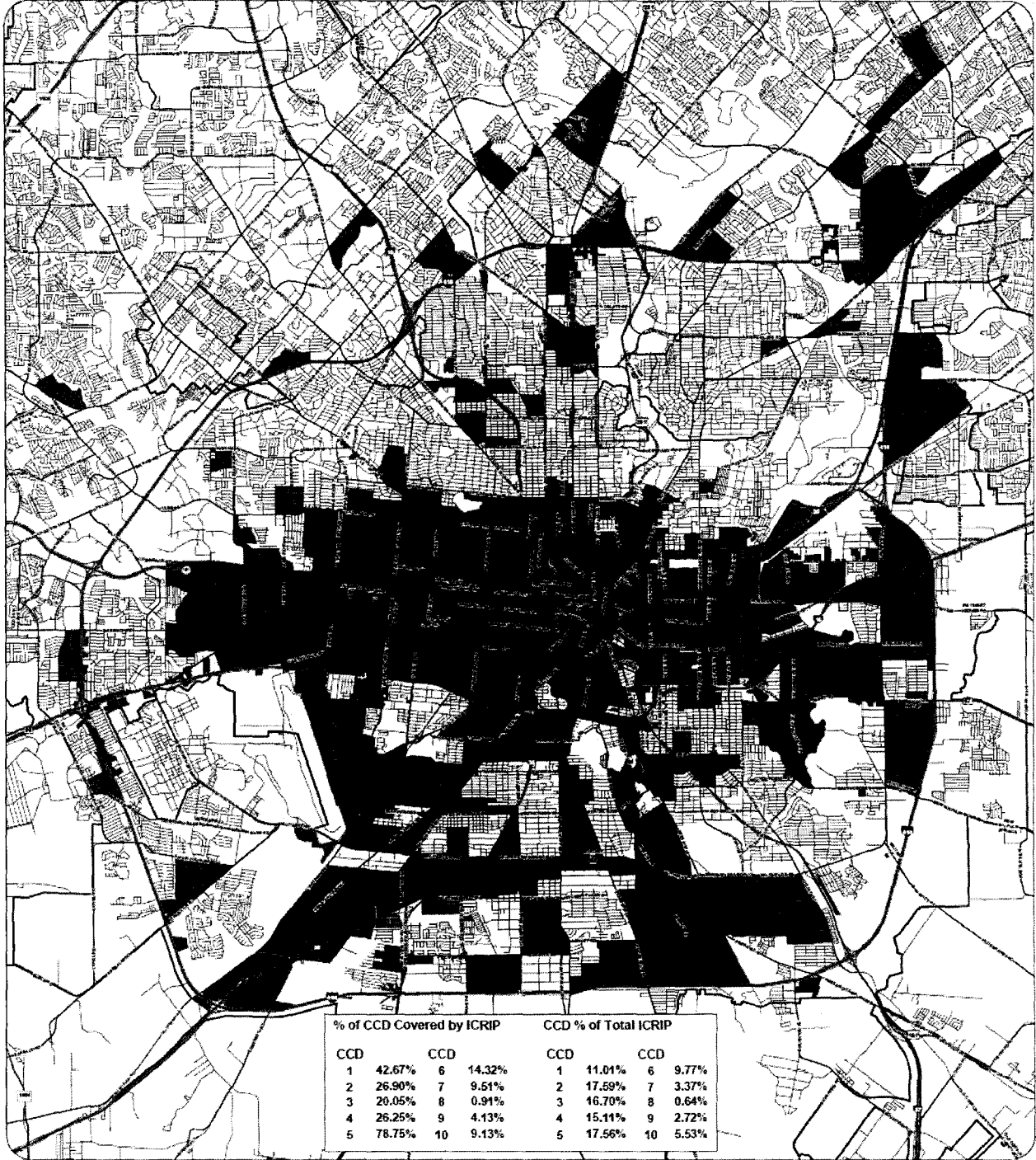


EXHIBIT B

Map of the Inner City Reinvestment/Infill Policy Area



ICRIP, as Amended 1/10/2013
18.02% or 84.08 Sq. Mi. of CoSA



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