

A RESOLUTION AMENDING THE ECONOMIC
DEVELOPMENT INVESTMENT PROGRAM
(EDIP) POLICY AND PROCEDURE AND
REQUESTING CITY COUNCIL ADOPT SAME
AMENDMENTS

WHEREAS, on January 25, 1994, the City Council of the City of Virginia Beach (the "City Council") and the City of Virginia Beach Development Authority (the "Authority") approved the Economic Development Investment Program Policy and Procedure (the "Policy") to ensure that the expenditure of Economic Development Investment Program ("EDIP") funds is made in the public interest and is in furtherance of the purposes for which the EDIP was established;

WHEREAS; on March 21, 2006 and March 28, 2006, the Authority and City Council approved additional amendments to the Policy to further the City's goals to convert certain property in APZ-1 and Clear Zones area to uses that conform to the APZ-1 Ordinance (the "APZ-1 Amendments");

WHEREAS, on September 21, 2010 and September 28, 2010, the Authority and City Council approved additional amendment to the Policy to allow for reimbursement of additional expenses, greater incentives for additional job creation or retention and a clarification of the APZ-1 Amendments would further the goals of the Authority;

WHEREAS, on January 15, 2019 and March 19, 2019, the Authority and City Council approved additional amendment to the Policy to, among other things, clarify definitions, qualification, reporting requirements and the process for making and paying award;

WHEREAS, on April 28, 2020 and May 12, 2020, City Council and the Authority approved the addition of Part E to the Policy to temporarily allow the Authority to make emergency assistance grants to small businesses impacted by the COVID-10 Pandemic for the duration of the declared local emergency;

WHEREAS, the Authority requested that staff review the Policy to determine if further changes or refinements were appropriate;

WHEREAS, after a review and consultation with the Authority, staff recommended changes to the Policy to (i) more closely align with the policy governing the implementation of the Commonwealth Opportunity Fund, and (ii) adjust the thresholds for awards based on job creation or retention, and (iii) clarify the required documentation for the disbursement of awards, and (iv) remove Part E from the Policy as the local emergency justifying the inclusion of Part E has ended and all awards made under Part E have been fully administered; and

WHEREAS, the Authority is of the opinion that the proposed revisions to the Policy are consistent with the Authority's mission, and would further the goals of the Authority.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF VIRGINIA BEACH
DEVELOPMENT AUTHORITY:

1. That, subject to City Council concurrence, the amended Policy is hereby approved in the form as attached hereto as Exhibit A (the "Amended Policy") and Part E of the Policy is hereby removed in its entirety.

2. The Authority hereby requests the City Council adopt an ordinance approving the Amended Policy, together with removal of Part E, subject to such revisions as deemed appropriate and necessary by City Council.

3. That, after City Council approval, the Chair is hereby authorized to execute the Amended Policy, together with such technical amendments as may be necessary, so long as such amendments are acceptable to the Chair and the City Attorney, on behalf of the Authority.

Adopted this 20th day of February 2024, by the City of Virginia Beach Development Authority.

CITY OF VIRGINIA BEACH
DEVELOPMENT AUTHORITY

By  _____
Secretary/Assistant Secretary

APPROVED AS CONTENT:



Economic Development

APPROVED AS TO LEGAL
SUFFICIENCY:



City Attorney

EXHIBIT A

ECONOMIC DEVELOPMENT INVESTMENT PROGRAM POLICY AND PROCEDURE

WHEREAS, the City of Virginia Beach Development Authority (the "Authority") was created pursuant to Chapter 643 of the Acts of Assembly of 1964, as amended and as codified by § 15.2-4900 et. seq. of the Code of Virginia (collectively, the "Act");

WHEREAS, one of the primary purposes of the Act is to enable development authorities "to promote industry and develop trade by inducing manufacturing, industrial, governmental, nonprofit and commercial enterprises to locate in or remain in the Commonwealth....";

WHEREAS, pursuant to § 15.2-4905(6), the Authority has the power, *inter alia*, "to sell, exchange, donate and convey any or all of its facilities or properties whenever its board of directors shall find any such action to be in furtherance of the purposes for which the authority was organized";

WHEREAS, pursuant to §7 of the Act, "the Authority may foster and stimulate the development of industry in the area within its jurisdiction... [and] may accept, and expend for the purposes stated above, money from any public or private source....";

WHEREAS, pursuant to § 10 of the Act, the City of Virginia Beach (the "City") "is authorized and empowered to make appropriations and to provide funds for the operation of the Authority and to further its purposes";

WHEREAS, the economic development goals and objectives of the City include achieving a higher ratio of nonresidential to residential real estate assessments, investing in land and infrastructure to benefit future economic growth, and maximizing the return of economic development efforts through the development and implementation of programs and strategies that facilitate new business investment and encourage retention and expansion activities thereby improving the overall quality of life in the City;

WHEREAS, while the Authority and City desire to promote all sectors of growth, the Authority and the Department of Economic Development (the "Department") have identified certain industries to target for growth and expansion in the City (the "Key Industries"), and the Key Industries, which may be updated from time to time, are identified on the Department's website, www.yesviriniabeach.com ;

WHEREAS, other than JEB Little Creek Fort Story, NAS Oceana is the single largest employer in the City, and investments and economic development efforts aimed at retaining NAS Oceana as a master jet base are critical to the City's economic "health";

WHEREAS, the City has established the Economic Development Investment Program ("EDIP") as part of its overall effort to enhance the City's ability to accomplish these goals and objectives;

WHEREAS, pursuant to the authority and empowerment set forth in §10 of the Act, City Council has determined that it would be in the best interests of the City to provide EDIP appropriations to the Authority to enable the Authority to more effectively continue its efforts to foster and stimulate economic development by (i) inducing businesses to locate or remain in the City; and (ii) providing incentives to qualifying developers and property owners for the development or redevelopment of under improved or underdeveloped properties, or brownfields, grey fields, or abandoned or blighted properties in areas of the City which have been designated as "Strategic Growth Areas", "Special Economic Growth Areas", "Economic Redevelopment Areas" or "Opportunity Zones" (as defined in the Internal Revenue Code), including infill development within such areas. Collectively, Strategic Growth Areas, Special Economic Growth Areas, Economic Redevelopment Areas, and Opportunity Zones may be referred to herein as "Target Areas;" and

WHEREAS, the City and the Authority have agreed that the provision of funds in the EDIP account to the Authority for economic development purposes, and the subsequent provision of such funds by the Authority to qualifying recipients, should be subject to policies and procedures which will ensure that the expenditure of such funds is in the public interest and is in furtherance of the purposes for which the EDIP was established; and

WHEREAS, awards made under this Policy are at the sole legislative discretion of the Authority, and nothing herein should be deemed or interpreted as an entitlement to an award.

NOW, THEREFORE, the City of Virginia Beach and the City of Virginia Beach Development Authority hereby adopt the following Economic Development Investment Program Policy and Procedures (the "Policy"):

DEFINITIONS:

Unless otherwise defined, the following terms shall have the following meanings in this Policy:

- a. "Applicant" means the business, owner, or developer that submits an application pursuant to this Policy.
- b. "Average Annual Wage" means the average annual wage in Virginia Beach as calculated by the Virginia Employment Commission. Currently, the Average Annual Wage is \$58,032. The Average Annual Wage shall be adjusted quarterly as the Virginia Employment Commission releases updated calculations.
- c. "Capital Investment" means a capital expenditure in taxable real property, taxable tangible personal property, or both at the Project in the City of Virginia Beach. The Authority may, in its discretion, determine that the value of machinery and equipment leased under an operating lease will qualify as a capital investment. The Authority may also, in its discretion, consider Capital Investments made by third parties at the Project for the overall benefit of the Project, and/or the value of moveable equipment retained by a business that was considering relocating outside of the City of Virginia Beach. Except for good cause found by the Authority, the cost of the acquisition of land and existing buildings will not count toward the required capital investment thresholds unless the land and existing buildings are being purchased from a governmental entity and are being returned to the tax rolls. If a Project is also receiving an incentive from the Commonwealth based in part on Capital Investment, the Authority may accept the evidence presented to the appropriate agency of the Commonwealth to establish the amount of Capital Investment for purposes of compliance with this Policy.
- d. "Maintain" means that the New Jobs will continue without interruption from the date of creation through the Performance Period. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the grantee's employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.
- e. "New Job" means employment of indefinite duration, created as the direct result of the private investment, for which the firm pays the wages and provides standard fringe benefits for its employee, requiring a minimum of either (i) 35 hours of the employee's time a week for the entire normal year of the firm's operations, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in Virginia Beach to the location of the economic development project, unless the Authority makes a finding that the job is a "Retained Job" as

required by Part A(6)(d), positions with construction contractors, suppliers, and multiplier or spin-off jobs may not qualify as new job. Net new jobs for contractors or employees of contractors who are located in Virginia Beach and provide dedicated full-time service to the Applicant may count as New Jobs (as determined by the Authority), even though the Applicant is not directly paying the wages or providing the fringe benefits if the other conditions set forth in this paragraph have been satisfied. Jobs qualifying as "Teleworking Jobs" may be considered by the Authority so long as those jobs are identified by the Applicant and the other conditions of this paragraph are satisfied.

- f. "Performance Period" means the time an Applicant is given to satisfy the terms of an award, usually thirty-six (36) months from the date of an award is approved by the Authority or such later period as is specified in the requirements of a matching grant provided by the Virginia Economic Development Partnership, the Commonwealth Opportunity Fund, or some other grant program administered by the Commonwealth.
- g. "Project" means the facility or facilities where a recipient of an award under this Policy has located from outside the City of Virginia Beach, or remained in the City of Virginia Beach or expanded its operations within the City of Virginia Beach and for which Capital Investment, New Jobs or direct tax revenues returned to the City are considered as a basis for an award under this Policy.
- h. "Retained Job" means employment of indefinite duration, retained in the City of Virginia Beach as direct result of the private investment, for which the firm pays the wages and provides standard fringe benefits for its employee, requiring a minimum of either (i) 35 hours of the employee's time a week for the entire normal year of the firm's operations, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year. Seasonal or temporary positions, positions retained when a job function is shifted from an existing location in Virginia Beach to the location of the economic development project, unless the Authority makes a finding required in Part A(6)(d), positions with construction contractors, suppliers, and multiplier or spin-off jobs may not qualify as a retained job. Retained jobs for contractors or employees of contractors who are located in Virginia Beach and provide dedicated full-time service to the Applicant may count as Retained Jobs (as determined by the Authority), even though the Applicant is not directly paying the wages or providing the fringe benefits if the other conditions set forth in this paragraph have been satisfied. Retained Jobs qualifying as "Teleworking Jobs" may be considered by the Authority so long as those jobs are

identified by the Applicant and the other conditions of this paragraph are satisfied.

- i. “Teleworking Job” means an employee who works from home or from or from a different location than the Project, where that employee physically reports to the Project two or more days a week. Fully remote workers residing outside of Virginia, or more than one hundred and fifteen (115) miles from Virginia Beach will not be considered as a “Teleworking Job” when calculating eligibility or performance of an award under this Policy.

PART A: POLICY AND PROCEDURE FOR THE PROVISION OF EDIP FUNDS TO QUALIFYING BUSINESSES.

1. **PURPOSE AND INTENT.** The animating purpose of Part A of the EDIP shall be to enhance the ability of the Authority to implement the purposes set forth in the Act including, without limitation, to foster and stimulate economic development in the City by inducing (i) new businesses to locate in the City, (ii) existing businesses to remain in the City, and (iii) existing businesses to expand their operations.

2. **INVESTMENT CRITERIA.** Except as otherwise provided in paragraph 4 of this Part A, EDIP funds may be awarded pursuant to Part A of this Policy where the Director of the Department (the “Director”) has determined, and has advised the Authority that one or more of the following criteria have been met:

- a. The net amount of direct tax revenues returned to the City by a Project to which EDIP funds are provided will exceed the amount of EDIP funds so provided before the end of the Performance Period; and/or
- b. For every one dollar (\$1) in EDIP funds provided, at least twenty-five dollars (\$25) of Capital Investment will be made or if appropriate, retained, at the Project for which the award is granted; and/or
- c. **Tier 1.** Every one thousand dollars (\$1,000) in EDIP funds provided will yield at least one (1) New Job or Retained Job in the Project to which such EDIP funds are provided where such employment opportunities pay an average of at least 1.2 times the Average Annual Wage, excluding benefits.

Tier 2. Every three thousand dollars (\$3,000) in EDIP funds provided will yield at least one (1) New Job or Retained Job in the Project to which such EDIP funds are provided where such employment opportunities pay

an average of at least 1.7 times the Average Annual Wage, excluding benefits.

The Applicant must Maintain at least eighty-five percent (85%) of the incentivized jobs from the date of creation or award through the end of the Performance Period or any funds awarded may be subject to recapture by the Authority.

These criteria shall be reviewed by the Director and the Director of the Department of Department of Management Services on a biennial basis. Specifically included in such review is the examination of whether the dollar thresholds in this Section 2 require adjustment to reflect changes in the CPI or cost of construction. The Director shall recommend any appropriate revisions to the City Council and the Authority for further consideration and action.

In addition to the foregoing criteria, it is the goal of the Authority to approve EDIP awards to Projects that pay an average annual salary of at least \$66,000 (excluding benefits). However, the Authority reserves the right to deviate from this goal in exceptional cases and for good cause shown.

3. **QUALIFYING USES FOR PART A FUNDS.** EDIP funds under Part A of this Policy may be used throughout the City for the following purposes: office, industrial, commercial and mixed-use development, or such other uses where the Director has demonstrated a need for the proposed use in that part of the City. In determining whether to award EDIP funds for other uses, the Authority shall consider (i) whether the proposed use is consistent with the goals of the SGA or SEGA where the Project is located, and (ii) whether the Project meets the City's Investment Partnership Guidelines, and (iii) whether the Project will meet an underserved need in the City or further the growth of the Key Industries.

4. **APPLICATION FOR EDIP AWARD.** An Applicant who desires EDIP funds for a Project in the City of Virginia Beach may apply for that purpose through the Department. The form of the application is attached hereto as Exhibit A. The Applicant shall also complete the City of Virginia Beach Disclosure Statement Form, also attached hereto as Exhibit B. The Applicant shall identify in writing any confidential or proprietary information contained in or provided with the application at the time of submission. The failure to mark such materials may result in the disclosure by the City or the Authority pursuant to applicable open records laws. If, on review by the City, it is determined that the designated information may not be kept confidential by the City, the document containing same will be redacted or returned to the party submitting it. The Applicant shall submit such additional information and documentation concerning its application as may

be required by the Director. The Director shall review the application and information submitted and may, if the Director finds that the Project described in the application meets the requirement of this Part A, recommend to the Authority that it award EDIP funds for the Project. The Director's recommendation shall be in writing and shall include the proposed amount of the award and basis therefore under this Policy. This recommendation may take the form of the written presentation made to the Authority in a closed session. As set forth more fully in Section 6, an EDIP award must be approved by a formal vote in an open session of the Authority. Once an award is approved, the recommendation of the Director and all non-confidential or proprietary portions of the application will become public records.

5. **COUNCIL APPROVAL OF CERTAIN EDIP AWARDS.** If the Director, acting on behalf of the Authority, determines the need to provide EDIP funds for the Project, but the criteria set forth in paragraph 2 of this Part A have not been met, the Authority shall obtain specific approval from City Council prior to its approval of the provision of EDIP funds for such purpose

6. **AUTHORITY FINDINGS AND ACTION.** Upon consideration of the recommendation of the Director, the Authority may, by a recorded majority vote at a public meeting, approve the proposed provision of EDIP funds for the Project. The Authority shall not be required to approve the Director's recommendation, but shall exercise its legislative discretion in determining whether, and to what extent, the Applicant's proposed Project satisfies Part A of this Policy and the Authority's objective of fostering and stimulating the development of industry in the City. Provided, however, that prior to approval, the Authority must make all the following findings:

- a. That the animating purpose of the proposed provision of EDIP funds for the Project is to serve the public purpose of fostering and stimulating economic development in the City of Virginia Beach;
- b. that the expenditure of such EDIP funds will only incidentally enure to the benefit of private interests, if at all;
- c. That the proposed provision of EDIP funds for the Project is in furtherance of the purposes for which the Authority was created;
- d. For an award involving "Retained Jobs", that the jobs would likely have left the City of Virginia Beach if not for the stimulus of the EDIP;
- e. If the Performance Period of Capital Investment is tied to a similar award from the Commonwealth, that the Authority is aware of the Commonwealth's award and the award's applicable performance

standards;

- e. That without the stimulus of the EDIP award, it is unlikely that the Applicant would locate, remain or expand in the City; and
- f. That as of the date the Director presents his or her recommendation to the Authority in closed session, the Project has not yet commenced construction of its proposed improvements. Consideration in a closed session does not indicate approval and any investment or expenditure made by the Applicant is done at the sole risk of the Applicant. Further, if an award is not approved within seventy (70) days of the date of closed session, no investments made prior to seventy (70) days of the date of the approval of the award in open session will be considered for reimbursement under the award.
- g. The Applicant for an award shall certify to the Authority that the findings in section (d), (e), and (f) above, are true and accurate at the time of the Authority's vote on an award.

7. **APPROVAL OF AWARD OF EDIP FUNDS.** Approval by the Authority of the provision of EDIP funds to a specific business pursuant to this Part A shall be in the form of a resolution which shall include the following information:

- a. The name of the Applicant, and the location and a brief description of the Project to which the funds will be provided;
- b. The amount of EDIP funds that will be provided;
- c. The purpose or purposes for which the EDIP funds will be provided;
- d. A statement that the criteria set forth in paragraph 2 of this Part A have been met; or, in the alternative, that City Council has specifically approved provision of EDIP funds for such purpose pursuant to paragraph 5 of this Part A; and
- e. A statement that the findings set forth in paragraph 6 of this Part A have been made by the Authority.

PART B: POLICY AND PROCEDURE FOR THE PROVISION OF EDIP FUNDS TO QUALIFYING DEVELOPERS AND PROPERTY OWNERS FOR THE DEVELOPMENT OR REDEVELOPMENT OF PROPERTIES IN STRATEGIC

GROWTH AREAS, SPECIAL ECONOMIC GROWTH AREAS, ECONOMIC REDEVELOPMENT AREAS, OR OPPORTUNITY ZONES.

1. **PURPOSE AND INTENT.** It is recognized that within the City there are areas that are currently brownfields, greyfields or vacant, abandoned, under improved or underdeveloped with improvements or land uses which are not economically viable, but, if developed, should stimulate industry and economic development within the City. Moreover, such properties and areas, if developed or redeveloped, may reasonably be expected to (i) generate additional tax revenue as a result of Capital Investment; (ii) create additional job opportunities; (iii) influence similar redevelopment and additional investment in nearby properties; (iv) further the goals of the Comprehensive Plan and be consistent with the City's Economic Development Strategy and good zoning principles; and (v) lead to the establishment of safe and convenient neighborhoods and workplaces. Accordingly, it is the animating purpose of the Economic Development Investment Program under Part B of this Policy to enhance the ability of the City of Virginia Beach Development Authority to foster and stimulate economic development in the City by providing incentives for the development or redevelopment of properties described herein.

2. **ECONOMIC REDEVELOPMENT AREAS, SPECIAL ECONOMIC GROWTH AREAS, STRATEGIC GROWTH AREAS AND OPPORTUNITY ZONES.** The Directors of the Department and the Planning Department shall identify areas of the City (i) that are currently brownfields, greyfields, or vacant, abandoned, under improved or underdeveloped, and (ii) which should be considered for redevelopment or special development opportunities, but may lie outside of the Strategic Growth Areas as set forth in the City's Comprehensive Plan. Such areas shall be known as "Economic Redevelopment Areas". Once identified, an Economic Redevelopment Area must be submitted to the City Council for designation as such by ordinance. To qualify for EDIP funds under Part B of this Policy, a developer or owner of property must demonstrate that the subject property is located within a Target Area. For purposes of this Policy, the term "brownfields" means vacant, abandoned or under improved real property large enough to support significant expansion, redevelopment or reuse, but for which such expansion, redevelopment or reuse is complicated by the presence of a substantial amount of hazardous substances, pollutants, or contamination. The term "greyfields" means underperforming, declining or vacant real estate.

3. **QUALIFYING LAND USES.** EDIP funds under Part B of this Policy may be provided for office, industrial, retail, hotel and mixed use development (including high density and multi-family residential uses).

4. **INVESTMENT CRITERIA.** EDIP funds may be awarded pursuant to Part B of this Policy in such instances where the Director has determined, and has advised the Authority, that both of the following criteria have been met:

- a. The net amount of direct tax revenues returned to the City as a result of the Project for which the EDIP funds are provided will exceed the amount of the EDIP funds provided no later than 48 months following the payment of the EDIP award or such later period as is specified in the requirements of a matching grant provided by the Virginia Economic Development Partnership or through the Governor's Opportunity Fund, or some other grant program administered by the Commonwealth; or where flexibility for tax abatement has been granted by the City, the amount of direct tax revenues not abated as a result of the Project for which EDIP funds are provided will exceed the amount of the EDIP funds provided no later than 48 months following the payment of the EDIP award; and
- b. For every one dollar (\$1) in EDIP funds provided, twelve and 50/100 dollars (\$12.50) or more in new Capital Investment will be made at the Project.

The foregoing investment criteria and required return to the City shall be interpreted as being a threshold for consideration for the award of EDIP funds. No award of such EDIP funds may be made unless all other requirements of Part B of this Policy are satisfied and all findings stated in Part B of this Policy are made. The Authority shall have complete discretion as to the award of EDIP funds and the amount of EDIP funds awarded, as well as whether or not the criteria have been met.

5. **AVAILABILITY OF FUNDS.** EDIP funds may be authorized for use pursuant to Part B of this Policy only to the extent that they have been appropriated by the City Council. Further, provided that in any given fiscal year, the Authority shall not award more than fifty percent (50%) of its annual appropriation for EDIP use pursuant to Part B of this Policy without authorization of the City Council.

6. **APPLICATION FOR EDIP AWARD.** An Applicant who desires EDIP funds for a Project located in a Target Area may apply for that purpose through the Department. The form of the application is attached hereto as Exhibit A. The Applicant shall also complete the City of Virginia Beach Disclosure Statement Form, also attached hereto as Exhibit B. The Applicant shall identify in writing any confidential or proprietary information contained in or provided with the application at the time of submission. The failure to mark such materials may result in the disclosure by the City or the Authority pursuant to applicable open records laws. If, on review by the City, it is determined that the designated information may not be kept confidential by the City, the document containing same will be redacted or returned to the party submitting it. The Applicant shall submit such additional information and documentation concerning its application as may

be required by the Director, including any certifications as required by this Policy. The Director shall review the application and information submitted and may, if the Director finds that the Project described in the application satisfies all requirements of this Part B, recommend to the Authority that it award EDIP funds for the Project. The Director's recommendation shall be in writing and shall include the proposed amount of the award and basis therefore under this Policy. This recommendation may take the form of the written presentation made to the Authority in a closed session. As set forth more fully in Section 7, an EDIP award must be approved by a formal vote in an open session of the Authority. Once an award is approved, the recommendation of the Director and all non-confidential or proprietary portions of the application will become public records. In determining whether to recommend that EDIP funds be awarded for the Project, the Director shall find as follows:

- a. Whether the provision of EDIP funds is necessary to stimulate the development or redevelopment of the Project area; and
- b. Whether the Project satisfies the investment criteria set forth in paragraph 4 of this Part B.

Additionally, the Director may consider the following:

- c. The amount of EDIP funds remaining and available for use pursuant to this Part B of the Policy for the fiscal year.
- d. The economic return to the City generated by the Project in addition to the criteria set forth in paragraph 4 of this Part B .
- e. The expertise and experience of the Applicant in redeveloping brownfields, greyfields, abandoned, blighted, under improved and underdeveloped properties.
- f. The degree to which the Project may influence development or redevelopment within the applicable Target Area and adjacent or nearby properties.
- g. The extent to which the Project may serve to implement a change in use which is consistent with and/or furthers the goals of the Comprehensive Plan, the City's Economic Development Strategy.
- h. The number and types of jobs which the development or redevelopment may expect to generate.

- i. The amount of the Applicant's Capital Investment in the Project.
- j. The extent to which the Project incorporates mixed uses, provides open space and focuses on transportation and transit accessibility.

7. **COUNCIL APPROVAL OF CERTAIN EDIP AWARDS.** If the Director, acting on behalf of the Authority, determines the need to provide EDIP funds for the Project, but the criteria set forth in paragraph 4 of this Part B have not been met, the Authority shall obtain specific approval from City Council prior to its approval of the provision of EDIP funds for such purpose

8. **AUTHORITY FINDINGS AND ACTION.** Upon consideration of the recommendation of the Director, the Authority may, by a recorded majority vote at a public meeting, approve the award of EDIP funds to the Applicant. The Authority may attach conditions to the approval of the award of EDIP funds. In the case of a brownfield property, the Authority shall attach the condition that prior to receiving EDIP funds, the recipient of EDIP funds shall provide to the Authority evidence of all permits or approvals as required by state, federal and local regulatory agencies and compliance therewith. The Authority shall not be required to approve the Director's recommendation, but shall exercise its legislative discretion in determining whether, and to what extent, the Applicant's proposed Project satisfies Part B of this Policy and the Authority's objective of fostering and stimulating the development of industry in the City. Provided, however, that prior to approval of the award of EDIP funds for the Project, the Authority must make the following findings:

- a. That the animating purpose of the proposed provision of EDIP funds for the Project is to serve the public purpose of fostering and stimulating economic development in the City of Virginia Beach; and
- b. That the expenditure of such EDIP funds will only incidentally enure to the benefit of private interests, if at all;
- c. That the proposed provision of EDIP funds for the Project is in furtherance of the purposes for which the Authority was created;
- d. That without the stimulus of the EDIP award, it is unlikely that the Applicant would locate, remain or expand in the City;
- e. That as of the date the Director presents his or her recommendation to the Authority in closed session, the Project has not yet commenced construction of the proposed improvements. Consideration in a closed session does not indicate approval and any investment or expenditure made by the Applicant is done at the sole risk of the Applicant. Further,

if an award is not approved within seventy (70) days of the date of closed session, no investments made prior to seventy (70) days of the date of the approval of the award in open session will be considered for reimbursement under the award;

- f. The Applicant for an award shall certify to the Authority that the findings in section (d) and (e), above, are true and accurate at the time of the Authority's vote on an award;
- g. That the property has been designated (or is in an area which has been designated) as a Target Area;
- h. That the Project is consistent with the City's Comprehensive Plan, and the City's Economic Development Strategy, as amended; and
- i. That the Project as proposed, will serve to influence redevelopment and additional capital investment in adjacent or nearby properties.

9. **APPROVAL OF THE AWARD OF EDIP FUNDS.** Approval by the Authority of the provision of EDIP funds pursuant to this Part B shall be in the form of a resolution which shall include the following information:

- a. The name of the Applicant , and the location and a brief description of the Project;
- b. The amount of EDIP funds that will be provided;
- c. The purpose or purposes for which the EDIP funds are to be provided;
- d. A statement that the criteria set forth in paragraph 4 of this Part B have been met;
- e. A statement that the findings set forth in paragraph 7 of this Part B have been made by the Authority; and
- f. Any conditions to the approval of the award of the EDIP funds by the Authority.

10. **ALTERNATIVE USES OF PART B FUNDS BY THE AUTHORITY TO PURCHASE AND IMPROVE PROPERTY IN A STRATEGIC GROWTH AREA, SPECIAL ECONOMIC GROWTH AREA ECONOMIC REDEVELOPMENT AREA OR AN OPPORTUNITY ZONE.** The Authority may use

EDIP funds to purchase and improve property within a Target Area. Prior to the approval of the use of EDIP funds for such acquisition, the Authority must find that:

- a. The property is located within a Target Area; and
- b. The acquisition and/or improvement of the property by the Authority and its subsequent development or redevelopment will be in conformity with and/or furthers the goals of the City's Comprehensive Plan, the City's Economic Development Strategy, the APZ-1 Ordinance, as amended, and Part B of this Policy.

In addition to any property purchased using EDIP funds pursuant to paragraph 10 of this Part B, the Authority may also use EDIP funds for the following improvements to such property: (i) the installation of infrastructure; (ii) the demolition of existing structures; or (iii) the remediation or cleanup of adverse environmental conditions. The Authority may dispose of such property in accordance with state law and may subsequently sell such property to a private party for development or redevelopment. In the event of such sale, the Authority shall attach appropriate conditions to assure that the development or redevelopment is in conformity with and/or furthers the goals of the City's Comprehensive Plan, the City's Economic Development Strategy, the APZ-1 Ordinance, as amended, and is in furtherance of the objectives of Part B of this Policy.

The proceeds of any property purchased by the Authority and sold pursuant to paragraph 10 of this Part B shall be returned to the EDIP fund account.

PART C: POLICY AND PROCEDURE FOR THE PROVISION OF EDIP FUNDS TO QUALIFYING DEVELOPERS AND PROPERTY OWNERS FOR THE DEVELOPMENT OR REDEVELOPMENT OF PROPERTIES IN APZ-1 OR THE CLEAR ZONES.

1. **PURPOSE AND INTENT.** It is recognized that within the City there are areas that are not advancing the City's purpose of retaining NAS Oceana as a master jet base in Virginia Beach, but, if developed with conforming uses, should stimulate industry and economic development within the City. Moreover, such properties and areas, if developed or redeveloped, may reasonably be expected to (i) generate additional tax revenue as a result of Capital Investment; (ii) influence similar redevelopment and additional investment in nearby properties; (iii) further the goals of the Comprehensive Plan and be consistent with the City's Economic Development Strategy and good zoning principles; (iv) in the APZ-1 and Clear Zone areas, encourage the conversion of property that does not conform to the City's zoning amendments adopted in response to the BRAC Order on December 20, 2005 (the "APZ-1 Ordinance") to uses that do conform to the APZ-1 Ordinance, including the relocation of nonconforming properties to areas of the City

outside the APZ-1 and Clear Zones and the location of conforming properties within the APZ-1; and (v) lead to the establishment of safe and convenient neighborhoods and workplaces. Accordingly, it is the animating purpose of the Economic Development Investment Program under Part C of this Policy to enhance the ability of the Authority to foster and stimulate economic development in the APZ-1 by providing incentives for the development or redevelopment of properties as described herein.

2. **APZ-1 AND THE CLEAR ZONES.** The term “APZ-1” means Accident Potential Zone 1 and the areas identified as APZ-1 on the 1999 “Air Installations Compatible Use Zones” (“AICUZ”) pamphlet published by the U.S. Department of the Navy. The term “Clear Zones” are those areas designated as “Clear Zones” on the 1999 AICUZ pamphlet.

3. **QUALIFYING LAND USES.** EDIP funds under Part C of this Policy may be provided only for uses consistent with the APZ-1 Ordinance and any amendments thereto.

4. **INVESTMENT CRITERIA.**

a. For Areas located in the APZ-1 or Clear Zones, EDIP funds may be awarded pursuant to Part C of this Policy in such instances where the Oceana Land Use Conformity Committee has determined, and has advised the Director, that the Project for which EDIP funds will be provided will have the effect of furthering the goals of the Oceana Land Use Conformity Program, including bringing new uses into APZ-1 areas that conform to the APZ-1 Ordinance, converting nonconforming uses to conforming uses, retaining conforming uses in APZ-1, and relocating nonconforming uses in APZ-1 and Clear Zones to other areas of the City where such uses would be consistent with the Comprehensive Plan and the City Zoning Ordinance. The Director shall advise the Authority of all determinations and recommendations made by the Oceana Land Use Conformity Committee (“OLUCC”).

b. In determining the amount of the award recommended to OLUCC, the Director shall determine whether both the following criteria have been met:

(i) The net amount of direct tax revenues returned to the City as a result of the Project for which the EDIP funds are provided will exceed the amount of the EDIP funds provided no later than 48 months following the payment of the EDIP award; or where flexibility for tax abatement has been granted by the City, the amount of direct tax revenues not abated

as a result of the Project for which EDIP funds are provided will exceed the amount of the EDIP funds provided no later than 48 months following the payment of the EDIP award; and/or

(ii) For every one dollar (\$1) in EDIP funds provided, the Applicant of the Project for which such funds are provided will spend ten and 50/100 dollars (\$10.50) or more in new Capital Investment, including buildings, furnishings, and/or equipment.

The foregoing investment criteria and required return to the City shall be interpreted as being a threshold for consideration for the award of EDIP funds. No award of such EDIP funds may be made unless all other requirements of Part C of this Policy are satisfied and all findings stated in Part C of this Policy are made. The Authority shall have complete discretion as to the award of EDIP funds and the amount of EDIP funds awarded, as well as whether or not the criteria have been met.

5. **ADDITIONAL USES OF FUNDS UNDER PART C.** A qualifying owner of land located in APZ-1 or the Clear Zones who desires to (i) move a nonconforming use of that land out of APZ-1 or the Clear Zones and into another part of the City where the use is compatible and (ii) if owner retains ownership of the subject land, agrees to restrict the further use of that land to uses compatible with those allowed in the APZ-1 Ordinance, shall be entitled to apply for an award of up to \$75,000 to offset actual moving expenses incurred in moving the said nonconforming use out of APZ-1 or the Clear Zones.

6. **AVAILABILITY OF FUNDS.** The City Council specifically appropriates funds for EDIP use in APZ-1 and Clear Zone areas, It is anticipated that such funds for EDIP use in APZ-1 and Clear Zone areas will be made available from CIP 9-037 (Oceana and Interfacility Traffic Area Conformity and Acquisition II).

7. **APPLICATION FOR EDIP AWARD.** An Applicant who desires EDIP funds for use in a Project located in APZ-1 or the Clear Zones may apply for that purpose through the Department. The form of the application is attached hereto as Exhibit A. the Applicant shall also complete the City of Virginia Beach Disclosure Statement Form, attached hereto as Exhibit B. The Applicant shall identify in writing any confidential or proprietary information contained in or provided with the application at the time of submission. The failure to mark such materials may result in the disclosure by the City or the Authority pursuant to applicable open records laws. If, on review by the City, it is determined that the designated information may not be kept confidential by the city, the document containing same will be redacted or returned to the party submitting it. The Applicant shall submit such additional information and documentation concerning its

application as may be required by the Director. The Director shall review the application and information submitted and may, if the Director finds that the Project described in the application satisfies all requirements of this Part C, recommend to the Authority that it award EDIP funds for the Project. The Director's recommendation shall be in writing and shall include the proposed amount of the award and basis therefore under this Policy. This recommendation may take the form of the written presentation made to the Authority in a closed session. As set forth more fully in Section 4, an EDIP award must be approved by a formal vote in an open session of the Authority. Once an award is approved, the recommendation of the Director and all non-confidential or proprietary portions of the application will become public records. In determining whether to recommend that EDIP funds be awarded to for the Project, the Director shall find as follows:

- a. Whether the provision of EDIP funds is necessary to stimulate the development or redevelopment of the property/area; and
- b. Whether the Project satisfies the investment criteria set forth in paragraph 4 of this Part C.
- c. Whether the Project is consistent with the APZ-1 Ordinance.

Additionally, the Director may consider the following:

- d. The amount of EDIP funds remaining and available for use pursuant to this Policy for the fiscal year.
- e. The economic return to the City generated by the Project.
- f. The expertise and experience of the Applicant in redeveloping brownfields, greyfields, abandoned, blighted, under improved and underdeveloped properties.
- g. The degree to which the Project may influence compatible development or redevelopment within the APZ-1 and development of adjacent or nearby properties.
- h. The extent to which the Project may serve to implement a change in use which is consistent with and/or furthers the goals of the Comprehensive Plan, the City's Economic Development Strategy, and the APZ-1 Ordinance, as amended.
- i. The amount of the Applicant's Capital Investment in the Project.

- j. The value of moving a use of property that is inconsistent with the APZ-1 Ordinance out of the APZ-1 or the Clear Zones.

8. **COUNCIL APPROVAL OF CERTAIN EDIP AWARDS.** If the Director, acting on behalf of the Authority, determines the need to provide EDIP funds for the Project, but the criteria set forth in paragraph 4 of this Part C have not been met, the Authority shall obtain specific approval from City Council prior to its approval of the provision of EDIP funds for such purpose

9. **AUTHORITY FINDINGS AND ACTION.** Upon consideration of the recommendation of the Director, the Authority may, by a recorded majority vote at a public meeting, approve the award of EDIP funds to for the Project. The Authority may attach conditions to the approval of the award of EDIP funds. The Authority shall not be required to approve the Director's recommendation, but shall exercise its legislative discretion in determining whether, and to what extent, the Applicant's proposed Project satisfies Part C of this Policy and the Authority's objective of fostering and stimulating the development of industry in the City, including the retention of NAS Oceana as a master jet base. Provided, however, that prior to approval of the award of EDIP funds for the Project, the Authority must make the following findings:

- a. That the animating purpose of the proposed provision of EDIP funds for the Project is to serve the public purpose of fostering and stimulating economic development in the City of Virginia Beach, including the retention of NAS Oceana as a master jet base; and
- b. That the expenditure of such EDIP funds will only incidentally enure to the benefit of private interests, if at all;
- c. That the proposed provision of EDIP funds for the Project is in furtherance of the purposes for which the Authority was created;
- d. That without the stimulus of the EDIP award, it is unlikely that the property would be developed or redeveloped to the extent proposed, or at the current time;
- e. That as of the date of application for the EDIP award, the Applicant had not yet commenced construction of the Project;
- f. That without the stimulus of the EDIP award, it is unlikely that the Applicant would locate, remain or expand in the City;
- g. That as of the date the Director presents his or her recommendation to the Authority in closed session, the Applicant had not yet commenced

construction of the Project. Consideration in a closed session does not indicate approval and any investment or expenditure made by the Applicant is done at the sole risk of the Applicant. Further, if an award is not approved within seventy (70) days of the date of closed session, no investments made prior to seventy (70) days of the date of the approval of the award in open session will be considered for reimbursement under the award;

- h. The Applicant for an award shall certify to the Authority that the findings in section (e), (f) and (g), above, are true and accurate at the time of the Authority's vote on an award;
- i. That the property is in APZ-1 or the Clear Zones;
- j. That the proposed Project is consistent with the City's Comprehensive Plan, the City's Economic Development Strategy and the APZ-1 Ordinance, as amended;
- k. That the scope and quality of the Project will serve to influence redevelopment and additional capital investment in adjacent or nearby properties or, in APZ-1 and Clear Zones, will foster the retention of NAS Oceana as a master jet base; and
- l. The Oceana Land Use Conformity Committee has endorsed in writing the award of EDIP funds as proposed by the Authority

10. **APPROVAL OF THE AWARD OF EDIP FUNDS.** Approval by the Authority of the provision of EDIP funds pursuant to this Part C shall be in the form of a resolution which shall include the following information:

- a. The name of the Applicant, and the location and a brief description of the Project;
- b. The amount of EDIP funds that will be provided;
- c. The purpose or purposes for which the EDIP funds are to be provided;
- d. A statement that the criteria set forth in paragraph 4 of this Part C have been met;
- e. A statement that the findings set forth in paragraph 9 of this Part C have been made by the Authority; and

- f. Any conditions to the approval of the award of the EDIP funds by the Authority.

11. **ALTERNATIVE USES OF PART C FUNDS BY THE AUTHORITY TO RETAIN A REAL ESTATE BROKER.** The Authority may use EDIP funds to retain a licensed real estate broker to sell property located in APZ-1 or the Clear Zones and owned by the Authority or the City. The Authority is authorized to pay a commission to that broker in an amount not to exceed the following:

<u>Sale Price</u>	<u>Cumulative Commission Rate</u>
\$ 0 - \$500,000	5%
\$500,001 - \$1,000,000	3%
\$1,000,001 and up	2%

PART D: GENERAL PROVISIONS APPLICABLE TO PARTS A, B AND C.

1. **SEPARATE ACCOUNT FOR EDIP FUNDS.** EDIP funds shall be maintained by the Authority in a separate account and shall not be commingled with other Authority funds.

2. **EDIP FUND EXPENDITURES.** All expenditures of EDIP funds shall be in keeping with this Policy and may enure only incidentally to the benefit of private interests. In addition to the use of EDIP funds pursuant to Parts A, and B or C of this Policy, EDIP funds may also be utilized to conduct appraisals, financial and market studies, and architectural and engineering studies directly related to specific economic development initiatives and/or projects being conducted by the Authority on behalf of the City.

3. **PAYMENT OF EDIP FUNDS.**

- a. When EDIP funds are awarded pursuant to either Part A or Part B this Policy, they shall be paid to the Applicant at such time as the Director shall (i) obtain copies such records from the Applicant (including all contractors or subcontractors) necessary to document the actual costs incurred for the purpose or purposes for which the funds are to be provided, including invoices and evidence of payment; (ii) determine that the Project is in conformity with the plan of development presented to the Authority and with all conditions which may have been attached to the approval of the award of the EDIP funds by the Authority; and (iii) where required by the Authority (such as when a majority of the justification for an EDIP award is for the acquisition of personalty that could be removed from the City of Virginia Beach), the Applicant shall execute and deliver to the Authority an EDIP Recapture Agreement in a form acceptable to counsel for the Authority.

- b. Prior to paying funds to any Applicant based on New Jobs or Retained Jobs, the Applicant shall submit to the Authority a copy of its Virginia Employment Commission Quarterly Tax Report FC-20.
- c. Prior to paying funds to any Applicant based on New Jobs or Retained Jobs that are Teleworking Jobs, the Applicant shall submit to the Authority a certification that such employees physically report to the Applicant's location in Virginia Beach at least three days per week unless such workers are not at the Applicant's location for a project (such as a construction project outside of Virginia Beach requiring an employees' attendance at the project for the duration of the project). On the request of the Authority, the Applicant will provide the following information for employees classified as holding Teleworking Jobs:
 - i. Individual titles
 - ii. Individual salaries
 - iii. Hire Date
 - iv. Zip code of residence or remote work site
- d. Each resolution approving an EDIP award under this Policy shall contain a statement of the amount of Capital Investment to be made and/or New Jobs to be added as a basis for the award of EDIP funds approved. Notwithstanding anything to the contrary in this Policy, the resolution shall also direct that the full amount of the EDIP award approved shall not be paid unless at least eighty-five percent (85%) of the Capital Investment and/or New Jobs are actually made and/or added or retained.
- e. If moveable equipment in the City of Virginia Beach at the time of an EDIP award is to be considered as a basis for the calculation of Capital Investment, the resolution shall contain a statement of the value of such movable equipment at the time of the EDIP award.
- f. The Director shall compile a written report for each EDIP award paid documenting the methodology employed, records reviewed and steps undertaken to ensure compliance with the terms of this Policy. The report shall include sufficient information to determine compliance with the Capital Investment and/or New Job requirement(s) of Section 3(b), above. This report shall be provided to the Commissioners at their monthly financial briefing.

4. **SPECIFIC PURPOSES FOR THE USE OF EDIP FUNDS.** When EDIP funds are awarded for a Project pursuant to this Policy, such funds shall be used only for the following purposes:

- a. Public and private utility extension or capacity development on and off site;
- b. Road, rail, or other transportation access costs beyond the funding capability of existing programs;
- c. Public and private installation, extension or capacity development of high-speed or broadband Internet access, whether on or off site;
- d. Site acquisition;
- e. Grading, drainage, paving, and any other activity required to prepare a site for construction;
- f. Construction or build-out of publicly or privately owned buildings;
- g. Training costs;
- h. Purchase and installation of tangible business property, located in the City of Virginia Beach, in the following categories:
 - Machinery and Tools;
 - Tangible personal property used for research and Development;
 - Computer hardware used by businesses primarily engaged in providing data processing services to other nonrelated or affiliated businesses;
 - Programmable computer equipment and peripherals employed in a trade or business (not individual workstations);
 - Tangible personal property used in the provision of Internet services;
 - Equipment used primarily for research, development, production or provision of biotechnology for the purpose of providing products or processes for specific commercial or public purposes;
 - Tangible property designed and used primarily for the purpose of manufacturing a product from renewable energy.

5. **REPORTING.** The Authority shall provide City Council annual reports, outlining, in detail, the manner in which the EDIP funds were provided. Such reports shall include, at a minimum, the information required by subsections a, b, and c of paragraph 6 of Part A, subsections a, b, and c of paragraph 8 of Parts B and C, and information demonstrating compliance with the provisions of this Policy and Procedure.

6. **AMENDMENTS TO POLICY.** The provisions of this Policy shall not be amended without the prior consent and approval of the City Council and the Authority.

7. **APPLICATION OF POLICY.** This Policy is specifically applicable to the expenditure of EDIP funds. This Policy is not intended to be, nor shall it be deemed to be, applicable to the use of public funds from any source other than the EDIP.

8. **EFFECTIVE DATE OF POLICY.** This Policy shall become effective immediately upon its approval by the City of Virginia Beach and the City of Virginia Beach Development Authority, which approval shall be evidenced by signature of the Mayor of the City of Virginia Beach and the Chair of the City of Virginia Beach Development Authority acting by, and on behalf of, the City and the Authority, respectively.

Date: _____

Mayor, City of Virginia Beach

Approved as to Content:

Economic Development

**Chair, City of Virginia Beach
Development Authority**

Approved as to Legal Sufficiency:

City Attorney