

DOWNTOWN DEVELOPMENT INCENTIVES OPTIONS



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**City of Wichita Falls
MEMORANDUM**

March 10, 2010

To: Honorable Mayor and Members of City Council

From: David A. Clark, Director of Community Development
Karen Gagné, Planner III

Subject: Development Incentives

Attached is a report and recommendation on incentives for commercial/retail development in the downtown Wichita Falls area. This report considers the implementation of the City's adopted Vision 20/20 Plan and provides an update to a reports entitled "Local Development Incentives Options" prepared for the Wichita Falls City Council in July, 2006. This is being provided for your general information.

Additional details are included on several of the programs. A previously submitted survey has also been attached.

Cc: Darron Leiker
Kevin Hugman

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INTRODUCTION

The City Council of the City of Wichita Falls has the option of providing or facilitating financial incentives to leverage commercial, housing, service, and retail development in the downtown area. This report is intended to provide general information on incentives that have been utilized in Texas and recommendations regarding their use. Decisions to offer any incentives should be based on the overall benefit and positive economic impact to the citizens of the community. Both short term and long term effects should be considered. Policies and regulations may be established to generally insure the completion of an assisted project.

Downtown development is an acknowledged goal as indicated by the City's adoption of the Vision 20/20 Plan in 2008. The area is recognized as a major factor in the image of the community as it seeks to enhance its economic base.

POTENTIAL INCENTIVES

4B

4A

Business Improvement District (BID)

Community Development Block Grant (CDBG)

Fee Waivers

Section 380, Local Government Code

Historic Preservation Tax Credits

Historic Tax Freeze Incentive

Infrastructure Improvements

New Market Tax Credits

Tax Abatement

Tax Increment Financing (TIF)

Non Traditional

Brief descriptions, including recommended use, are followed by an Appendix providing more detailed information on some of the programs.

COMMERCIAL/RETAIL GOVERNMENT INCENTIVES

4B Funding

Eligibility The 4B Sales Tax Corporation was organized for economic development by funding public improvements that may enhance or facilitate commercial and industrial development projects.

Utilization To date, 4B has been locally used extensively for such projects as library improvements, police and fire training center, fire station consolidation and equipment, police and fire radio dispatch modernization, public park improvements, streets, roads, and drainage related improvements. 4B is carrying much of the TIF #2 (Lawrence Road area) costs until such time as the increment from the TIF #2 project can reimburse those costs. It has been utilized in the downtown area to assist in the further development of the Backdoor Theater and the Wichita Theater. An amount of \$1,000,000 has recently been authorized for pedestrian, aesthetic, and utility improvements for three downtown intersections along 8th Street.

Funding source is a quarter cent per dollar (\$0.0025) sales tax.

Recommendation 4B has high demands on its use, but it will continue to be a viable funding source for infrastructure improvements to enhance economic development. Utilization should be considered on a case by case basis.

4A Funds

Eligibility Proceeds from a designated sales tax of a quarter cent per dollar (\$0.0025) sales may be utilized to provide direct financial assistance, training, related utility or other infrastructure needed for support as determined on a case by case basis.

- The 4A Corporation develops and implements a competitive industrial (economic) development program for Wichita Falls with the following objectives:
 - 1) Expand and diversify the tax base of Wichita Falls with the intent of maintaining a tax rate consistent with the needs of the City;
 - 2) Enhance existing job opportunities and create new ones;
 - 3) Retain and expand existing business;
 - 4) Attract new businesses and investment to Wichita Falls; and,
 - 5) Protect the local environment and resources.

Uses include Job Training and projects approved on a case by case basis by election. They also include projects that create “primary jobs” identified in the following sectors. A primary job means a job that is available at a company for which a majority of the products are ultimately exported to regional, statewide, national, or international markets infusing new dollars into the local economy; and included in one of the following sectors of the North American Industry Classification System (NAICS):

NAICS
Sector #

1	Crop Production
2	Animal Production
3	Forestry and Logging
411	Commercial Fishing
5	Support activities for Agriculture and Forestry
1-213	Mining
1	Utilities
1-339	Manufacturing
	Wholesale Trade
49	Transportation and Warehousing
	Information (excluding movie theaters and drive in theaters)
3-525	Securities, Commodity Contracts, and Other Financial Investments and Related Activities, Insurance Carriers and Related Activities, Funds, Trusts, and Other Financial Vehicles
13, 5415, 5416, 5417, And 5419	Architectural, Engineering, and Related Services; Management, Scientific, and Technical Consulting Services; Scientific Research and Development Services; Other Professional, Scientific, and Technical Services
1	Management of Companies and Enterprises
142	Telephone Call Centers
2140	Correctional Institutions

or a job that is included in North American Industrial Classification System (NAICS) sector number 928110; National Security for the corresponding index entries for Armed Forces, Army, Navy, Air Force, Marine Corps, and Military Bases.

Utilization

4A funding has recently been authorized to assist the operation of the Downtown Wichita Falls Development, Inc. entity. This has been provided on the basis of marketing and economic development efforts.

Recommendation 4A can continue to be an important incentive to attract, retain, and expand businesses that provide primary job employment. Downtown office development for eligible NAICS functions should be considered.

Business Improvement District

Eligibility A defined area may be designated as a Business Improvement District (BID) through a process regulated by the State enabling legislation. Included properties are taxed an amount in addition to those regularly paid to the City, County, and school districts. Revenues from this additional tax are directed back to the area to finance a wide range of services including such things as security, maintenance, marketing, economic development, parking, and special events.

Utilization To date a local BID has not been established. The program has had much success in other locations such as downtown Ft. Worth. It requires consent from affected property owners that may be difficult to obtain.

Funding source is a new tax on property within a designated district.

Recommendation While this would be a very effective tool to facilitate downtown beautification, maintenance, promotion, and security, investigation of costs and assessed valuation recently concluded that the needed additional tax would be too high at this time. This might be reconsidered at a later date.

Community Development Block Grant (CDBG) Funding

Eligibility A project can receive a grant or loan that is individually negotiated. It must be an eligible project that meets the national criteria of:

1. Benefit of low and moderate income persons.
2. The elimination of slums and blight.
3. Urgent need (catastrophic natural disaster or major closings of job base).

Utilization CDBG funds have previously been utilized in the context of a façade easement grant. This program, available only to buildings that were documented as “blighted”, provided a percentage of the funding to rehabilitate eligible buildings. Funds for the remaining portion were provided by the private property owner. This program was discontinued due to lack of utilization.

The Holt Hotel received CDBG funding due to its blighted condition. It has been successfully rehabilitated into market rate apartments. Funds have also been utilized in the downtown area providing a concrete construction training crew who has replaced many of the sidewalks and curbs (must be eligible as a declared blighted area or by facilitation of accessibility). Factors of lead based paint abatement and Davis Bacon wage rate requirements diminish the effectiveness of these funds as leverage.

Funding source is an entitlement from the federal government.

Recommendation CDBG funds from the federal government have been decreasing. Assistance for an individual blighted property can facilitate a positive reuse. Such use is recommended on a case by case basis in conjunction with a not-for-profit organization or as a job creation factor for low/moderate income people. Reporting requirements are extensive for the use of these funds.

Fee Waivers

Eligibility The City has an option of waiving fees for permits, utility connections, and plan review.

Utilization This has been utilized with industrial development related to non-annexation agreements, but not for commercial projects.

Funding source is the general fund or designated fund.

Recommendation It is recommended that fee waivers be utilized to assist commercial projects only if a location is proposed for which the City Council wishes to particularly encourage development in the central business district (CBD) or economically challenged neighborhoods.

Chapter 380, Local Government Code

Eligibility Chapters 380.001 and 380.002 of the Code enable a city to utilize general fund money to assist in economic development for for-profit (.001) and not-for-profit (.002) businesses.

Program options for cities:

- a) May be used to provide the equivalent of tax increment financing.
- b) Provide money, loans, city personnel, and city services for promotion and encouragement of economic development.
- c) Tax Increment Financing (TIF) funds are eligible to finance chapter 380 projects if:
 - i) Located within a TIF Zone; and
 - ii) Funds are available.
- d) Fund enhancements or amenities with transportation authorities for parking facility or transit centers, etc.
- e) Opt to condition the grant or loan of public monies based upon a sales tax agreement that may require retailer to provide city with:
 - i) Certificate that includes the amount of taxable sales, sales tax collected and paid to State or refunded; and
 - ii) Receipt of sales tax as condition of grant payments.
- f) Grants paid only if City receives sales tax from development.
- g) Agreement terminates on payment of maximum grant amount or fixed term whichever is earlier.

Utilization The City has not utilized this option.

Funding source is the delay in the collection of new sales tax.

Recommendation Utilization is recommended on a case by case basis and only for large scale projects that may generate significant net increases in sales taxes. 4B may be a better option since the amount of actual tax funds available is known initially.

Historic Preservation Tax Credits

Eligibility Historic preservation tax credits are not administered through local government, but offer financial assistance to qualified projects. Established by the federal government to encourage the restoration of historic buildings, tax credits offer the reduction of federal income tax liability through investment in older buildings. A 10% tax credit may be obtained for the improvement of buildings that are seventy (70) years old or older.

A 20% tax credit may be obtained if the building is either individually listed on the National Register of Historic Places or considered to be contributing to a listed district. The processing for this higher credit requires plan approval by the State Historic Preservation office (Texas Historic Commission) and the U.S. Department of the Interior. With final approval, 20% of the eligible basis may be taken off of the federal income tax owed. On larger projects, these credits are often “purchased” by financial institutions representing private individual investors.

The federal government is currently considering a major revamping of this program. Should it be enacted, the tax credit could go up to 30 % and the 10% credit could be applied to properties over 50 years old. Other changes would make it more “user friendly” and a potentially much larger incentive for downtown Wichita Falls properties. See Appendix.

Utilization This is a federal benefit, not overseen by the City. It is included in this report for informational purposes. It has been utilized locally for the Holt Hotel and the LaSalle Crossing Apartment projects.

Funding source is the investment of private investors to either personally utilize or to invest in a tax credit program.

Recommendation This is a valid method of encouraging historic preservation projects; not administered by the City.

Historic Tax Freeze Incentive

Eligibility Offers a tax freeze on the City portion of property taxes for up to five (5) years for locally designated historic properties via approval from City Council.

- a) Property must be a designated City Landmark or situated within a City Historic District.
- b) Commercial projects/improvements: 50% of the assessed value of the structure for the year the rehab is to begin or \$100,000, whichever is less.
- d) Plans & proposals for rehab project must obtain approval from Landmark Commission.
- e) If the project receives TIF funds it is not eligible for historic tax freeze.

Utilization This incentive has rarely been utilized. Recent eligible commercial projects have also had the opportunity of requesting TIF funds and have selected that option.

Funding source is the delay of the collection of taxes on new investment.

Recommendation City taxes are among the lesser rates and the incentive may be small. This possibility should remain an option for those who wish to utilize this freeze.

Infrastructure Improvement

Eligibility This involves improvement of public infrastructure to facilitate or enhance an economic development project; a project may have planned funding in the future, but its priority is heightened potentially affecting sidewalk, street, curb, gutter, or utility construction. Some items, such as sidewalk improvements, might otherwise be considered to be the responsibility of the adjacent property owner.

Utilization This has been done in conjunction with other incentives. An example was the decision to raise the priority of improvements to Quail Creek in order to facilitate the development of a shopping center.

Funding source is the general fund, TIF (inside district), CDBG sidewalk /concrete construction program as eligible.

Recommendation Council should utilize its ability to change priorities as needed from its capital improvements plans.

New Market Tax Credits

Eligibility The New Markets Tax Credit (NMTC) Program permits taxpayers to receive a credit against Federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). Substantially all of the qualified equity investment must in turn be used by the CDE to provide investments in low-income communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year credit allowance period. In each of the first three years, the investor receives a credit equal to five percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is six percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period. The National Development Council (NDC) is a CDE who facilitated the Holt Hotel project and with whom we have a working relationship.

Utilization New Market Tax credits have not been utilized in Wichita Falls.

Recommendation The complexity of New Market Tax Credits suggests that outside assistance be utilized for packaging of development projects.

Tax Abatement

Eligibility A city may offer negotiated tax abatement on projects that may otherwise have a more immediate property tax increase due to significant improvements or new construction. A county may do the same. Tax abatement may be provided for commercial and industrial projects.

Utilization The City has not provided tax abatement to commercial projects.

Funding source is the delay of the collection of taxes on new investment.

Recommendation The City's portion of ad valorem taxes is often not significant enough to make a difference as an economic development incentive. This might remain as an available option.

Tax Increment Financing Funding

Eligibility Tax Increment Financing (TIF) may be used to implement an adopted Project Plan that follows enabling legislation restrictions. Property taxes due the participating taxing units that are identified at the time of the creation of a TIF or reinvestment zone become the "base". Those taxes continue to be paid to the taxing units. Additional proceeds from taxes above the base that are generated from new development are placed in a TIF fund account.

In accordance with the Project Plan, the TIF funds may be utilized to construct public infrastructure, to prepare plans, and to implement development projects. The intent is to leverage projects that ultimately increase the tax base.

Utilization TIF #1 funding was a major factor in multiple properties within its boundaries, along with facilitating the Downtown Wichita Falls Development, Inc. organization. A 10 per cent contribution factor has often been provided for larger projects. This participation amount has been greater in several smaller projects. Among the assisted projects were the Holt Hotel, LaSalle Apartments, Travis Crossing Apartments, the Coliseum, Railroad Museum gates, Walgreens, landscaping and decorative fencing programs, and the Ray Clymer center. The twenty year life ended on December 31, 2008. A new TIF district is appropriate for the area and should be timed based on a pending project to provide a necessary increment.

Funding source is the delay in the collection of increased property taxes from new construction or improvements.

Recommendation TIF programs have likely been the most successful incentives for commercial development. Their success is dependent on the generation of incremental funds from new construction or major remodeling. Timing of a new district and its boundaries must be based on the prospect of increment development.

Non Traditional

A potential assistance for the downtown that could also solve derelict structures is an active pursuit of ownership. Acquisition, lien foreclosure, or negotiation could lead to renovation or redevelopment solutions for poorly managed properties. Designation of the area as a Tax Increment Financing District also permits negotiation for the restricted sale of property to assure its reuse. While there would be a management factor, such action could return properties to become viable and taxable contributors to the downtown area.

CITY PARTICIPATION SUMMARY

Commercial/Retail

4B *Currently being utilized to provide “up front” funding for TIF #2 projects as increment becomes generated. Used extensively for general public projects. Assistance was provided to the Wichita Theater and the Backdoor Theater for remodeling activities. Funding has recently been authorized for improvements to three intersections along Eighth Street.*

4A *4A funding has been provided to Downtown Wichita Falls Development, Inc. to support operations for the upcoming year.*

Business Improvement District (BID) *Current assessed values do not support a BID without the taxes being too high.*

Community Development Block Grant (CDBG) *Previous use for equipment installation for call center operation and job training, small business development loan program, and façade improvement program.*

Fee Waivers *Not presently utilized.*

Section 380, Local Government Code *Not presently utilized.*

Historic Preservation Tax Credits *Federal benefit utilized on the Holt Hotel and the LaSalle Crossing Apartments.*

Historic Tax Freeze Incentive *Available. Has not been utilized (May not be utilized if receiving TIF funding.)*

Infrastructure Improvements *Not presently utilized for commercial projects.*

New Market Tax Credits *Not presently utilized.*

Tax Abatement *Not presently utilized.*

Tax Increment Financing (TIF) *TIF #1 (Downtown) and TIF # 2 (Lawrence Road area) have both successfully leveraged new investment. TIF#3 has just been established for the community’s eastside. TIF #4 is recommended for further development of the downtown area.*

APPENDIX

Chapter 380

Arlington Example

Historic Preservation Tax Credits

Incentive Examples

Asbestos Program

Downtown Partnership

Survey – Economic Development Incentives

Chapter 380, Texas Local Government Code

Municipalities may provide incentives promoting economic development pursuant to Chapter 380 of the Texas Local Government Code. This statute permits loans and grants of a city's general funds, as well as the use of city staff, city facilities or city services at minimal or no charge. Cities usually execute agreements with grantees containing recapture or repayment features if the grantee does not fulfill its represented promises. Several cities have conditioned grant payments on the basis of increased sales tax revenues from a given retail project. Although sales tax payments from the State Comptroller's office are deposited in a city's general fund, the effect of these grants is to "rebate" a portion of sales tax revenues generated by a user.

Specifically, Section 380.001 allows a city to make loans and grants of city funds, as well as the use of city staff, city facilities or city services, to promote state or local economic development and to stimulate business and commercial activity in the municipality if the city establishes a "program" to implement the incentive. Very little guidance exists, however, with regard to the establishment and administration of such programs.

Section 380.001 of the Local Government Code reads as follows:

(a) The governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and 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.

(b) The governing body may:

(1) Administer a program by the use of municipal personnel,

(2) Contract with the federal government, the state, a political subdivision of the state, a nonprofit organization, or any other entity for the administration of a program; and

(3) Accept contributions, gifts, or other resources to develop and administer a program.

Grants and loans made pursuant to Chapter 380 must be subject to consideration and approval at an open meeting of the city. Any such grants must also comply with a city's charter and any related local ordinances. The city must also meet the requirements contained in the Texas Constitution and in applicable Texas statutes.

In addition to meeting these requirements, any expenditure in the form of a grant, loan, or provision of city services must satisfy certain other requirements. First, any such grant, loan or provision of city services at less than fair market value involves a donation of public property. Article 3, Section 52-a of the Texas Constitution sets up the constitutional framework for public funding of economic development efforts and provides that economic development is a public purpose. However, a city may not simply extend grants and disburse funds to interested businesses.

The city must ensure that the business pursues the public purpose of economic development. For example, if a city provides a grant or a loan to a business, the city should enter into a binding contract with the entity setting forth the steps such business will take that justify the provision of public funding (creation of jobs, construction or enhancement of the physical facilities, etc.). The city should provide in the agreement a recapture provision that if the business does not fulfill its promises, the city would have a right to seek reimbursement of the incentives. Any such agreement should also include tangible means for measuring whether the industry has met its obligations under the contract. Without these safeguards and a demonstrable benefit to the municipality, such incentives may not satisfy the constitutional requirements for serving a public purpose.

Additionally, any such grant or loan must meet the requirements under the budget law contained in Chapter 102 of the Local Government Code. Specifically, any economic development-related expenditure must be made pursuant to consideration and approval of the item at an open meeting of the city. If the expenditure were not included within the original budget, the city council would need to pursue a budget amendment.

If a city is offering city services as an incentive discounted or no-cost incentive, the city must also review any bond documents that may have been executed with regard to those services. The bond documents must be analyzed to ensure that providing reduced or no-cost service is permitted. For example, if a city has issued bonds to fund a municipal utility system or to fund some other type of public facility, the bond documents may prohibit the city from giving away its utility services or otherwise limiting any other revenue stream until the bonds are fully repaid.

Section 380.002 of the Local Government Code reads as follows:

- (a) A home-rule municipality with a population of more than 100,000 may create programs for the grant of public money to any organization exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986 as an organization described in Section 501(c) (3) of that code for the public purposes of development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development or expansion of commerce in the state. The grants must be in furtherance of those public purposes and shall be used by the recipient as determined by the recipient's governing board for programs found by the municipality to be in furtherance of this section and under conditions prescribed by the municipality.
- (b) The funds granted by the municipality shall be derived from any source lawfully available to the municipality under its charter or other law, other than from the proceeds of bonds or other obligations of the municipality payable from ad valorem taxes.

CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM POLICIES AND PROCEDURES

I. General Statement of Purpose and Policy

The City of Arlington is committed to the promotion of high quality development in all parts of the City and to an ongoing improvement in the quality of life for its citizens. The City of Arlington has previously developed economic development programs and incentives designed to encourage high quality business, commercial, professional sports and manufacturing concerns to locate, remain, and expand in the City of Arlington. Now the City of Arlington seeks to enhance its economic development efforts to attract and retain high quality development and jobs by establishing these Chapter 380 Economic Development Program Policies and Procedures.

These Policies and Procedures are established in an effort to develop and expand the local economy by promoting and encouraging development and redevelopment projects that enhance the City's economic base, and diversify and expand job opportunities or by promoting and encouraging projects that create additional revenue for the city without substantially increasing the demand on City services or infrastructure. The ultimate goal and public purpose of programs established hereunder is to protect and enhance the City's fiscal ability to provide high quality municipal services for the safety, comfort and enjoyment of Arlington residents.

In furtherance of these objectives, the City of Arlington will, on a case-by-case basis, give consideration to providing economic incentives to applicants in accordance with these Policies and Procedures as authorized by Chapter 380 of the Texas Local Government Code, as amended from time to time.

Nothing in this document is intended to imply or suggest that the City of Arlington is under any obligation to provide economic incentives to any applicant. All applicants shall be considered on a case-by-case basis. The decision to approve or deny economic incentives shall be at the discretion of the City Council. Each applicant granted economic incentives as a Chapter 380 Economic Development Program (also referred to as Program) under these Policies and Procedures must enter into an agreement with the City of Arlington containing all terms required by these Policies and Procedures and by state law to protect the public interest of receiving a public benefit in exchange for public funds, assets and services invested to stimulate economic development in Arlington.

II. Program Requirements

A. To be considered for incentives as a Chapter 380 Economic Development Program under these Policies and Procedures, a project must at least meet the following minimum requirements:

1. Either the project
 - a. will result in a minimum increased taxable value for the City of \$25,000,000 in real and business personal property (excluding inventory and supplies); **or**

- b. will result in a minimum increased taxable value for the City of \$250,000 in real and business personal property (excluding inventory and supplies) in the Downtown Business Zoning District or the Downtown Neighborhood Overlay District; **or**
 - c. is specifically determined by resolution of the Arlington City Council to bring benefit to the City consistent with the General Statement of Purpose and Policy as stated in Paragraph I above; **and**
2. In addition, the project
- a. is qualified as a target industry according to the City of Arlington Policy Statement for Tax Abatement; **or**
 - b. will make a unique or unequaled contribution to development or redevelopment efforts in the City of Arlington, due to its magnitude, significance to the community or aesthetic quality; or
 - c. will enhance the City's fiscal ability to provide high quality municipal services for the safety, comfort and enjoyment of Arlington residents.

B. A project shall not be eligible for incentives under these Policies and Procedures if a building permit has been issued for the project prior to making application in accordance with these Policies and Procedures.

C. Incentives provided in accordance with these Policies and Procedures will be provided only to the extent that the revenue realized by the City and attributable to a project exceeds a minimum amount established by the Agreement. The public benefit or amount of revenue realized by the City and attributable to the project must be commensurate with value of any incentives granted under this Program.

III. Additional Considerations

Additional factors to be considered by the City Council in determining whether to authorize an Agreement for incentives as a Chapter 380 Economic Development Program (Program) are:

- A. the number and types of jobs to be created or retained;
- B. the financial capacity of the applicant to undertake and complete the proposed project;
- C. other incentive programs for which the applicant has applied or is qualified;
- D. the market conditions and growth potential for the business activity, and
- E. any other factors the City Council finds helpful and relevant to accomplishing the City's economic development objectives.

IV. Application Process

- A. An application for consideration as a Program shall be made on forms supplied by the City. An applicant may be required to provide additional information to show compliance with minimum Program requirements. If City staff determines minimum Program requirements have been met, City staff shall prepare and present a proposed Agreement with the applicant to the City Council.
- B. The City Council may consider the proposed Agreement and may take action on the proposal as it deems appropriate. Nothing in these Policies and Procedures and nothing in the application form and process shall create any property, contract, or other legal right in any person to have the City Council consider or grant incentives.

V. Agreement Terms

An Agreement established for a Program must include:

- A. a timetable and list of the kind of improvements or development that the Program will include, and conditions to assure that the Program meets or exceeds the City's requirements pertaining to property values and revenues, which in no event shall be less than the minimum Program requirements established in Paragraph II above;
- B. a complete description of the location of the proposed Program or projects included in the Program;
- C. a timetable and list of the kind and amount of property values, revenues, incomes or other public benefits that the proposed Program will provide;
- D. a provision establishing the duration the Agreement;
- E. a provision identifying the method for calculating and source of funding for any grant, loan or other incentives provided in the Agreement;
- F. a provision providing a tangible means for measuring whether the applicant and other responsible parties have met their obligations under the Agreement;
- G. a provision providing for access to and authorizing inspection of the property and applicant's pertinent business records by municipal employees in order to determine compliance with the Agreement;
- H. a provision for cancellation of the Agreement and/or nonpayment of incentives if the Program is determined to not be in compliance with the Agreement;
- I. a provision for recapturing City funds granted or loaned, or for recapturing the value of other public assets granted or loaned, if the applicant does not meet its duties and obligations under the terms of the Agreement;
- J. a provision that allows assignment of the Agreement with prior written approval of the City Council, or without the prior written approval of the City Council provided that:
 - 1. all rights, duties, obligations and liabilities under the Agreement are assigned from the assignor to the assignee; and
 - 2. the assignment is made subject and subordinate to the Agreement and the Chapter 380 Economic Development Program Policies and Procedures; and
 - 3. the assignment document is in a form and contains content acceptable to the City Attorney's Office;
- K. provisions relating to administration, delinquent taxes, reporting requirements and indemnification;
- L. a provision that the Agreement may be amended by the parties to the Agreement by using the same procedure for approval as is required for entering into the Agreement; and
- M. such other provisions as the City Council shall deem appropriate.

(b) The funds granted by the municipality shall be derived from any source lawfully available to the municipality under its charter or other law, other than from the proceeds of bonds or other obligations of the municipality payable from ad valorem taxes.

Historic Preservation Tax Credits

Federal Historic Preservation Tax Incentives

A federal tax credit worth 20 percent of the eligible rehabilitation costs is available for buildings listed in the National Register of Historic Places. A building needs to be eligible for listing at the beginning of the rehabilitation project, but need not be officially listed until the tax credit is claimed by the owner.

Eligible Buildings and Costs

The work undertaken as part of the project must meet *The Secretary of the Interior's Standards for Rehabilitation*. The tax credit is available only for income-producing properties. For example, office, retail, hotel and apartments are eligible. Owner-occupied residential properties are NOT eligible for the credit. The credit is also limited to buildings only; structures such as bridges and silos do not qualify.

The tax credit is designed for substantial rehabilitation projects, not small remodeling projects. The eligible project costs generally must exceed the value of the building itself (not including the land) at the beginning of the project. Most rehabilitation costs are eligible for the credit, such as structural work, building repairs, electrical, plumbing, heating and air conditioning, roof work and painting. Some specific costs are NOT eligible for the credit, such as acquisition, new additions, furniture and landscaping.

The Application Process

An application for the tax credits MUST be submitted before the project is completed, although work may begin prior to the application or approval. Ideally the application should be submitted during the planning stages of the work so the owner can receive the necessary guidance to ensure that the project meets the *Standards for Rehabilitation*, and therefore may qualify for the credits. The application consists of three parts.

Part One, the Evaluation of Significance, determines if the building is eligible for the National Register and thus the credits. Part One is not needed if the property is already individually listed in the National Register.

Part Two describes the proposed work, and photographs are required showing the major features of the building prior to work beginning.

Part Three of the application is submitted upon completion of the rehabilitation.

The tax credit requirements, which include both National Park Service and Internal Revenue Service (IRS) regulations, can appear confusing at times. The Texas Historical Commission staff will assist property owners in understanding and applying for the credits. The IRS also allows a separate 10 percent tax credit for income-producing buildings constructed prior to 1936, but not listed in the National Register.

Legislation is currently before Congress to adjust the historic preservation tax credit program that considers the following changes. If adopted, this would make the program much more friendly and could increase useage.

1

Enabling Smaller Rehabilitation Projects

Increase the federal historic tax credit from 20% to 30% for "small projects" with \$5 million or less in qualified rehabilitation expenditures.

The historic tax credit is difficult for individuals and small businesses to use largely due to the high transaction costs of syndication. Allowing a deeper credit of 30% for historic rehabilitation projects of \$5 million or less in total development costs would ensure enough equity to make the historic credit work for smaller projects, many which are located in rural Main Street communities and urban commercial areas that are most in need of reinvestment.

2

Providing Downtown Housing in Historic Buildings

Permit the 10% non-historic credit for older buildings to be used for rehabilitating residential rental property.

The 20% portion of the historic tax credit is currently available for the rehabilitation of any income producing property, including residential rental property. However, housing is not allowed under the 10% portion of the credit. This change would correct that.

3

Using a Practical Definition for "Older Building"

Use the common definition of an older building as one that is at least 50 years old in determining eligibility for the 10% non-historic rehabilitation credit.

Preservation policy routinely use 50 years old or older as a threshold for classifying older and historic buildings. In 1986 when Section 47 was amended, Congress recognized this standard by establishing 1936 as the placed-in-service requirement for the 10% non-historic older buildings portion of the credit. Rather than use a fixed date to determine eligibility, it would be a better public policy approach to define an older building as one that is simply "50 years old or older."

4

Rehabilitating Qualified Non-Profit and Public Historic Buildings

Allow for certain leasing arrangements with non-profits and other tax-exempt entities that are now precluded.

The tax-exempt use rules now penalize many community revitalization-oriented historic tax credit projects by disallowing tax-exempt tenants. In 1986, Congress rightly sought to correct a situation that could result in abuses in "sale leaseback" situations but in the process disqualified other types of leases that allowed appropriate tax-exempt use of tax credit projects. This proposal would continue to disallow the lease abuses Congress wanted to address but would allow certain types of tax-exempt leases.

5

Making Historic Buildings as Energy-Efficient as They Can Be

Encourage building owners who are rehabilitating historic buildings to achieve substantial energy savings and allow graduated increases in the credit based on the scale of energy efficiencies

achieved.

The amendment would provide a boost in the historic credit of an additional \$2.00 to \$5.00 per square foot depending on a range of energy savings starting at 30% and graduating up to 50%. The added incentive could not exceed half of a building's total rehabilitation expenditures. If a building owner should fail to meet the 30% energy savings goal, but attains a base reduction of at least 25%, he or she can receive a partial credit.

6

Facilitating Smaller Projects through Transferability

Allow for the transfer of historic tax credits to another taxpayer for projects under \$5 million in qualified rehabilitation costs.

By making the historic tax credit transferable in limited circumstances, property owners without much income could sell the credit and use the proceeds for the equity required by a bank to enable them to finance renovations on their building.

7

Encouraging Moderate Rehabilitation through Reducing the Substantial Rehabilitation Requirements

Allow for moderate rehabilitation by reducing by half the substantial rehabilitation requirements.

Historic tax credits can only be used if the property being developed meets certain requirements for substantial rehabilitation. Rehabilitation expenditures must exceed the greater of \$5,000 or the full adjusted basis of the building and its structural components. This proposal would allow historic tax credit to be claimed if the rehabilitation cost is 50% and not 100% of the basis.

8

Allowing State Historic Tax Credits to Work More Effectively with the Federal Credit *Specify that state historic tax credits should not be considered federal income for tax purposes.*

Many states have historic tax credits that can be combined with the federal historic tax credit. To ensure the maximum amount of resources are targeted to offset the cost of restoring historic structures, state historic tax credit proceeds would not be taxed by the IRS and considered federal income unless the taxpayer elects to report it as such. Furthermore, the transfer or disposition of a state historic tax credit should not reduce the federal tax credit's qualified rehabilitation expenditures or trigger any recapture of income.

Incentive Examples

Asbestos Program

Asbestos inspection and abatement is a long-standing problem in many communities. One City (Temple) is considering training an inspector with the Construction Safety Department to perform asbestos inspections on private property at the request of a property owner. Within the next few months, one inspector will be able to offer this initial inspection, at no cost to the property owner, potentially saving \$3,000 to \$5,000 in up-front costs. The initial inspection will identify types and locations of asbestos and offer a standardized report outlining solutions for identified problem areas. A second aspect of the asbestos program is a one-time abatement grant. Funds may be set aside in the form of grants to qualified property owners, which will be applied towards abatement. Grant money amounts will be determined and distributed based upon the preliminary inspection reports. Although this program is not currently funded, it is receiving consideration as a viable incentive for downtown redevelopment.

Downtown Partnership

Dallas, TX - The Dallas Downtown Partnership was awarded a contract to administer a \$2.5M retail recruitment program by the Dallas City Council. The program is aimed at providing rent and tenant improvement subsidies as an incentive for retailers to locate downtown. The \$2.5M comes from a **Chapter 380** grant, originating from dollars in the City Center **Tax Increment Financing** (TIF) Fund, dollars generated from increased tax assessments within the designated district which are then also reallocated to enhance infrastructure within that area.

Modeled after a similar program that has been widely successful in other cities such as Washington D.C., the Downtown Partnership will recruit retail for the Main Street District of downtown Dallas. The retail incentive dollars are restricted to goods and services retailers, and will be calculated using a point system.

SURVEY – ECONOMIC DEVELOPMENT INCENTIVES

This document summarizes a quick review of incentives provided by various Texas cities for commercial and/or downtown development. Results are from various phone calls along with subsequent e-mails.

Abilene

Downtown no longer has active TIF

Downtown has received much assistance from local Dodge Jones Foundation.

4A funding utilized for building improvements related to the offices of an engineering company.

Community does not have 4B

Amarillo

Center City of Amarillo (Downtown Assoc.)

Façade Grant \$2 invest for \$1 grant up to \$10,000

\$45,000 for the grant program is provided from the City's general fund.

Rarely use incentives for commercial development. Have done some related utility work.

Austin

Economic Growth & Redevelopment Services

Do not offer any incentives to stand alone retail developments

Mixed Use development – incentives provided based on series of criteria

Denison

Development Foundation owns other properties and from income provides funding for Façade Grant program – up to \$1,500

Lower interest rate loans (1% below prime) for exterior improvements up to \$100,000

Feel direct competition with Sherman so need incentives.

Has 4A no 4B

Denton

No 4A/4B Fund for Incentives

Incentives via 1 ½ % local sales tax – revenues go to City's general fund

Incentives negotiated for two recent development projects due to market loss to other metroplex cities along I-35 corridor (i.e. Lewisville)

Denton Crossing – along I-35, Section 380 Agreement, 50 acre site with 450,000 ft² retail space (i.e. Best Buy, TJMaxx, World Market, Lane Bryant, etc.)

City/developer enter into a contract for either a specified timeframe (ie, 10/15 yrs) or for set monetary reimbursement based on the developer's initial public improvements (i.e. ½ cent monthly sales tax reimbursement based on comptroller's record of sales receipts up to a cap of \$x million)

Rebate strictly from sales tax receipts – no property taxes abated

Georgetown

4B for some development issues, particularly downtown

Downtown has façade enhancement program funded from downtown festival, match (@ \$15,000) is provided from Georgetown general fund.

Chap. 380 sales tax reduction used for major mall project

Longview

Tax abatements reserved for industrial projects – no real, direct incentives for retail

Do not anticipate getting into reimbursement incentives or rebates

Local sales tax – 1% goes to City's general fund; ½ cent designated to County for road & bridge improvements; ¼ cent set aside for a drainage project fund; ¼ cent designated to LEADCO – Economic Development Corp (4B funds) for industrial development

Lubbock

Two TIF districts

One TIF is redevelopment area where demolition is being followed by new construction. Existing streets are being improved by TIF funds – not developer.

No attention given downtown, plan now underway that will likely include incentive proposals.

Have overlaid TIF with Public Improvement District (PID) for maintenance.

4A no 4B

380 and other incentives are more likely for disadvantaged NE. Would not anticipate assistance in higher growth areas.

Midland

TIF Zone downtown – developers request participation for reimbursement based on a specific request for items

Only fund public improvements associated with dev't projects – ie, façade, landscaping, etc.

Other incentives may be provided via negotiations with City Manager, Public Works Dir. based on being able to justify public improvements

City careful when: a) private developer asking for specific private needs, and b) show public service or need – developer must demonstrate why funds are necessary to assist project

4A/4B Funds – specific requirements for use of funds – must create set # and type of jobs prior to being eligible.

Round Rock

4B Funds dedicated to transportation projects that demonstrate economic benefit (ie, frontage roads, connectors) – ½ cent of local tax dedicated to fund

May enter into a special agreement (Section 380 Agreement) for major destination oriented retailer/company (ie, Dell & Sears Call Centers) based on numerous factors: sizable investment & creating significant number of new jobs – currently working with Chelsea Property Group to negotiate a premium outlet mall – if project is a good fit for City – may try to enter into another 380 Agreement

Southlake

Tax abatement for larger retail projects utilizing 380 agreements.

Southlake Town Square has been developed as a TIF district.