

ECONOMIC DEVELOPMENT AUTHORITY HANDBOOK

October 2011



PREFACE

In these uncertain economic times, it is more important than ever for cities to develop and utilize sound economic development procedures and practices to address an ever more complex and changing marketplace.

This handbook has been prepared as a guide to assist local economic development leaders to utilize their limited resources in the best practical manner. Furthermore, this handbook seeks to ascertain methods in which one can better set up one's EDA to make it more efficient and effective in utilizing scarce resources. The key to successful economic development is communication with local businesses to learn of their needs and concerns, and to determine how to best use the community's resources to address those concerns.

Throughout my career in various economic development roles, I have seen, firsthand, just how vital development tools such as EDAs, Housing and Redevelopment Authorities, and Port Authorities can be to a community in building a vibrant business climate and in generating significant employment opportunities. Early in my career at the Region Nine Development Commission, I would have given anything to have a document such as this to utilize! As a Business Finance Specialist with the Minnesota Department of Trade and Economic Development (now MN DEED) I was able to see directly just how important EDAs are to local communities and how they could be utilized to great effect by cities in Southern Minnesota. In addition, the ability to utilize EDA powers significantly benefited economic development through my tenure as Community Development Director in the City of Roseville and as City Administrator for Oakdale. In both communities, I found the use of an EDA (or similar authorities) to be an invaluable tool in many development and redevelopment projects.

I would like to offer special thanks to a number of individuals for their hard work and dedication in updating this handbook. I would especially like to thank Mary Ippel from Briggs and Morgan for her experience and for her extensive help preparing this handbook. I would also like to thank the City of Oakdale staff including Assistant to the Administrator Dave Schaps, for coordinating the update of this handbook and compiling the information, and Intern Devin Swanberg for conducting the background research. In addition, my thanks to the Minnesota Economic Development Foundation for funding this project, the Minnesota Department of Employment and Economic Development for its review and subsequent publication of the handbook, and the Economic Development Association of Minnesota for its review of the handbook. We hope this guide will help you in your own economic development endeavors. Now go out there and create jobs and develop that tax base!

Sincerely,

Craig A. Waldron,
City Administrator, ICMA-CM
City of Oakdale

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NOTICE

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INTRODUCTION TO LOCAL ECONOMIC DEVELOPMENT ORGANIZATIONS

There are several types of organizational structures available for community economic development programs. The type of organization that a community decides to establish is dependent on the special activities that are targeted. In some communities, business development and job creation are the primary goals, while others have housing development as a priority. Many communities have existing community economic development groups. There are several different kinds of organizations available that focus on economic growth. The type of growth that a community wishes to achieve will dictate what type of group will be formed. In addition, the purpose and creation of the organization will impact the statutory powers available to the entity. Each of these organizations may focus on different issues such as housing development, creation of jobs, and business development. The majority of community groups focus on economic growth opposed to housing growth.

Outlined below is a brief description of each type of development organization.

Business Organizations

Commercial Club: Usually an incorporated 501(c)(4) or (6) organization whose purpose is to promote community and retail events. This group is usually made up of local retail owners and owners of local businesses. This is an unpaid organization consisting of volunteers and has no staff.

Chamber of Commerce: A chamber is an incorporated non-profit 501(c)(4) or (6) that is generally affiliated with the state and national chamber of commerce. The chamber consists of local business professionals of the community who meet together to promote local businesses and the community. Generally, they have an elected board with limited staff. Larger chambers often deal with tourism and overall business development of the community. They sometimes are politically active and can be a powerful lobbying force when dealing with policy that affects the community's economic strategy. Chambers are generally active and can hold educational and other events for local businesses.

Development Corporations

For-Profit: A corporation formed to develop and sell industrial land and/or provide financing for business development within the community. Local investors can buy shares that can be paid in dividends from profits made on projects. Money invested in corporations can be repaid to the stockholders. The board is made up of shareholders and may or may not have staff. The corporation is subject to federal and state income tax.

Non-Profit: A corporation formed to develop and sell industrial land and/or provide financing for business development in the community. Shares are sold or funds may be raised in other ways. No dividends are paid on shares. The non-profit corporation must obtain either 501(c)(3) or 501(c)(4) status from the IRS. Donations made to a 501(c)(3) by both individuals and

businesses are tax deductible. Obtaining 501(c)(3) status can be difficult, expensive and time-consuming and many communities are not willing to go through the lengthy process. Although 501(c)(4) status is less difficult to obtain than 501(c)(3) status, only a business may make contributions that are tax deductible, individual contributions are not eligible for the tax deduction. Also, organizations with 501(c)(3) are prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of or against any candidate for elective public office.

Government Organizations

Economic Development Commission: A board used to advise a City Council, appointed by the Mayor and/or City Council. It has limited or no decision making authority and is used as a sounding board or a first point of contact for the City Council on development projects. The commission is used to draft strategies and policies for ratification and implementation of local plans on a volunteer basis.

Housing Redevelopment Authority (HRA): An HRA is a public corporation with power to undertake certain types of housing and redevelopment or renewal activities. While state legislation conveys authority for housing and redevelopment in each City, it is up to the City Council to formally establish an HRA before it can do business and use its powers. Once a council legally establishes an HRA, it may undertake certain types of planning and community development activities on its own with council approval.

Port Authority: This is a legal entity created by the State Legislature to promote the general welfare of a City's port district, increase the volume of commerce in the port and provide facilities for handling, storage and shipment of freight. The Port Authority actively develops commerce within the City and can enable business location and expansion. The powers of a Port Authority are more expansive than those of an HRA or an EDA. The State Legislature authorizes the creation of Port Authorities. A Port Authority is a separate political entity with the right to sue and be sued in its own name and is generally organized to increase commerce in a City. Unlike EDAs and HRAs, a Port Authority may issue general obligation bonds without holding an election.

Joint Powers Board: This is a board created by multiple Cities, Townships or Counties for a certain purpose, such as economic development. The agreement between the units of government would specifically describe activities and powers that the board exercises in carrying out its duties.

Economic Development Authority (EDA): An EDA is a legal entity created by a City or a County to facilitate a well-rounded development program by taking advantage of some of the port authority powers and all of the HRA powers. By combining and utilizing HRA, EDA and City powers, community leaders are able to create flexible business assistance and development programs. EDAs for example, are allowed, to buy and sell property; make loans and grants to businesses; provide guarantees or other credit enhancements; and to sell bonds.

All Cities have authority from the State Legislature to create an EDA. The City may consolidate the EDA with an existing HRA or the City may establish the EDA as a separate entity. The City

Council may create an EDA by passing an enabling resolution. Before adopting the enabling resolution, the City must first conduct a public hearing. The enabling resolution establishes a Board of Commissioners for the EDA. The City Council can choose to serve as the EDA Board of Commissioners or create a board composed of council members and community members. The Mayor, with approval of the Council, appoints the Commissioners. The Board may consist of three, five or seven members who serve six-year terms. The Board is subject to the open meeting law.

Rural Development Finance Authority (RFDA). A nonprofit corporation established by a County or group of Counties through special legislation. RFDAs are designed to facilitate the production and processing of agricultural products and promote jobs in agriculture and natural resources industries. The board is appointed by the County Board of Commissioners.

Note: Please see appendix for a table comparing selected development laws.

FORMATION AND OPERATION OF AN ECONOMIC DEVELOPMENT AUTHORITY

Reasons for Forming an EDA

The Minnesota Legislature granted Cities the power to create economic development authorities in 1987. By giving Cities this ability they can promote economic growth. EDAs were created to work in conjunction with and to facilitate other economic development organizations such as Port Authorities and Housing Redevelopment Authorities (HRA). This allows Cities to create a better approach to economic development allowing them to create flexible business assistance and development programs.

In addition to HRA powers, EDAs were authorized to exercise the powers of Cities in connection with City development districts and the powers of municipalities or development agencies in connection with municipal industrial development. By consolidating the powers of economic and housing development into one body, City officials are not only able to focus development on blighted areas but, also create programs that will prevent blight from occurring elsewhere within the community.

The primary powers of an EDA:

- Serve to promote business and to recruit new businesses
- Issue revenue bonds.
- Acquiring property.
- Purchase and sell land.
- Serve as a limited partner.
- Make or guarantee or other credit enhancements.
- Issue general obligation bonds (approved by election).

Procedures for Establishing an EDA

In order for a City to create an EDA the City Council must adopt a written resolution called an enabling resolution. A County can also create an EDA. This handbook describes the process for Cities to establish an EDA. Through the enabling resolution EDA's are granted all of the powers described in Minnesota Statutes, 469.090-1082, subject to any limitation on those powers as specified by the City. EDA's are also granted the powers given to HRAs in the HRA law, powers almost identical to Port Authorities under the Port Authority Law and all of the development powers granted to a City under the municipal development district law and the industrial development act.

Before adopting an enabling resolution the City Council must hold a public hearing and it must determine the number of Board Members to be on the EDA. The notice of the public hearing must identify the place and time of the hearing, brief statement of the purpose of the hearing, and the notice must contain a summary of the resolution. The notice of public hearing must be published in newspaper of general circulation once a week for two consecutive weeks prior to

the meeting. The first publication must appear not more than 30 days from the date of the public hearing.

Without limiting the right of the EDA to petition the City Council at any time, each year, within 60 days of the anniversary date of the first adoption of the enabling resolution, the EDA shall submit to the City Council a report stating whether and how the enabling resolution should be modified. Within 30 days of receiving the recommendation, the City Council shall review the enabling resolution, consider the recommendation of the EDA, and make any modification it considers appropriate (Minn. Stat. § 469.092, Subd. 3).

All modifications to the enabling resolution must be by written resolution and must be adopted after notice is given and a public hearing conducted as required for the original adoption of the enabling resolution (Minn. Stat. § 469.093, Subd. 2).

An EDA is a public body corporate and politic as well as a political subdivision of the State of Minnesota with the right to sue or be sued in its own name. An EDA carries out an essential governmental function when it exercises its powers, but is not immune from liability because of this. (Minn. Stat. § 469.091, Subd. 2)

Enabling Resolution, Bylaws, Transfer Resolution and Ordinance Checklist

_____ Board Size (Optional)

- _____ 3 – Minimum of 1 City Council member
- _____ 5 – Minimum of 2 City Council members
- _____ 7 – Minimum of 2 City Council members

_____ Officers/Staff Powers and Duties

- | | |
|-----------------------------|---------------------------------|
| _____ - President | _____ - Executive Director |
| _____ - Vice President | _____ - Engineers |
| _____ - Treasurer | _____ - Technical/Support Staff |
| _____ - Assistant Treasurer | _____ - Secretary |

_____ Procedures

- | | |
|---|---|
| _____ - Board Compensation | _____ - Quorum |
| _____ - Budget | _____ - Treasurer's Bond |
| _____ - Fiscal Year | _____ - Reports/Financials/Audits |
| _____ - Corporate Seal | _____ - Professional/Technical Services |
| _____ - Annual/Monthly/Special Meetings | _____ - Amendments to By-Laws |
| _____ - Depositories | _____ - Conflict of Interest |

_____ Committee Structure (optional)

- | | |
|-----------------------------|--|
| _____ - Local Publicity | _____ - Business Retention and Expansion |
| _____ - Planning and Zoning | _____ - Marketing |
| _____ - Sites and Buildings | _____ - Advisory |

_____ Transfer of Authority and Programs

_____ Economic Development Powers

- | | |
|--|---------------------------------|
| _____ - Economic Development Districts | _____ - Redevelopment Districts |
| _____ - Acquisition of Property | _____ - Options |
| _____ - Eminent Domain | _____ - Contracts |
| _____ - Limited Partnerships | _____ - Rights and Easements |
| _____ - Acceptance of Public Land | _____ - Foreign Trade Zone |
| _____ - Public Facilities | _____ - Government Agent |
| _____ - Studies/Analysis/Research | _____ - Public Relations |
| _____ - Loans | _____ - Use of Proceeds |
| _____ - Mined Underground Space | _____ - Levy of Taxes |
| _____ - Advances | _____ - Issuance of Bonds |

_____ Housing and Redevelopment Powers

- | | |
|--|---------------------------------------|
| _____ - Acquisition of Open Land | _____ - Acquisition of Unused Land |
| _____ - Sale of Real/Personal Property | _____ - Studies |
| _____ - Comprehensive Plans | _____ - Inventory of Land/Buildings |
| _____ - Joint Powers Agreements | _____ - Parking Facilities |
| _____ - Bonding Authority | _____ - Special Benefit Tax |
| _____ - Property Tax Exemption | _____ - Borrowing/Acceptance of Funds |
| _____ - Rehabilitation Loan/Grants | _____ - Interest Reduction Program |

_____ Limitations on Powers

- | | |
|-----------------------------------|--|
| _____ - Limitations on All Powers | _____ - Limitations on Individual Powers |
|-----------------------------------|--|

Board of Commissioners of EDA

Board Size

The City Council must determine the size and makeup of a Board of Commissioners. The City Council may serve as the Board of Commissioners or it can create a board that includes members of the community.

The Board shall be appointed as follows:

- A. Three-member EDA: the Commissioners constituting a three-member EDA, one of whom must be a member of the City Council, shall be appointed by the Mayor with the approval of the City Council. Those initially appointed shall be appointed for terms of two, four, and six years, respectively. Thereafter all Commissioners shall be appointed for six-year terms.
- B. Five-member EDA: the Commissioners constituting a five-member EDA, two of whom must be members of the City Council, shall be appointed by the Mayor with the approval of the City Council. Those initially appointed shall be appointed for terms of two, three, four, five and six years respectively. Thereafter all Commissioners shall be appointed for six-year terms.
- C. Seven-member EDA: the Commissioners constituting a seven-member EDA, two of whom must be members of the City Council, shall be appointed by the Mayor with the approval of the City Council. Those initially appointed shall be appointed for terms of one, two, three, four, and five years respectively and two members for six years. Thereafter all Commissioners shall be appointed for six-year terms.

An EDA may be increased from three to five or seven members or from five to seven members by a resolution adopted by the City Council following the procedures provided for modifying the enabling resolution.

Cause for Removal

A Commissioner may be removed by the City Council for inefficiency, neglect of duty, or misconduct in office. A Commissioner shall be removed only after a hearing. A copy of the charges must be given to the Commissioner at least ten days before the hearing. The Commissioner must be given an opportunity to be heard in person or by counsel at the hearing. When written charges have been submitted against a Commissioner, the City Council may temporarily suspend the Commissioner. If the City Council finds that those charges have not been substantiated, the Commissioner shall be immediately reinstated. If a Commissioner is removed, a record of the proceedings, together with the charges and findings, shall be filed in the office of the City clerk.

Vacancy

A vacancy is created in the membership of an EDA when a City Council member of the EDA ends council membership. A vacancy for this or another reason must be filled for the balance of the unexpired term, in the manner in which the original appointment was made. The City Council may set the term of the commissioners who are members of the City Council to coincide with their term of office as members of the City Council.

Committees

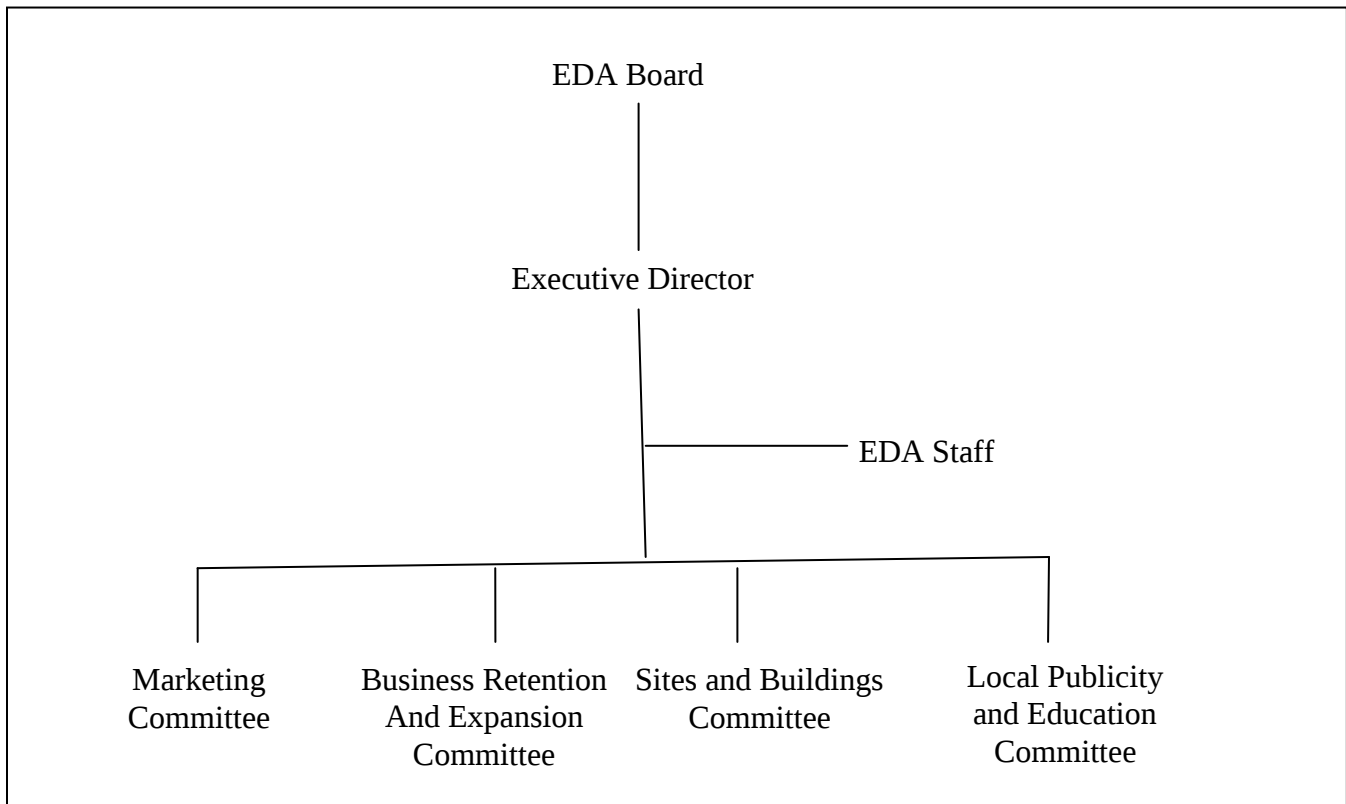
The EDA Board of Commissioners is responsible for the decision making process for the EDA, many Cities have found it helpful to develop a committee structure to assist in reaching the economic development goals of the community on or ongoing or ad hoc depending on upon the workload and particular issues that may arise. Possible committees could include:

Local Publicity and Education Committee

Sites and Buildings Committee

Business Retention and Expansion (BRE)

Marketing Committee



Officers, Duties and Organizational Issues

The EDA must adopt bylaws, rules of procedure and an official seal. In the appendix is an example of organizational bylaws.

Officers

An EDA shall elect a president, a vice-president, a treasurer, a secretary and an assistant treasurer. The Authority shall elect the president, treasurer, and secretary annually. A Commissioner must not serve as president and vice-president at the same time. The other offices may be held by the same Commissioner. The offices of secretary and assistant treasurer need not be held by a Commissioner. At a minimum, there must be three officers on the board. (Minn. Stat. § 469.096).

Duties and Powers of Officers

The president and vice-president have the usual duties and powers of their offices. They may be given other duties and powers by the EDA.

The treasurer is responsible for receiving, disbursing and monitoring all funds of the EDA. When disbursing funds, the transaction must be by check only. The treasurer must also keep an account

of the source of all receipts, as well as the nature, purpose and authority of all expenditures. The treasurer is responsible for filing a detailed financial statement with the secretary at least once a year at times set by the EDA. Quarterly reports may also be filed. The treasurer is also responsible for the acts of the assistant treasurer. The assistant treasurer has the powers and duties if the treasurer is absent or disabled. (Minn. Stat. § 469.096, Subd. 4).

The EDA must obtain a treasurer's bond conditioned for the faithful discharge of official duties. The bond must be approved as a form and surety by the EDA and filed with the secretary. The bond must be for twice the amount of money likely to be on hand at one time, as determined at least annually by the EDA provided that the bond may not exceed \$300,000 (Minn. Stat. § 469.096, Subd. 6)

The EDA may choose to have the secretary and the assistant treasurer position filled by a non-board member (Minn. Stat., § 469.096, Subd. 2).

Public Money

EDA money is public money.

Checks

An EDA check must be signed by the treasurer and one other officer named by the EDA in a resolution. The check must state the name of the payee and the nature of the claim that the check is issued for.

Financial Statement

The EDA's detailed financial statement must show all receipts and disbursements, their nature, the money on hand, the purposes to which the money on hand is to be applied, the EDA's credits and assets, and its outstanding liabilities in a form required for the City's financial statements. The EDA shall examine the statement together with the treasurer's vouchers. If the EDA finds that the statement and vouchers are correct, it shall approve them by resolution and enter the resolution in its records. (Minn. Stat. § 469.051).

Compensation and Reimbursement

A Commissioner, including the president, shall be paid for attending each regular or special meetings in an amount to be determined by the City Council. (Minn. Stat., § 469.095, Subd. 4). In addition to receiving pay for meetings, the Commissioners may be reimbursed for actual expenses incurred in doing official business of the EDA. All money paid for compensation or reimbursement must be paid out of the EDA's budget.

Conflict of Interest

A Commissioner or employee of an EDA shall not acquire any financial interest, direct or indirect, in any project or in any property included or planned to be included in any project sponsored by the EDA. EDA Commissioners or employees may not have any financial interest,

direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any project (Minn. Stat., § 469.098).

The following is a list of exceptions when an EDA may contract for goods or services with a Commissioner or officer of the EDA who has a financial interest in a project. Approval of this action must be passed by a unanimous vote of the EDA with the affected Commissioner abstaining from the vote on the resolution (Minn. Stat., § 471.88).

1. When an officer or Commissioner is employed by a bank or savings association that serves as the EDAs depository or as a source of borrowing, and that Commissioner has an interest either direct or indirect, no restrictions apply. However, if a Commissioner or officer does have a direct or indirect interest as a director or an employee of the bank or savings association, he or she must make that disclosure and enter it into the minutes of the EDA. This disclosure serves as notice of the Commissioner's interest and does not need to be made on future transactions with that designated financial institution.
2. When a Commissioner of the EDA is employed by a bank that is engaged in making loans or performing trust services involving real or personal property affected by any plan of the EDA, there is no restriction that applies to the loans made or trust services performed by the Commissioner's bank if he or she discloses the nature of the loans or trust services of which the Commissioner has personal knowledge. This disclosure must be entered in the minutes of the EDA.
3. If the EDA has designated an official newspaper, or publication where it publishes its public notices and minutes, and a Commissioner has an interest in the paper.
4. If the EDA enters into a contract with a cooperative association where a Commissioner is a shareholder or stockholder, but not an officer or manager.
5. A contract for which competitive bids are not required by law and where the amount does not exceed \$5,000.
6. Contracts for goods or services when consideration does not exceed \$5,000 in any year and the sealed bid process is used and the contracting governmental unit has a population of less than 1,000.
7. When an EDA Commissioner is engaged in or employed by a firm that is in the business of importing or exporting or general trade, the EDA may enter into business transactions with the Commissioner or the Commissioner's employer provided that the Commissioner abstains from voting on any resolution that sets rates affecting shippers or users of an EDA-owned facility. (Minn. Stat. § 471.88)

Ethics Law

Changes made in the 1994 Ethics in Government Act not only affect state legislators but also local officials. The definition of a local official is "a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision". Minn. Stat. § 10A.01 Subd. 22 goes on to state that local officials are those who

have the "authority to recommend, or as a member of the governing body, make major decisions regarding the expenditure or investment of public money." Based on these definitions, EDA executive directors and commission members are subject to the gift restrictions of the Ethics in Government Act.

A local official is prohibited from accepting gifts from a lobbyist or lobbyist principal including:

- Money,
- Real or personal property,
- A service,
- A loan,
- A forbearance or forgiveness of indebtedness, or
- A promise of future employment

unless the lobbyist or lobbyist principal receives consideration of equal or greater value in return.

Employees, Services, and Supplies

The EDA may employ an executive director, a chief engineer, other technical experts and agents, and other employees as it may require. The EDA must determine their duties, qualifications and compensation. Also, the EDA may contract for the services of consultants, agents, public accountants, and other persons needed to perform its duties and exercise its powers. The EDA may use the services of the City Attorney or hire a general counsel for its legal needs (Minn. Stat. § 469.097). (See appendix for sample job description).

The EDA may utilize the City/County's purchasing department in connection with construction work and to purchase equipment, supplies and materials. The City/County may furnish offices, structures and space, stenographic, clerical, engineering and other assistance to the EDA in order for it to perform its duties and to carry out its powers.

The EDA may also delegate to one or more of its agents or employees powers or duties it may deem proper.

Depositories

Every two years the EDA shall name a national or state bank(s) within Minnesota as depositories for its funds. Before acting as a depository, the bank must give the EDA a bond approved as to form and surety by the EDA. The bond must state the conditions for the safekeeping and the prompt repayment of deposits. The amount of the bond must be at least equal to the maximum amount expected to be deposited at any one time. An EDA may deposit all its money from any one source in one bank account.

When the EDA funds are deposited by the treasurer in a bonded depository, the treasurer and the surety on the treasurer's official bond are exempt from liability for the loss of the deposits because of the failure, bankruptcy or other act or default of the depository bank. However, an EDA may accept assignments of collateral from the depository bank to secure the deposits just as assignments of collateral are permitted by law to secure deposit of the EDA's City (Minn. Stat. § 469.099)

Budget, Fiscal Year, Taxes, Audits and Reports

The fiscal year of the EDA must be the same as that of its governing City. It must annually submit its budget to the City in a time frame that matches the City's normal budget cycle. This budget must include a detailed written estimate of the amount of money that the EDA expects to need from the City during the next fiscal year.

There are many ways in which EDA's budgets are established. EDAs have the ability to receive funding from virtually any source, public and private, and including the general funds of the underlying City. In addition, EDAs utilize administrative fees from loan or grant agreements, guarantees or other credit enhancements or contributions from local businesses or organizations.

The most common practice is a direct general fund appropriation to the EDA out of the City general fund. The EDA is required to send its budget to the City Council with an estimate of funding requirements for the next fiscal year, and it is through this procedure that a City may give money from the City's general funds for the EDA to use. There is no limit to the amount of funding that can be provided to an EDA through this mechanism.

One of the fringe benefits of City general fund monies lies in the fact that their use may not be as restricted as monies from other funding sources. This enables an EDA to use them for virtually any economic development purpose, as long as appropriate findings are made and safeguards imposed to demonstrate the use will promote economic development in the City. Such uses include write downs, grants or loans, working-capital loans and the purchase of limited partnership interests. For example, an EDA received funding using dollars remaining in a City's bond fund after all bonds were retired, and used these dollars to capitalize a revolving loan fund.

In addition to the annual budget, the EDA must submit a detailed annual report to the City Council outlining its activities, receipts and expenditures during the preceding calendar year. The report may also include other matters and recommendations that the EDA deems advisable for the economic development of the City.

On an annual basis the financial statements of the EDA must be prepared, audited, filed and published or posted in the manner required for the financial statements of the City. The financial statements must permit a comparison and reconciliation with the City's accounts and financial reports. The report must be filed with the State Auditor by June 30th of each year. The auditor will review the report and may accept it or audit the books of the EDA for cause (Minn. Stat. § 469.100).

City Levy of Taxes for EDA Activities

The City may, at the request of the EDA, levy a tax in any year for the benefit of the EDA in an amount not more than 0.01813 percent of taxable market value. The amount levied must be paid by the City treasurer to the treasurer of the EDA, to be spent by the EDA. A City may increase its levy for economic development authority purposes under Minnesota Statutes 469.107, Subdivision 1 in the following way. The City Council must first pass a resolution stating the proposed amount of levy increase. The City must then publish the resolution together with a notice of public hearing on the resolution for two successive weeks in its official newspaper or if none exists in a newspaper of general circulation in the City. The hearing must be held two to

four weeks after the first publication. After the hearing, the City Council may decide to take no action or may adopt a resolution authorizing the proposed increase or a lesser increase. A resolution authorizing an increase must be published in the City's official newspaper or if none exists in a newspaper of general circulation in the City. The resolution is not effective if a petition requesting a referendum on the resolution is filed with the City Clerk within 30 days of publication of the resolution. The petition must be signed by voters equaling five percent of the votes cast in the City in the last general election. The election must be held at a general or special election. Notice of the election must be given in the manner required by law. The notice must state the purpose and amount of the levy.

Levy of Taxes for HRA Activities

Subject to the approval by resolution of the governing body of the City, the EDA may levy a tax for HRA purposes upon all taxable property within that taxing district. The levy cannot not exceed an amount equal to 0.0185 percent of taxable market value, and must be spent for purposes authorized under the HRA statutes. These levies must be included in the EDAs annual budget.

Transfer of Authority

The City may by ordinance divide the economic development, housing and redevelopment powers granted under the EDA and HRA sections in Minnesota Statutes, Chapter 469 between the EDA and any other authority or commission established under statute or City charter for economic development, housing or redevelopment.

The City may, by resolution, transfer the control, authority and operation of any project or program located within the City from another governmental agency or subdivision that established the project or program to the EDA. The City may also require the EDA to accept control, authority and operation of the project or program. If a project or program is transferred to the EDA, it may exercise all of the powers that the governmental unit establishing the project or program could have exercised with respect to the project or program.

When a project or program is transferred to the EDA, the EDA must pledge in writing to perform the terms, conditions and covenants of the bond indenture or other agreements executed for the security of any bonds that were issued by the governmental subdivision that initiated the project or program. The EDA may exercise all of the powers necessary to perform the terms, conditions and contracts of any indenture or other agreements executed for the security of the bonds and will become obligated for the bonds when the project or program is transferred.

If the City transfers a housing project or a housing development project to the EDA, the City must transfer all housing development and management powers relating to that specific project or program.

Transfer of Personnel

The City may also by resolution place any employees of the HRA under the direction, supervision or control of the EDA. The transfer of employees does not affect the employee rights

existing under a collective bargaining agreement or fringe benefit plan. Upon transfer, the employees will become employees of the EDA.

POWERS OF EDAS

General Powers and Purposes

The primary benefit of an EDA rests in its ability to easily and flexibly accomplish a wide range of development and redevelopment objectives. An EDA is granted a remarkably full complement of development powers. These include (subject to any limitation in the enabling resolution) the powers enumerated by its enabling legislation, but also those powers granted by cross-reference to housing and redevelopment authorities (HRAs), to Cities in connection with projects and development districts, of municipalities and redevelopment agencies in connection with Municipal Industrial Development. These development powers allow an EDA great latitude, flexibility and efficiency in pursuing economic development objectives.

The purposes to which EDAs may direct their powers are not entirely clear in the statutes. They appear to include making land suitable and available for economic development and to encourage the location or expansion of economic development facilities. Also, through incorporating the purposes of HRAs, EDAs also can provide adequate housing in addition to clearing and developing blighted areas. And by incorporating the broad purposes of Municipal Industrial Development, EDAs may actively promote, attract and encourage the development of economically sound industry and commerce for the purpose of preventing the emergence of blighted and marginal lands and areas of chronic unemployment.

Usually, an EDA must adopt or reference a broader plan to exercise its powers. Certain EDA powers can only be exercised within the boundaries of an "Economic Development District; certain HRA powers must be exercised within the boundaries of a "Redevelopment Project," and certain municipal powers must be exercised within a "Municipal Development District."

Certain EDA Powers must be exercised only within the boundaries of an "Economic Development District." The EDA may create and define the boundaries of economic development districts at any place or places within the City, except the district boundaries must be contiguous. An EDA must hold a public hearing on the establishment and at least 10 days before the hearing the EDA shall publish notice of the hearing in a daily newspaper of general circulation in the City. The EDA must find that an economic development district is proper and desirable to establish and develop within the City.

Redevelopment Project

When the EDA exercises many of the powers of an HRA, such powers must be used within the boundaries of a Redevelopment Project established under the HRA law.

When establishing a Redevelopment Project, the EDA must develop a redevelopment plan which provides an outline for the development or redevelopment of the area. The EDA must obtain the written opinion of the City's planning agency if there is one.

The City Council must approve or disapprove the plan within 30 days after holding a public hearing on the Redevelopment Project. The council must make the following findings in connection with its approval:

1. The land in the project area would not be made available for redevelopment without the financial aid to be sought from the EDA.
2. The redevelopment plans for the redevelopment areas in the locality will afford maximum opportunity consistent with needs of the locality as a whole for the redevelopment of the areas by private enterprise.
3. The redevelopment plan conforms to the general comprehensive plan for the development of the locality as a whole. (Minn. Stat. § 469.028).

Municipal Development District

When the EDA exercises certain powers of cities identified in the City Development District law (Minn. Stat. §§ 469.124-469.143), they must be used within the boundaries of a Municipal Development District. A development district may be designated anywhere within the boundaries of a City and the City must adopt a Development Program for the development district, which is a statement of objections for the development district and contain the information set forth in Minn. Stat. § 469.125, Subd. 3. The City may develop a program for improving the district to provide the impetus for commercial development, increase employment, protect pedestrians, provide open space relief and other actions which are in the public purpose. Prior to designation, the City must consult with its planning agency or department, publish notice, and hold a public hearing.

Specific Powers

Because EDAs derive powers both directly from EDA law and indirectly by cross reference with other development statutes, there is often considerable overlap in the statutes which can be cited as authority for a given power.

For example, the power to acquire and develop property under the EDA Law must be exercised within the boundaries of an "economic development district." Since the definition of an economic development district is very restrictive, the EDA power to acquire land cannot be exercised in many circumstances. However, the comparable HRA power to acquire and develop property is far more general and can be exercised in a broad range of development circumstances. By picking and choosing the particular statutory authority best suited to a given proposed action, an EDA can usually carry out its purposes with a minimum of inconvenience.

Many of the powers of an EDA are listed below, including powers derived from EDA, HRA and municipal authorities. When considering the exercise of any specific power cited, you should always review the available legislation and consult with your legal and development advisors.

Acquisition of Property

An EDA may acquire the necessary rights, titles or interest in property through purchase, lease or gift. While the property is owned by the EDA and used for governmental purposes, the property is exempt from taxation by the state or its political subdivisions. However, once the EDA sells or leases the property for use by a non-governmental body, it becomes subject to taxation.

Options

The EDA may sign options to purchase, sell or lease property. This power may be used to set aside a particular building or site for future development purposes.

Eminent Domain

An EDA may exercise the right of eminent domain under Chapter 117 or under its City's charter to acquire property by condemnation. If the property is owned by the City for public use, the City must approve the taking. Also, the EDA may take possession of the property after it files a petition in condemnation proceedings describing the property -- a practice sometimes referred to as a "quick take" proceeding.

Loans

An EDA may make loans to businesses to carry out the purposes outlined in the EDA Law (Minn. Stat. § 469.192).

Contracts

The EDA may enter into contracts with both governmental and non-governmental entities for the purpose of economic development, including the purchase or sale of real and personal property. An EDA may not incur an obligation or expense under the HRA Law, unless it has an existing appropriation, or can identify reasonably expected revenues sufficient to discharge the obligation or pay the expense. Independent authority is found in the EDA Law for the EDA to guarantee loans, as more fully discussed under the "Advances" power described later in this handbook.

Limited Partnership

An EDA may be a limited partner in a partnership whose purpose is consistent with the EDA's purpose.

If a City is participating in a project as a limited partner, it may wish to stipulate in the equity agreement a limit on its current and future liability. This stipulation will serve as a safeguard for the City if legal action is brought against the firm as a result of its operation or inequities in its services or products.

Rights and Easements

The EDA may acquire rights and easements for development of an economic development district. It may be necessary for an EDA to utilize these powers when extending public infrastructure to a project area.

Acceptance of Public Land and Property

The EDA may accept land, money, or assistance, either by gift, loan or otherwise, in any form from the federal or state government, or its agencies, or a local subdivision of the state government to carry out its economic development activities.

An EDA may accept conveyances of land from all other public agencies, commissions, or other units of government, if the land can be properly used by the EDA in an economic development district.

Foreign Trade Zone

Minnesota Statute 469.101, Subdivision 11 authorizes EDAs to operate and manage Foreign Trade Zones. Foreign or "Free" Trade Zones (FTZ) were established to facilitate international trade by serving as "safe havens" and can increase a company's cash flow by reducing costs associated with import restrictions and duties. FTZs can be warehouses, storage tanks or fenced-in areas near harbors, airports or industrial parks. Foreign and domestic goods are brought into a zone where they can be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned and mixed with foreign and domestic products or used in a manufacturing process.

There are two types of foreign trade zones. General zones are located at or adjacent to a U.S. Customs Port of Entry (i.e. Minneapolis-St. Paul International Airport or Duluth Port) and subzones which are technically part of the general zone but are physically removed from it. General zones typically have multiple users occupying a facility or warehouse site, while "subzones" are special-purpose facilities operated by individual firms that cannot be accommodated within a general zone and are engaged in large-scale manufacturing. The major goods being produced in subzones are automobiles, trucks, motorcycles, tractors, women's garments, and refined oil.

Although a zone is operated as a public utility and can be managed by either a public or private corporation, it is treated as foreign territory and considered to be in foreign commerce, therefore providing benefit to the users. The usual formal Customs entry procedure and payment of duties is not required on the foreign merchandise unless and until it enters Customs territory for domestic consumption, in which case the importer ordinarily has a choice of paying duties either on the original foreign material or the finished product. In addition, quota restrictions do not normally apply to foreign goods stored in zones. Domestic goods moved into a zone for export may be considered exported upon entering the zone for purposes of excise tax rebates and drawback. In some cases companies can avoid both import duties on an item and state and local ad valorem taxes when goods are exported from the zone. In most cases, Federal taxes and excise taxes can be deferred on the goods until they enter the U.S. marketplace.

Public Facilities

The EDA may operate and maintain a public parking facility or other public facility to promote development or prevent the emergence of slum and blight. Frequently, these powers are exercised in cooperation with other units of government, including Cities, counties and school districts. Projects may include City halls, fire stations, libraries, community centers, administration buildings, and many others.

For example a City may want a community center for its residents. In order for the project to occur, the EDA sells revenue bonds, constructs the community center, and leases the community center to the City. The lease is paid by an annual appropriation from the City's general fund to

the EDA, and the EDA uses the lease payments to pay the principal and interest due on the revenue bonds. When the revenue bonds are retired, title to the new community center will be transferred to the City.

Government Agent

An EDA may cooperate with or act as an agent for the federal or state government, a state public body, an agency or instrument of a government, or a public body to carry out its mission.

Studies, Analysis, Research

An EDA may study and analyze economic development needs in the City, and ways to meet those needs. An EDA may study the desirable patterns for land use for economic development and community growth and other factors affecting local economic development in the City. It may make the results of the studies available to the public and to business/industry in general. An EDA may engage in research and disseminate information on economic development within the City.

Public Relations

To further its economic development efforts, an EDA may join an official, industrial, commercial, or trade association, or other organization. It may also have a reception of officials who may contribute to advancing the City and its economic development activities. It may also carry out other public relations activities as it deems appropriate in fulfilling its efforts to promote the City and its economic development projects (Minn. Stat. § 469.101, Subd. 16).

Joint Powers Agreements

Any two or more EDAs using HRA powers or together with an HRA may join with one another to exercise, either jointly or otherwise, any or all of their powers. This joint powers agreement may be used for the purpose of financing, including the issuance of bonds and giving security, planning, undertaking, owning, constructing, operating, or contracting a housing project located within the area of operation of any one or more of the EDAs or HRAs. The EDA may, by resolution, authorize any other housing authority or EDA utilizing HRA powers to act on its behalf with respect to any or all powers, as its agent or otherwise.

An EDA may by resolution authorize another housing authority to exercise its powers within the authorizing EDAs area of operation at the same time that the authorizing authority is exercising the same powers.

Tax Increment Financing

There are many benefits afforded to a City by utilizing Tax Increment Financing (TIF) to facilitate economic development. Some of these are: the City can realize new development, which would not otherwise occur without the use of TIF; the City may realize broader economic gains of new development in terms of employment, tax base enhancement and secondary spin-off effects; the City can facilitate the construction of related public improvements it wishes to achieve by coordinating a TIF project with more general public improvement projects; the City

may have better control over the nature of the development; the City may be able to fund administrative and/or community development costs with revenue from the TIF district and; in some cases, the qualifying of new development is enhanced by the TIF financing.

An EDA may act as an Authority for the purposes of creating and administering tax increment financing districts and plans. These powers must be exercised within a Redevelopment Project, when acting under HRA powers, or within a Municipal Development District when exercising City powers. In general, an EDA must receive approval from the City Council prior to adoption of a Tax Increment Financing plan, and comply in all respects with the requirements of Minnesota Statutes 469.174 - 469.179.

There are several types of TIF districts allowed by statute. The following is a brief description of each.

Redevelopment District:

- Generally a blighted area containing substandard buildings.
- Requires documentation to evaluate occupied land area and analysis of substandard buildings.
- Maximum duration of TIF district is 25 years from receipt of the first increment.

Renewal and Renovation District:

- Blight and obsolescence tests must be met.
- Maximum duration of TIF district is 15 years from receipt of the first tax increment.

Housing District

- Provides housing opportunities for persons and families of low and moderate income.
- Maximum duration of TIF district is 25 years from receipt of the first tax increment.

Soils Condition District:

- Provides for the removal or remediation of hazardous substances or contaminants as specified in a development action response plan.
- Such costs must exceed (a) the fair market value of the land before completion of the preparation or (b) \$2 per square foot of the area of each parcel.
- Maximum duration of the TIF district is 20 years from receipt of the first tax increment.

Economic Development District:

- May be used only for manufacturing, production, processing, warehousing, storage, distribution (excluding retail sales), research and development, telemarketing, certain tourism and border City retail facilities and uses are directly related to or in support of such qualifying activities. Prohibits establishment if more than 15 percent of the square footage of such facilities are used for other purposes.

- Must demonstrate retention of local businesses, increased employment or preservation or enhancement of the state tax base, etc.
- Maximum duration of TIF district is 8 years from receipt of the first tax increment.
- May be used for commercial facilities not exceeding 15,000 square feet in Cities with populations of 5,000 or less located at least 10 miles outside of a City with a population of 10,000 or more. Other than administrative expenses, all increments must be spent within the TIF district.
- Expanded Rules for any type of development if construction commences by July 1, 2011 and certification of district is requested by June 30, 2011.

Compact Development District:

- May be used to redevelop property where 70 percent of the parcel is industrial or utility property.
- The project must result in an increase of square footage of industrial or utility property by three times or more over its current level.
- Must be approved before June 30, 2012.

In order to establish a TIF district, a specific process must be followed including the following:

1. A Development Program or Redevelopment Plan (depending on statutory authority used) must be prepared. This sets forth the general goals for the development or redevelopment project area.
2. A Tax Increment Financing Plan must be prepared. This sets forth the specific project(s) to be undertaken, costs involved, and revenues projected, and is the guiding document for the proposed project.
3. A public hearing on the TIF Plan and district must be conducted. Notification of the public hearing must be published 10-30 days prior to the hearing.
4. A TIF district "fiscal and economic impact" letter must be received by the County and school district at least 30 days prior to the public hearing.
5. The City planning commission must review the TIF Plan and Development Program prior to City approval.
6. At the public hearing, all interested parties are invited to express their opinion(s).
7. Subsequent to the public hearing, the City must approve or reject the TIF Plan and district.
8. Upon approval, the City must request County certification of the original value of the TIF district which will begin the tax increment collection process.
9. Actual project expenditures may not be made until the TIF Plan is adopted and the TIF district is established.

Financing and Bonding Powers

Issuing General Obligation Bonds

The EDA may issue General Obligation Bonds (GO Bonds) in anticipation of income from any source for any purpose allowed by statute. The City must, by ordinance and by two thirds vote, give specific consent to pledge the City's full faith and credit to the GO Bonds. The EDA must comply with the provisions of Minnesota Statutes § 475, the general public indebtedness statute. An election is required to issue GO Bonds backed by the City's full faith and credit.

Issuing Revenue Bonds

Revenue bonds may be issued by the EDA to fund any authorized activity of the EDA. The revenues generated by the projects to be financed and/or other revenues of the EDA may be pledged to the payment of the revenue bonds. Bonds may also be secured by a mortgage on certain EDA property. The EDA can pledge its full faith and credit and limited taxing power to the payment of revenue bonds, but it may not pledge the full faith and credit of the City.

Because the credit strength of an EDA is usually very limited, the feasibility of a revenue bond offering is highly dependent upon the project to be financed. For example, if an EDA were to issue a revenue bond to finance the construction of a building to be leased to a manufacturing firm, the interest rate and security terms of the revenue bond would depend primarily on the creditworthiness of the manufacturer. For weaker projects and tenants, issuance may not be feasible.

Advances

As noted earlier in this handbook, there is independent authority for an EDA to make a loan. An EDA may advance (loan) its general fund money or credit without interest. The advances must be repaid from the sale or lease of land. If the money advanced for the development or redevelopment project was obtained from the sale of the EDAs general obligation bonds, then the interest rate on the advances must not be lower than the average annual interest rate on the EDAs general obligation bonds that are outstanding at the time the advances are made. Advances made to acquire land and to construct facilities for recreational purposes, do not need to be reimbursed (Minn. Stat. § 469.106).

Secondary Market

An EDA may sell, at private or public sale, at the price or prices determined by the EDA, any note, mortgage, lease, sublease, lease purchase, or other instrument or obligation evidencing or securing a loan made for the purpose of economic development, job creation, redevelopment, or community revitalization by a public agency to a business, for-profit or nonprofit organization, or an individual (Minn. Stat. § 469.101, Subd. 22). An EDA operating a revolving loan fund may choose to sell a loan on the secondary market if it needs to recapitalize the loan fund in order to finance additional projects.

Borrowing in Anticipation of Bonds

After authorizing a bond issue, an EDA may borrow funds to provide money immediately required for the project, but the loan must not exceed the amount of the bonds. The EDA must approve a resolution stating the terms of the loan. The due date for the loan may not be for more than 12 months from the date of the loan origination and may be repaid with interest from the proceeds of the bonds when the bonds are issued and delivered to the bond purchasers. The loan must not be obtained from any Commissioner of the EDA or from any corporation, association, or other institution of which a Commissioner is a stockholder or officer (Minn. Stat. § 469.101, Subd. 19).

Revolving Loan Funds

Small business growth in most communities provides the greatest opportunity for new investment and job development. However, because constraints on capital markets, financial institutions may be unable or unwilling to provide a complete financing package, and many good companies end up with marginal long-term financing.

Businesses and financial institutions invest dollars in projects to make a profit and to earn a return on that investment. Unless the project offers the promise of a positive return, it is difficult to sell a prospective investor on locating or expanding a business. Stimulating investment requires impacting a business and a bank's spending decisions. An EDA can impact business spending decisions by providing an opportunity where rates of return on investment are attractive and competitive. Many EDAs do this by operating a local Revolving Loan Fund (RLF) designed to facilitate small business investment.

The typical goal of a local RLF is to leverage private sector investment by filling the capital market gap for financing long-term assets.

Most RLFs provide a cost advantage to the business to lessen their financial constraints and meet the community's goal of increasing productivity and creating new, permanent jobs. The RLF can provide lower interest payments, more flexible equity requirements, longer terms, deferred principle payments and a subordinate collateral position to the bank.

The type of businesses that are eligible for loan funds type of businesses that are eligible for loan funds will depend on the loan guidelines established by the particular EDA.

An RLF can be designed in several different ways. The most common type of RLFs structure is the direct loan to the business. Direct loans are made to the business with a separate set of loan documents and collateral to secure the loan. These loans are typically made to fill the gap in a development project.

The second type of funding structure is a loan guarantee. The EDA provides a partial guarantee to the private lender to ensure repayment of the loan and to limit the risk to the private lender. This type of activity provides several advantages to the EDA, notably, smaller capitalization requirements, increased leverage of funds, and limited administrative activity

A third type of RLF is a linked deposit program. With a linked deposit program, the EDA works with other government agencies and large non-profit institutions to place a certificate of deposit with the lending institution at below market rate. This action allows the bank to increase its liquidity of funds, gain a higher return on a riskier project and improve collateral coverage.

The most fundamental issue in the development of a revolving loan program is the development of policies and procedures for operating, marketing, financing and dealing with delinquencies and defaults. It is important to consider working with development counsel and/or financial advisors to discuss the intricacies and mechanics of a RLF program.

The source of capitalization for local loan funds varies by community. Communities are utilizing local sources through the use of excess general fund or municipal utility reserves, Tax Increment Financing reserves and partnerships with banks or utilities to capitalize local revolving loan funds.

Limitation of Powers

The City Council may place limits on the activities of the EDA in the enabling resolution. These limitations may be placed on the power to issue general obligation or revenue bonds, the power to grant or loan EDA funds, power to enter into limited partnerships, or any other specific power over which the governing body wishes to exercise control. The following is a list of specific areas where the governing body may exercise control (Minn. Stat. § 469.092):

1. that the EDA may not exercise any specified power contained in Minn. Stat. §§ 469.001 to 469.047, 469.090 to 469.108, and 469.124 to 469.134 or that the EDA must not exercise any powers without the prior approval of the City Council.
2. that, except when previously pledged by the EDA, the City Council may by resolution require the EDA to transfer any portion of the reserves generated by activities of the EDA that the City Council determines is not necessary for the successful operation of the authority to the debt service fund of the City, to be used solely to reduce tax levies for bonded indebtedness of the City;
3. that the sale of all bonds or obligations issued by the EDA be approved by the City Council before issuance;
4. that the EDA follows the budget process for City departments as provided by the City and as implemented by the City Council and Mayor;
5. that all official actions of the EDA must be consistent with the adopted comprehensive plan of the City, and any official controls implementing the comprehensive plan;
6. that the EDA submit all planned activities for influencing the action of any other governmental agency, subdivision, or body to the City Council for approval;

7. that the EDA to submit its administrative structure and management practices to the City Council for approval.
8. any other limitation or control established by the City Council by the enabling resolution.

GLOSSARY

Cash Flow: Can the business repay the loan out of operating cash flow.

Collateral: A tangible asset like land, building, inventory, machinery and equipment, etc., offered as security on a loan. Typically, the value of the offering is greater than the amount loaned.

Commercial Club: Usually an incorporated 501(c)(4) or (6) organization whose purpose is to promote community and retail events. The membership is usually made up of retail business owners or owners of businesses in the central or downtown business district.

Chamber of Commerce: A chamber is an incorporated, non-profit 501(c)(4) or (6) that is generally affiliated with the state and national chamber of commerce. The chamber consists of local business professionals of the community who meet together to promote local businesses and the community. Generally, they have an elected board with and most have limited staff. Larger chambers often deal with tourism and overall business development of the community. They sometimes are politically active and can be a powerful lobbying force when dealing with policy that affects the community's economic strategy. Chambers are generally active and can hold educational and other events for local businesses.

Development Commission: A board used to advise City Council, appointed by the Mayor and/or City Council. It has limited or no decision making authority and is used as a sounding board or a first point of contact for the City Council for development projects. The commission is used to draft strategies and policies for ratification and implementation of local plans on a volunteer basis.

Economic Development District: A type of tax increment financing district which consists of any project, or portions of a project, but which the authority finds to be in the public interest because: it will discourage commerce, industry, or manufacturing from moving their operations to another state or municipality; or it will result in increased employment in the state; or it will result in preservation and enhancement of the tax base of the state.

Excess Increments: Tax increments that exceed the amount needed to pay the costs authorized under the tax increment financing plan. Increments are not excess increments if the TIF plan has been amended or modified to permit additional spending. The law requires that excess increments be used to prepay outstanding bonds or deposited in an escrow account for bond payments or returned to the City, County, and school district(s) in proportion to their local tax rates.

For-Profit Development Corporation: A corporation formed to develop and sell industrial land and/or provide financing for business development within the community. Local investors can buy shares that can be paid dividends for profits made on projects. Money invested in corporations can be repaid to the stockholders. The board is made up of shareholders and may or may not have staff. The corporation is subject to federal and state income tax.

Guarantee Fee: Money paid by a borrower to a government agency, company, or individual to guarantee repayment of a loan. The fee is usually a percentage of the amount of the guarantee.

Housing District: A type of tax increment financing district which consists of a project, or a portion of a project, intended for occupancy, in part, by persons or families of low and moderate income, as defined in chapter A, Title II of the National Housing Act of 1934, the National Housing Act of 1959, the United States Housing Act of 1937, as amended, Title V of the Housing Act of 1949, as amended, any other similar present or future federal, state, or municipal legislation, or the regulations promulgated under any of those acts. A project does not qualify under this subdivision if the fair market value of the improvements which are constructed for commercial use or for uses other than low and moderate income housing consists of more than 20 percent of the total fair market value of the planned improvements in the development plan or agreement. The fair market value of the improvements may be determined using the cost of construction, capitalized income, or other appropriate method of estimating market value.

Housing Redevelopment Authority: An HRA is a public corporation with power to undertake certain types of housing and redevelopment of renewal activities. While state legislation conveys authority for housing and redevelopment in each City, it is up to the City Council to formally establish an HRA before it can do business and use its powers. Once a council legally establishes an HRA, it may undertake certain types of planning and community development activities on its own with council approval

Joint Powers Board: This is a board created by two or more Cities, townships, or counties for a specific purpose, such as economic development. The agreement between the units of government would specifically describe activities and powers that the board exercises in carrying out its duties.

Limited Partnership: A form of group ownership with at least one general partner and one limited partner, the general partner has unlimited liability. Limited partners can only lose their initial investment.

Port Authority: This is a legal entity created by the State Legislature to promote the general welfare of a City's port district, increase the volume of commerce in the port and provide facilities for handling, storage and shipment of freight. The Port Authority actively develops commerce within the City and can enable business location and expansion. The powers of the Port Authority are more expansive than the HRA or EDA. Port Authorities can issue General Obligation bonds without an election.

Redevelopment District: A type of tax increment financing district consisting of a project , or portions of a project, within which the authority finds by resolution that one of the following conditions, reasonably distributed throughout the district, exists: parcels consisting of 70 percent of the area of the district are occupied by buildings, streets, utilities, paved or gravel parking lots, or other similar structures and more than 50 percent of the buildings, not including outbuildings, are structurally substandard to a degree requiring substantial renovation or clearance; or the property consists of vacant, used, under used, inappropriately used, or infrequently used rail yards, rail storage facilities, or excessive or vacated railroad rights-of-way.

Renewal and Renovation district: A type of tax increment financing district consisting of a project, or portions of a project, within which the authority finds by resolution that one of the following conditions exist: parcels consisting of 70 percent of the area of the district are occupied by buildings, streets, utilities, or other improvements; 20 percent of the buildings are structurally substandard; and 30 percent of the other buildings require substantial renovation or clearance to remove existing conditions such as: inadequate street layout, incompatible uses or land use relationships, overcrowding of buildings on the land, excessive dwelling unit density, obsolete buildings not suitable for improvement or conversion, or identified hazards to the health, safety, and general well-being of the community; and the conditions are reasonably distributed throughout the geographic area of the district.

Rural Development Finance Authority (RFDA): A non-profit corporation established by a County or group of counties through special legislation. RFDAs are designed to facilitate the production and processing of agricultural products and promote jobs in agriculture and natural resource industries. The board of directors is appointed by the County board of commissioners.

Structurally Substandard: A building that contains defects in structural elements or a combination of deficiencies in essential utilities and facilities, light and ventilation, fire protection including adequate egress, layout and condition of the interior partitions, or similar factors. which defects or deficiencies are of sufficient total significance to justify substantial renovation or clearance.

A building is not structurally substandard if it is in compliance with the City's building code applicable to new buildings or it could be modified to satisfy the building code at a cost of less than 15% of the cost of constructing a new structure of the same square footage and type on the site.

Tax Increment District: A district consists of the geographic area for which tax increments are collected. The development authority defines the area in the tax increment plan. A district may be contiguous or non-contiguous area within a project area.

TABLES

COMPARISON OF SELECTED DEVELOPMENT LAWS

<u>Rural Development Finance Authority</u>	<u>Municipal Industrial Development Act:</u>	<u>Housing Redevelopment Development Authorities</u>	<u>Economic Authorities</u>
Purpose:	Purpose:	Purpose:	Purpose:
An RDFA may be established by a County or group of counties to bring about the production of agricultural products and to encourage increased employment in agriculture. A RDFA is a non-profit corporation.	The main focus of Minn. Stat. , §§ 469.152 to 469.1651 includes the following: expansion and economic growth in blighted land areas; retention of industry within the district; overall strengthening of community tax base; and the general enhancement of the economy in the district.	An HRA is responsible for determining blighted land areas, and for preventing the spread of blight, including substandard building structures. A blighted area is one with buildings and areas that are detrimental to the health, safety and welfare of the community. The HRA may then provide for improvements or redevelopment of these areas through a redevelopment plan. An HRAs main area of operation is housing program development. HRAs are primarily concerned with family rehabilitation, housing redevelopment, public housing, and rent assistance.	The overall purpose of an EDA is to promote economic development within a district. EDAs may exercise their own powers which are similar to port authority powers, powers of a HRA, and the powers of Cities in connection with development districts and municipal industrial development activities.
Governing Body:	Governing Body:	Governing Body:	Governing Body:
An RDFA is controlled by a Board of Directors who are either elected or appointed by the County Board. If more than one County is involved, then all counties involved must be represented on the board.	Consists of the representing governmental unit--e.g. City Council/County Commissioners for Cities, County Board for counties, etc.	An HRAs main area of operation is housing program development. HRAs are primarily concerned with family rehabilitation, housing redevelopment, public housing, and rent assistance.	EDA is created through an enabling resolution written and approved by City Council.
The board must have a minimum of five members.	All rights of a municipality are granted to bondholders.	Governing Body:	EDAs have a board consisting of 3, 5, or 7 commissioners appointed by the Mayor with the approval of City Council. The board may also consist entirely of City Council members.
All projects and activities of the RDFA must have approval of the Commissioner of the Department of Employment and Economic Development.	When beginning a project, each municipality must provide the Commissioner of the Department of Employment and Economic Development with specified information regarding the details of the contracting agreement. All projects must be approved by the state Commissioner (except County jails).	Approval for any project through the approval of a redevelopment plan, must be granted by the appropriate City Council. Activities are controlled by a board of commissioners. An HRA is independent of the local government. Approval of the redevelopment plan for the proposed project is needed, however, by the governmental unit in order to proceed.	The City Council may control the activities of the EDA by limiting its powers under the enabling resolution and through the annual approval of the EDA budget.

Rural Development Finance
Authority:
(continued)

Activities:

1. Build, obtain and operate projects designed for the production of agricultural products.
2. Perform agricultural research.
3. Seek aid from additional sources to promote employment.
4. Undertake projects authorized under the agricultural resource loan guarantee program.
5. May enter contracts and employ financial specialists for assistance.
6. Issue bonds or notes for financing purposes.

Municipal Industrial Development
Act:
(continued)

Activities

1. Build, acquire, and retain all lands, structures, and equipment relating to a project.
2. Enter into contracts with other municipalities and agencies in connection with projects.
3. Assign revenues from projects to the holders of bonds.
4. Sell property associated with projects.
5. Exempt from property taxes on nonresidential structures built for sale or rent until the building is sold or rented; maximum time is 4 years.
6. May contractually limit its ability to exercise authority, allowing a municipality to enter into a contract with bondholders.
7. Make all necessary contracts in order to secure payments of its bonds.

Housing Redevelopment
Development Authorities
(continued)

Activities:

1. May establish a redevelopment project (Minn. Stat. 469.002) for the elimination/and prevention of blighted areas.
2. Carry out projects designed to improve blighted areas.
3. Acquire real or personal property for activities related to projects.
4. May provide for the administration of a commercial building loan program to preserve small sized buildings in its district.
5. May sell real or personal property for project related purposes.
6. May sell its lands and properties to private or public parties. Sale is dependent on these parties' responsibility to continue with the redevelopment plan specified by the HRA.
7. May act as federal government agent in carrying out provisions of Municipal Housing and Redevelopment Act.
8. May exercise the powers granted to redevelopment agencies under Minn. Stat. §§ 469.152 to 469.1651.
9. Provide relocation payments and assistance in accordance with federal guidelines.

Economic Authorities
(continued)

Activities:

EDAs are granted powers within their own district, outside their development district, and, by cross-reference, the powers of HRAs, development districts in connection with the City, and agencies in connection with Municipal Industrial Development.

Powers:

1. Acquire property for creation of development district that is tax exempt.
2. Sell or lease land either by private or public means.
3. Carry out EDA law to develop and improve land within the district. The EDA may make any necessary arrangements to make land suitable for development.
4. Exercise Eminent Domain.
5. Enter into contracts for the purpose of economic development.
6. Purchase all materials needed to carry out development.
7. Engage in research to determine factors of specified development projects.
8. Act as a limited partner in contracts with additional parties.

Cross reference powers:

1. Exercise Industrial Development powers for HRA and EDA powers for industrial development activities.

Port Authorities:

Purpose:

Originally, the purpose behind port authorities was to acquire and promote development of harbors and ports. Currently, the only operating port in this regard is that of the Duluth Port Authority. The additional 25 port authorities in Minnesota exist to promote economic development, including increased commerce and acquisition of facilities within the specified port district of the City.

Governing Body:

A port authority is a governmental subdivision of the state. Direct authority is handled by a board of commissioners (usually 3-7 members) appointed by the City Council. Ports are a statutorily created municipal body.

General Port Activities:

1. Adopt plans for improvement and development of port districts.
2. Oversee the activities of privately owned port facilities.
3. Acquire and construct various facilities and charge for the use of these facilities.
4. Acquire, lease, own and operate real or personal property.
5. Sell or exchange property (real or personal) owned by the port.
6. Determine legislation to improve development and commerce within the district.
7. Apply to the federal Foreign Trade Board for authorization to exercise the powers relating to foreign trade zones.
8. Act as agent for the federal government to carry out the provisions of sections 469.090 to 469.108.
9. Issue Revenue Bonds and with the approval of the City Council, given by ordinance, General Obligation Bonds secured by a pledge of the "Full Faith and Credit" of the City.

Municipal Development Districts:

Purpose:

The purpose of an MDD is to improve the general economy of a community by increasing employment and enhancing the tax base.

Governing Body:

The MDD falls under control of the City Council/County Commissioners. The council then designates a board to administer the districts. In first class Cities, an advisory board must be created to aid with district activities. A majority of members on the board must be real property owners on lands within the district. In St. Paul and Minneapolis the board must be elected, in other Cities the members may be appointed.

Activities:

1. An MDD may obtain land through eminent domain or negotiation.
2. The MDD may design a development program within the district.
3. The MDD may further develop the facilities, transportation, or overall quality of life in a district through building acquisition, construction or reconstruction.
4. The municipality may be given ordinances regulating traffic in parking facilities or pedestrian skyway systems.
5. A municipality may lease all or portions of the basement, 1st or 2nd floors of buildings within the district.
6. The MDD may accept grants from private institutions or other sources for public facilities and general improvements.
7. The municipality may use private developers to construct buildings/facilities under the development plan. The City will reimburse the developers from MDD funds.
8. A municipality has the authorization to: install lighting systems, street signs, construct special landscaping, install snow removal systems, and build public parking ramps.

City Council

Purpose:

The main purpose of any City Council regarding the development units in this report, is to act as a control mechanism for operations. The power of the City Council and the controls it has over each of these units varies from City to City.

For Port Authority:

The City Council/County Commissioners of any port has indirect control over a port's use of general obligations bonds used for industrial projects. City Council/County Commissioners has the authority to approve the board of commissioners for any port. If a seven-member board is developed, two members must be from the City Council/County Commissioners.

For Municipal Development District:

City Council has the power to designate an existing department, agency, HRA, or other to administrate the district.

City Council may adopt ordinances designed to aid specific MDD projects.

The City has the power to create an MDD advisory board.

The City Council may defer property taxes on improved property (within the district) where a private developer constructs the improvement upon request of the economic developer.

Port Authorities:
(continued)

10. Contract with outside parties for the port.
11. Employ a director or additional staff as it deems necessary.
12. Allow membership in organizations to advance port activities and provide funds for public relations assistance.

These powers granted to a port are connected with powers of industrial development districts:

1. Develop and improve property within an industrial district and make them adequate for industrial use.
2. Exercise the power of a City regarding mined underground development.
3. Obtain rights and easements connected with industrial districts.
4. Exercise the powers specified under Minn. Stat. §§ 469.152 to 469.1651 to further improve the purposes of sections 469.090 to 469.108 (port authorities and industrial development districts).
5. Enter into a partnership agreement where the port serves as a limited partner only.
6. Receive for one dollar, tax forfeited land.
7. Use the power of eminent domain.
8. A port authority may create industrial development districts within the port district.
9. A port may obtain lands and facilities required for industrial development purposes.
10. Cooperate, and become an agent to the federal government in carrying out legislation concerned with operations in harbor and industrial districts.
11. Operate and maintain various parking systems and facilities to improve economic development.

City Council:
(continued)

For Municipal Industrial Development Act:

City Council acts as the overall Governing Body with direct and indirect control over municipal activities.

For Rural Development Finance Authority Act:

Inapplicable--County related.

For an HRA:

City Council approves appointees to the HRA Board of Directors.

City Council has certain powers of restrictions that may be enforced on the HRA. Generally, projects and activities must be approved by the City Council.

For an EDA:

The City Council may establish an EDA by way of enabling resolution. It may also determine the specific powers the EDA is to have in that resolution.

City Council must have membership on the EDA Board of Commissioners. It may serve as the EDA Board of Commissioners in entirety or choose a portion of members from the business community or general public.

City Council approves the Mayor's appointments to the EDA Board of Directors.

SAMPLE BYLAWS AND ENABLING RESOLUTIONS

EXTRACT OF MINUTES OF MEETING OF THE CITY COUNCIL OF THE CITY OF [NAMEOFCITY], MINNESOTA

HELD: _____, [Year]

Pursuant to due call and notice thereof, a regular or special meeting of the City Council of the City of [NameofCity], Minnesota, was held at the [NameofCity] City Hall on _____, [Year], commencing at _____ p.m.

The following members of the Council were present:

and the following were absent:

Councilmember _____ introduced the following Resolution and moved its adoption:

RESOLUTION CALLING FOR PUBLIC HEARING ON THE QUESTION OF ESTABLISHING AN ECONOMIC DEVELOPMENT AUTHORITY FOR THE CITY

IT IS HEREBY RESOLVED by the City Council of the City of [NameofCity], Minnesota, as follows:

1. Recitals.

(a) The City is authorized pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, to establish an Economic Development Authority for the City.

(b) The Council desires to initiate the process for considering the establishment of an Economic Development Authority.

2. Public Hearing. The Council shall hold a public hearing on the question of establishing for the City an Economic Development Authority and the City Clerk is hereby authorized and directed to cause notice of that public hearing, substantially in the form attached to and made a part of this Resolution, to be published in the City's official newspaper once a week for two consecutive weeks prior to the scheduled public hearing date, with the first publication occurring no earlier than 30 days prior to the public hearing date.

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember _____ and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

whereupon the resolution was declared duly passed and adopted and was signed by the Mayor and City Clerk.

Adopted by the City Council on _____, [Year].

By _____
Mayor

Attest _____

City Clerk

NOTICE OF PUBLIC HEARING
ON THE PROPOSAL TO ESTABLISH
AN ECONOMIC DEVELOPMENT AUTHORITY
FOR THE CITY OF [NAMEOFCITY], MINNESOTA

Notice is hereby given that the City Council (the "Council") of the City of [NameofCity], Minnesota, will hold a public hearing on _____, [Year], at a meeting of the Council beginning at approximately _____ p.m., at the [NameofCity] City Hall in the City of [NameofCity], Minnesota, relating to the question of the establishment by the City of an economic development authority (the "EDA") pursuant to Minnesota Statutes, Sections 469.090 through 469.1082.

Following the public hearing the Council will consider an enabling resolution (the "Enabling Resolution") which would establish the EDA. The Enabling Resolution, a copy of which is on file and available for inspection in the City offices, would authorize the EDA to exercise all powers granted to such authorities pursuant to the above-mentioned statutes and would designate that the EDA would be governed by a five-member Board of Commissioners, all of whom would be members of the City Council. Upon approval of the Enabling Resolution, an organizational meeting of the EDA will be held on the same evening.

All interested persons may appear at the _____ public hearing and present their views orally or in writing.

STATE OF MINNESOTA)
COUNTY OF [NAMEOFCOUNTY]) SS
CITY OF [NAMEOFCITY])

I, the undersigned, being the duly qualified and acting City Clerk of the City of [NameofCity], Minnesota (the "City"), do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a regular or special meeting of the City Council held on _____, [Year], with the original minutes on file in my office and the extract is a full, true and correct copy of the minutes insofar as they relate to calling a public hearing on the question of establishing an Economic Development Authority for the City.

Witness my hand as City Clerk and the official seal of the City on _____,
[Year].

City Clerk

(SEAL)

EXTRACT OF MINUTES
OF MEETING OF THE CITY COUNCIL
OF THE CITY OF [NAMEOFCITY], MINNESOTA

HELD: _____, [Year]

Pursuant to due call and notice thereof, a regular or special meeting of the City Council of the City of [NameofCity], Minnesota, was held at the [NameofCity] City Hall on _____, [Year], commencing at _____ p.m., C.T.

The following members of the Council were present:

and the following were absent:

Councilmember _____ introduced the following Resolution and moved its adoption:

ENABLING RESOLUTION ESTABLISHING THE ECONOMIC
DEVELOPMENT AUTHORITY OF THE CITY OF [NAMEOFCITY], MINNESOTA,
UNDER MINNESOTA STATUTES, SECTIONS 469.090 THROUGH 469.1082

BE IT RESOLVED by the City Council (the "Council") of the City of [NameofCity], Minnesota (the "City"), as follows:

1. Recitals. The City is authorized pursuant to Minnesota Statutes, Sections 469.090 through 469.1082 (the "Economic Development Authority Act"), to establish an economic development authority for the City and the Council desires to do so in order to promote certain economic, commercial, housing, and/or industrial development and redevelopment goals and objectives. The City has caused notice of a public hearing on the establishment by the City of an economic development authority to be published in a newspaper of general circulation in the City once each week for two consecutive weeks, and pursuant to such notice, a public hearing on the proposal has been held by the Council on the date hereof, at which hearing all persons desiring to present their oral or written comments on the proposal were given an opportunity to do so.

2. Establishment of Economic Development Authority. Pursuant to the Economic Development Authority Act, the Council hereby establishes an economic development authority for the City to be known as the Economic Development Authority of the City of [NameofCity], Minnesota (the "EDA"). The EDA shall be governed by a board of commissioners thereof consisting of five members, all of whom shall be members of the Council. Each Commissioner of the EDA who is a member of the Council shall cease to be a Commissioner effective at such time as he or she is no longer a member of the Council, and a successor Commissioner shall be

appointed pursuant to the Economic Development Authority Act to serve the remainder of the applicable term so vacated.

[Revise to reflect if EDA Board consists of community members and council members.]

3. Powers. The EDA shall have all powers given to an economic development authority pursuant to the Economic Development Authority Act, as the same may be amended or supplemented.

[Revise to reflect if City is limiting the powers of the EDA]

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember _____ and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

whereupon the resolution was declared duly passed and adopted and was signed by the Mayor and City Clerk-Treasurer.

Adopted by the City Council on _____, [Year].

By _____
Mayor

Attest _____
Clerk

STATE OF MINNESOTA)
COUNTY OF [NAMEOFCOUNTY]) SS
CITY OF [NAMEOFCITY])

I, the undersigned, being the duly qualified and acting City Clerk of the City of [NameofCity], Minnesota (the "City"), do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a regular or special meeting of the City Council held on _____, [Year], with the original minutes on file in my office and the extract is a full, true and correct copy of the minutes insofar as they relate to an enabling resolution establishing the Economic Development Authority of the City of [NameofCity], Minnesota.

Witness my hand as City Clerk and the official seal of the City on _____,
[Year].

City Clerk

(SEAL)

RESOLUTION ORGANIZING THE ECONOMIC
DEVELOPMENT AUTHORITY OF THE CITY OF [NAMEOFCITY], MINNESOTA

IT IS HEREBY RESOLVED by the Board of Commissioners (the "Board") of the Economic Development Authority of the City of [NameofCity], Minnesota (the "EDA") as follows:

1. Recitals.

(a) On _____, [Year], the City of [NameofCity], Minnesota (the "City"), acting through its City Council, adopted an enabling resolution establishing the EDA pursuant to Minnesota Statutes, Sections 469.090 through 469.108.

(b) The Board wishes to provide for the basic organization of the EDA, including appointment of officers and adoption of Bylaws.

2. Adoption of Bylaws and Appointment of Officers. The Board hereby (1) approves the Bylaws of the EDA, as presented on the date hereof for the Board's consideration, and (2) appoints and approves the following officers of the EDA (Note: the offices of President, Vice-President and Treasurer must be held by Boardmembers, but the offices of Secretary and Assistant Treasurer need not be; the offices of President and Vice-President must be held by different persons):

President	_____
Vice-President	_____
Secretary	_____
Treasurer	_____
Assistant Treasurer	_____

The President shall be the chief presiding officer of the Board and shall have such other responsibilities as may be required by law or conferred on the President by resolution of the Board. In the absence of the President, the Vice-President shall assume all of said responsibilities of the President. The offices of President, Treasurer, and Secretary shall be elected annually, as required by law. The Secretary shall act as the chief recording officer for the Board and shall maintain a file of minutes of Board meetings and resolutions.

In accordance with Minnesota Statutes, Section 469.096, Subdivision 8, all checks of the EDA shall be signed by the Treasurer and the Assistant Treasurer and shall state the nature of the claim for which the check is issued. As required by law, the EDA shall adopt an official seal.

3. Regular Meetings of the Board. The Board's regular meetings shall be held at such times as the Board may designate.

The following Boardmembers were present:

and the following were absent:

The motion for the adoption of the foregoing resolution was introduced by Boardmember _____ and was duly seconded by Boardmember _____ and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

whereupon the resolution was declared duly passed and adopted and was signed by the President and Secretary.

Adopted by the Board of Commissioners on _____, [Year].

By _____
President

Attest _____
Secretary

STATE OF MINNESOTA)
COUNTY OF [NAMEOFCOUNTY]) SS
ECONOMIC DEVELOPMENT)
AUTHORITY OF THE CITY)
OF [NAMEOFCITY], MINNESOTA)

I, the undersigned, being the duly qualified and acting Secretary of the Economic Development Authority of the City of [NameofCity], Minnesota, do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a regular or special meeting of the Board of Commissioners held on _____, [Year], with the original minutes on file in my office and the extract is a full, true and correct copy of the minutes insofar as they relate to a Resolution Organizing the Economic Development Authority of the City of [NameofCity], Minnesota.

WITNESS my hand officially as Secretary on _____, [Year].

Secretary

BYLAWS OF THE ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF [NAMEOFCITY], MINNESOTA

ARTICLE I - THE AUTHORITY

Section 1. Name of Authority. The name of the Authority shall be the "Economic Development Authority of the City of [NameofCity], Minnesota" (which may sometimes be referred to as the "EDA" or the "Authority"), and its governing body shall be called the Board of Commissioners (the "Board"). The Board shall be the body responsible for the general governance of the Authority and shall conduct its official business at meetings thereof.

Section 2. Seal of Authority. As required by Minnesota Statutes, Section 469.096, Subdivision 1, the Authority shall have an official seal, which shall be in the form depicted on Exhibit A.

Section 3. Office of Authority. The offices of the Authority shall be the [NameofCity] City Hall.

ARTICLE II - OFFICERS

Section 1. Officers. The officers of the Authority shall be a President, a Vice-President, a Treasurer, an Assistant Treasurer and a Secretary. The President, the Vice-President and the Treasurer shall be members of the Board and shall be elected annually, and no Commissioner may be both President and Vice-President simultaneously. The Assistant Treasurer and the Secretary need not be members of the Board.

Section 2. President. The President shall preside at all meetings of the Board. Except as otherwise authorized by resolution of the Board, the President and the Secretary (the Vice-President, in the Secretary's absence or incapacity) shall sign all contracts, deeds and other instruments made or executed by the Authority, except that all checks of the Authority shall be signed by the Treasurer and Assistant Treasurer. At each meeting the President shall submit such recommendations and information as he or she may consider proper concerning the business, affairs, and policies of the Authority.

Section 3. Vice-President. The Vice-President shall perform the duties of the President in the absence or incapacity of the President; and in case of the resignation or death of the President, the Vice-President shall perform such duties as are imposed on the President until such time as the Board shall select a new President.

Section 4. Secretary. The Secretary shall keep minutes of all meetings of the Board and shall maintain all records of the Authority. The Secretary shall also have such additional duties and responsibilities as the Board may from time to time and by resolution prescribe.

Section 5. Treasurer. The Treasurer shall have the care and custody of all funds of the Authority and shall deposit the same in the name of the Authority in such bank or banks as the Board may select. The Treasurer and Assistant Treasurer shall sign all orders and checks for the payment of money and shall pay out and disburse such moneys under the direction of the Board. The Treasurer shall keep regular books of accounts showing receipts and expenditures and shall render to the Board, at least annually (or more often when requested), an account of such transactions and also of the financial condition of the Authority. The Treasurer shall post a bond as required by Minnesota Statutes, Section 469.096, Subdivision 6. The Assistant Treasurer shall act as the Treasurer's agent and assistant to perform the above-described duties, subject to the Treasurer's approval thereof.

Section 6. Additional Duties. The officers of the Authority shall perform such other duties and functions as may from time to time be required by the Board or the bylaws or rules and regulations of the Authority.

Section 7. Vacancies. Should the office of President, Vice-President, Treasurer, Assistant Treasurer or Secretary become vacant, the Board shall elect a successor at the next regular meeting, or at a special meeting called for such purpose, and such election shall be for the unexpired term of said officer.

Section 8. Additional Personnel. The Board may from time to time employ such personnel as it deems necessary to exercise its powers, duties, and functions. The selection and compensation of such personnel shall be determined by the Board.

ARTICLE III - MEETINGS

Section 1. Regular Meetings. The regular meetings of the Board shall occur according to a meeting schedule, if any, adopted or revised from time to time by resolution of the Board.

Section 2. Special Meetings. Special meetings of the Board may be called by the President or any two members of the Board for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered at any time prior to the time of the proposed meeting to each member of the Board or may be mailed to the business or home address of each member of the Board at least two (2) days prior to the date of such special meeting. At such special meeting no business shall be considered other than as designated in the call, but if at least four members of the Board are present at a special meeting, any and all business may be transacted at such special meeting. Notice of any special meeting shall be posted and/or published as may be required by law.

Section 3. Quorum. The powers of the Authority shall be vested in the Board. Three Commissioners shall constitute a quorum for the purpose of conducting the business and exercising the powers of the Authority and for all other purposes, but a smaller number may adjourn from time to time until a quorum is obtained. When a quorum is in attendance, action may be taken by the Board upon a vote of a majority of the Commissioners present.

Section 4. Order of Business. At the regular meetings of the Board the following shall be the order of business:

1. Roll call.
2. Approval of the minutes of previous meeting.
3. Bills and communications.
4. Reports.
5. Unfinished business.
6. New business.
7. Adjournment.

All resolutions shall be written or transcribed and shall be retained in the journal of the proceedings maintained by the Secretary.

Section 5. Adoption of Resolutions. Resolutions of the Board shall be deemed adopted if approved by not less than a simple majority of all Commissioners present, unless a different requirement for adoption is prescribed by law. Resolutions may but need not be read aloud prior to vote taken thereon and may but need not be executed after passage.

Section 6. Rules of Order. The meetings of the Board shall be governed by the most recent edition of Robert's Rules of Order.

ARTICLE IV - MISCELLANEOUS

Section 1. Amendments to Bylaws. The bylaws of the Authority shall be amended only by resolution approved by at least three of the members of the Board.

Section 2. Fiscal Year. The fiscal year of the Authority shall coincide with the fiscal year of the City of [NameofCity], Minnesota.

Adopted on _____, [Year].

Exhibit A

Form of Official Seal

SAMPLE JOB DESCRIPTION

POSITION TITLE: Economic Development Director

DEPARTMENT: Economic Development

ACCOUNTABLE TO: City Administrator

PRIMARY OBJECTIVE OF POSITION:

Serves as chief staff to the Economic Development Authority, planning, directing, and implementing the economic development efforts of the City under the direction of the Authority. Performs highly skilled, managerial, coordinative and technical tasks. Generates business leads, promotes business retention and expansion, creates a positive attitude for development and raises supportive public awareness for strategic economic planning and development.

DUTIES AND RESPONSIBILITIES:

1. Prepares, organizes and implements a coordinated target marketing program to generate leads for specific business and industry.
2. Researches, designs, recommends and implements programs to encourage location of new businesses and expansion of existing businesses within the City. Coordinates resources of public and private sectors - i.e. Federal and State Grants, Industrial Development Bonds and SPA Loans, Tax Increment Financing, banks, mortgage companies, etc.
3. Develops strategies and programs for allocation and delivery of City/Authority financial assistance resources.
4. Maintains contacts with Minnesota Department of Employment and Economic Development, area Development Corporations, and area commercial and industrial real estate brokers and developers.
5. Maintains current inventory of potential business location sites within the City - both building and vacant land, including contact persons.
6. Maintains updated demographic data, promotional materials and existing building lists for economic development programs.
7. Works with prospective businesses to tailor a proposal suited to their specific needs, including alternative locations and financing packages.

8. May negotiate economic incentive packages with prospective businesses. Analyzes financial needs of specific companies to insure that public/Authority resources are applied judiciously.
9. Maintains contact with current businesses to stay abreast of their future business plans and needs.
10. Identifies and contacts prospective clients for location and expansion within the City.
11. Assists locating or expanding businesses in understanding and anticipating comprehensive plan locations, zoning districts, standards and processes. Works closely with City Planning, Building Inspections, and Engineering Divisions to help facilitate a smooth review process.
12. Periodically reviews all economic development programs for effectiveness, making recommendations to Authority and City officials for changes as deemed appropriate.
13. Participates in exhibitions, seminars, media events and the like to attract businesses to the City.
14. Limited travel may be required to attend conferences, meet with prospective clients, research potential problems, financing, etc.
15. Prepare annual budget and work program for submission to the Authority and City Council.
16. Provide quarterly and annual report to the Authority and City Council regarding status of work program, future program potentials and activities of the staff.
17. Serves as chief staff support to Economic Development Authority. Prepares agendas and background information reports for Authority meetings. Attends meetings of the Authority, Chamber of Commerce, City Council, etc. and follows up staff responsibilities as assigned.
18. Completes other duties as assigned by the Economic Development Authority.

KNOWLEDGE, SKILLS AND ABILITIES

1. Thorough working knowledge of the principles, practices and procedures of economic development.
2. Ability to organize and coordinate support from professional and technical City staff, legal consultants, other government agencies, private business, and the financial services industry.

3. Ability to analyze the economics of a particular business location or expansion project, so as to make independent judgments about the effectiveness of financial assistance or inducements.
4. Ability to establish and maintain contacts and effective working relationships with potential business clients.

QUALIFICATIONS

1. Bachelor's Degree in Public Administration, Business Administration, or a closely related field highly desirable.
2. Minimum of three years of experience working in economic development, preferably at the local government level.
3. A demonstrated record of ongoing continuing education in economic development.

SAMPLE REVOLVING LOAN FUND POLICY

Oakdale Seed Fund

Purpose

The purpose of the Oakdale Seed Fund is to expand the tax base and promote new job opportunities by providing small business concerns and developers of multi-tenant facilities with a portion of the financing necessary for their projects. These *Administrative Procedures* set forth the organization and guidelines for personnel engaged in making loans through the Seed Fund. All personnel engaged in interviewing applicants for Fund assistance and accepting, screening, processing applications and servicing loans for the program should become familiar with this information. The procedures are for use by private lenders as well as staff employed by the City of Oakdale.

Scope of EDA/ Seed Fund Activities

Purpose

The administrative procedures are a guideline for personnel working with the Oakdale Seed Fund. They set forth the internal requirements of the program and how it should be managed by the Oakdale EDA.

The EDA was created with the intention of assisting small businesses primarily by providing financial assistance for growth and expansion. The EDA and the Seed Fund are intended to provide such assistance within the specified boundaries of the City of Oakdale. Any revenue generated by the Seed Fund to the EDA is incidental to the community benefits as measured by the creation and retention of jobs, increased tax base, expanded business ownership activities and improved community services.

Authority

Chapter 469 of the Minnesota State Statutes as amended authorizes the EDA to make loans to prospective private businesses. Recipients of financial assistance under this program are subject to non-discrimination requirements of the laws and policies governing such government assistance.

**Project Financed
By the Oakdale
Seed Fund**

The purpose of the Oakdale Seed Fund is to provide assistance to small business. This may occur by directly providing financing to the small business or indirectly by providing financing to a developer who will build a facility to assist a small business.

**Eligible Applicant
Defined**

Applicants may be small businesses or developers that are organized as a proprietorship, partnership or corporation.

**Size Eligibility
For Businesses**

For purposes of the Oakdale Seed Fund, a business may qualify if its sales are less than \$6 million annually for each of the last two fiscal years preceding the application for assistance from the fund. The Economic Development Authority may make exceptions to this rule on a case-by-case basis.

**Sound Business
Purpose**

The proceeds from a loan made through the Oakdale Seed Fund are to be used to assist an identifiable small business concern or a developer in accomplishing a sound business purpose. A sound business purpose would not exist if any of the following conditions occur:

- a) If the project proposed will destabilize existing multi-tenant facilities or have an adverse impact on them.
- b) If it is to accomplish an expansion or conversion which is unwarranted in light of the small business concern's past experience and management ability.

**Ineligible
Projects**

- a) Retail businesses
- b) Nonprofit institutions
- c) Gambling organizations
- d) Lending or investment organizations
- e) Land held primarily for sale or investment

Project Costs

"Project costs" should be limited to direct expenditures necessary to acquire, construct, convert, or expand a business including site

improvements and professional fees directly attributable and essential to a project such as survey, engineering, architectural, legal and accounting. In this context legal expenditures for such items as zoning changes title searches, title insurance, recording fees, etc., which are clearly essential to the total project can be included as project costs. While there is considerable flexibility in determining the composition of a project, in general it should be a productive asset when completed. In the classic sense, this would be land, building, machinery, and equipment.

Elements of Project Costs

In developing the aggregate project costs for the Oakdale Seed Fund the following guidelines will be used:

Land

Valuation of land injected by the small business concern into the project should be at the appraised value based on an appraisal acceptable to the EDA. The appraisal should conform with current bank regulatory requirements.

Land Improvements

Improvements which are paid through special tax assessments or user fees should not be included in determining project costs. Improvements to the land which are a portion of the project cost could include but are not limited to the following:

- 1) Grading
- 2) New streets or street improvements including curb and gutter
- 3) Parking lots
- 4) Utilities – water, sewer, gas, electric or
- 5) Landscaping

Purchased and/or Remodel an Existing Building

The cost of purchasing an existing building generally includes the value of the land and applicable fees and charges required to gain clear title to the property. Purchasing an existing facility with funds provided by the Oakdale Seed Fund is permissible.

Building Construction

Construction includes the erection of a new building and/or a major addition to an existing building.

Purchase Machinery and Equipment

Oakdale Seed Fund proceeds can be used to finance the purchase of major items of machinery and equipment independent of land and building. These items are defined to have a useful life of at least 7 years. The term of the loan will be commensurate with the life of the asset.

Ineligible Project Costs

The following costs should not be construed as part of the project costs under this program.

- a) Management fees
- b) Financing costs and fees
- c) Franchise fees
- d) Debt consolidation
- e) Moving costs

Leasehold Improvements

Financing should be permitted for leasehold improvements including construction on leased land. The lease should be equal to or greater than the term of the loan. The remaining economic life of the facility or leasehold improvements should be equal to or greater than the term of the Seed Fund loan. Financing may be provided if the land or building owner allows the EDA to secure lien positions on the land or building and improvements, sufficient to fully secure its exposure or if other collateral sufficient in value to fully protect the interest of the Oakdale EDA is offered.

Limited or Single Purpose Assets

The construction or the purchase of limited use assets should not be financed under the Oakdale Seed Fund unless the liquidating value of the asset plus other available collateral, if sold, would be

sufficient to protect the Oakdale EDA from realizing a substantial loss.

Working Capital

Proceeds from an Oakdale Seed Fund loan should not be used for working capital or to refinance prior obligations of the small business concern.

**Availability of
Personal Resources**

Since the primary focus of the Oakdale Seed Fund is economic development, personal resources of the owners or principals of the small business concern should not usually disqualify the small business concern from receiving assistance. Where credit factors indicate the need for additional capitalization, the injection of personal resources may be required to make the loan credit-worthy.

**Personal
Guarantees**

The EDA should require the personal guaranty of any person owning 20% or more of the small business concern regardless of the form of ownership.

**Participants and
Structure of Project
Financing**

Maximum Private Sector Exposure

The Oakdale Seed Fund is designed to foster projects contributing to sound economic growth in Oakdale in such a way that maximum private sector exposure is stimulated and encouraged. The Seed Fund should not be a substitute for conventional business financing or be used in place of other specialized state, federal or local programs that may be better suited to the specific project needs. In most Seed Fund projects a private sector lender will make a separate secured loan equal to a certain percentage of the total project cost and will usually be secured by a senior lien on project assets acquired with the financing. The EDA's share of the project financing will usually be secured by a junior lien position on project assets. The EDA will use the Seed Fund to participate with the private sector lender in making the total loan to the small business concern.

**Private Sector
Lender**

Financing may be provided by regulated and/or non-regulated financial institutions or noninstitutional sources if they are in the business of providing financing for commercial purposes and they are not associated with the small business concern receiving

financial assistance. The terms and conditions of such financing must be acceptable to the Oakdale EDA based on the small business concern's ability to repay the Oakdale Seed Fund Loan.

Interest Rate

The lender and EDA may establish their own rate provided the rate is legal and reasonable. The lender and EDA may charge either a fixed or variable rate of interest on their loan. A renegotiable rate of interest is acceptable provided terms and conditions are established and agreed to both by the Oakdale EDA and the lender at the time of the loan approval. The EDA must be aware of the lender's terms and conditions in assessing the small business concern's ability to repay the Oakdale Seed Fund Loan.

Balloon Payment

Such payments may be considered where circumstances warrant their use.

Amount

The maximum amount of private lender financing should be included in each project. At least 50% of the project cost should be funded by a private lender.

Maturity

Maturity must be reasonable in relation to the life of the asset being financed. In no instance should the maturity of the Oakdale Seed Fund Loan exceed the maturity of the loan being provided by the private lender.

Personal Guarantees

The EDA requires the personal guaranty of any person owning 20% or more of the small business concern regardless of the form of ownership. Where ownership ranges from 5% to 19% the requirement for personal guarantees is discretionary. A partial guarantee may be considered for less than the total amount of the loan. Generally, a guaranty will not be required where ownership is less than 5%.

Alter Ego Loans

For tax and other reasons some small business owners prefer to separate the ownership of the asset from the operating small business concern. In such cases the small business owners form two legal entities: One entity owns part or all of the fixed assets and the other entity is the operating company. Loans will be permitted to the "alter ego" (passive concern) which is an eligible small business concern when:

- a) The applicant (passive concern) is a business entity that is organized and operated for profit, whether operating as an individual proprietorship, partnership or corporation;

- b) The operating small business concern is an eligible small business and the proposed use of proceeds would be allowable for such assistance if the operating small business concern were the owner of the property that is owned or to be owned by the applicant;
- c) The ownership interests in the applicant shall be completely identical with and in the same proportion as the ownership interest in such operating small business concern;
- d) Collateral includes an assignment of the lease between the applicant and the operating small business concern and a lien on the property itself. The lease, including options, shall be for a term of not less than the term of the loan;
- e) The operating small business concern must be either a guarantor or co-borrower, and any owners of 20% or more of the equity of the operating small business concern and of the applicant must also guarantee the loan.

Franchises

A franchise is eligible for the Oakdale Seed Fund if the franchise has the right to profit from his/her efforts commensurate with ownership and is eligible in all other respects. Franchises are ineligible only in the exceptional cases where the franchise agreement disguised as a contract of employment under the guise of a franchise operation. Where royalty or similar payments must be made by the borrower to the franchisor, a condition should be considered that prohibits such payment as long as the EDA loan is in default. Where credit factors warrant, guarantee of the franchisor should also be considered.

Operational Requirements

Responsibilities of the EDA/Oakdale Seed Fund

The Oakdale EDA/Seed Fund will offer its assistance to small business in need of financing. It will cooperate with other lenders participating in projects. The EDA and the Seed Fund are able to:

- a) Package and process loan applications
- b) Close and service loans
- c) Make available management services or cause such services to be made available

- d) Maintain the organizational and operational requirements set forth in these administrative guidelines

Disclosure of Information

On a loan application, no recommendation of any individual, (including a loan officer, city staff person or EDA board member) may be divulged directly or indirectly to an applicant, or to any of its representatives or any other unauthorized source. Only final EDA actions may be released.

Diversified Portfolio

The EDA will not concentrate the Seed Fund in any one type of industry. The EDA is encouraged to make loans to a variety of businesses in different industries. The Oakdale Seed Fund is designed primarily to assist existing healthy businesses to grow and create jobs. While new businesses (businesses in existence for less than two years) do create jobs, they should be considered for Seed Fund financing only after careful scrutiny as to management capability, experience, and financial support.

Place of Business

The EDA shall maintain an accessible place of business open to the public during regular business hours and maintain staff adequate to perform normal business transactions. The EDA's place of business shall be located within the Community Development Department of the Oakdale City Hall.

Fiscal Year

The EDA shall choose and establish a fiscal year. The EDA is encouraged to establish a fiscal year which coincides with the City's fiscal year (January 1 through December 31).

Records

The EDA shall maintain financial records including books of accounts and minutes of all meetings of the directors. All records and supporting documents relating to the EDA's transactions shall be kept at its' principal office. Records and documents which are the basis for or related to the financial statements or loans shall be preserved for the periods required by the Internal Revenue Service (IRS) in accordance with generally accepted accounting practices.

Maintaining Loan Portfolio Documents

The EDA shall develop a filing and control system which ensures that the following information and documents relating to its loan portfolio are available at its principal office. The EDA filing

system must contain information and documents related to each loan made through the Seed Fund as follows:

- 1) Loan application including all exhibits;
- 2) Loan authorization and all correspondence related to the loan prior to closing;
- 3) Loan closing documents including all documents relating to participation with the private lender;
- 4) Evidence of a 10% equity injection by the small business concern;
- 5) Amortization schedule;
- 6) Financial statements of the small business concern;
- 7) Related correspondence;
- 8) Evidence of field visits;
- 9) Condition of collateral;
- 10) Tickler file for insurance and UCC;
- 11) Evidence that taxes and insurance have been paid;
- 12) All other items relating to the loan.

Restrictions

Conflicts of Interest/Self-Dealing

Self-dealing by the EDA, its Board of Directors, employees or any other related parties to the prejudice of the small business concern, or the EDA is prohibited. The EDA shall not permit a significant relationship to exist or to be created between the EDA and a small business concern to be assisted while assistance through the Seed Fund is outstanding.

Servicing Capability

In most cases, the EDA will service the loan. The EDA may require that the private lender to service the loan. In this instance, a servicing agreement will be completed between the private lender and the EDA. Costs of servicing will be paid for by the applicant.

Notice of Default

In cases where the private lender is servicing the loan, the lender must agree to furnish the Oakdale EDA with written notice of any default by the small business concern within thirty (30) days of the date of default. The lender must give the Oakdale EDA sixty (60) days notice prior to a foreclosure sale. This agreement must incorporate provisions providing for a timely written notification from the lender to the Oakdale EDA of any default, delinquency by the small business concern on the lender's portion of the financing and the right of the Oakdale EDA to an immediate purchase of the lender's senior position in the loan thereby allowing the EDA the opportunity to protect its position and to avoid the accumulation of legal costs, preservation expenses, etc.

Loan Processing

Repayment ability

An Oakdale Seed Fund Loan must be secured so as to reasonably assure repayment. Reasonable assurance of repayment takes into consideration earnings, management ability and financial condition of the borrower as well as the value of collateral.

Process for Analyzing Loan Applications

The intake of loan applications will be completed by the Community Development Department staff of the City of Oakdale. Upon receipt of a complete application, the staff will complete an initial review to determine the ability of the program to address the identified financing need. If the project meets the intent and general parameters of the program, the application will be forwarded to the city's economic development consultant who will complete additional due diligence work on the application. The consultant will provide a report on the loan request to the Loan Committee of the EDA. The loan committee will make a recommendation to the Economic Development Authority who will make the final decision on the loan request.

Credit Information and Credit Reports

Upon receipt of the loan application, a credit report will be ordered from the private lender participating in the project. The report will be provided to the Oakdale EDA if the lender receives permission from the borrower. If the application package includes an acceptable credit report or sufficient credit information is supplied by the small business concern/lender or is available from other sources a new credit report may not be needed. Letters should be written by the private lender to credit references and others where

necessary to determine the applicant's credit standing. Telephone contact should be made with credit references where appropriate.

Credit Requirement

The small business concern must meet certain practical credit requirements including the following:

- 1) The applicant must be in good character as determined by the private lender and the Oakdale EDA.
- 2) There must be evidence that management has the ability to operate the business successfully.
- 3) The small business concern must have enough capital in the business so that with the assistance through the Oakdale EDA and Seed Fund it will be possible for the business to operate on a sound financial basis.
- 4) While the questions of security and collateral are important in determining whether financial assistance will be extended, they are not the only factors upon which the approval or rejection of an application is determined. The Oakdale EDA attaches great importance to management, the inherent soundness of the small business concern, the small business concern's earnings records and prospects, the small business concern's long-range possibilities for successful operation and whether the granting of financial assistance will increase employment or have other favorable effects on the economy of the City of Oakdale.

Financial Statement Requirements

The loan officer of the private lender must evaluate the reliability of the financial statement submitted. All statements must be signed and dated by the proprietor, a partner, or unauthorized office of the applicant unless they are accompanied by an independent accountant's report. Statements submitted on a compilation basis must be signed by the small business concern owner or designated officer.

Business Financial Statements

Balance sheets, profit and loss statements and statement of change in financial position are normally required for the preceding two full years. In addition, an interim statement for the current period is required when the application is received more than ninety (90) days after the end of the last fiscal year. An aging of accounts receivable and payables should accompany the interim balance sheet.

Analysis of Loan Applications

Additional Data

Additional financial data or written explanation may be required where necessary for an adequate analysis. This is especially true for new businesses or for existing businesses planning major changes in their operations. Both cases should require earnings projections. Cash flows or other types of data may be required where deemed necessary and appropriate.

Personal Financial Statements

Personal financial statements are required for proprietors, general partners each owner of 20% or more of the business including limited partners and guarantors. All statements must be signed and dated.

Processing Time

All loans are to be processed within thirty (30) working days. The processing cycle will begin with the day the application is received as indicated by a date stamp and ends when the loan authorization is issued. Time awaiting the receipt of additional information will be excluded from the processing time. If major delays are anticipated in receiving additional information to complete the package, the application will be returned to the small business concern within three (3) working days.

Loan Servicing

There are two options for loan servicing. The EDA may elect to have loans serviced by lenders participating in the financing for any project or service the loan internally. The EDA may require the servicer to obtain and review the financial statements of the small business concern annually; review the small business concern's payment of taxes and insurance, review the uniform commercial code filings on

collateral and monitor other financing senior to the loan to assure that payments are current.

The EDA may also require the servicer to make field visits as necessary to review the condition of collateral and report to the EDA any default or any other adverse trend condition or information as they occur and take or propose remedial servicing actions as ordinarily performed by a prudent lender. The EDA will provide written instructions to the servicer outlining the services that need to be provided as a part of the servicing contract. In addition, the servicer will not, without the prior written authorization of the Oakdale EDA, authorize any actions regarding the EDA loan including:

- 1) Make or consent to any substantial alteration in the terms of the loan instrument.
- 2) Make or consent to release of collateral.
- 3) Accelerate the maturity of the note.
- 4) Sue upon the loan instrument.
- 5) Waive any claim against borrower, guarantor, obligor or stand-by creditor arising out of the loan instrument.
- 6) Directly or indirectly charge or receive a bonus, fee, commission or other payment or benefit in connection with the making and servicing of the loan except as authorized by the program.
- 7) Require or obtain any funds, certificates of deposit or compensating balance not under the unrestricted control of the small business concern or any other agreement establishing any preference in favor of the lender.

Repayment

The servicer is required to ensure the timely forwarding of the small business concern's monthly payment to the Oakdale Seed Fund.

Upon request, this information can be made available in alternative formats.
For more information, email economic.development@state.mn.us or call 651-259-7432.

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