

**CITY OF SAN ANTONIO  
ECONOMIC DEVELOPMENT DEPARTMENT  
CITY COUNCIL AGENDA MEMORANDUM**

**PUBLIC HEARING  
TIME CERTAIN  
ITEM NO 5  
3:00 PM**

**TO:** Mayor and City Council  
**FROM:** Ramiro A. Cavazos, Director  
**SUBJECT:** Tax Phase-In Agreement and Training Grant Agreement with Washington Mutual  
**DATE:** May 12, 2005

**SUMMARY AND RECOMMENDATIONS**

This item provides for: (1) a public hearing and consideration of an ordinance designating the *Washington Mutual Reinvestment Zone* (“the Zone”) consisting of 75 acres located at 20855 Stone Oak Parkway, provided that Washington Mutual (“WaMu”) locates its Regional Operations Center on the property; (2) consideration of an ordinance approving and authorizing the negotiation of terms and conditions and execution of a Tax Phase-In Agreement with WaMu to exempt 100% of ad valorem taxes on personal property improvements of approximately \$7.2 million for a period of 10 years, provided WaMu locates its Regional Operations Center in the Zone; and (3) approving and authorizing the negotiation of terms and conditions of a Training Grant Agreement, which would provide up to \$3,000,000 to the company in support of customized job training for newly created positions. The ordinance would also appropriate the grant amount from the Economic Development Incentive Fund, and authorize payment in accordance with the Training Grant Agreement.

Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION**

Washington Mutual, Inc. is now the nation’s 6<sup>th</sup> largest financial services holding company, and the 3<sup>rd</sup> largest mortgage lender. Headquartered in Seattle, Washington, WaMu subsidiaries operate more than 2,300 offices and employ more than 55,000 people nationwide.

The company’s consumer bank operates financial centers in Arizona, California, Colorado, Florida, Georgia, Idaho, Illinois, Nevada, New Jersey, New York, Oregon, Texas, Utah and Washington. As of September 2004, the company had more than \$288 billion in consolidated assets.

In August 2004, WaMu began a site selection process for a major regional banking operations center. San Antonio is one of two cities now being considered for this project. In early 2005, WaMu informed City staff that it was considering the future use of the former MCI/WorldCom campus located at 20855 Stone Oak Parkway. This is the only site in San Antonio being considered for the project. The 75-acre corporate campus would permit rapid opening and hiring

for the center at reduced cost. This center would support various WaMu business groups and support functions.

If San Antonio is selected, Washington Mutual would occupy the 3 existing buildings by July 2005, and ramp-up to 2,250 employees by 2007. As additional job requirements are identified, WaMu will erect a fourth building that would provide the campus with 540,000 square feet of office space for 3,000 total employees. However, for the long term, WaMu contemplates a complete office campus of up to one million square feet. This will require additional new buildings and/or structural parking facilities to accommodate up to 4,200 employees.

Initially, WaMu expects to invest \$13.1 million in real property improvements and \$7.2 million in personal property improvements. However, if the campus is built out to one million square feet, WaMu anticipates a total investment up to \$50 million regarding the real and personal property for the proposed project. In its tax abatement application, WaMu requests a ten-year, 100% abatement of the ad valorem taxes for its initial \$7.2 million personal property investment and subsequent personal property investments made during the term. (The draft Tax Phase-In Agreement is attached as Exhibit A.)

Washington Mutual has also requested \$3 million from the City's Economic Development Incentive Fund (EDIF). The City's funding would help defray the initial costs of employee skill training. The Training Grant will be paid to WaMu on a reimbursement basis at a rate of \$1,000 per new job created, up to 3,000 jobs in accordance with WaMu's execution of the job creation thresholds outlined in the agreements, through December 31, 2012. (The draft Training Grant Agreement is attached as Exhibit B.)

Washington Mutual is also seeking a 10-year, 100% tax abatement on personal property from Bexar County; and, is pursuing a \$15 million grant from the State's Enterprise Fund, as well as a refund of State sales taxes through the Property Tax Rule 9.210 Program.

## **POLICY ANALYSIS**

This project meets the Joint City-County Tax Phase-In Guidelines for investment, job creation and wages as a Level 1 Project. However, because it is located on the Edwards Aquifer Recharge Zone, it normally is ineligible for a tax phase-in unless City Council grants an exception. Additionally, an exception would be required to allow this project to qualify for a 10-year (instead of a 6-year) abatement term. Washington Mutual requests City Council to approve these two exceptions to the City's Tax Phase-In Guidelines.

This project exceeds the City's wage standard requiring all new employees to receive at least \$9.06 per hour, and after one year, at least 70% of new employees must receive at least \$11.03 per hour.

<b>Tax Phase-In Criteria for Personal Property Tax Phase-In</b>	<b>Washington Mutual Project</b>
Investment $\geq$ \$1million in real property	\$13.1 million in real property
<b>OR</b> Investment $\geq$ \$10 million in personal property	\$7.2 million in personal property
<b>AND</b> Job Creation $\geq$ 25 New Jobs	3,000 New Jobs over 7 Years
<b>AND</b> Benefits Package	Yes
<b>AND</b> 100% of new jobs $\geq$ \$9.06/hr	Yes
<b>AND</b> 70% of new jobs at or above \$11.03/hr within one year following project opening	Yes

Washington Mutual offers a competitive benefits package to its employees and their dependents including health insurance, a retirement savings plan, tuition reimbursements and other benefits. Washington Mutual follows a standard new employee recruitment methodology, which utilizes all available resources to identify potential candidates for employment such as print and Internet media and fully anticipates the utilization of Alamo WorkSource as one of many available resources to identify candidates.

The project supports the City's *Strategic Plan for Enhanced Economic Development* by encouraging the attraction of new businesses to the community. Additionally, this project reinforces and promotes San Antonio's reputation as an excellent location for Fortune 500 companies.

In regards to the Economic Development Incentive Fund, WaMu does qualify as a High Level Business Service entity that will create at least 500 full-time permanent positions within one year of project completion. WaMu requests City Council to consider a \$3 million EDIF Training Grant, that will assist it in securing a \$15 million grant from the State's Enterprise Fund.

Much of the initial project will occur in existing structures, or in facilities previously planned but never developed. This first phase will limit impervious cover to 40 percent, as previously approved by the City. At the point that WaMu chooses to expand its footprint, the total impervious cover will be 44 percent. As a condition to this agreement, an easement over the balance of the site will be obtained from WaMu to prevent additional development or impervious cover. The tax phase-in agreement also requires a separate dedication of right-of-way for Marshall Road, without impacting impervious cover calculations.

## FISCAL IMPACT

The following table details the estimated fiscal impact to the City resulting from the project. Over a 20-year period, the City is expected to receive approximately \$2,427,838 in taxes on the existing value of the land and property. The City will also receive new property taxes, sales taxes, and CPS Energy revenues estimated at \$4,384,181 over the 10-year tax phase-in term. Overall, new revenues to the City over a 20-period will be approximately \$8,494,353, with the overall net benefits accruing to the City estimated to be \$5,407,669.

Years	<u>New</u> Property Taxes + Sales Taxes + CPS Energy Revenues (Present Value)	Personal Property Taxes Abated + EDIF (Present Value)	Net Benefits (Present Value)
1-10	\$ 4,384,181	\$ 3,086,684	\$ 1,297,497
11-20	\$ 4,110,172	0	\$ 4,110,172
<b>Total</b>	<b>\$ 8,494,353</b>	<b>\$ 3,086,684</b>	<b>\$ 5,407,669</b>

The phase-in agreement (attached as Exhibit A) will allow the City to recapture up to 100% of abated taxes from WaMu during the 10-year term, and on a declining basis for another 6 years in the event that WaMu relocates its business activities outside the City or ceases conducting business activities. The City may also terminate the Agreement if WaMu fails to meet the wage standard or invest at least \$7.2 million in new personal property. The percent of tax phase-in will be reduced according to the contract if WaMu does not achieve its job creation requirements.

In consideration of full and satisfactory performance in training newly acquired personnel, the City will disburse up to \$3,000,000 to WaMu according to the provisions in the Training Grant Agreement. Funds for this disbursement will be made available from an appropriation from the Economic Development Incentive Fund.

## COORDINATION

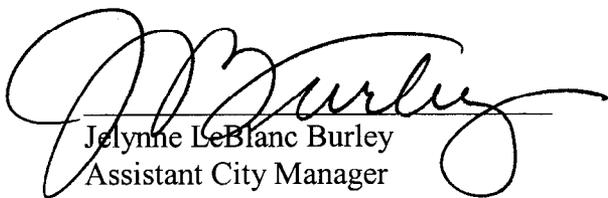
The Economic Development Department (EDD) staff has worked with the City Attorney's Office and City Manager's Office to finalize the agreement. EDD has coordinated with relevant City departments and determined that the project has no appreciable impact on the delivery of City services. These departments include Public Works, Development Services, Planning, Finance, Budget, Police and Fire. EDD has also coordinated this project with Bexar County, CPS Energy, SAWS, Bexar Appraisal District, Northeast ISD and the SA Economic Development Foundation.

**SUPPLEMENTARY COMMENTS**

The Discretionary Contracts Disclosure Forms are attached, as Exhibit C.



\_\_\_\_\_  
Ramiro A. Cavazos, Director  
Economic Development Department



\_\_\_\_\_  
Jelynn LeBlanc Burley  
Assistant City Manager



\_\_\_\_\_  
J. Rolando Bono  
Interim City Manager

Attachments

**Exhibit A**

**Tax Phase-In Agreement**

**TAX PHASE-IN AGREEMENT BETWEEN  
WASHINGTON MUTUAL BANK AND THE CITY OF SAN ANTONIO**

**1. PARTIES**

THIS AGREEMENT (the "Agreement") is entered into on this 12<sup>th</sup> day of May 2005, by and between WASHINGTON MUTUAL BANK (hereinafter referred to as "WASHINGTON MUTUAL"), a federal banking association organized and existing under the laws of the United States of America, as real property and personal property owner, and the CITY OF SAN ANTONIO, a municipal corporation, (hereinafter referred to as the "CITY"), acting by and through its Interim City Manager.

**2. AUTHORIZATION AND FINDINGS**

A. This Agreement is entered into pursuant to the following authorities:

1. The Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312, as amended;
2. CITY COUNCIL RESOLUTION No. 89-07-12, dated the 15th day of February 1989, and most recently revised by Ordinance No. 98692 on January 8, 2004, together which established the City of San Antonio Guidelines and Criteria for Tax Phase-In and Reinvestment Zones, (hereinafter referred to as the "Guidelines and Criteria");
3. CITY COUNCIL ORDINANCE NO. \_\_\_\_\_, dated May 12, 2005, which designated the WASHINGTON MUTUAL Reinvestment Zone (the "Zone"); and
4. CITY COUNCIL ORDINANCE NO. \_\_\_\_\_, dated May 12, 2005, which specifically approved this Agreement and authorized execution hereof.

B. The City Council, by its approval of this Agreement, hereby finds that the terms of this Agreement, and the property subject to it, generally meet the Guidelines and Criteria as adopted by the City Council and has approved the following exceptions: 1) land location; and 2) term of abatement. The City Council further finds that (a) the approval of this Agreement will not have any substantial long-term adverse effect on the provision of CITY services or the CITY'S tax base; and (b) the planned use of the Property (defined below) inside the Zone by WASHINGTON MUTUAL for the uses contemplated herein will not constitute a hazard to public safety, health or morals.

**3. PROPERTY**

A. The taxable real property which is the subject of this Agreement is located at 20855 Stone Oak Parkway on a seventy-five (75) acre, or 3,266,803 square foot more or less, tract of land being all of Lot 2 Block 2 of the Worldcom, Inc. subdivision recorded in Volume 9539, Pages 221-223 of the deed and plat records of Bexar County, being the same tract of land as conveyed to Worldcom Technologies, Inc. in Special Warranty Deed as recorded in Volume

7222, Page 146-153 of the Official Public Records of real property of Bexar County, Texas, all in New City Block (N.C.B.) 19218 of the City Of San Antonio, Bexar, Texas and as more particularly described in Exhibit A, attached hereto and incorporated herein. With an initial personal property improvement investment of approximately seven million two hundred thousand dollars (\$7,200,000.00), WASHINGTON MUTUAL will retrofit three existing structures on said property and construct at least one additional structure to conduct Business Activities in and to house approximately three thousand (3,000) employees, which WASHINGTON MUTUAL will own, hold an interest in or otherwise control (the "Facility"). The Facility will be used as a Regional Operations Center. WASHINGTON MUTUAL will conduct, in the Facility, normal business activities including, but not limited to, banking and financial services (hereinafter collectively referred to as the "Business Activities") or the normal Business Activities of a Related Organization (defined in Article 5, Paragraph I) so long as such Business Activities include the normal Business Activities of a financial institution or similar activity. WASHINGTON MUTUAL shall invest approximately seven million two hundred thousand dollars (\$7,200,000.00) in personal property improvements by January 1, 2008. WASHINGTON MUTUAL shall be entitled to tax abatements authorized herein for the personal property improvements above the Base Year Value (as defined in Article 6, Paragraph A) (the "Property") if WASHINGTON MUTUAL or a Related Organization undertakes Business Activities in accordance with the terms of this Agreement in the WASHINGTON MUTUAL Reinvestment Zone. WASHINGTON MUTUAL understands and accepts that there shall be no abatement of taxes for the existing structures located on the property.

B. WASHINGTON MUTUAL will establish an "Improvements Only" tax account for personal property with the Bexar Appraisal District regarding the Property and provide these tax account numbers to the CITY.

#### **4. WASHINGTON MUTUAL'S REPRESENTATIONS**

A. WASHINGTON MUTUAL represents that they have no knowledge that any interest in the Facility and/or Property is presently owned, held or leased by a member of the San Antonio City Council, Zoning Commission, Planning Commission, the City's Economic Development Department, or any other City officer or employee. WASHINGTON MUTUAL further represents that they shall not knowingly sell, lease or otherwise convey such an interest to a member of the San Antonio City Council, the Zoning Commission, the Planning Commission, the City's Economic Development Department or any other City officer or employee, as long as this Agreement remains in effect.

B. WASHINGTON MUTUAL represents that there is no litigation pending against WASHINGTON MUTUAL for any violations under the Occupational Safety and Health Act.

#### **5. TERMS OF THE AGREEMENT**

A. Obligations of WASHINGTON MUTUAL. For WASHINGTON MUTUAL to receive the tax abatement authorized herein: (1) WASHINGTON MUTUAL shall own, hold an interest in or otherwise control the Facility and Property and shall invest a seven million two hundred thousand dollars (\$7,200,000.00) in the personal property improvements for the Facility

described in Article 3, Paragraph A by January 1, 2008; (2) WASHINGTON MUTUAL shall occupy and use the Facility for its Business Activities; (3) WASHINGTON MUTUAL shall occupy and use the Facility for its Business Activities; (4) WASHINGTON MUTUAL shall hire three thousand (3,000) employees as follows:

**YEAR 1** (ending December 31, 2006) – A minimum of five hundred (500) non-temporary, full time employees

**YEAR 2** (ending December 31, 2007) – An additional five hundred (500) non-temporary, full-time employees

**YEAR 3** (ending December 31, 2008) – An additional five hundred (500) non-temporary, full-time employees

**YEAR 4** (ending December 31, 2009) - An additional five hundred (500) non-temporary, full-time employees

**YEAR 5** (ending December 31, 2010) – An additional five hundred (500) non-temporary, full-time employees

**YEAR 6** (ending December 31, 2011) - An additional two hundred and fifty (250) non-temporary, full-time employees

**YEAR 7** (ending December 31, 2012) – An additional two hundred and fifty (250) non-temporary, full-time employees

for a cumulative total of three thousand (3,000) new jobs for the Facility; and

(5) otherwise comply with the applicable terms of this Agreement.

B. Wage Requirement. WASHINGTON MUTUAL covenants and agrees that it shall comply with the wage standard policy specified in the City of San Antonio Guidelines and Criteria for Tax Phase-In and Reinvestment Zones, attached hereto as Exhibit “B” and incorporated herein for all purposes, at the time the City Council of CITY authorized execution of this Agreement. WASHINGTON MUTUAL understands and agrees that the minimum cash wage for all employees shall be nine dollars and six cents (\$9.06) per hour and after one year, the hourly earnings for seventy percent (70%) of the new jobs shall be not less than eleven dollars (\$11.00) per hour as of the time City Council of CITY authorized execution of this Agreement.

C. Full-Time Employee. For the purposes of this Agreement, a full-time job shall be equivalent to two thousand eighty (2,080) straight-time paid hours in a fiscal year.

D. Employee Benefits. WASHINGTON MUTUAL covenants and agrees that it shall offer all of its non-temporary full-time employees at the Facility substantially similar employee benefits as those employee benefits offered to similarly situated employees of WASHINGTON MUTUAL, as those benefits are currently described in Exhibit “C”, attached hereto and

incorporated herein, and as they may be modified from time to time corporate-wide. WASHINGTON MUTUAL covenants and agrees that, during each year of the Term of this Agreement, it will continue to offer all of its full-time employees at the Facility an employee benefits package that is substantially similar to either (a) the benefits package described in Exhibit "C" or (b) those employee benefits offered to similarly situated WASHINGTON MUTUAL non-temporary full-time employees generally. WASHINGTON MUTUAL further covenants and agrees that during the Term of this Agreement all of its full-time employees at the Facility shall be offered a health plan which provides coverage for their eligible dependents on terms substantially similar to the coverage provided to the eligible dependents generally of WASHINGTON MUTUAL's non-temporary full-time employees.

E. Compliance with Employment Regulation. WASHINGTON MUTUAL covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees. A non-exclusive list of such laws is attached hereto as Exhibit "D" and incorporated herein.

F. Compliance with Business Activities Regulation. WASHINGTON MUTUAL also covenants and agrees that it shall conduct its Business Activities (as defined in Article 3, Paragraph A) at the Facility in accordance with all applicable federal, state and local laws.

G. Compliance with Construction Regulation. WASHINGTON MUTUAL shall construct any improvements made to the Facility in accordance with all applicable federal, state and local laws including, but not limited to, Texas Commission on Environmental Quality regulations, Bexar County and City of San Antonio laws, Building Codes and ordinances, Historic Preservation and Urban Design ordinances, flood, subdivision, building, electrical, plumbing, fire and life safety codes and regulations, current and as amended.

H. Improvements Completion. WASHINGTON MUTUAL shall substantially complete personal property improvements by December 31, 2007 and will house WASHINGTON MUTUAL'S Business Activities (as defined in Article 3, Paragraph A) in the Facility in the WASHINGTON MUTUAL Reinvestment Zone. WASHINGTON MUTUAL shall be entitled to such additional time to complete said improvements as may be required due to any "Force Majeure" event, so long as WASHINGTON MUTUAL reasonably diligently pursues said completion of improvements. For purposes of this Agreement, "Force Majeure" shall be as defined in Article 8 below. The CITY shall have the final determination, to be exercised reasonably and in good faith, whether to extend such period of time for said completion for reasons of Force Majeure. WASHINGTON MUTUAL shall notify the CITY of the completion of the personal property improvements by sending notice to the address listed in Article 9 (Notice) within one month of completion.

I. Authorized Business Activities. Except as provided herein, WASHINGTON MUTUAL covenants and agrees that it shall use the Property at the Facility only to conduct its Business Activities (as defined in Article 3, Paragraph A). Without additional consent or approval by the City Council, a parent, subsidiary or affiliate organization of WASHINGTON MUTUAL or new entity created as a result of a merger, acquisition, or other corporate restructure or reorganization of WASHINGTON MUTUAL, or any component thereof (hereinafter "Related Organization")

may occupy and use the Property and the Facility for such Related Organization's normal business activities, so long as such business activities are those of a financial institution, or similar or comparable to the Business Activities of WASHINGTON MUTUAL at the Facility. To be eligible for tax abatements as provided in this Agreement, such Related Organization shall comply with all applicable terms of this Agreement. Except as authorized above, WASHINGTON MUTUAL covenants and agrees not to change the principal use of the Property without prior approval by the City Council, as evidenced in a duly approved ordinance.

J. Maintenance Obligations. WASHINGTON MUTUAL covenants and agrees that they shall maintain the Property and the Facility in good repair and condition during the Tax Phase-In Period, normal wear and tear and damage by fire or other casualty not caused as a result of the negligence, intentional act or misconduct of WASHINGTON MUTUAL excepted. Compliance with the maintenance obligations imposed herein shall be presumed if WASHINGTON MUTUAL follows its normal and customary maintenance procedures and schedules.

K. Inspections by the City. Upon five business days prior notice to WASHINGTON MUTUAL by the CITY, WASHINGTON MUTUAL covenants and agrees that they shall allow designated representatives of the CITY access to the Property and the Facility during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. (This inspection is independent of CITY'S police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances). The CITY's access to WASHINGTON MUTUAL's books and records will be limited to information needed to verify that WASHINGTON MUTUAL is and has been conducting Business Activities, and to verify the number of non-temporary full-time employees at the Facility. Any information that is not required by law to be made public shall be kept confidential by CITY. Should any good faith dispute or question arise as to the validity of the data provided, the CITY reserves the right to require WASHINGTON MUTUAL to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of WASHINGTON MUTUAL. CITY representatives may be accompanied by WASHINGTON MUTUAL representatives and such inspections shall be conducted in such a manner as to (a) not unreasonably interfere with the operation of the Property or the Facility; and (b) comply with WASHINGTON MUTUAL's reasonable security requirements.

L. Disclosure to Bexar Appraisal District. During the term of this Agreement, WASHINGTON MUTUAL covenants and agrees to furnish, as applicable, by April 30<sup>th</sup> of each year, the Chief Appraiser of Bexar Appraisal District with information outlined in Chapter 22, V.A.T.S. Tax Code, as amended, as may be necessary for the tax phase-in and for appraisal purposes.

M. Disclosure to CITY. WASHINGTON MUTUAL covenants and agrees that it shall provide the CITY's Director of Economic Development with a annual certification from an officer of WASHINGTON MUTUAL attesting to the number of jobs created and maintained, as well as wages paid, by WASHINGTON MUTUAL at the Facility. WASHINGTON MUTUAL shall also submit this information to the CITY upon request, as deemed necessary at the sole discretion of the CITY, during the term of this Agreement. The information provided shall be on

the forms set forth in, or substantially similar to the forms set forth in, Exhibit "F" (attached hereto and incorporated herein), as amended.

N. Hiring Goals for Economically Disadvantaged Workers. WASHINGTON MUTUAL covenants and agrees to make a good faith effort to hire Economically Disadvantaged Individuals to comprise at least twenty-five percent (25%) of the new non-temporary full-time employees required to be employed at the Facility, as follows:

1. As used herein, "Economically Disadvantaged Individual" shall mean a person:
  - a. who was unemployed for at least three consecutive months immediately prior to being hired by WASHINGTON MUTUAL at the Facility;
  - b. who receives, or is a member of a family which receives, cash welfare or other public assistance benefits under a federal, state, or local program;
  - c. who has, or is a member of a family which has, received a total family income for the six-month period prior to being hired by WASHINGTON MUTUAL (exclusive of unemployment compensation, child support payments and public assistance payments) that, in relation to family size, did not exceed the greatest of the following:
    - (i) the official poverty line, as defined by the Director of the Office of Management and Budget, and revised annually in accordance with §672(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. §9902(2));
    - (ii) 70 percent of the lower living standard income level; or
    - (iii) the level for moderate income as defined by the United States Department of Housing and Urban Development;
  - d. whose residence is in the City's State Enterprise Zone areas that include all census tract block groups in which at least 20% of the residents exceed the federal poverty level. These census tract block groups can be found at [www.txed.state.tx.us/TexasEnterpriseZone](http://www.txed.state.tx.us/TexasEnterpriseZone) by clicking on "Census Tract Zones";
  - e. is receiving or has been determined within the six-month period prior to the application for the program involved to be eligible to receive food stamps pursuant to the Food Stamp Act of 1977;
  - f. qualifies as a homeless individual under subsections (a) and (e) of §103 of the Stewart B. McKinney Assistance Act;
  - g. is a foster child on behalf of whom state or local government payments are made;

h. is an individual with a disability whose own income meets or exceeds the requirements of subsections (c)(i) or (c)(ii) above, but who is a member of a family whose income does not meet such requirements.

2. WASHINGTON MUTUAL may consult with Alamo WorkSource (“AWS”), which is capable of identifying those Economically Disadvantaged Individuals who are qualified for the non-temporary full-time employment positions WASHINGTON MUTUAL will seek to fill from time to time.

3. WASHINGTON MUTUAL may from time to time inform AWS of job openings and the qualifications for each such job, providing the same type of information with the same level of detail as WASHINGTON MUTUAL would normally use in recruiting for such a position. AWS shall disseminate information about WASHINGTON MUTUAL’s job opportunities to Economically Disadvantaged Individuals, recruit and screen such Economically Disadvantaged Individuals, and refer potential candidates for employment to WASHINGTON MUTUAL. Such referrals shall be accompanied by such personnel information as WASHINGTON MUTUAL may prescribe so the potential candidates can be evaluated by WASHINGTON MUTUAL.

4. In its sole and complete discretion WASHINGTON MUTUAL shall:

a. determine which Economically Disadvantaged Individuals, if any, meet its hiring criteria for particular positions;

b. determine how many Economically Disadvantaged Individuals, if any, to interview for particular positions; and

c. determine how many and which Economically Disadvantaged Individuals WASHINGTON MUTUAL will hire for particular positions, if any.

5. WASHINGTON MUTUAL shall have satisfied its obligations under Article 5, Paragraph N if it makes a good faith effort to hire Economically Disadvantaged Individuals. If WASHINGTON MUTUAL consults with AWS in good faith to identify and interview those Economically Disadvantaged Individuals who are qualified for positions to be filled by WASHINGTON MUTUAL, then such activity shall be deemed to be the good faith effort required herein. In addition, regardless of whether WASHINGTON MUTUAL works with AWS, if WASHINGTON MUTUAL meets the goal of hiring at least twenty-five (25%) Economically Disadvantaged Individuals, then such activity shall be conclusively deemed to have satisfied the good faith effort required by Article 5, Paragraph N. In determining whether WASHINGTON MUTUAL meets the goal of hiring at least twenty-five percent (25%) Economically Disadvantaged Individuals, the calculation shall be calculated on a calendar year basis by the month of April.

O. Local Employment Goal. WASHINGTON MUTUAL covenants and agrees to make a good faith effort to hire local employees to fulfill its requirements under Article 5, Paragraph A. "Local" is defined, for the purposes of this Paragraph, as an employee whose principal residence is located within the city limits of the City of San Antonio or within the county limits of Bexar County.

P. Notification Requirement Regarding Sale, Transfer or Sub-lease of Property. WASHINGTON MUTUAL covenants and agrees to notify CITY in writing at least 30 days prior to any sale, transfer or sub-lease of the Property during the Term. CITY shall not unreasonably withhold approval of any requests for Assignment of this Agreement by WASHINGTON MUTUAL under Article 11 and any new purchaser or transferee requesting Assignment shall be bound by same. Failure to provide the required notification under this Article 5, Paragraph P may render WASHINGTON MUTUAL subject to the termination and recapture provisions under Article 7, Paragraphs F and I without benefit of the Cure Period (as defined in Article 7, Paragraph F).

Q. Notification Requirement Regarding Relocation or Cessation of Business. WASHINGTON MUTUAL covenants and agrees to notify CITY in writing at least 30 days prior to Relocating or Ceasing its Business Activities (as defined in Article 7, Paragraphs B and C). Failure to provide the required notification under this Article 5, Paragraph Q may render WASHINGTON MUTUAL subject to the termination and recapture provisions under Article 7, Paragraphs F and I without benefit of the Cure Period (as defined in Article 7, Paragraph F).

R. Penalty for Default/Termination. If, during this Agreement or within ten (10) years after the end of this Agreement, WASHINGTON MUTUAL fails to create and retain at least the minimum number of non-temporary, full-time jobs required under Article 5, Paragraph A of this Agreement, or WASHINGTON MUTUAL fails to pay at least the minimum wages required under Article 5, Paragraph B of this Agreement for a period of three (3) or more consecutive months, then the termination and recapture provisions of Article 7, Paragraphs E, F and I of this Agreement shall apply against WASHINGTON MUTUAL.

S. Other Actions Resulting in Default/Termination. If, during this Agreement, WASHINGTON MUTUAL allows its ad valorem taxes due on the land, real and personal property or inventory and supplies to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or is in default with any loan which has been made by the San Antonio Development Agency, San Antonio Local Development Company, *dba* South Texas Business Fund, City of San Antonio Industrial Development Authority or any other CITY-sponsored loan/grant/bond program, then the termination and recapture provisions of Article 7, Paragraphs F and I of this Agreement shall apply.

## 6. **ADDITIONAL CONSIDERATION**

A. Marshall Road. No later than sixty (60) days after the acquisition of the required property rights, WASHINGTON MUTUAL shall convey to CITY, through an executed conveyance document, Right of Way ("ROW") through Marshall Road, as described in Exhibit "G." Such conveyance document shall be in the form and manner of Exhibit "H" and shall be executed by a

duly authorized WASHINGTON MUTUAL representative. Upon execution WASHINGTON MUTUAL shall record such document in the land records of Bexar County and bear any and all costs associated with such recording.

B. Master Thoroughfare Plan. Both Parties hereby explicitly acknowledge that WASHINGTON MUTUAL, by accepting the benefits of this Agreement, consents to the inclusion of Marshall Road in the CITY's Master Thoroughfare Plan. WASHINGTON MUTUAL shall have no obligation to bear any costs associated with installing Marshall Road to wrap the north and/or west side(s) of the site, if such installation is deemed necessary by CITY or by the Master Thoroughfare Plan.

C. Completion of Existing Master Plan. It is understood by WASHINGTON MUTUAL and CITY that WASHINGTON MUTUAL shall occupy three existing structures and construct at least one additional structure on the Property. WASHINGTON MUTUAL and CITY acknowledge that this Agreement shall apply only to improvements to the three structures in existence at the time of execution of this Agreement, one additional structure to be constructed, and to the seven million two hundred thousand dollar (\$7,200,000.00) personal property investment outlined herein. CITY acknowledges WASHINGTON MUTUAL's right to construct additional buildings on the Property for the purpose of housing additional personnel. All new construction shall require WASHINGTON MUTUAL to comply with the prevailing local laws and regulations regarding such construction, including but not limited to the City's Unified Development Code.

D. Overall Site Use. WASHINGTON MUTUAL acknowledges that the location of its Regional Operations Center is atop part of the environmentally sensitive Edwards Aquifer Recharge Zone. WASHINGTON MUTUAL agrees to restrict any development and any future development on the Property to a maximum impervious cover limit of forty-four percent (44%). Such restriction shall remain on the Property regardless of ownership and shall be recorded in the land records of Bexar County in the form and manner specified in Exhibit "I."

## 7. TAX PHASE-IN

A. Term. The Tax Phase-In Period (the "Term") for the Property improvements shall be for ten (10) years beginning on January 1, 2006. The base year for calculating the value of the Facility Property shall be January 1, 2005. The "Base Year Value" of the Property shall be the assessed value (determined by the Bexar Appraisal District), as of the Base Year, of the personal property located thereon.

B. Conditions Precedent. At the commencement of the Term, WASHINGTON MUTUAL shall own, have an interest in or otherwise control the Property. WASHINGTON MUTUAL shall also conduct its Business Activities in the Facility. A Tax Phase-In shall be granted in each year of the Term as described in Article 7, Paragraph C below.

C. Additional Conditions and Tax Phase-In Percentage. Provided that WASHINGTON MUTUAL has invested a minimum of seven million two hundred thousand dollars (\$7,200,000.00) in the Facility personal property improvements by December 31, 2007,

WASHINGTON MUTUAL has hired and retained the minimum number of employees specified in Article 5, Paragraph A of this Agreement, WASHINGTON MUTUAL pays at least the minimum wages required under Article 5, Paragraph B of this Agreement, WASHINGTON MUTUAL uses the Facility for its Business Activities, and WASHINGTON MUTUAL is otherwise in compliance with the conditions of this Agreement, then one hundred percent (100%) of the ad valorem taxes for the personal property improvements, above the Base Year Value, shall be abated during the Term. There shall be no abatement of taxes for land, real property, and/or pre-existing personal property.

D. Pre-Term Taxes. WASHINGTON MUTUAL shall pay, or cause to be paid, to the CITY ad valorem personal property taxes and real property taxes assessed, if any and as applicable, by the CITY on the Property prior to the commencement of the Term.

E. Base Year Taxation. WASHINGTON MUTUAL understands and agrees that the Base Year Value of the Property and the tax levy based on said Base Year Value of the Property in the Zone shall not decrease, but taxes may increase and that the amount of personal property taxes paid by WASHINGTON MUTUAL to the CITY attributable to the Property during the Term shall not be less than the amount of taxes attributable to the Property paid to the CITY for the base year tax year, if any, except in the event of casualty or condemnation of the Facility in the Zone.

F. Protest Rights. WASHINGTON MUTUAL shall have the right to protest appraisals of the Property, or any portion thereof, or the value of any improvements over and above the Base Year Value as applicable.

## 8. **DEFAULT/TERMINATION/RECAPTURE**

A. Relocation Defined. For purposes of this section, "Relocation" or "Relocate" shall mean WASHINGTON MUTUAL or a Related Organization which has taken the place of WASHINGTON MUTUAL: (i) relocating Business Activities to a location outside the CITY; or (ii) relocating Business Activities outside an approved Enterprise or Reinvestment Zone within the CITY.

B. Termination and Recapture of Taxes in Event of Relocation of Business Activities. If WASHINGTON MUTUAL occupies and uses the Facility for its Business Activities and subsequently Relocates (as defined in this Article 8, Paragraph A) during the Term, except if such Relocation of Business Activities is caused by a Force Majeure, as defined in Article 9, then City Council shall have the right to terminate this Agreement and the Term. Said terminations shall be effective for the calendar year during which the Property was no longer used for the required purposes stated herein. Upon said terminations, personal property taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured (based on the table in Article 8, Paragraph I) and shall be paid to CITY within sixty (60) calendar days from the date of said termination notices to WASHINGTON MUTUAL by CITY.

C. Termination and Recapture of Taxes in Event of Cessation of Business Activities. If WASHINGTON MUTUAL occupies and uses the Facility for its Business Activities and subsequently ceases conducting Business Activities (or a substantial portion thereof) at the site for a continuous period of three months during the Tax Phase-In Period for any reason, except if such cessation is caused by a Force Majeure as defined in Article 9, then the City Council shall have the right to terminate this Agreement and the Term. Said terminations shall be effective for the calendar year during which the Property was no longer used for the required purposes stated herein. Upon said terminations, personal property taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured (based on the table in Article 8, Paragraph I) and shall be paid to CITY within sixty (60) calendar days from the date of said termination notices to WASHINGTON MUTUAL by CITY.

D. Recapture of Taxes Following Term of Agreement. If the Term expires and WASHINGTON MUTUAL Relocates (as defined in this Article 8, Paragraph A) or ceases to conduct Business Activities (as defined in this Article 8, Paragraph C) at the Facility, then the City Council shall also have the right to recapture from WASHINGTON MUTUAL a percentage of the previously abated personal property taxes based on the table in Article 8, Paragraph I of this Agreement.

E. Termination and Recapture of Taxes for Failure to Maintain Minimum Number of Employees. If WASHINGTON MUTUAL, a Related Organization or City-approved assignee fails to hire and retain the minimum number of permanent full-time employees as required in Article 5, Paragraph A above, calculated by the averaging of the two most current annual Employee Wage Information for Tax Phase-In Request Forms, or substantially similar form, (Exhibit "E") for such calendar year of noncompliance, then for each such calendar year of noncompliance, the tax abatement shall be reduced in the following tax year by the same percentage as the deficiency in the number of employees. For example, if WASHINGTON MUTUAL hires and retains ninety percent (90%) of the minimum number of non-temporary full-time employees in a given year, WASHINGTON MUTUAL shall be entitled to ninety percent (90%) of the ad valorem personal property tax abatement for the Property for that following year, but subject to a floor of fifty percent (50%). If WASHINGTON MUTUAL fails to hire and retain at least fifty percent (50%) of the minimum number of non-temporary full-time employees in a given year then, at the option of City Council, this failure may be grounds for termination of this Agreement and the Term. Said termination shall be effective for the calendar year during which the number of permanent full-time employees stated herein have not been hired or retained as required. Upon said terminations, personal property taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured (based on the table in Article 8, Paragraph I) and shall be paid to CITY within sixty (60) calendar days from the date of said termination notices to WASHINGTON MUTUAL.

F. Cure Period and Declaration of Default. During the Term, CITY may declare a default if WASHINGTON MUTUAL fails to comply with any of the terms of this Agreement. Should CITY determine WASHINGTON MUTUAL is in default under any of the terms of this Agreement, CITY will notify WASHINGTON MUTUAL in writing at the address below in Article 10. If said default is not cured within sixty (60) calendar days from the date of such notice (hereinafter the "Cure Period"), then City Council shall have the right to terminate this

Agreement. CITY may extend the Cure Period if WASHINGTON MUTUAL commences the cure within the Cure Period and WASHINGTON MUTUAL is diligently pursuing such cure. If the Agreement is terminated as a result of default, tangible personal property taxes will be due for the tax year during which the termination occurred and shall accrue without further abatements for all tax years thereafter; in addition, CITY shall have the right to recapture (based on the table in Article 8, Paragraph I) from WASHINGTON MUTUAL all previously abated personal property taxes under this Agreement and said taxes shall be paid by WASHINGTON MUTUAL within sixty (60) calendar days of receiving CITY'S written notification of recapture.

G. Additional Rights to Terminate. If WASHINGTON MUTUAL allows its ad valorem taxes due on the Base Year Value of the tangible personal property to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or is in default with any loan which has been made by the San Antonio Development Agency, San Antonio Local Development Company dba South Texas Business Fund, City of San Antonio Industrial Development Authority or any other CITY sponsored loan/grant/bond program, City Council shall have the right to terminate this Agreement under Article 8, Paragraph F. Taxes will then be due for the tax year during which the termination occurred and shall accrue without abatement for all tax years thereafter and all taxes previously abated by virtue of this Agreement will be recaptured (based on the table in Article 8, Paragraph I) and paid by WASHINGTON MUTUAL within sixty (60) calendar days of receiving CITY'S notice of termination.

H. Termination in Event of Taking by Eminent Domain. If the Facility, or any portion of the Property in the Facility, is taken by any public or quasi-public authority under the power of eminent domain, condemnation or expropriation, then the Abatement shall terminate (only as to the portion of the Property or Facility affected by the taking), effective as of the calendar year during which the taking occurs, and there shall be no recapture of taxes. In such event, WASHINGTON MUTUAL shall have the right to continue or to terminate this Agreement, for the remaining portion of the Property or Facility, without recapture or other penalty.

I. Calculation of Taxes Subject to Recapture. If WASHINGTON MUTUAL fails to comply with any of the terms of this Agreement including, but not limited to, those pertaining to Article 8, Paragraphs A through H, then the City Council shall have the right to recapture from WASHINGTON MUTUAL a percentage of the abated personal property taxes based on the following table:

TERM YEAR	TOTAL TAX PREVIOUSLY ABATED SHALL BE MULTIPLIED BY:
1-10	100%
11-12	80%
13	60%
14	40%
15	20%
16	10%

FORMULA: The recapture formula shall be:

	Applicable Percentage	=	Amount to be
Total Taxes Abated	X		
	from above Schedule		Recaptured

CITY shall recalculate the amount of recapture pertaining to each tax year utilizing the above formula. A bill for each year will then be sent to WASHINGTON MUTUAL.

J. Other Remedies Available. CITY shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and/or recapture, if WASHINGTON MUTUAL defaults under the terms of this Agreement. However, such termination and/or recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which WASHINGTON MUTUAL may be entitled. The termination and/or recapture of taxes provided in this Article 8 are not applicable to situations involving minor changes to the description of the Property or Facility, or changes in ownership or in management thereof, so long as WASHINGTON MUTUAL, its parent, subsidiary, affiliate or its CITY-approved successor or assignee continues conducting Business Activities or other authorized activities thereon as provided hereinabove.

**9. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)**

For purposes of this section, "Force Majeure" is defined as an act of God or natural disaster. It also includes explosion or other casualty or accident which is not the result of negligence, intentional act or misconduct on the part of WASHINGTON MUTUAL. In addition to relief expressly granted in this Agreement, CITY may grant relief from performance of this Agreement if WASHINGTON MUTUAL is prevented from compliance and performance by an event of Force Majeure. The burden of proof for the need for such relief shall rest upon WASHINGTON MUTUAL. To obtain release based upon this Article 9, WASHINGTON MUTUAL must file a written request with the CITY'S Economic Development Department for processing to City Council for a decision, authorized by a duly approved Ordinance.

**10. NOTICE**

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective upon its deposit into the custody of the United States Postal Service or such nationally recognized delivery service as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO WASHINGTON MUTUAL:

- (Whether personally delivered or mailed):

WASHINGTON MUTUAL  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TO CITY:

- If mailed:

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

- If by personal or overnight delivery:

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

**11. CONDITION**

This Agreement is conditioned entirely upon the approval of the San Antonio City Council, as evidenced by duly approved Ordinance Number \_\_\_\_\_, dated May 12, 2005.

**12. ASSIGNMENT**

Except as otherwise expressly provided herein, this Agreement may be assigned or otherwise transferred only with City Council's prior approval (which approval shall not be unreasonably withheld), as reflected in a duly adopted ordinance. WASHINGTON MUTUAL must submit a written request to CITY for approval of the proposed assignment or other transfer at least thirty (30) days prior to the effective date of the assignment or transfer of any part of the

Property or of the Facility; however, no City Council consent is required for an assignment or transfer to a parent of WASHINGTON MUTUAL, a subsidiary of WASHINGTON MUTUAL, an affiliate entity of WASHINGTON MUTUAL, or to any new entity created as a result of a merger, acquisition or other corporate restructure or reorganization of WASHINGTON MUTUAL. However, WASHINGTON MUTUAL shall give CITY prior written notice of all assignments or other transfers that do not require City Council consent, as required under Article 5, Paragraph P. All future assignees shall be bound by all terms and/or provisions and representations of this Agreement.

### **13. GENERAL PROVISIONS**

A. None of the property improvements described in this Agreement are financed by tax increment bonds.

B. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the CITY related to this project. No bonds for which the CITY is liable have been used to finance this project.

C. No amendment, modification, or alteration of the terms hereof shall be binding unless in writing dated subsequent to the date of this Agreement and duly authorized by the parties. WASHINGTON MUTUAL acknowledges that City Council approval is required for any and all of these actions.

### **14. SEVERABILITY**

In the event any section, subsection, paragraph, subparagraph, sentence, phrase or work herein is held invalid, illegal or unenforceable, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase or word. In such event there shall be substituted for such deleted provisions a provision as similar as possible in terms and in effect to such deleted provision that is valid, legal and enforceable. This Agreement constitutes the entire Agreement between the parties hereto relating to the subject matter contained herein and supersedes all prior, oral or written agreements, commitments or understandings with respect to the matters provided for herein.

### **15. ESTOPPEL CERTIFICATE**

Any party hereto may request an estoppel certificate related to this project (hereafter referred to as "Certificate") from another party hereto so long as the Certificate is requested in connection with a bona fide business purpose. The Certificate, which if requested, will be addressed to a subsequent purchaser or assignee of WASHINGTON MUTUAL or other party designated by WASHINGTON MUTUAL which shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default, if such is the case, the remaining Term of this Agreement, the levels of tax abatement in effect, and such other matters reasonably requested by the party(ies) to receive the Certificate.

16. **OWNER STANDING**

WASHINGTON MUTUAL, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or City Council actions authorizing same, and WASHINGTON MUTUAL shall be entitled to intervene in said litigation.

17. **APPLICABLE LAW**

This Agreement shall be construed under the laws of the State of Texas and is performable in Bexar County, Texas, the location of the WASHINGTON MUTUAL Reinvestment Zone.

18. **DUPLICATE ORIGINALS**

This Agreement shall be executed in two duplicate originals, with a duplicate original going to each party.

**WASHINGTON MUTUAL BANK**  
A federal financial association

**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
J. Rolando Bono  
INTERIM CITY MANAGER

ATTEST:

ATTEST:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Leticia Vacek  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
Martha C. Sepeda  
ACTING CITY ATTORNEY

*List of exhibits appears on next page*

EXHIBITS:

Exhibit "A" Property Description

Exhibit "B" City of San Antonio Guidelines & Criteria for Tax Phase-In and Reinvestment Zones

Exhibit "C" Washington Mutual Benefits Package

Exhibit "D" Employment Laws

Exhibit "E" Employment Wage Information

Exhibit "F" Job Number Certification

Exhibit "G" Marshall Road Description

Exhibit "H" City's Right of Way

Exhibit "I" Development Covenant

## **Exhibit B**

# **Training Grant Agreement**

STATE OF TEXAS §  
  §  
COUNTY OF BEXAR §

**AGREEMENT FOR DISTRIBUTION OF AN  
ECONOMIC DEVELOPMENT INCENTIVE  
FUND TRAINING GRANT**

This agreement (hereinafter referred to as "AGREEMENT") is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas, hereinafter referred to as "CITY", by and through its Interim City Manager or his designee, and Washington Mutual Bank., hereinafter referred to as "WASHINGTON MUTUAL."

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, the CITY is authorized to grant and loan municipal funds in furtherance of public purposes for economic development projects; and

**WHEREAS**, as set forth in Ordinance No. 99308, passed and approved on June 3, 2004, and revised in Ordinance No. 100684, passed and approved on April 14, 2005, the CITY's Economic Development Program was modified to permit grants in accordance with the CITY's Economic Development Incentive Fund ("EDIF") Guidelines; and

**WHEREAS**, CITY has a grant amount of \$3,000,000.00 available in the EDIF to be used to carry out the project; and

**WHEREAS**, the City Council of CITY granted an exception to the EDIF Guidelines and authorized the City Manager or designee to negotiate an agreement with WASHINGTON MUTUAL for the project as reflected in Ordinance No. \_\_\_\_\_, passed and approved on May 12, 2005 and CITY wishes to engage WASHINGTON MUTUAL to carry out such project; **NOW THEREFORE**:

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

**SECTION 1. CONTRACT PURPOSE**

WASHINGTON MUTUAL shall conduct, in a satisfactory manner as determined by CITY, an economic development project to renovate three existing facilities and construct at least one additional facility on property located at 20855 Stone Oak Parkway in San Antonio, Texas (hereinafter referred to as the "Facility") to permit the Facility to be used for banking and financial services (hereinafter referred to as the "Project"). The CITY will support the Project through a grant from the EDIF, as created by the City Council of the City of San Antonio and for which guidelines were adopted by Ordinance No. 99308, passed and approved on June 3, 2004, and revised in Ordinance No. 100684, passed and approved on April 14, 2005, to provide funding for the purpose of workforce training as part of a larger incentive package intended, in part, to attract and retain high-impact companies or government agency projects that support the City's targeted industries and that are used to leverage private, state or federal funds intended to achieve the same goals.

**SECTION 2. PROJECT REQUIREMENTS**

A. Both WASHINGTON MUTUAL and CITY understand and agree that this Agreement is to be executed pursuant to the approval of the City Council of San Antonio by Ordinance Number \_\_\_\_\_ given on May 12, 2005.

B. The total number of new, direct, permanent, full-time jobs to be created by WASHINGTON MUTUAL, as a result of the Project, shall be no less than 3,000, subject to the schedule listed in Attachment I.

C. The total amount of funding granted toward the Project is \$3,000,000.00, which is to be funded as follows:

<b>Funding Type</b>	<b>Specific Source Name</b>	<b>Amount of Funding</b>
COSA EDIF Grant	COSA	\$3,000,000.00
<b>Total Project Cost</b>		<b>\$3,000,000.00 Total</b>

D. If WASHINGTON MUTUAL's proposal for funding from any of the other sources named in Section 2(C) is rejected, the commitment of funds under this Agreement may be withdrawn. WASHINGTON MUTUAL shall have thirty (30) days to renegotiate financial arrangements prior to withdrawal of the commitment of funds under this Agreement.

### **SECTION 3. CONTRACT PERIOD**

This Agreement shall commence upon full execution of this Agreement and shall terminate upon final acceptance of the last scheduled payment due under the payment schedule, as defined by Section 16 of this Agreement and as more fully described in Attachment I, attached hereto and incorporated herein.

### **SECTION 4. WASHINGTON MUTUAL PERFORMANCE**

A. WASHINGTON MUTUAL shall conduct and complete the Project in a satisfactory manner as determined by CITY, subject to all provisions and dates listed in the Term Sheet in Attachment I.

B. WASHINGTON MUTUAL shall comply with all applicable laws and regulations, and shall perform all activities in accordance with the terms of the Special Conditions specified in Section 16 of this Agreement, and with all other terms, provisions, and requirements set forth herein.

### **SECTION 5. DEPARTMENT OBLIGATIONS**

A. In consideration of full and satisfactory performance of activities required by Section 2 of this Agreement, CITY will disburse EDIF grant funds to WASHINGTON MUTUAL for the reimbursement of costs associated with training newly acquired personnel in the amounts and at the times specified by the Special Conditions detailed in Section 16 of this Agreement, and subject to the limitations set forth in this Section 5 and in Sections 14 and 15 below. Notwithstanding any other provision of this Agreement, the total of all grant payments and other obligations incurred by CITY under this Agreement will not exceed the sum of Three Million and No/100 Dollars (\$3,000,000.00).

B. CITY will not be liable to WASHINGTON MUTUAL or other entity for any costs incurred by WASHINGTON MUTUAL.

C. WASHINGTON MUTUAL shall refund to CITY any sum of money paid to WASHINGTON MUTUAL by CITY, which CITY or its Economic Development Department determines is an overpayment to WASHINGTON MUTUAL, or in the event CITY or its Economic Development Department determines funds spent by WASHINGTON MUTUAL were not an allowable cost of this

Project. Allowable costs will be determined in accordance with this Agreement and are defined as direct costs incurred in the training of WASHINGTON MUTUAL's workforce, to include planning and design, labor, materials and equipment. No refund payment(s) may be made from local, state, or federal grant funds unless statute or regulation specifically permits repayment with grant funds. Such refund shall be made by WASHINGTON MUTUAL to CITY within ninety (90) calendar days after such refund is requested in writing by CITY, or within thirty (30) calendar days of a notice from CITY indicating the request is the result of a final determination that the refund is owed.

## **SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS**

A. WASHINGTON MUTUAL shall maintain fiscal records and supporting documentation for all expenditures of funds made under this Agreement in a manner that conforms to this Agreement. Such records shall include data on the racial, ethnic and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. WASHINGTON MUTUAL shall retain such records, and any supporting documentation, for the greater of: (1) four [4] years from the end of the contract period; or (2) the period required by other applicable laws and regulations.

B. WASHINGTON MUTUAL shall give the CITY, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by WASHINGTON MUTUAL pertaining to this Agreement, including records concerning the past use of EDIF grant funds. Such rights of access shall continue as long as the records are retained by WASHINGTON MUTUAL. Failure to provide reasonable access to authorized CITY representatives shall give the CITY the right to suspend or terminate this Agreement as provided for in Section 15 and 16, or any portion thereof, for reason of default. All records and other information shall be retained by WASHINGTON MUTUAL for a period of four (4) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. WASHINGTON MUTUAL agrees to maintain such records in an accessible location and to provide citizens, through the CITY, reasonable access to such records consistent with the Texas Public Information Act.

## **SECTION 7. MONITORING**

A. CITY reserves the right to perform periodic on-site monitoring of WASHINGTON MUTUAL's compliance with the terms and conditions of this Agreement and of the adequacy and timeliness of WASHINGTON MUTUAL's performance. After each monitoring visit, CITY will provide WASHINGTON MUTUAL with a written report of the monitor's findings. If the monitoring report notes deficiencies in WASHINGTON MUTUAL's performances under the terms of this Agreement, the monitoring report shall include requirements for the timely correction of such deficiencies by WASHINGTON MUTUAL. Failure by WASHINGTON MUTUAL to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

B. During the course of the Project, WASHINGTON MUTUAL shall provide, on an annual basis in accordance with its Tax Phase-In Agreement with CITY, information evidencing the number of jobs generated during the Term of this Agreement and in accordance with ATTACHMENT "I."

## **SECTION 8. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed by the parties hereto that CITY is contracting with WASHINGTON MUTUAL as an Independent Contractor, and that WASHINGTON MUTUAL, its employees and subcontractors are not employees of the CITY.

#### **SECTION 9. CONFLICT OF INTEREST**

A. WASHINGTON MUTUAL shall ensure that no employee, officer, or agent of WASHINGTON MUTUAL shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. WASHINGTON MUTUAL shall comply with Chapter 171, Texas Local Government Code as well as the CITY's Code of Ethics.

B. Except for eligible administrative or personnel costs, no employee, agent, consultant, officer, or elected or appointed official, of either WASHINGTON MUTUAL or of a subcontractor, who exercises or has exercised any functions or responsibilities or is in a position to participate in decision-making or gain inside information in regard to the activities involved in the Project, shall be permitted to have or obtain a financial interest in or benefit from the Project or any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties. This prohibition shall remain in effect for the duration of the prohibited relationship plus one calendar year thereafter.

#### **SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY**

A. WASHINGTON MUTUAL shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

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

C. WASHINGTON MUTUAL shall include the substance of this Section 10 in all subgrant/subcontract agreements.

#### **SECTION 11. LEGAL AUTHORITY**

A. WASHINGTON MUTUAL assures and guarantees that WASHINGTON MUTUAL possesses the legal authority to enter into this Agreement, to receive funds authorized by this Agreement, and to perform the services WASHINGTON MUTUAL has obligated itself to perform hereunder.

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

C. CITY will have the right to suspend or terminate this Agreement in accordance with Section 14 and 15 herein if there is a dispute as to the legal authority, of either WASHINGTON MUTUAL or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. WASHINGTON MUTUAL is liable to CITY for any money it has received from CITY for performance of the provisions of this Agreement if CITY suspends or terminates this Agreement for reasons enumerated in this Section 11.

## **SECTION 12. LITIGATION AND CLAIMS**

A. WASHINGTON MUTUAL shall give CITY immediate notice in writing of any action, including any proceeding before an administrative agency, filed against WASHINGTON MUTUAL arising out the performance of any subcontract hereunder. Except as otherwise directed by CITY, WASHINGTON MUTUAL shall furnish immediately to CITY copies of all pertinent papers received by WASHINGTON MUTUAL with respect to such action or claim. WASHINGTON MUTUAL shall notify the CITY immediately of any legal action filed against the WASHINGTON MUTUAL or any subcontractor, or of any proceeding filed under the federal bankruptcy code. WASHINGTON MUTUAL shall submit a copy of such notice to CITY within 30 calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations.

B. CITY and WASHINGTON MUTUAL acknowledge that CITY is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

## **SECTION 13. CHANGES AND AMENDMENTS**

A. Except as specifically provided in Section 13(C) of this Agreement, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement upon CITY approval and authorization of WASHINGTON MUTUAL.

B. It is understood and agreed by the parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as detailed in Chapter 380 of the Texas Local Government Code, approved by Ordinance 100684 on April 14, 2005, and the terms and conditions of this Agreement. CITY may, during the contract period, issue policy directives that serve to establish, interpret, or clarify performance requirements under this Agreement. Such policy directives will be promulgated by CITY, shall have the effect of qualifying the terms of this Agreement and shall be binding upon WASHINGTON MUTUAL, as if written herein, provided however that said policy directives and any amendments shall not alter the terms of this Agreement so as to release CITY from any obligation specified in Section 5 of this Agreement to reimburse costs incurred by WASHINGTON MUTUAL prior to the effective date of said amendments or policy directives.

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

#### **SECTION 14. SUSPENSION**

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event WASHINGTON MUTUAL fails to comply with the terms of any contract with the CITY, CITY shall provide WASHINGTON MUTUAL with written notification as to the nature of the non-compliance. CITY shall grant WASHINGTON MUTUAL a sixty (60) day period from the date of the CITY's written notification to cure any issue of non-compliance under such contract. Should WASHINGTON MUTUAL fail to cure any default within this period of time, the CITY may, upon written Notice of Suspension to WASHINGTON MUTUAL, suspend this Agreement in whole or in part and withhold further payments to WASHINGTON MUTUAL, and prohibit WASHINGTON MUTUAL from incurring additional obligations of funds under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

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

C. A suspension under this Section 14 may be lifted only at the sole discretion of the CITY upon a showing of compliance with or written waiver by CITY of the term(s) in question.

D. With the exception of payment for work in progress or materials ordered prior to receiving a Notice of Suspension, CITY shall not be liable to WASHINGTON MUTUAL or to WASHINGTON MUTUAL's creditors for costs incurred during any term of suspension of this Agreement.

#### **SECTION 15. TERMINATION**

A. CITY shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion specified in Section 4 of this Agreement whenever CITY determines that WASHINGTON MUTUAL has failed to comply with any term of any contract with the CITY. CITY will provide WASHINGTON MUTUAL with written notification as to the nature of the non-compliance, and grant WASHINGTON MUTUAL a sixty (60) day period from the date of the CITY's written notification to cure any issue of non-compliance under such contract. Should WASHINGTON MUTUAL fail to cure any default within this period of time, the CITY may, upon issuance to WASHINGTON MUTUAL of a written Notice of Termination, terminate this Agreement in whole or in part and withhold further payments to WASHINGTON MUTUAL, and prohibit WASHINGTON MUTUAL from incurring additional obligations of funds under this Agreement. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated.

B. In the case of default for causes beyond WASHINGTON MUTUAL's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the CITY may, in its sole discretion, extend the cure period provided that WASHINGTON MUTUAL shall: (1) immediately upon receipt of Notice of Termination advise CITY of WASHINGTON MUTUAL's intention to institute all steps

necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. Except as provided in Section 15(A), awards may be terminated in whole or in part only as follows:

1. By the CITY (with the consent of the WASHINGTON MUTUAL) in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or
2. By WASHINGTON MUTUAL upon written notification to the CITY, setting forth the reasons of such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, the CITY determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the CITY may terminate the award in its entirety under Section 15(A).

D. Upon receipt of Notice of Termination for non-compliance under Section 15(A), WASHINGTON MUTUAL shall, to the extent possible under its other contractual obligations, cancel, withdraw or otherwise terminate any outstanding orders or subcontracts related to the performance of this Agreement or the part of this Agreement to be terminated and shall cease to incur costs thereunder. Any other work or materials under or part of this Agreement shall be terminated and CITY will not be liable to WASHINGTON MUTUAL or to WASHINGTON MUTUAL's creditors for any costs incurred subsequent to receipt of a Notice to Terminate.

E. Notwithstanding any exercise by CITY of its right of suspension under Section 14 of this Agreement, or of early termination pursuant to this Section 16, WASHINGTON MUTUAL shall not be relieved of any liability to CITY for damages due to CITY by virtue of any breach by WASHINGTON MUTUAL of any contract with CITY. CITY may withhold payments to WASHINGTON MUTUAL until such time as the exact amount of damages due to CITY from WASHINGTON MUTUAL is agreed upon or is otherwise determined.

## **SECTION 16. SPECIAL CONDITIONS AND TERMS**

A. Following the effective date of this Agreement, CITY will release the disbursement of grant funds on a performance basis at the rate of one thousand dollars (\$1,000.00) per employment position hired (subject to the Job Target and Reporting Requirements schedule in Attachment I) until December 31, 2012, which shall not exceed the amount of Three Million Dollars (\$3,000,000.00) under this Agreement (hereinafter "Contract Funds"), upon submission by WASHINGTON MUTUAL of the following information:

1. The first annual report (due in January 2007) certifying that WASHINGTON MUTUAL has met its first Job Target Requirement of five hundred (500) new Employment Positions by December 31, 2006. The next disbursement, if applicable, will occur following receipt of WASHINGTON MUTUAL's second annual certification report (due in January 2008) confirming that WASHINGTON MUTUAL has met the second Job Target Requirement of five hundred (500) new Employment Positions for a cumulative total of one thousand (1,000) new Employment Positions by December 31, 2007. Thereafter, disbursements will continue to occur on an annualized basis subject to the Job Target and Reporting Requirements listed on the Term Sheet schedule in Attachment I.

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

C. In the event that WASHINGTON MUTUAL fails to hire the minimum employment positions in accordance with the dates specified in the Term Sheet in Attachment I, and has not utilized the full available grant award amount of three million dollars (\$3,000,000.00) by December 31, 2012, WASHINGTON MUTUAL shall forfeit the remaining balance of the available grant award, subject to CITY's reservation of rights articulated in Section 19 of this Agreement.

#### **SECTION 17. SUBCONTRACTS**

A. WASHINGTON MUTUAL shall ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Agreement as if such performance were rendered by WASHINGTON MUTUAL. WASHINGTON MUTUAL shall bear full responsibility for performance by all subcontractors if any are employed under this Agreement.

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

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

#### **SECTION 18. DEBARMENT**

By signing this Agreement, WASHINGTON MUTUAL certifies that it will not award any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs.

#### **SECTION 19. RIGHTS UPON DEFAULT**

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

#### **SECTION 20. NON-ASSIGNMENT**

This Agreement is not assignable. Notwithstanding any attempt to assign the Agreement, WASHINGTON MUTUAL shall remain fully liable on this Agreement and shall not be released from

performing any of the terms, covenants and conditions herein. WASHINGTON MUTUAL shall be held responsible for all funds received under this Agreement.

**SECTION 21. ORAL AND WRITTEN AGREEMENTS**

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

**SECTION 22. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)**

CITY may grant relief from performance of the Agreement if WASHINGTON MUTUAL is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of WASHINGTON MUTUAL. The burden of proof for the need for such relief shall rest upon WASHINGTON MUTUAL. To obtain release based upon *force majeure*, WASHINGTON MUTUAL must file a written request with the CITY.

**SECTION 23. SURVIVAL OF CERTAIN CONTRACT PROVISIONS**

The following provisions of the Agreement, concerning WASHINGTON MUTUAL's obligations, shall survive the termination of the Agreement after completion of the Project:

- A. Section 2B (Job Creation)
- B. Section 6 (Records Retention and Accessibility of Records)
- C. Section 16D (Reports Concerning the Project After Completion).

*Signatures appear on next page.*

**WITNESS OUR HANDS, EFFECTIVE as of \_\_\_\_\_, 2005:**

Accepted and executed in two duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number \_\_\_\_\_, dated May 12, 2005, and Washington Mutual Bank pursuant to the authority of its President.

**WASHINGTON MUTUAL BANK**

**CITY OF SAN ANTONIO,  
a Texas Municipal Corporation**

BY: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
J. Rolando Bono  
INTERIM CITY MANAGER

ATTEST:

ATTEST:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Leticia Vacek  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
Martha C. Sepeda  
ACTING CITY ATTORNEY

# ATTACHMENT I

**ATTACHMENT I  
TERM SHEET:**

**ECONOMIC DEVELOPMENT INCENTIVE FUND (EDIF) AGREEMENT**

**Between The**

**CITY OF SAN ANTONIO  
AND WASHINGTON MUTUAL BANK**

<b>City of San Antonio Requirements</b>	The City of San Antonio will pay up to \$3,000,000 from the Economic Development Incentive Fund ("EDIF") to Washington Mutual by providing performance-based payment of \$1,000 for each net New Employment Position (defined and subject to the schedule below), up to 3,000 Positions, for a total reimbursement of up to \$3,000,000 through December 31, 2012.
<b>Washington Mutual Requirements</b>	Washington Mutual shall invest a total of at least \$7.2 Million toward personal property improvements and the renovation of three existing facilities and one facility to be constructed, for banking and financial services.
<b>Washington Mutual Job Target Requirements</b>	<p>Washington Mutual shall meet the "Job Target" of creating Three Thousand (3,000) new Employment Positions according to the following schedule:</p> <ul style="list-style-type: none"> <li>(i) 500 by December 31, 2006;</li> <li>(ii) 500 by December 31, 2007;</li> <li>(iii) 500 by December 31, 2008;</li> <li>(iv) 500 by December 31, 2009;</li> <li>(v) 500 by December 31, 2010;</li> <li>(vi) 250 by December 31, 2011; and</li> <li>(vii) 250 by December 31, 2012</li> </ul> <p>and maintaining these total job numbers through December 31, 2016.</p> <p>"Employment Positions" shall be defined as jobs meeting the following criteria:</p> <ul style="list-style-type: none"> <li>(i) New Non-Temporary, Full-Time (equivalent to two thousand eighty (2,080) straight-time paid hours in a fiscal year) Employment Positions in San Antonio with Washington Mutual Bank at the San Antonio facility.</li> <li>(ii) All Employment Positions at the San Antonio location shall be paid a cash wage of at least \$9.06 per hour.</li> <li>(iii) Within one year of project location opening, 70% of all new and existing positions at the project location shall earn a cash wage exceeding \$11.00 per hour.</li> </ul>
<b>Washington Mutual Reporting Requirements</b>	As required by Washington Mutual's Tax Phase-In Agreement, Washington Mutual shall report annually on its job creation progress. The first annual report is due in January 2007 and must verify that Washington Mutual has met the Job Target of 500 total Employment Positions in San Antonio by December 31, 2006. The second annual report, due in January 2008, must verify that Washington Mutual has met the Job Target of 1,000 total Employment Positions in San Antonio by December 31, 2007. The third annual report, due in January 2009, must verify that Washington Mutual has met the Job Target of 1,500 total Employment Positions in San Antonio by December 31, 2008. The fourth annual report, due in January 2010, must verify that Washington Mutual has met the Job Target of 2,000 total Employment Positions in San Antonio by December 31, 2009. The fifth annual report, due in January 2011, must verify that Washington Mutual has met the Job Target of 2,500 total Employment Positions in San Antonio by December 31, 2010. The sixth annual report, due in January 2012, must verify that Washington Mutual has met the Job Target of 2,750 total

	<p>Employment Positions in San Antonio by December 31, 2011. The seventh annual report, due in January 2013, must verify that Washington Mutual has met the Job Target of 3,000 total Employment Positions in San Antonio by December 31, 2012.</p> <p>There will be 7 annual reports, covering the years 2006-2012.</p>
<p><b>Failure to Meet Job Target Requirements</b></p>	<p><b>Failure to Meet Job Target.</b> If a Washington Mutual annual report demonstrates that it has not met the Job Target of new Employment Positions at its new facility for the preceding year, the City of San Antonio may require Washington Mutual to refund \$1,000.00 for every Employment Position at the new facility by which it is short that year. This recapture amount represents an appropriate proportional payback of the City's investment from the EDIF for each job Washington Mutual has failed to create, plus interest.</p> <p>If Washington Mutual is in default in meeting any of the terms of the Tax Phase-In Agreement, the San Antonio EDIF agreement will also be subject to termination.</p>

# **Exhibit C**

## **Discretionary Contracts Disclosure Form**

**City of San Antonio**  
**Discretionary Contracts Disclosure**

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)  
Attach additional sheets if space provided is not sufficient.*

(1) Identify any individual or business entity<sup>1</sup> that is a **party** to the discretionary contract:

**Washington Mutual Bank, A Federal Association ("Washington Mutual")**

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

Washington Mutual is a wholly-owned subsidiary of Washington Mutual, Inc., a public company whose stock is traded on the New York Stock Exchange. It is a federal association (i.e., a federal banking association) organized and existing under the laws of the United States of America. Its primary federal regulators are the U.S. Department of the Treasury's Office of Thrift Supervision ("OTS") and the Federal Deposit Insurance Corporation ("FDIC"). Both Washington Mutual and Washington Mutual, Inc. have numerous non-bank\* financial or other subsidiaries and/or affiliates, none of which is involved in the discretionary contract.

Washington Mutual, Inc. is a Washington State corporation and is a savings and loan holding company. As a savings and loan holding company, Washington Mutual, Inc. is also subject to regulation by the OTS. Its non-bank financial subsidiaries are also subject to various federal and state laws and regulations.

\*In addition to Washington Mutual, Washington Mutual, Inc. also owns all outstanding shares of Washington Mutual Bank, fsb, a federal savings bank regulated by the OTS and the FDIC, with operations in Utah and Idaho.

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

None.

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

<sup>1</sup> A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

None.

**(5) Political Contributions**

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

None.

**Please note: if any officers of Washington Mutual made political contributions of \$100 or more as described above, such contributions were made as personal contributions, not as official contributions by authorized representatives of Washington Mutual. Washington Mutual has no mechanism to monitor or track personal political contributions which may be made by its officers.**

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

**(6) Disclosures in Proposals**

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

Washington Mutual is unaware of any facts which, reasonably understood, would raise a question as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code) ("conflicts of interest") by participating in official action relating to the discretionary contract.

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**City of San Antonio**  
**Discretionary Contracts Disclosure**

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)  
Attach additional sheets if space provided is not sufficient.*

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

**Signature:**



**Ted Telford**

**Title: First Vice President**

**Company or D/B/A:**

**Washington Mutual Bank,  
A Federal Association**

**Date: 05/02/05**