

# KNOX COUNTY, TENNESSE

## TAX INCREMENT FINANCING

Policies, Procedures and Application



The Industrial Development Board of the County of Knox

**THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX (TENNESSEE)  
TAX INCREMENT FINANCING PROGRAM  
POLICIES AND PROCEDURES**

**Introduction**

The Industrial Development Board of the County of Knox (“Board” or IDB”) adopted this Tax Increment Financing (“TIF”) Program and the following Policies and Procedures on June 12, 2007, and amended them on September 9, 2008. It sets forth the terms of the Program, the policies and procedures associated with TIF proposals and approvals, is intended to implement and facilitate the consideration of requests for tax increment financing by applicable legislative bodies of Knox County and the City of Knoxville, Tennessee, and provides for the implementation and administration of the TIF. The TIF Program is a discretionary program, and the adoption of this Program and the related Policies and Procedures do not create or vest any rights in any person or entity.

**Section 1. General Policy**

Tax increment financing is an economic development tool used by municipalities to allocate all or a portion of the new, additional taxes generated by a development over a limited period of time to pay for public infrastructure and other improvements related to that development. Tax increment is the difference in tax revenues generated by the property in the development area after a project has been completed compared with the tax revenues generated by a property before the development plan was adopted. The difference in these tax revenues pays the costs of improvements to the public infrastructure serving the development area.

The benefits of TIF transactions include the following:

- (i) TIF transactions can be effective as “off balance sheet” financing of components of public infrastructure such as utilities and road and traffic improvements. TIF bonds and notes are not included in the municipality’s general debt obligations. The structure of these transactions allows the municipality to utilize the new incremental revenue streams to accelerate funding of municipal improvements. This enables a municipality to complete public infrastructure that it otherwise could not afford at the time.
- (ii) TIFs provide financing for projects that are not otherwise economically feasible. For instance, TIF transactions may contribute to the redevelopment of blighted and under-utilized property selected by the municipality.
- (iii) Because of the accelerated development of public infrastructure improvements, the ad valorem property tax base from associated properties often increases, which produces even greater benefits for the municipality.
- (iv) TIF projects are financed from increases in tax revenues that the development itself generates and not from tax subsidies from other areas of the municipality.
- (v) TIF projects may attract significant new jobs, businesses, and investment to the community, or may retain jobs and businesses, that otherwise would be missed or lost without the investment made possible through tax increment financing.

The TIF Program is primarily for economic development projects that provide improvements to public infrastructure in blighted and under-utilized areas of Knox County and in other properties designated by Knox County Commission and City Council. Members of Knox County Commission and City Council, as qualified elected representatives, are the ones not only vested with the final authority to approve TIF transactions and districts, but also are in the best position to determine the relative priorities of the proposed infrastructure improvements and the related community benefits from a public policy standpoint. The Board will administer and implement the TIF Program and its policies and procedures.

Housing authorities are also permitted by state law to undertake tax increment financing. State law permits tax increment financing by housing authorities only in designated redevelopment areas approved by the municipality. Applicants for tax increment financing for projects located in redevelopment areas in the City of Knoxville will be referred to Knoxville's Community Development Corporation, as the City's housing authority, for consideration.

## **Section 2. Statutory Background**

Enabling Legislation and Statutory Authority of the Board. The IDB is a nonprofit public corporation that was established in 1966 pursuant to the Tennessee Industrial Development Corporation Act ("Act"), Tenn. Code Ann. §§7-53-101 et seq. The Board's statutory purpose includes financing, owning, and leasing certain real and personal properties, which will have the effect of maintaining and increasing employment and otherwise promoting new industry, commerce and trade in Tennessee and Knox County, in particular.

On May 14, 2004, the Tennessee General Assembly amended the Act to vest industrial development corporations like the Board with the authority to initiate and administer tax increment financing for certain qualified projects approved by Knox County Commission and/or Knoxville City Council. The Board's responsibilities under the amendment include the following:

- (i) Preparation and submission of an economic impact plan for the project that complies with the statutory criteria;
- (ii) Holding a public hearing relating to the economic impact plan after proper, published notice; and
- (iii) Administering the incremental tax payments under the TIF.

The purpose of these Policies and Procedures is to identify the procedures for applying for tax increment financing, specify the information that will be required of an Applicant, confirm that Knox County Commission and City Council will actually decide whether to grant the tax increment financing (as the Act provides) affecting their respective property taxes, and prescribe the roles the Board will play in the process.

The amendment, which is codified as Tenn. Code Ann. §7-53-312, provides that County Commission must approve TIFs affecting property taxes owed to Knox County and City Council must approve TIFs affecting property taxes due to the City of Knoxville. Neither has the authority to authorize a TIF transaction affecting the property taxes of the other. TIFs may be granted for projects generating both real and personal property taxes.

The Board has always viewed its core mission as the promotion of economic development and growth in Knox County, and in particular commercial and industrial projects that involve a significant capital investment and the generation of new jobs with wages in excess of the annual average wage in

Knox County. A project fitting within this core mission will encounter greater flexibility and receptivity by both the Board and the Governmental Authorities, as opposed to projects that do not involve these factors.

### Section 3. Process

3.1. Application. The process for requesting tax increment financing will commence with an Applicant filing a completed Application in the form attached to this Program as Exhibit A and incorporated herein by reference together with all exhibits, supplements, schedules, and financial information required in the Application. The Applicant shall tender an application fee to the Board in an amount set forth in Section 6 of this Program. No action will be taken with respect to the Application until the Board (or its Administrative Agent) determines that it has received all information which may be relevant or necessary in determining the qualifications of the Applicant and the Project. **Acceptance of the Application does not imply, evidence or confirm the IDB's support for, or recommendation of, the Project and the TIF request.**

3.2. Submission to Governmental Authorities. Once the Board determines that it has received a properly completed Application and any other information that it considers relevant or necessary for County Commission to determine the qualifications of the Applicant and the Project, the Board will submit the Application and the information with a proposed Resolution of Intent to the County Mayor, Knox County Commission (or a designed Committee of the Commission), Knox County Department of Engineering and Public Works, and other governmental departments specified by either the Mayor or the Commission.

If the TIF request will affect City property taxes, the Board will take comparable actions and timely provide the same information to the City Mayor, City Council and other governmental departments specified by either the Mayor or City Council.

After a full review by these Governmental Authorities, the Commission may take one of three actions: (i) reject the Application and return it to the Board, (ii) return it to the Board for more information, or (iii) approve a Resolution of Intent described below. To authorize further action and direct the Board to prepare and submit an economic impact plan, the Commission will adopt a Resolution of Intent stating that (i) the proposed Project will provide necessary improvements to public infrastructure that the County wants to occur within the proposed time for the Project, but does not currently plan to effect in the short term under its existing capital improvement plans, and (ii) the Commission will consider an economic impact plan prepared and submitted by the Board with respect to the Project in accordance with the Policies and Procedures set forth herein.

If the TIF request will affect City property taxes, City Council may engage in the same deliberations and may take similar action with respect to the Application.

3.3. Economic Impact Plan. If the Board receives a Resolution of Intent from the Commission or City Council that makes the above findings and directs the Board to proceed with the preparation and submission of an economic impact plan, the Applicant will submit a proposed economic impact plan to the Board, generally in the form designed by the Board and containing the information required by Section 7-53-312(b) of the Act and the following information and documents:

- (i) a list of tax parcels composing the Plan Area, including owners and parcel numbers, from which the incremental tax revenues will be generated;

- (ii) a map or drawing clearly identifying the boundaries of the Project Area, including the proposed public improvements, and the boundaries of the Plan Area;
- (iii) confirmation of the current zoning of the Project Area and the Plan Area subject to the economic impact plan;
- (iv) the proposed period of time for which taxes will be allocated from the Plan Area in accordance with the economic impact plan;
- (v) a description of any proposed borrowing related to the tax increment financing;
- (vi) the number of jobs which the Applicant estimates will be created by the Project and the wages, salaries and other compensation that will be paid to those holding the jobs;
- (vii) the estimated development and construction costs of the Project; and
- (viii) the projected total cost of the TIF, including interest paid during the term of the TIF.

The Applicant shall submit the proposed economic impact plan to the Board no later than 60 days after approval of the Resolution of Intent referred to in Section 3.2 by County Commission. If the Applicant does not submit the proposed plan within that period, the Board will take no further action with respect to the Application and the Project. The Board will consider any requests of the Applicant after the 60-day period as a new request requiring a new Application, the re-commencement of the procedures described above, and the payment of another application fee.

The Board's staff and counsel will review the proposed plan and will advise the Applicant if any additional information or changes are necessary for the plan. If necessary, the Applicant shall then revise the plan and submit the revised plan to the IDB Application Review Committee.

3.4. Application Review Committee. The Application Review Committee will review the economic impact plan, the application process to date, and the Resolution of Intent. The Committee will also review a proposed Development and Financing Agreement and will evaluate the terms in light of the Board's Policies and determine whether to recommend the Agreement and any variations from such Policies to the Board. The Committee will advise the Board whether the economic impact plan complies with the Act and this Program, and is, therefore, qualified to be considered for submission to County Commission and/or City Council for approval. The Committee will also determine whether to recommend the Development and Financing Agreement to the Board for its approval. The Committee will then establish a proposed date for the Board to hold a public hearing and determine whether to submit the economic impact plan to the County Commission and/or City Council for approval.

3.5. Notice and Hearing of IDB. After the Application Review Committee and the Board's staff and counsel determine the economic impact plan to be complete, the Board will hold a public hearing related to the proposed plan at a regular or special meeting. Notice of the public hearing shall be published in a newspaper of general circulation in Knox County at least two weeks prior to the date of the public hearing, as required by Section 7-53-312(g) of the Act. If the IDB determines that the economic impact plan substantially complies with the Act, and the Board's policies and core mission, it will submit the economic impact plan to Knox County Commission and/or Knoxville City Council for consideration and approval. The submission shall include a summary of any comments from the public hearing on the proposed plan and other information deemed pertinent by the Board.

3.6. Approval of Municipality/Transaction Documents. If Knox County Commission approves the economic impact plan, the Applicant and the Board will enter into a Development and Financing Agreement with the project developer, which will incorporate the specific terms of the tax increment financing approved by the municipality.

The Applicant shall be responsible for preparation of any documents related to third party financing authorized as part of the economic impact plan. All third party financing shall be non-recourse as to the Board, and all financing documents shall be subject to the review and approval of the Board's counsel.

The Applicant will close the TIF transaction within 30 days after the Board sends the Development and Financing Agreement and the related closing documents to the Applicant. If the closing does not occur within that 30-day period, the Applicant will be deemed to have withdrawn its Application and the TIF transaction and all approvals by the Board and other Governmental Authorities will lapse and be of no further force or effect.

A diagram summarizing the above procedures is attached hereto as Exhibit B.

#### **Section 4. Board Policies for TIF Projects**

The Board has adopted the following policies with respect to TIF Projects and will not prepare and submit economic impact plans failing to comply with the following criteria, unless specifically directed to do so by the Commission or City Council:

4.1. Maximum Term. The maximum period for any TIF will be 15 years.

4.2. Incremental Tax Revenues. The Board will allocate a maximum of 75% of the incremental tax revenues for TIF transactions having a term of 10 years or less and 60% of such incremental revenues for TIF transactions having terms in excess of 10 years.

4.3. Plan Area. The Plan Area, from which the TIF Revenues will be generated, will consist of no more than (i) the parcels included in the Project Area, and (ii) those parcels, determined by the Board, to be directly affected and substantially benefited by the Public Infrastructure, whose owners have received the notice referred to in Section 4.5 and have consented in writing to be included in the Plan Area. The Board may rely upon the opinions of the Knox County Department of Engineering and Public Works or other engineering consultants in determining whether a parcel would be directly affected and substantially benefited by the Public Infrastructure.

4.4. TIF Eligible Costs. Incremental tax revenues may be used to finance only the following Project costs:

- (i) capital costs, including costs incurred for construction and reconstruction of Public Infrastructure, clearing, grading and excavating, site work, and other hard construction expenses;
- (ii) costs of obtaining permits for the Project from Governmental Authorities;
- (iii) capitalized interest;
- (iv) premiums for payment and performance bonds issued in favor of Governmental Authorities or the Board;

- (v) professional fees for architectural and engineering services and legal expenses capitalized as Project costs under generally accepted accounting principles;
- (vi) acquisition costs for equipment; and
- (vii) fees and expenses of the Board and other fees and expenses related to the TIF.

Public Infrastructure will include the following public facilities and public improvements:

(A) Streets roads, highways, curbs, gutters, water lines, sanitary sewer lines, storm drainage facilities, ramps, roads, bridges, traffic signals, paving, driveways, sidewalks, walking and running trails, mass transit and other public transportation facilities, culverts, manholes, retaining walls, tunnels, approaches, underpasses, artificial lighting, off-street parking improvements and structures, fencing, landscaping, public parks, site work and grading for such public infrastructure, walkways, signage, flood control improvements, and improvements for the supply, storage and distribution of water; and

(B) Electricity and telecommunications services, utility, and other similar site development infrastructure costs, qualified public improvements that may include on-site, off-site, utility relocation and under-grounding, according to the municipality's plans.

Under certain limited circumstances, the Board will include the costs of acquiring public rights of way as TIF Eligible Costs, but this determination will be made on a case by case basis after due consideration of the circumstances.

4.5. Notice to Property Owners. (i) The Board through its administrative staff will notify the owners of parcels included in the proposed Plan Area that the Board will consider the Application for tax increment financing on a certain date and at a prescribed time and place. The Applicant will provide a list of all parcels contained in the Plan Area, the names of the record owners and the address of each owner. The Board's notice will invite public comment and will give the property owners at least 14 days' notice of the Board meeting. In addition, the form of notice will advise property owners how they may comment on the Project such as by email or by letter, as well as attending the meeting. This notice is in addition to the notice required by Tenn. Code Ann. 7-53-312(g).

(ii) In addition, the Board will record an instrument in the Register of Deeds Office providing public notice of the tax increment financing and the properties contained in the Plan Area.

4.6. Minimum TIF Project. The Board will consider TIF Projects for submission to County Commission or City Council but such Projects must include (i) at least \$5,000,000 in capital improvements to the Project Area, without taking into account the costs of the Public Infrastructure to be financed by the TIF, and (ii) at least \$1,000,000 of Public Infrastructure that will be financed by tax increment revenues from the Plan Area.

4.7. Residential Projects. In the absence of unusual or extenuating circumstances acceptable to the Board, Projects that are substantially residential will not qualify for tax increment financing under the Board's TIF Program. Such proposals should be submitted to Knoxville's Community Development Corporation, if located in a redevelopment area in the City.

4.8. Applicant Affidavit. The Applicant must submit a signed affidavit certifying that the Project cannot proceed without the availability of TIF and must provide supporting documentation justifying the need for and the amount of the TIF, all in accordance with the Application form.

4.9. Disbursement of Incremental Tax Revenues upon Project Completion. The Board will normally require completion of the Public Infrastructure component of the TIF Project before disbursing any incremental tax revenues to the Applicant, the Applicant's lender or any bond trustee.

4.10. Certification by Consultant or Governmental Authority. The Board will require the certification of the completion of the Project before the disbursement of incremental tax revenues. The certification must be from a consultant retained by the Board or a Governmental Authority vested with the authority to approve the completion of the Project or specific components thereof. The form and content of the certification must be acceptable to the Board.

4.11. Guaranties of Completion. The Board will require guaranties of completion of the Project from principals of the Applicant, payment and performance bonds from sureties acceptable to the Board, or letters of credit from financial institutions acceptable to the Board that assure the timely completion of the Project.

4.12. Transfer of TIF. No rights to a TIF may be sold, assigned, or leased unless otherwise specified in the Development and Financing Agreement, provided however that the Board will consent to the collateral assignment of TIF Revenues to secure financing for the TIF Eligible Costs. Any sale, assignment or lease of the property, which is not permitted in the Development and Financing Agreement, will terminate the TIF.

These Policies are in addition to the normal rules and procedures of the Board. From time to time and without notice, the Policies may be amended, waived in whole or part, or deleted by the Board, and new policies may also be adopted by the Board. The Board may consider other special circumstances or conditions in determining whether to submit an Application for consideration by the legislative body of the municipality and whether to prepare and submit an economic impact plan for approval.

## **Section 5. Post-Closing Evaluation**

The Board intends to produce substantial and measurable changes and improvements to and for the economic and commercial environment of Knox County. Accordingly, it has established a follow-up system of accountability to insure that the benefits represented by the Applicant to the Board actually come to fruition. The Applicant will be obligated to develop the Project substantially in accordance with the economic impact plan. Material departures from the development described in the economic impact plan will require the consent of the Board and may result in reductions or even elimination of the TIF, depending on the effect of the proposed changes. These commitments will be provided in the Development and Financing Agreement with the Applicant.

In addition, the Board requires the Applicant to annually certify compliance with the Development and Financing Agreement in a writing signed by the Applicant's chief executive officer or other executive acceptable to the Board. The Board will annually (or at such other times as it deems appropriate) evaluate each Project receiving a TIF to ensure compliance with the Development and Financing Agreement.

## **Section 6. Fees**

6.1. Application Fee. The Applicant will submit the Application with an Application Fee in an amount equal to \$10,000.



6.2. Annual Administrative Fee. The Applicant will pay to the Board an annual administrative fee equal to 25 basis points (0.25%) of the maximum tax increment benefit, which will be deducted from the amount disbursed to the Applicant, lender or bond trustee.

In addition, the Board will charge reasonable fees for any amendments to the TIF and the Development and Financing Agreement that will be based upon the facts and circumstances requiring the amendment, the actions required by the Board to effect the amendment, and the involvement of any Governmental Authorities. The Board may require that these fees be paid in advance of Board action and at the time the Applicant requests the amendment.

The above quoted fees are for reimbursement of the expenses of the Board, and other economic development programs as approved by the administration of Knox County. In addition to the fees described above, the Applicant is responsible for payment of the Board's counsel fees and other expenses incurred by the Board with respect to the Application, the economic impact plan, the Development and Financing Agreement and all other aspects of the TIF Program, as applied to the Applicant.

### **Section 7. Environmental Report and Title Insurance**

The Board may require the Applicant to provide at its expense a Phase I Environmental Site Assessment Report for the Project and/or Plan Areas that (i) shall be prepared by a recognized Person in the health, safety and environmental field that is acceptable to the Board; (ii) shall bear a date acceptable to the Board; and (iii) shall disclose no unacceptable conditions to the Board. All environmental reports requested by the Board must grant to the Board the right to rely on such reports.

The Board may also require that the Applicant obtain at its expense, and deliver to the Board, a title insurance commitment for the Project and/or Plan Areas described in the economic impact plan.

### **Section 8. Conflicts of Interest**

Each Board member shall be responsible for disclosing any material interest which he or she may have in or with an Applicant or financing source. Any Board member having any material interest in a Project or a financial or family relationship with an Applicant or financing source shall submit to the Board Counsel a representation of that interest, and Board Counsel shall advise both the Board and Board member whether the member needs to recuse himself or herself from consideration of the Application. Such recommendation of Board Counsel shall be conclusive. If recusal is recommended, the Board will then consider the Application without participation from the member or members who recuse themselves.

To avoid conflicts of interests, no TIF will be approved if Board Counsel has a professional legal relationship with the Applicant or source of the financing other than incidental representations in connection with proposed financings of other projects, but the Board may waive this condition in appropriate circumstances. In the event of a conflict involving Board Counsel, the Board will retain special counsel to represent it in connection with the particular Project being considered.

### **Section 9. Definitions**

For purposes of this Program, the following terms shall have the following meanings:

**“Administrative Agent”** means the Person providing administrative services to the Board from time to time. The Board's current administrative agent is The Development Corporation of Knox County.

**“Application”** means the Application for TIF submitted hereunder in the form designated by the Board and as amended from time to time. The initial form of the Application is attached hereto as Exhibit A.

**“Development and Financing Agreement”** means the Development and Financing Agreement between the Board and the Applicant (and any guarantor thereof) or similar agreement or contract providing for the terms and implementation of the TIF.

**“Governmental Authority”** means Knox County, Tennessee, the City of Knoxville, Tennessee, the State of Tennessee, any political subdivision of any of them, and any agency, department, commission, board, bureau or instrumentality of any of them.

**“Person”** means any individual, sole proprietorship, corporation, limited liability company, association, partnership (general, limited, or limited liability partnership), organization, business, trust, individual and Governmental Authority.

**“Plan Area”** means the real property included in the Project Area and any additional parcels meeting the criteria provided in Section 4.3, from which the TIF Revenues will be generated in order to finance the Public Infrastructure constituting a part of the Project.

**“Project”** means a project under Section 7-53-101(11) of the Act and includes the infrastructure, utilities, road and traffic improvements, traffic signage and signals, utilities, buildings, structures, machinery, equipment, and land defined in the Application as part of the Project.

**“Project Area”** means the real property designated in the Application constituting the Project, including property for the Public Infrastructure.

**“Public Infrastructure”** has the meaning assigned to it in Section 4.3.

**“TIF Revenues”** means the property tax revenues generated from the Plan Area after consideration of the Base Tax Amount and the allocation of tax revenues to municipal debt service.