

**ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT
BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE
TAX INCREMENT FINANCING POLICIES AND PROCEDURES**

Introduction

The Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (“Board” or “EDGE”) adopted this Tax Increment Financing (“TIF”) Policies and Procedures on September 18, 2019 (“Policies”). It sets forth the policies and procedures associated with TIF proposals and approvals and provides for the implementation and administration of a TIF. TIFs are discretionary, and the adoption of these Policies and Procedures does not create or vest any rights in any person or entity.

From time to time and without notice, the Policies may be amended, waived in whole or part, or deleted by EDGE, and new policies may also be adopted by EDGE. EDGE may consider other special circumstances or conditions in determining whether to submit an Application or Economic Impact Plan for consideration by the legislative bodies of the city and/or county.

Section 1. General Policy

Tax increment financing is an economic development tool used by local governments and economic development agencies to allocate 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. Further, Tennessee law provides that TIFs approved by industrial development boards can, upon the prior approval of the State of Tennessee (the “State”), pay for some forms of private improvements.

The benefits of TIF transactions include the following:

- (i) TIFs provide financing for projects that are not otherwise economically feasible.
- (ii) 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 community.
- (iii) TIF projects are financed from increases in tax revenues that the development itself generates.
- (iv) TIF projects may attract 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.
- (v) With the prior approval of the State of Tennessee, TIFs approved by industrial development boards can provide financing for certain private improvements.

Approved: September 18, 2019

Section 2. Statutory Background

Enabling Legislation and Statutory Authority of EDGE. EDGE is a nonprofit public corporation that was established in 2011 through a joint resolution of the Memphis City Council and the Shelby County Commission and is, among other things, an industrial development board pursuant to the Tennessee Industrial Development Corporation Act (“Act”), Tenn. Code Ann. §§7-53-101 et seq. EDGE’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 Memphis and Shelby County.

On May 14, 2004, the Tennessee General Assembly amended the Act to vest industrial development corporations like EDGE with the authority to initiate and administer tax increment financing for certain qualified projects also approved by the Memphis City Council and/or the Shelby County Commission. EDGE’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;
- (iii) Submitting the Economic Impact Plan to the Shelby County Commission and/or Memphis City Council for consideration after the public hearing and approval of the Economic Impact Plan by EDGE; and
- (iv) Administering the incremental tax revenues under the TIF, the Economic Impact Plan, and the associated Development Agreement.

The amendment, which is codified as Tenn. Code Ann. §7-53-312, provides that the Shelby County Commission must approve TIFs affecting property taxes owed to Shelby County and the Memphis City Council must approve TIFs affecting property taxes due to the City of Memphis. 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 purpose of these Policies is to identify the procedures for applying for tax increment financing through EDGE, specify the information that will be required of an Applicant by EDGE, and prescribe the role that EDGE will play in the process.

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 as Exhibit A, 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 EDGE in an amount set forth in Section 6 of these Policies. No action will be taken with respect to the Application until the EDGE staff 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 EDGE's support for, or recommendation of, the Project or the TIF request.**

3.2. Economic Impact Plan. Provided the Application is deemed by EDGE staff to be satisfactory for consideration by the EDGE Board, EDGE will prepare a proposed Economic Impact Plan, generally in the form attached hereto as EXHIBIT B and including the information required by Section 7-53-312(b) of the Act. After consent by the Applicant, the Economic Impact Plan will be considered ready for consideration by the EDGE Board and the Shelby County Commission and/or Memphis City Council.

3.3 Preview by Shelby County Commission and Memphis City Council. After the Economic Impact Plan has been agreed to by the Applicant and EDGE staff, Applicant is required to preview the proposed TIF with the Shelby County Commission Economic Development and Tourism Committee and the Memphis City Council Economic Development, Tourism & Technology Committee, depending on which property taxes (County and/or City) are included in the Economic Impact Plan. This preview is required prior to the EDGE public hearing on the proposed TIF project.

3.4. Notice and Hearing of IDB. After EDGE's staff and the Applicant have agreed on the Economic Impact Plan and the required previews with the Shelby County Commission and/or Memphis City Council have been held, EDGE will hold a public hearing related to the proposed Economic Impact Plan at a regular or special called Board meeting. Notice of the public hearing shall be published in a newspaper of general circulation in Shelby County at least two weeks prior to the date of the public hearing, as required by Section 7-53-312(g) of the Act.

3.5 EDGE Approval. After the public hearing, if the EDGE Board determines that the Economic Impact Plan substantially complies with the Act and EDGE's policies and core mission, it will approve the Economic Impact Plan and submit it to the Shelby County Commission and/or Memphis City Council for consideration and approval. The submission shall include a summary of any comments from the public hearing on the proposed Economic Impact Plan and other information deemed pertinent by EDGE. If the required county and/or city approval of the Economic Impact Plan does not come within three (3) months of the date of approval by the EDGE Board and the Applicant does not seek and obtain a three-month extension from EDGE, EDGE's approval will be deemed to have lapsed and be of no further force or effect.

3.6. State Approval for Financing Private Improvements. If the Economic Impact Plan provides for the financing of private improvements on private property for general economic development purposes, the Economic Impact Plan must be approved by the Tennessee Comptroller of the Treasury and the Tennessee Commissioner of Economic and Community Development. The Applicant is responsible for submitting the Economic Impact Plan to the State and seeking State approval. If the required state approval of the Economic Impact Plan does not come within six (6) months of later of county and/or city approval and the Applicant does not seek and obtain a three-month extension from EDGE, EDGE's approval will be deemed to have lapsed and be of no further force or effect.

3.7. Approval of Transaction Documents. If the Shelby County Commission and, if applicable, the Memphis City Council approve the Economic Impact Plan (and if required, the Economic Impact Plan receives State approval), the Applicant and EDGE will enter into a Development Agreement, which will incorporate the specific terms of the tax increment financing as approved. The Applicant has three months from the time EDGE sends the Applicant a draft of the Development Agreement to finalize and execute the Development Agreement. If the Development Agreement is not executed within that three-month period and the Applicant does not seek and obtain a three-month extension from EDGE, the Applicant will be deemed to have withdrawn its Application and the TIF transaction and all approvals by EDGE will lapse and be of no further force or effect.

Section 4. Board Policies for TIF Projects

EDGE has adopted the following policies with respect to TIF Projects:

4.1. Maximum Term. The maximum period for any TIF will be 20 years unless a longer period is approved by the Tennessee Comptroller of the Treasury and the Tennessee Commissioner of Economic and Community Development, in addition to the Shelby County Commission and/or Memphis City Council.

4.2. Incremental Tax Revenues. EDGE will allocate between 50% and 75% of the Incremental Tax Revenues for the TIF Project. The actual percentage will be determined based upon the scope, needs, and benefits of the Project.

4.3. Plan Area. The Plan Area, from which the Incremental Tax Revenues will be generated, will consist of no more than those parcels, determined by EDGE, to be directly affected and substantially benefited by the Public Infrastructure or private development. EDGE may rely upon the opinions of the Shelby County Department of Planning and Development, the City of Memphis Department of Public Works, Memphis Light, Gas and Water, 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 only be used to finance the following Project costs:

(i) capital costs for public development including: costs incurred for land acquisition, equipment, construction and reconstruction of Public Infrastructure, clearing, grading and excavating, site work, and other hard construction expenses;

For the purposes of these Policies, Public Infrastructure will include the following public facilities and public improvements:

(I) public roadways, highways, curbs, gutters, medians, crosswalks and pedestrian safety features, raised pedestrian crossings, bike lanes, bike racks, speed bumps and humps, arches, gateways, traffic calming devices, railroad crossing improvements including Quiet Zone improvements, utility installation, relocation and replacement, water lines, sanitary sewer lines,

storm drainage facilities, ramps, bridges, traffic signals, paving, driveways, sidewalks, walking and running trails, mass transit and other public transportation facilities including transit stops, culverts, manholes, retaining walls, tunnels, approaches, underpasses, artificial lighting, off-street parking improvements and structures, fencing, landscaping, water features, public parks or plazas, planters, irrigation systems, street lights and other lighting, security camera systems, street furnishings including benches, bollards, tables, chairs, public art, etc., site work and grading for such public infrastructure, walkways, signage, including wayfinding and district branding signs, flood control improvements, and improvements for the supply, storage and distribution of water; and

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

(III) Other improvements of a similar nature approved by EDGE.

(ii) fees and related soft costs including

(A) costs of obtaining permits for the Project from Governmental Authorities;

(B) capitalized interest;

(C) premiums for payment and performance bonds issued in favor of Governmental Authorities or EDGE;

(D) professional fees for architectural and engineering services, construction management services, traffic engineering services, landscaping design services and legal expenses capitalized as Project costs under generally accepted accounting principles;

(E) fees and expenses of EDGE and other fees and expenses related to the TIF;

(F) debt service; and

(G) fees and expenses for EDGE's Construction Consultant, if required by the Board.

(iii) capital costs for private development, including costs incurred for land acquisition, equipment, construction and renovation of private improvements, clearing, grading and excavating, site work, other hard construction expenses, and any soft costs, that have been approved by the Tennessee Comptroller of the Treasury and the Tennessee Commission of Economic and Community Development.

Under certain limited circumstances, EDGE 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.

Notwithstanding anything contained above, the costs of developing general strategic plans and research for a Project shall not be a TIF Eligible Cost.

4.5. Minimum TIF Project. EDGE will consider TIF Projects for submission to the County Commission and/or the City Council but such Projects must include (i) at least \$15 million 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 \$3 million of Public Infrastructure that will be financed by Incremental Tax Revenues from the Plan Area.

4.6. Disbursement of Incremental Tax Revenues. Projects may be structured either (i) on a pay-as-you-go basis wherein Incremental Tax Revenues will be disbursed to the Applicant upon the completion of specified parts of the Project, or (ii) bonded wherein Incremental Tax Revenues are used to pay debt service to the Applicant's lender or any bond trustee. EDGE may 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.

4.7. Certification by Consultant or Governmental Authority. EDGE will require the certification of the completion of the Public Infrastructure component of the Project before the final disbursement of Incremental Tax Revenues. On Projects structured on a pay-as-you-go basis, EDGE will require certification of the completion of the applicable Public Infrastructure component of the Project before the disbursement of the Incremental Tax Revenues for such component. The certification must be from a Construction Consultant retained by EDGE 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 EDGE.

4.8. Guaranties of Completion. If the Incremental Tax Revenues will be disbursed to the Applicant on a pay-as-you-go basis, EDGE will require guaranties of completion of the Project from principals of the Applicant, payment and performance bonds from sureties acceptable to EDGE, or letters of credit from financial institutions acceptable to EDGE that assure the timely completion of the Project.

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

Section 5. Post-Closing Evaluation

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 EDGE 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 Agreement which shall include an LBP Obligation.

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

Section 6. Fees

6.1. Application Fee. The Applicant will submit the Application with an Application Fee in an amount equal to \$3,000.00. The Applicant will pay EDGE's attorney's fees for EDGE Counsel to negotiate the terms of the Economic Impact Plan, negotiate the terms of the Development Agreement, and to prepare all notices and attend all meetings held in connection with the Project.

6.2. Annual Administrative Fee. The Applicant will pay to EDGE an annual administrative fee equal to 3% of the Shelby County Incremental Tax Revenue, which will be deducted from the amount disbursed to the Applicant, lender, or bond trustee. The Shelby County Trustee will be paid an administrative fee of 2% of the Shelby County Incremental Tax Revenues for administering the TIF. If the project is located in the City of Memphis, the Applicant will pay to EDGE an annual administrative fee equal to 4% of the City of Memphis Incremental Tax Revenues, which will be deducted from the amount disbursed to the Applicant, lender, or bond trustee. The City Treasurer will be paid an administrative fee of 1% of the City of Memphis Incremental Tax Revenues for administering the TIF.

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

The above quoted fees are for reimbursement of the expenses of EDGE. If the TIF Project involves financing through EDGE, please see the EDGE Bond Policy's fee provisions for EDGE counsel which shall be paid in addition to any attorney's fees required by this section.

Section 7. Conflicts of Interest

Each EDGE 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 EDGE 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 EDGE Counsel a representation of that interest, and EDGE Counsel shall advise both the EDGE Board and the member whether the member needs to recuse himself or herself from consideration of the Application. Such recommendation of EDGE Counsel shall be conclusive. If recusal is recommended, the EDGE Board will then consider the Application without participation from the member or members who recuse themselves.

In the event of a conflict involving EDGE Counsel, the Board will retain special counsel to represent it in connection with the particular Project being considered.

Section 8. Definitions

For purposes of these Policies, the following terms shall have the following meanings:

“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.

“Construction Consultant” means any licensed engineer or architect located in Shelby County designated by the Board from time to time and approved by the Applicant, such approval shall not to be unreasonably withheld, conditioned, or delayed.

“Development Agreement” means the Development Agreement between EDGE and the Applicant (and any guarantor thereof) or similar agreement or contract providing for the terms and implementation of the TIF which will include the LBP Obligation established by the Board.

“Economic Impact Plan” means a document that describes the area subject to the tax increment financing, the “project” within the meaning of the Act, the expected benefits to Shelby County and/or Memphis, and the mechanics of allocating Incremental Tax Revenues from the Plan Area during the term specified in the Economic Impact Plan.

“Governmental Authority” means Shelby County, Tennessee, the City of Memphis, 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.

“Incremental Tax 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 which shall be distributed as follows:

TIF Calculation

Current Year Tax Paid

- Base Year Tax Paid to County

= Excess of Current Over Base Year

- Trustee’s Fee on Excess (Shelby County only)

2%

- Millage Dedicated to Debt Service (on Current Year)

City/County Percentages

= Incremental Tax Revenue

- Share of Incremental Tax Revenue to Project

50% - 75%

- Share of Incremental Tax Revenue to City & County

20% - 45%

- Share of Incremental Tax Revenue to Administrative Fees

5%

“LBP Obligation” means the total expenditure, expressed by a percentage of the TIF spending with qualified Local Business Participants. The LBP Obligation shall be periodically tested with the Applicant repaying any shortfall to the Board. The LBP Obligation shall be at least

28% of funds contracted by the Applicant. Funds expended by Shelby County, the City of Memphis or Memphis Light Gas and Water shall conform to their own internal spending and contracting requirements.

“Local Business Participant” or “LBP” means any business that is certified as a Minority/Woman Business Enterprise by either the City of Memphis or Shelby County government or their successor programs; provided that the City and/or County maintain up-to-date lists of such Minority/Woman Business Enterprises. A vendor shall be recognized as an LBP if included in lists maintained by the City or County government for that purpose during the year in which the vendor contract is entered into or the purchase is made by the Applicant. If the City and County fail to maintain up-to-date lists of such Minority/Woman Business Enterprises, a recognized Local Business Participant shall mean other Minority/Woman Business Enterprises certified by other entities jointly determined by the parties in their reasonable discretion.

“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 and any additional parcels meeting the criteria provided in Section 4.3, from which the Incremental Tax Revenues will be generated in order to finance the Public Infrastructure constituting a part of the Project and where the Incremental Tax Revenues will be spent.

“Project” means a project under Section 7-53-101(15) 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.

“Public Infrastructure” has the meaning assigned to it in Section 4.