



ECONOMIC DEVELOPMENT
GROWTH ENGINE
FOR MEMPHIS & SHELBY COUNTY

SEWER CAPACITY MANAGEMENT INCENTIVE

POLICIES AND PROCEDURES

OF THE ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL
DEVELOPMENT BOARD OF THE CITY
OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE

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I. GENERAL PURPOSE AND PROVISIONS

The Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (EDGE) is an industrial development board organized under Tennessee Code Annotated Section §7-53-101 et seq.

The creation of EDGE was authorized by resolutions of the City Council of Memphis and the Board of Commissioners of Shelby County on February 1, 2011, and January 24, 2011, respectively.

The Sewer Capacity Management Incentive is a Payment In Lieu of Tax (PILOT) Program to assist Applicants absorb the cost of an offline sewer storage and pumping facilities as may be required by the City of Memphis. The Sewer Capacity Management Incentive shall provide a 75% abatement of City of Memphis real property taxes to persons or entities developing property located in the City of Memphis for a certain PILOT Term up to fifteen (15) years; there is no abatement for associated Shelby County property taxes.

In accordance with the requirements of State law, EDGE must find each Project that is presented for approval to be in the public interest and one that will spur development within the City of Memphis. Only Eligible Uses shall qualify for a PILOT. Nothing herein shall imply or suggest that EDGE, the City of Memphis, or Shelby County is under any obligation to provide a PILOT to any Applicant. All Applications shall be considered on a case-by-case basis, with the required

performance criteria for each Project set accordingly, and the decision to approve or deny an Application shall be at the discretion of EDGE. No Project shall be awarded unless it is recommended in writing by the Mayor of the City of Memphis.

To provide the intended benefit for approved Projects, EDGE shall take title to the real properties associated with the Project, and EDGE shall then lease such property back to the Applicant or Sewer Capacity Management Incentive Recipient for the duration of the PILOT Term, with the PILOT payments being established consistent with these Policies and Procedures, and as set forth in a Lease Agreement between EDGE and the Sewer Capacity Management Incentive Recipient.

Under the Lease Agreement, payments are to be made to the appropriate governmental entities in lieu of ad valorem taxes on the property being utilized for the Project, such properties no longer being subject to ad valorem taxation by virtue of their ownership by EDGE.

For the real property utilized for the Project, such payments are to be based on one hundred percent (100%) of the property taxes which would otherwise be collected and attributable to land and twenty-five percent (25%) of the property taxes which would otherwise be collected and attributable to the real property improvements resulting from the Project as if it were privately owned.

The Lease Agreements shall be closed when the offline sewage storage and pumping facility has completed and the Project has received its certificate of occupancy. The Applicant shall build the site and comply with the pumping permit issued by the [City of Memphis].

Each Applicant, in its use of the property in the Project, will be required to comply with all laws, ordinances, orders, rules, regulations, and requirements of the duly constituted public authorities, which are or shall become applicable to the Project, including those applicable to the repair and/or alteration of the properties thereof, and the use or manner of use of said properties and the Project.

In order to support the community's economic development goals, which include enhancing minority and women owned businesses, Applicants obtaining a PILOT under the Sewer Capacity Management Incentive Program, must use city-certified MWBEs (defined herein below) in an amount not less than 50% of the cost to acquire and install the offline sewer storage and pumping system for the Project.

Any Sewer Capacity Management Incentive Recipient, in its sole discretion, may choose to terminate any Lease Agreement early, at any time, and receive back ownership of the affected Project property from EDGE with any payments under the Lease Agreement remaining as a lien on the Project's property.

EDGE has the right to amend or waive these Policies and Procedures, as needed, upon a majority vote of the EDGE Board of Directors, in order to effectuate its mission of economic development for Memphis and Shelby County, including the adoption, incorporation, and implementation of any and all available programs statutes, or other measures made available by the United States, the State of Tennessee, the County of Shelby, and/or the City of Memphis.

II. DEFINITIONS

“Applicant” means the person or entity which submits to EDGE an Application for a Sewer Capacity Management Incentive.

“Application” means that document prepared, submitted, and, perhaps, amended by the Applicant, in accordance with the provisions of these Policies and Procedures, for the purpose of obtaining a Sewer Capacity Management Incentive from EDGE.

“Brownfield Property” means any real property that has been vacant or abandoned for at least five (5) years, has a prior history of industrial uses, and has potential environmental contamination as indicated by a Phase I Environmental Assessment.

“Capital Investment” means the investment in land, buildings, site preparation, equipment and any other property for the Project. Capital Investment may also include property that is not transferred to EDGE and which will not receive a PILOT benefit as required by the EDGE Board.

“Charter” means the charter of EDGE, the State of Tennessee Amended and Restated Charter of Incorporation of EDGE, effective February 19, 2012, as amended from time to time.

“Eligible Uses” shall be retail, office, industrial, distribution, tourism and hospitality, and other commercial, mixed uses, or multi-family residential uses requiring a sewage storage and pumping system by the City of Memphis. Pawn shops, adult entertainment and product stores, liquor and tobacco stores, payday loan and title loan establishments, as well as other business types determined in EDGE’s sole discretion shall not be considered as Eligible Uses.

“Lease Agreement” means the formal contract pertaining to the lease of real property which is the subject of a Project and contains all of the terms and conditions with which all parties of said Lease Agreement must be in compliance. The Lease Agreement is between EDGE, as lessor, and as lessees, the Sewer Capacity Management Incentive Recipient.

“MWBE” means any business that is certified as a Minority/Woman Business Enterprise by the City of Memphis.

“PILOT Term” means the number of years for which a PILOT is approved for a Project under the Sewer Capacity Management Incentive Program.

“Policies and Procedures” means these Sewer Capacity Management Incentive Policies and Procedures of the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee.

“Project” means the project which brings together the real property (e.g., the buildings, structures, and land), capital investment, and other rights and obligations of the Sewer Capacity Management Incentive Recipient and EDGE, as approved by the EDGE Board and memorialized in the Resolution and Lease Agreement.

“Resolution” means that resolution approved and executed by EDGE setting forth the PILOT benefits to be provided directly or indirectly to the Sewer Capacity Management Incentive Recipient for the Project.

“Sewer Capacity Management Incentive Recipient” means the person or entity receiving a Sewer Capacity Management Incentive from EDGE. Sewer Capacity Management Incentive Recipient includes Applicant’s tenants, assignees and/or vendees who contribute property to the Project, entering into Lease Agreement(s) with EDGE for such property, so as to enjoy a PILOT benefit.

III. ELIGIBILITY

- A. Projects must be located within the City of Memphis.
- B. To be considered by EDGE, Projects must first be recommended in writing by the City of Memphis Department of Public Works (DPW).
- C. Projects must be Eligible Uses.

- D. Only real property shall receive PILOT benefits.
- E. A Brownfield Property may be utilized for a Project, and PILOT benefits may be extended to a Brownfield Property where the EDGE Board specifically so provides and a Brownfield Agreement has been granted by the State of Tennessee.
- F. Sewer Capacity Management Incentive Recipient must demonstrate compliance with and payment of all municipal, county, and state taxes due for all properties owned by it and located in Shelby County at the time of closing the Lease Agreement and during the entire PILOT Term. Payment of taxes which are under appeal shall not be required until the appeal is finally resolved, as provided under law.

IV. APPLICATION PROCESS

- A. Pre-Application. Potential Applicants and/or their representative(s) shall meet with the City of Memphis Department of Public Works (DPW) to determine the need for an offline sewer storage and pumping system. If DPW agrees to recommend the Project to EDGE in writing, the Applicant will contact EDGE staff and complete a Sewer Capacity Management Incentive application. Please note that EDGE is subject to the public records laws of the State of Tennessee, and any Applicant information submitted to EDGE may be viewed or copied by any citizen of the State of Tennessee once the Project is submitted to the EDGE Board for approval.
- B. Application. The Applicant must fully complete EDGE’s Sewer Capacity Management Incentive Application, and provide such other information as DPW or EDGE may request. Completed applications must be received no later than 10 business days before the EDGE Board meeting at which it will be presented.
- C. Conflicts of Interest. EDGE shall follow its and Shelby County’s Policies and Procedures regarding conflicts of interest to ensure that no board member or staff member of EDGE, and no EDGE counsel, consultant or contractor working on a Project has a material interest, financial or personal, with the Applicant, the Sewer Capacity Management Incentive Recipient, or the Project.
- D. Term Calculation Method. The PILOT Term shall be sufficient to provide savings equal to the Project Budget, rounded up to the nearest half-year. “Project Budget” shall include (i) the estimated cost of the offline sewage storage system and pumping station, which amount shall be approved by DPW, plus (ii) fees paid to EDGE at closing, set forth in Section V.A. herein, plus (iii) a \$10,000 allowance for Applicant’s legal costs.

V. PAYMENTS

- A. Fees Paid at Closing

1. Closing Fee. At the time of closing, the closing fee associated with the closing shall be \$35,000. Sewer Capacity Management Incentive Recipients shall not be required to pay or reimburse EDGE's attorney and consultant fees.
2. PILOT Payments and Rent. All Sewer Capacity Management Incentive Recipients shall pay their PILOT Payments as set forth in the Lease Agreement; and shall pre-pay net basic rent for the entire PILOT Term of PILOT at the rate of \$100 per year at the time of closing any Lease Agreement.
3. Termination Fee. All Sewer Capacity Management Incentive Recipients must pre-pay a termination fee of \$1,000 at the time of closing any Lease Agreement.

B. Other Program Requirements.

1. EDGE Annual Report. Sewer Capacity Management Incentive Recipients must file an Annual Report with EDGE by January 31 of each year. Failure to file the Annual Report by January 31 of each year will result in a late fee of Fifty Dollars (\$50.00) for each day the Annual Report is late (February 1 or later) until the Annual Report is filed, subject to a maximum fee of Three Thousand Dollars (\$3,000). Late EDGE Annual Reports shall be accompanied by the payment of the late fee when filed.
2. DPW Annual Report. Sewer Capacity Management Incentive Recipients shall file an annual system maintenance activity report directly with DPW for every year the system is operational.
3. PILOT Payments. The PILOT payments shall be due and payable on the same dates as ad valorem tax payments are due to the City of Memphis and the Shelby County Trustee. If any such PILOT payments are not paid by the applicable delinquency dates for payment of the corresponding county or city ad valorem taxes, then the Sewer Capacity Management Incentive Recipient shall pay a penalty with respect to such delinquent PILOT payment from and after the delinquency date in the same amount as the penalty and all other charges which would be due on the corresponding county or city ad valorem taxes.
4. Termination. Upon the expiration of a Lease Agreement, EDGE shall provide written notification to the Sewer Capacity Management Incentive Recipient, pursuant to the Lease Agreement, to submit to EDGE all required documentation and approvals needed to enable it to execute any deeds necessary to transfer ownership of Project property to the Sewer Capacity Management Incentive Recipient. Sewer Capacity Management Incentive Recipient's failure to submit the required documentation and approvals within ninety (90) days of said notification shall result in a penalty of \$2,000 per month, which shall accrue for each month or part of a month during which Sewer Capacity Management Incentive Recipient fails to submit these documents.

C. Lease Amendment, Assignment and Other Documentation. Amendments, Assignments and other documentation, including, but not limited to joinder/estoppel fees, assignment/consents

to or for existing PILOT Lease Agreements shall require a fee of \$1,000. For other documentation not included with adding or removing property from the PILOT, the Sewer Capacity Management Incentive Recipient shall be responsible to reimburse EDGE's actual expenses, costs and reasonable attorney fees incurred in reviewing closing documents or otherwise expended by EDGE as a result of Sewer Capacity Management Incentive Recipient's transactions.

VI. CLOSING REQUIREMENTS

A. Insurance. EDGE must be listed as an additional insured on all property insurance contracts, including, without limitation, casualty and liability insurance policies and property insurance policies which cover property utilized for the Project and whose title has been conveyed to EDGE. Insurance coverage limits shall be in an amount not less than \$5,000,000 for injury or death of a single person, \$5,000,000 for a single accident, and \$5,000,000 for property damage combined single limit coverage.

B. Environmental Report Requirements. The Applicant must submit a Phase I Environmental Report ("Environmental Reports") with no recognized environmental conditions for the Project, unless waived by the EDGE Board, dated no more than three (3) months prior to the first Lease Agreement closing on the Project, if on developed real property or six (6) months prior to the first Lease Agreement closing on undeveloped real property. All Environmental Reports must explicitly grant to EDGE the right to rely on such reports. All Environmental Reports, which must be certified to EDGE, shall comply with the All Appropriate Inquiries Rule (40 C.F.R. §312), as amended from time to time, and the following applicable standards designed by the American Society for Testing and Materials ("ASTM") (all as subsequently amended or modified):

- A. Standard Practice for Environmental Site Assessments: ASTM E 1528-06 Assessments;
- B. Standard Practice for Site Assessments: Phase I Environmental Site Assessment Process, ASTM E 1527-05; and
- C. Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process, ASTM E1903-11.

Subject to the specific provisions of a Lease Agreement, the Applicant and the Sewer Capacity Management Incentive Recipient shall comply and ensure compliance with all applicable local, state, and federal environmental laws and regulations. In the event that the Applicant or the Sewer Capacity Management Incentive Recipient discovers or receives notice from any governmental agency with regards to any environmentally hazardous material or condition affecting the PILOT property which is the subject of the Lease Agreement, the Applicant or Sewer Capacity Management Incentive Recipient shall promptly provide written notice thereof to EDGE; shall conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other related actions required, if any; and shall indemnify and hold harmless EDGE for any and all costs associated therewith, including costs of litigation, if any.

C. Deadlines. EDGE counsel must receive notice of Sewer Capacity Management Incentive Recipient's intent to close on a Lease Agreement at least thirty (30) days prior to the expected closing date, but in no event later than November 1 of each year for closings to be effective December 31. All Lease Agreements must close by the second Friday in February of the following year in order to be made effective as of the immediately prior December 31.

D. Documentation. Applicant will submit certified documentation showing: (i) the specifications for the installed offline sewer storage and pumping system; (ii) the cost to acquire and install the offline system; (iii) participation by City-certified minority and women business enterprises; and (iv) acceptance of the offline sewer storage and pumping system by DPW.

VII. EVALUATION/COMPLIANCE

Each year the Sewer Capacity Management Incentive Recipient shall provide information in the manner described in the Lease Agreement and complete an Annual Sewer Capacity Management Incentive Compliance Report Form ("Annual Report") as approved by EDGE, which shall include a system maintenance activity report. Such Annual Reports shall be submitted by the Sewer Capacity Management Incentive Recipient to EDGE and its designated agent (if any), by January 31 of each year.

By October 1 of each year, Applicant shall submit to the Tennessee Comptroller of the Treasury the annual report required by Section 7-53-305(e) of the Act and shall provide a copy of the report to the County Assessor and EDGE by October 15 of each year.

The Sewer Capacity Management Incentive Recipient must submit data on pump run times and sewer discharge rates, and operations and maintenance logs, monthly to DPW by the tenth (10th) day of each month. The Sewer Capacity Management Recipient must submit an annual system operations and maintenance report to DPW by January 31 of each year.

To the extent that any agency of the City of Memphis, Shelby County, or the State of Tennessee shall require of the Sewer Capacity Management Incentive Recipient or EDGE any other information or documentation regarding the Project, the Sewer Capacity Management Incentive Recipient shall provide or otherwise assist EDGE, as needed, in the production of such information or documentation.

In addition, EDGE and DPW retain the right for their staff and/or agents to visit and inspect the Project periodically during the PILOT Term, and DPW thereafter, to ensure conformance with statements and representations made in the Lease Agreement. Such inspections shall be made during the Project's regular business hours, after reasonable advance written notice (at least 48 hours) has been given. EDGE and DPW's costs of such inspections shall be borne by those organizations.

During such inspections, EDGE and/or DPW staff, and/or their consultants may physically inspect the premises and any improvements thereon, and may require non-proprietary information including, but not limited to, any necessary books, records, and accounts relating to the Project.

In addition, unless prohibited by law, EDGE and/or DPW may obtain copies of any and all reports filed by the Sewer Capacity Management Incentive Recipient with the State of Tennessee or any other governmental entity.

The Sewer Capacity Management Incentive Recipient will be responsible for all maintenance of the offline sewer system to the point where it connects to the Public Sewer system.

The Sewer Capacity Management Incentive Recipient will be subject to penalties for any unpermitted sanitary sewer discharges or excess discharges that contribute to a sanitary sewer overflow (SSO). Penalties will be based on Consent Decree penalties and cost of cleanup. Repeat offenses will be charged a multiplier of 2 to 5 based on the number of prior violations as well as the severity of the SSO. Excessive numbers of violations will be subject to permit or PILOT termination or additional legal enforcement. Any penalties or fees charged to EDGE related to the Project, shall be paid by the Sewer Capacity Management Incentive Recipient.

If the performance requirements by Sewer Capacity Management Incentive Recipient do not meet the conditions that the EDGE Board placed on the Project in the Resolution, the Sewer Capacity Management Incentive Recipient shall be deemed to be in default, and action may be taken as provided under these Policies and Procedures and the Lease Agreement, including but not limited to (i) termination of the PILOT, or (ii) shortening the PILOT Term.

ADOPTED BY THE BOARD OF THE ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE ON _____.

By: _____
Reid Dulberger
President

ATTEST:

By: _____
Al Bright, Jr.
Chairman