CITY OF TOPEKA
TAX INCREMENT FINANCING DISTRICT ("TIF") PROCEDURES

Effective Date: May 16th, 2018

The City’s Tax Increment Financing (TIF) policy can be found at https://www.topeka.org. Please review these procedures and complete along with Application for Tax Increment Financing (TIF) District form.

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I. POLICY APPLICABILITY.

The following procedures are established under the authority of the City Manager and are intended to provide guidance in establishing a Tax Increment Financing District ("TIF" or "District") in accordance with the Governing Body TIF Policy as approved by Resolution No. 9016 on May 15, 2018. The TIF Policy is incorporated herein by reference. These procedures may be waived by the City Manager, if such waiver is in the best interest of the City and does not conflict with any statutory or procedural requirement of state law. If any part of this procedure conflicts with state law, the latter shall control.

The TIF Procedures and Application are appropriate for when a TIF project plan occurs simultaneously with a TIF district. If the TIF district alone is being requested, then a modified application and procedures document may be requested.

II. DEFINITIONS.

Capitalized terms (other than proper names) in this procedures document have the meanings shown below:

Finance Team means the City Manager, Deputy City Manager, Finance Director, City Attorney, and the City’s financial advisor

III. APPLICATION PROCESS.

A. TIF Application. An applicant shall make application for a TIF by filing with the City Clerk an electronic copy of the application to cclerk@topeka.org.
B. Fees.

1. Application Fee. A non-refundable application fee in the amount of $5,000.00, made payable to the City of Topeka, shall accompany the TIF Application.

2. City Cost Reserve. Once the application is received and reviewed, if the project is proceeding, the City and developer shall execute a funding agreement for a deposit of $30,000 to cover the City’s costs of evaluating the requests which may include but not necessarily be limited to direct costs of the City’s financial and legal advisors.

3. TIF Administrative Fee if District is Approved. An annual administrative fee of 2% of the annual TIF revenue generated within the District shall be charged by the City to reimburse it for services rendered in the administration and supervision of the Project. Such TIF Administration Fee shall be deducted by the City (a) in the case of property taxes, when the City receives property taxes from the County and (b) in the case of sales tax (or other locally-levied taxes), when the City makes the required transfers into the TIF fund.

4. Amendments. The City Manager may establish City fees, for amendments and modifications to the District financing documents that occur throughout the term. In addition, the applicant shall be responsible for all City Consultant fees associated with any such amendment request.

C. Preliminary Review and Pre-Application Meeting. Prior to submittal of a formal application, an applicant is encouraged to meet with the Finance Team to discuss a proposed project and possible TIF financing. These discussions are preliminary and are not binding on the applicant, the review committee, or the Governing Body. If the City utilizes any consultants to assist with the preliminary evaluation, the applicant shall be responsible to pay the associated costs, provided the City has first notified the applicant of such request and received their consent.

IV. DISTRICT ESTABLISHMENT.

The establishment of the district shall generally follow the guidelines established by State statute K.S.A. 12-1770 et seq. The Governing Body will consider setting the required public hearing to create a TIF District once a complete application is delivered to, reviewed by and recommended for action by the Finance Team, and the Applicant has paid any required fees (including entering into the funding agreement).
A. Reviewing and Establishing the Redevelopment District. Upon receiving the recommendation of the Finance Team, including a determination by the City Attorney that the proposed district area potentially qualifies for TIF under Kansas law, the Governing Body shall determine whether to reject the application for creation of a redevelopment district or to further consider the request. The Governing Body must conclude that redevelopment of the proposed area is necessary to promote the general and economic welfare of the City. If such a finding is made the Governing Body may adopt a resolution.

1. Redevelopment District Resolution – Notice of Public Hearing. The resolution shall state that the City is considering the establishment of a redevelopment district; additionally, it shall: (1) give notice that a public hearing will be held to consider the establishment of a redevelopment district and fix the date, hour and place of such hearing; (2) describe the proposed boundaries of the redevelopment district; (3) describe a proposed comprehensive plan that identifies all of the proposed redevelopment project areas and that identifies in a general manner all of the buildings and facilities that are proposed to be constructed or improved in each development project area; (4) state that a description and map of the proposed redevelopment district are available for inspection at a time and place designated; and (5) state that the Governing Body will consider findings necessary for the establishment of a redevelopment district. Such resolution shall be an expression of good faith intent, but shall not in any way bind the City to establishing a redevelopment district.

2. Public Notice and Hearing. No redevelopment district shall be established, nor TIF granted, by the City prior to notice and a public hearing as required by the Act. The date fixed for the public hearing shall be not less than 30 or more than 70 days following the date of the adoption of the resolution fixing the date of the hearing. The resolution shall be published by the City Clerk once in the official city newspaper not less than one week nor more than two weeks preceding the date fixed for the public hearing. A copy of the resolution providing for the public hearing shall be mailed certified mail, return receipt requested by the City Clerk to the Shawnee County Board of Commissioners, and the board of education of any school district levying taxes on property within the proposed district or proposed redevelopment project area, if known. Copies also shall be sent by certified mail, return receipt requested by the City Clerk to each owner and occupant of land within the proposed district or proposed redevelopment project area, if known, not more than 10 days following the date of the adoption of the resolution.

3. Shawnee County Board of Commissioners and Board of Education. No privately owned property subject to ad valorem taxes shall be acquired
and redeveloped under the provisions of the Act and this Policy if the Shawnee County Board of County Commissioners or the Board of Education levying taxes on such property determines by resolution adopted within 30 days following the conclusion of the public hearing for the establishment of the redevelopment district will have an adverse effect on such county or school district. If the City has established the redevelopment district prior to receiving such timely notice from the BOCC or School Board, the City shall, within 30 days of receipt of such resolution pass an ordinance terminating the redevelopment district.

4. Establishing the Redevelopment District. Upon the conclusion of the public hearing, the Governing Body may pass an ordinance establishing the redevelopment district. The ordinance shall make findings that the proposed redevelopment district is an eligible area and the conservation, development or redevelopment of such area is necessary to promote the general and economic welfare of the City; contain the district plan as approved, which shall identify all of the proposed redevelopment project areas and identify in a general manner all of the buildings, facilities and improvements that are proposed to be constructed or improved in each redevelopment project area; contain the legal description of the redevelopment district; and establish the redevelopment district. Any addition of area to the redevelopment district or any substantial change to the district plan shall be subject to the same procedure for public notice and hearing as is required for the establishment of the redevelopment district.

B. Reviewing and Approving the Redevelopment Project Plan.

1. The Redevelopment Project Plan. The City shall prepare a redevelopment project plan in consultation with the City Planning Commission. The Planning Commission must determine that the redevelopment project plan is consistent with the comprehensive general plan for the development of the City and this action must occur before the Governing Body adopts a resolution providing notice of a public hearing to consider adoption of the redevelopment project plan. The Redevelopment project plan shall include: (1) a summary of the feasibility study, described below, which shall be an open record; (2) a reference to the district plan that identifies the redevelopment project area that is set forth in the project plan being considered; (3) a description and map of the redevelopment area to be redeveloped; (4) the relocation assistance plan, if applicable; (5) a detailed description of the buildings, facilities and improvement proposed to be constructed or improved in such area; and (6) any other information the governing body deems necessary to advise the public of the intent of the project plan. Where the Governing Body determines that it will or may issue full faith and credit tax increment bonds to finance the
redevelopment project, in whole or in part, the resolution shall also include notice thereof. Any project shall be completed within 20 years from the date of the approval of the project plan.

2. Notice and Public Hearing. No redevelopment project plan shall be approved by the City prior to notice and a public hearing as required by the Act. The date fixed for the public hearing shall be not less than 30 or more than 70 days following the date of the adoption of the resolution fixing the date of the hearing. The resolution shall be published by the City Clerk not less than one week or more than two weeks preceding the date fixed for the public hearing. A sketch clearly delineating the area in sufficient detail to advise the reader of the particular land proposed to be included within the project area shall be included with the resolution. A copy of the resolution providing for the public hearing shall be mailed certified mail, return receipt requested by the City Clerk to the Shawnee County Board of Commissioners, the board of education of any school district levying taxes on property within the proposed redevelopment project area. Copies also shall be sent by certified mail, return receipt requested by the City Clerk to each owner and occupant of land within the proposed redevelopment project plan area not more than 10 days following the date of the adoption of the resolution.

3. Governing Body Adoption. Following the public hearing, the Governing Body may adopt the redevelopment project plan by ordinance passed upon a 2/3 vote. Any substantial changes as defined in K.S.A. 12-1770a, as amended, shall be subject to a public hearing following publication of notice thereof at least twice in the official city newspaper.

V. PROJECT FEASIBILITY.

A. Statutory Feasibility Study. The City will prepare the statutory feasibility study based upon information provided by the applicant.

B. Demonstration of Financial Capacity to Perform. Each TIF project plan application must include evidence that the applicant:

1. Has a complete capital stack established with sources and uses in balance;

2. Has the financial ability to complete the project, on time, as proposed;

3. Has a firm, demonstrable commitment from a lending institution(s) for any private borrowing required to complete the project;
4. Has the financial wherewithal to make the equity contribution to the project required to secure such borrowing(s);

5. Has a reasonable basis for its project cost estimates, with preference provided to applications that include professionally-estimated project costs; and

6. Has the capacity, for itself or through experienced operators, to operate the project profitably over its lifecycle.

C. But-For Test:

1. Each TIF project plan application must demonstrate that “but-for” the use of TIF, the project is not feasible and would not be completed without the proposed TIF assistance. The City (through staff or its advisors and consultants, at its sole discretion) will conduct the but-for analysis and the applicant shall be responsible for providing all information reasonably requested by the City to conduct such analysis.

2. The City’s but-for requirement is a greater burden than the statutory burden for approval of a TIF project plan. The City shall, in its reasonable discretion, select the calculation methodology for such but-for analysis but it shall generally compare the return of the project and/or its developer taking into account TIF and other incentives against market rates of return for similar projects developed on “greenfield” sites (that is, those without the physical and legal impediments leading to the request for TIF). The but-for analysis will use time value of money discounting using reasonable assumptions (at the discretion of the City).

3. The but-for analysis shall take into account all incentives requested by the development from any governmental or other source (such as the Greater Topeka Partnership), not just those benefits provided by the TIF.

4. The City generally will seek to target a level of TIF incentive sufficient to provide the applicant with a market rate of return, including the effects of the incentives, but the City, at its discretion, may choose to provide a greater rate of return to the applicant in exchange for extraordinary benefits to the public.

5. The City will generally agree to permit the applicant to provide sensitive financial information to the City’s advisors or legal counsel on the City’s behalf under non-disclosure agreement, provided, however, that such advisors or legal counsel must have the right under such agreement to convey their conclusions about the applicant’s ability to meet the
requirements above based upon its review.

D. Information to Be Submitted with a Project Plan Application:

1. Information in support of the requirements in paragraph (B) of this section

2. Current financial statements of the applicant and owner and/or operating entity if different from the Applicant (2 years); P&L (2 years); and Balance Sheet (2 years)

3. Market studies which identify target markets, analysis of competition, demographics, market rents and sales prices, letters of intent/interest from prospective tenants. The City may reasonably request of the applicant, at the applicant's cost, a thorough, third-party market analysis identifying: (1) the likelihood of success of the business mix proposed for the TIF project plan area; and (2) the potential economic impacts on existing businesses and corresponding tax revenues should the TIF project plan develop as proposed

4. A ten-year detailed operating pro forma for the Applicant/project

5. A schedule describing all incentives requested and/or granted in support of the project from any governmental entity

6. A uses-by-source-of-funding schedule illustrating the project costs that will be reimbursed from TIF and any other incentive program (public or private) for which the applicant has or plans to apply.

7. If businesses are to be relocated from other areas of the city to the proposed TIF project plan area, the applicant must provide sufficient justification to indicate why the City should subsidize such relocation.

8. A schedule identifying whether the TIF project plan is expected to create net new "quality jobs" in the city. The City defines a quality job as one that is (a) full-time (greater than 32 hours per week); (b) pays a wage equal to or greater than the average wage within the Topeka MSA; and (c) provides a basic benefit package including access to affordable health insurance, paid time off and the opportunity to participate in a retirement plan.
VI. DEVELOPMENT AGREEMENT.

A. Timing. The Governing Body will take action on project plan approval, project planning/zoning approvals and a development agreement concurrently.

B. Contents. Among other things, the Development Agreement will provide for:

   a. A minimum private expense requirement for the developer and maximum permitted reimbursement amount to the developer.
   b. Specific developer performance requirements, matching the proposed improvements provided in the TIF project plan application.
   c. Consequences for developer non-performance, including reductions in the amount of incentives available, reductions in the maximum permitted reimbursement amount and/or acceleration of the date of expiration of the TIF.
   d. The mechanics for reimbursement of TIF-eligible expenses.
   e. The mechanics for establishing base year values for non-ad valorem taxes captured by the TIF.
   f. Payment-in-lieu-of-tax requirements.
   g. Conditions under which the applicant could request the City issue special obligation TIF bonds on its behalf.

VII. METHOD OF PROJECT FINANCING.

A. Certificate of Completion.

1. As noted in the Policy, Projects may be financed by a variety of methods. Before payment will be made to applicant, the City must issue a Certificate of Completion. Multiple Certificates of Completion may be issued for projects with approved phases.

2. The request for Certificate of Completion shall include an affidavit of the applicant certifying:

   a. Project improvement is an approved TIF eligible cost and identify its priority for reimbursement, if any;
   b. Project was constructed in accordance with all applicable laws and codes;
   c. Cost was incurred for authorized project improvements;
   d. Cost has not previously been submitted for reimbursement;
   e. Cost reflects the actual cost expended; and

B. Reimbursement.

1. If pay as you go financing is used, the applicant shall submit to the
Director of Finance copies of all invoices supporting its request for reimbursement, accompanied by a Certificate of Completion. Invoices must be submitted quarterly and such submission must occur at least thirty (30) days prior to any quarterly disbursement period or applicant shall have to wait until the next quarterly disbursement period.

2. The Director of Finance shall attempt to determine the eligibility of the cost within thirty (30) days of the submittal. If the Director determines the nature or amount of the request for reimbursement is outside the scope of the Act or the Development Agreement, Developer may appeal this decision in accordance with the procedure in Chapter 2.145 of the Topeka Municipal Code. Any reimbursement payment shall be stayed pending a determination by the hearing officer.

3. Requests for reimbursement shall be denied unless submitted before the Project is closed or within thirty (30) days thereafter.

E. Appeals. No suit to set aside assessments or otherwise question the validity of the proceedings for the District establishment or Project authorization shall be brought 30 days after publication of the resolution or ordinance creating the District. No suit to set aside the CID sales tax may be brought 30 days from the publication of the ordinance or resolution declaring the intent to impose the CID sales tax. No protest petition pertaining to the issuance of full faith and credit bonds may be brought 60 days following the date of public hearing to create or modify the District.

VIII. BOND FINANCING GUIDELINES.

The City's general policy is that development should pay for itself. As a result, the City will consider general obligation or general fund support of TIF bonds only in extraordinary cases and typically only on City-initiated projects. If TIF bonds are issued for the project, the following guidelines shall be applied:

1. The City will give priority considerations to TIF applications that request only pay-as-you-go financing.

2. For third-party applications, the City will generally not consider full faith and credit TIF bonds or TIF bonds with other City credit enhancements.

3. The City will consider providing the applicant with the right to seek permit issuance of “special obligation” bonds (i.e. supported solely from TIF revenues) in the City's sole discretion. The City may include in the development agreement specific conditions precedent to this right becoming
available (minimum leasing commitments, minimum revenue thresholds, etc.).

4. The City’s financial advisor will manage the bond issuance process on the City’s behalf, including advising the City on the selection of members of the bond financing deal team (to include, but not be limited to, underwriters, trustees, feasibility consultants, etc.).

5. The City’s bond counsel will serve as bond counsel on all TIF bond transactions.

6. For any bond financing, all City fees for itself, its counsel and advisors, will be paid from TIF bond proceeds (or by the applicant through an equity contribution to the financing).

7. For any special obligation bond financing, the City may impose an issuance fee of up to $50,000 to cover its staff costs involved in preparing and managing the financing. Additionally, the City will charge to the TIF fund an additional one percent (1%) annually on all TIF collections for ongoing administration of the bonds.

8. If required by bond counsel, the applicant agrees to be a party to the tax compliance agreement and/or continuing disclosure agreement (if applicable) on any TIF bond transaction.

CITY OF TOPEKA

Brent Trout, City Manager