

# City of Edwardsville, Kansas

## Tax Increment Financing (TIF) Policy



Date Adopted: September 12, 2011

### **Section 1. Scope**

The City is committed to the high quality and balanced growth and development of the community; to preserving the City's unique character and distinctive atmosphere and to revitalizing and redeveloping areas of the City. Although the City does not encourage the practice of subsidizing private business with public funds, insofar as the City's objectives are substantially advanced by the expansion of the tax base, creation of new jobs and enhancement of the local economy, the City will consider, on a case-by-case basis, the approval of TIF projects where, but for the availability of TIF, such development would not be economically viable. It is the policy of the City that any decision regarding the approval of TIF projects will be made in accordance with the guidelines, criteria and procedures outlined in this Policy. Nothing herein shall imply or suggest that the City is under any obligation to approve a TIF Project for any applicant. The City will consider STAR bond financing on a case-by-case basis by applying the standards and procedures set forth in this TIF Policy where applicable.

### **Section 2. Objective**

The proper use of Tax Increment Financing (TIF) can promote, stimulate and develop the general and economic welfare of and quality of life in the City. This Policy establishes the procedures of the City of Edwardsville, Kansas, for considering applications for TIF used for economic development and redevelopment purposes in accordance with the provisions of K.S.A. 12-1770 et seq. and any amendments thereto (the "Act").

### **Section 3. Provisions**

#### A. Legal Authority.

Pursuant to state law, the City may create Redevelopment Districts in blighted areas, conservation areas, enterprise zones created pursuant to K.S.A. 12-17,110 prior to July 1, 1992 and certain other areas provided under state law. Certain costs of improvements within the Redevelopment District may be reimbursed to the Developer or paid through the issuance of special obligation bonds or full faith and credit bonds. Funds to pay the reimbursement or to retire the bonds are generated by the tax increment and other sources that may be pledged by the City. This authority is discretionary and the City may provide for tax increment financing in an amount and for purposes more restrictive than that authorized by statute. No privately owned property shall be acquired and redeveloped if the Board of County Commissioners or the Board of Education levying taxes on property proposed to be included in the Redevelopment District determines, in the manner prescribed by K.S.A. 12-1771(f), that the proposed Redevelopment District will have an adverse effect on such county or school district.

## B. Eligible Redevelopment Project Costs

Permissible Redevelopment Project (TIF Project) costs or expenses include, but are not limited to:

1. acquisition of property within the Redevelopment Project area;
2. payment of relocation assistance;
3. site preparation including utility relocations;
4. sanitary and storm sewers and lift stations;
5. drainage conduits, channels, levees and river walk canal facilities;
6. street grading, paving, graveling, macadamizing, curbing, guttering and surfacing;
7. street lighting fixtures, connection and facilities;
8. underground gas, water, heating, and electrical services and connections located within the public right-of-way;
9. sidewalks and pedestrian underpasses or overpasses;
10. drives and driveway approaches located within the public right-of-way;
11. water mains and extensions;
12. plazas and arcades;
13. parking facilities;
14. landscaping and plantings; fountains, shelters, benches, sculptures, lighting, decorations and similar amenities; and
15. demolition of existing structures; and
16. related expenses to redevelop and finance the Redevelopment Project.

Redevelopment Project costs shall not include costs incurred in connection with the construction of buildings or other structures to be owned by or leased to a Developer.

## C. Bond Authority

The City may use proceeds of special obligation bonds or full faith and credit tax increment bonds to finance the undertaking of a Redevelopment Project, as provided in K.S.A. 12-1774. The maximum maturity of any such special obligation bonds or full faith and credit tax increment bonds shall be twenty (20) years. The City may also issue industrial revenue bonds or private activity bonds to benefit a Developer located within a Redevelopment District.

### 1. Special Obligation Bonds

The City may issue special obligation bonds to finance permissible expenses of a Redevelopment Project. Such bonds may be payable, both as to principal and interest: (a) from property tax increments allocated to, and paid into a special fund of the City; (b) from revenues of the City derived from or held in connection with the undertaking and carrying out of any Redevelopment Project; (c) from private sources, contributions or other financial assistance from the state or federal government; (d) from the increased franchise fees and city sales tax, or (e) from any combination of these methods.

Special obligation bonds are not general obligations of the City, nor in any event shall they give rise to a charge against its general credit or taxing powers or be payable out of any funds or properties other than those sources set forth above. Except in the case of a City initiated Redevelopment Project or a tax exempt project, should the annual increment fall short of the

amount necessary to pay the principal and interest of the special obligation bonds issued under this Policy, the remaining amount payable is the responsibility of the Applicant, not the City.

If the special obligation bonds issued under this Policy are offered to the public, the security for the bonds must be sufficient to minimize any risk of default. If the bonds are privately placed, they may be issued without a rating, but must be sold to an accredited investor or qualified institutional buyers as those terms are defined by securities industry standards.

## 2. Full Faith and Credit Bonds

The City may also issue full faith and credit tax increment bonds in rare circumstances to finance a Redevelopment Project. Any resolution establishing a public hearing on a Redevelopment Project Plan for which the City intends or may intend to issue full faith and credit tax increment bonds, shall state the City's intent to issue full faith and credit tax increment bonds. These bonds are payable, both as to principal and interest: (a) from the revenue sources identified for special obligation bonds; and (b) from a pledge of the City's full faith and credit to use its ad valorem taxing authority for repayment thereof in the event all other authorized sources of revenue are not sufficient.

In accordance with K.S.A. 12-1774(b)(5), full faith and credit tax increment bonds are general obligations of the City and shall be exempt from all state taxes except inheritance taxes, and the amount of full faith and credit tax increment bonds issued and outstanding which exceed three percent (3%) of the assessed valuation of the City shall be within the bonded limit of the City.

## 3. Industrial Revenue Bonds

Industrial revenue bonds may be issued by the City pursuant to K.S.A. 12-1740, et seq. to benefit a Developer within the Redevelopment District. All state law benefits associated with such bonds shall be available, except that pursuant to K.S.A. 79-201a *Second*, as amended, no ad valorem tax abatement shall be available for property which is located in a Redevelopment Project area established under the authority of K.S.A. 12-1770 et seq., as amended.

## D. Reimbursement Authority (Pay-As-You-Go)

Pursuant to Attorney General Opinion 96-45, tax increment can be used to reimburse a Developer for eligible Redevelopment Project Plan costs as opposed to issuing bonds. Under this method, the City may agree to reimburse the Developer for eligible Redevelopment Project costs over a period of time not to exceed twenty (20) years from the date of Redevelopment Project Plan approval in accordance with the terms set forth in the Development Agreement. The reimbursement amount is paid solely from all or a portion of the tax increment and the Developer takes the risk that the portion of the increment pledged for reimbursement will be insufficient to retire the eligible Redevelopment Project costs. This reimbursement method is preferred by the City over the use of bond financing as the method to reimburse Developers for eligible Redevelopment Project costs.

## E. Amount of Tax Increment Financing Available.

### 1. Criteria.

The general objectives of the City in granting TIF for economic development are: (a) promote, stimulate and develop the general and economic welfare of the state of Kansas and the City; (b) promote the general welfare of the citizens of Kansas and the City through assisting in the development, redevelopment and revitalization of central business areas, blighted areas, conservation areas and environmentally contaminated areas located within the City; (c) create new jobs and retain existing jobs and (d) expand the economic and tax base of the City. The specific objectives of the City to be considered when reviewing a proposed Redevelopment District include but are not limited to promoting the redevelopment of locations that need assistance due to unique methods of construction, geological, environmental or other site constraints. The City recognizes that a simple system of determining the amount of TIF to be granted in order to reach these objectives may not always be equitable if applied uniformly to different kinds of Redevelopment Project Plans. As a result, in determining the actual amount and duration of TIF to be granted, the City shall review each application on a case by case basis and consider the factors and criteria set forth in this Policy including where applicable, a Feasibility Study as required by state law, as well as the amount and duration of previous TIF Projects supported by the City.

### 2. Capital Investment.

Although no minimum capital investment is required by the City, the amount of capital investment made by an applicant is a factor to be considered by the City in determining whether or not to authorize a Redevelopment Project Plan.

### 3. Application Of "But-For" Principle.

All TIF applications shall be considered in light of the "but-for" principle, i.e., tax increment financing must make such a difference in the decision of the Applicant that the Project would not be economically feasible "but for" the availability of TIF. The Governing Body does not encourage the subsidy of private businesses with public funds, the indirect consequence of TIF, unless some measurable public good results, as determined by the City, and the public subsidization can reasonably be expected to make a significant difference in achieving one or more objectives of the City.

In evaluating the economic feasibility, the staff shall consider factors that include, but are not limited to:

- a. the extraordinary or unique costs associated with developing the project;
- b. the applicant's financial investment in the project;
- c. the property, sales and other tax and fee revenue that may result from the project;
- d. the credit worthiness and experience of the applicant; and
- e. the value added, including intangible costs and benefits received by the City and other taxing jurisdictions, as a result of the proposed project.
- f. Distribution of Ad Valorem Taxes.

All tangible taxable property located within a Redevelopment District shall be assessed and taxed for ad valorem tax purposes pursuant to law in the same manner that such property would be assessed and taxed if located outside such district, and all ad valorem taxes levied on such property shall be paid to and collected by the county treasurer in the same manner as other taxes are paid and collected.

Some or all of the increment in ad valorem property taxes resulting from a Redevelopment District may be apportioned by the City to a special fund for the payment of the eligible Redevelopment Project costs of the TIF Project, including reimbursement or the payment of principal and interest on any special obligation bonds or full faith and credit tax increment bonds issued.

#### G. Condemnation.

The City does not encourage the use of condemnation in association with projects. However, the use of condemnation, permitted under K.S.A. 12-1773, may be considered by the Governing Body, but only upon a finding that the Applicant has attempted, in good faith, to acquire the property privately. Although expenses associated with condemnation is an eligible Redevelopment Project cost under state law, in the event condemnation is approved by the Governing Body, the Applicant may be required to be responsible for all costs associated with the proceedings, including court and litigation costs, attorney's fees and the final condemnation awards made.

#### H. Waiver of Requirements.

The Governing Body reserves the right to grant or deny tax increment financing for the development or redevelopment of a Redevelopment District under circumstances beyond the scope of this Policy or to waive provisions herein. However, no such action or waiver shall be taken or made except upon a finding by the Governing Body that a compelling or imperative reason or emergency exists, and that such action or waiver is found and declared to be in the public interest. The Governing Body shall not waive any statutory requirement of State law.

#### I. Statutory Amendments.

Any amendment to any statute cited herein or used as a source of authority for development of the City's TIF Policy shall apply without modification or amendment to the TIF Policy.

#### J. Responsibility for Enforcement.

The City Administrator shall be responsible to the Governing Body for the enforcement of this Policy. The City Treasurer, City Attorney, City Clerk and City Planner shall assist in the implementation of this Policy.

#### K. References.

K.S.A. 12-1770 through 12-1780; 12-17,110; and 12-1740 as amended.

## **Section 4. Procedures**

The following basic procedures shall govern the approval of all TIF Redevelopment Districts and TIF Projects within the City. All requests for or applications for Redevelopment Districts or Redevelopment Project Plans shall be considered and acted upon in accordance with this Policy. These procedures are established under the authority of the City Administrator. These provisions may be waived by the City Administrator, if such waiver is in the best interest of the City and does not conflict with any statutory or procedural requirement of state law.

A. The Applicant shall schedule a pre-application meeting with the City Administrator and City Clerk.

B. Application Process

1. Redevelopment District Application.

The Applicant shall make application for a Redevelopment District by filing in the City Clerk's Office eight (8) copies of a written application on a form provided by the City Clerk. The application shall include, but is not limited to: (a) legal description of the proposed boundaries of the Redevelopment District; (b) map of the Redevelopment District area with accompanying tax parcel I.D. information; (c) a comprehensive plan that identifies all the proposed Redevelopment Project areas and identifies in a general manner all of the buildings, facilities and other improvements that are proposed to be constructed or improved in each Redevelopment Project area; (d) if applicable, accompanied by a study from qualified personnel establishing the information necessary to establish blight or conservation area findings as the basis for establishing the Redevelopment District area; (e) information regarding expected capital expenditures by the Applicant; (f) an itemization of development assistance requested and (g) the applicable application fee.

2. Redevelopment Project Plan Application.

The applicant shall make application for a Redevelopment Project Plan by filing in the City Clerk's Office eight (8) copies of a written application on a form provided by the City Clerk. The application shall include, but is not limited to: (a) legal description of the proposed boundaries of the Redevelopment Project Plan; (b) description and map of the Redevelopment Project Plan; (c) a detailed description that identifies the proposed buildings, facilities and other improvements to be constructed in the Redevelopment Project area, including the estimated fair market and assessed value of the improvements and the estimated date in which construction of the improvements will be commenced and completed and (d) the proposed relocation plan required by K.S.A. 12-1777, and amendments thereto, if any relocation will be required under the Redevelopment Project Plan.

City staff may also initiate Redevelopment Project Plans. Such staff requests shall be accompanied by an application completed by the appropriate City staff and the corresponding fee will be waived.

3. General Application Procedure.

The City Clerk shall distribute copies of the application to the City Administrator, City Treasurer and City Attorney. The City will only consider full and complete applications.

Applicant will also be responsible for providing whatever additional information requested by staff or the Governing Body is necessary for assisting the City in making its recommendation or decision on the application. Any inaccuracy, misstatement or error in fact may render the application null and void and may be cause for the repeal of any development assistance ultimately provided by the City through the TIF statutes in reliance upon said information.

### C. Application and Administration Fees.

Redevelopment District applications and Redevelopment Project Plan applications shall be accompanied by an application fee. This fee is in addition to other fees which may be required by the City, including fees for the issuance of tax-exempt or taxable bonds, costs incurred for preparation of the Feasibility Study as required by the Act and this Policy and costs incurred, if any, for review and work done by the City's Financial Advisor and Bond Counsel. In addition, any applicant that receives Redevelopment Project Plan approval and subsequent TIF assistance shall pay an annual administration service fee. All fees shall be due and payable as provided for herein or as otherwise set forth in an approved Development Agreement.

#### 1. Fees Associated with Redevelopment District

- a. Initial Application Fee. A non-refundable amount of \$5,000.00 shall accompany the Redevelopment District application.
- b. Funding Agreement: On a case by case basis, the City will negotiate with the Applicant a sum of money to be included in a funding agreement based upon the size and scope of each project. The City shall use the money to pay for City Bond Counsel, Financial Advisor and other professional consultants' fees and apply the hourly fees incurred by the City's professional consultants for work on this Project. The Funding Agreement shall be signed and the money paid before the TIF application and project will move forward. (See Appendix A, Funding Agreement Example.)

#### 2. Fees Associated with Redevelopment Project Plan

- a. TIF Fee. A non-refundable initial application fee of \$2,500 must accompany the application submission plus a non-refundable amount equal to 1% of the total TIF assistance provided but initially based upon the estimated and approved eligible Redevelopment Project costs, in a maximum amount of \$50,000, which fee shall be paid as follows:
  - (1) Redevelopment Project Plan Approval Fee. An amount equal to 25% of the TIF fee or \$12,500 (whichever is less) paid upon Governing Body approval of the Redevelopment Project Plan.
  - (2) Balance of Fee. Paid with the first increment disbursement or the issuance of bonds, if applicable, in the amount of 75% of the TIF fee or \$37,500 (whichever is less).
- b. Annual Administrative Service Fee. An amount equal to 0.5% of the annual increment reimbursed to applicant or its successor in interest and/or 0.5% of the annual increment applied to the payment of the TIF bonds issued for the project.

- c. **Funding Agreement.** On a case by case basis, the City will negotiate with the Applicant a sum of money to be included in a Funding Agreement based upon the size and scope of each Redevelopment Project Plan. The City shall use the money to pay for City Bond Counsel, Financial Advisor and other professional consultants' fees and apply the hourly fees incurred by the City's professional consultants for work on this Project Plan against the funds. If additional money is needed to cover the aforementioned fees, the applicant shall pay the City a negotiated amount before the Project Plan will proceed. If there is money left in the account when the professional work is completed, the City shall pay to the Applicant any amounts remaining. The Funding Agreement shall be signed and the money paid before the Redevelopment Project Plan application will move forward. (See Appendix B, Explanation of Application and Administration Fees.)

#### D. Initial Review Procedure.

On receipt of the completed applications and the required fees, the City Clerk shall determine whether the proposal is complete and sufficient for review. If the proposal is incomplete, the Community and Economic Development Director shall immediately notify the Applicant of the need for such changes or additions as deemed necessary. Upon receipt of completed applications and the applicable fees, the City Clerk shall forward the applications to the Finance Team for review.

#### E. City Review.

The City Administrator shall review applications for TIF assistance. In the case of Redevelopment District applications, the City Administrator shall also evaluate the proposed Redevelopment District and verify that redevelopment is necessary to promote the general and economic welfare of the City; gather and review such additional information as may be deemed necessary to determine if the applicant meets the objectives of this Policy; obtain input of applicable City departments with respect to the proposed physical plan and infrastructure needs; prepare a timeline for processing the application; conduct discussions and negotiations with the applicant; and recommend to the Governing Body whether the application should be favorably considered.

In the case of Redevelopment Project Plan applications, the City Administrator shall evaluate the proposed Redevelopment Project Plan and determine if it meets the goals, objectives and codes of the City; obtain the input of applicable City departments with respect to the proposed physical plan and infrastructure needs; prepare a timeline for processing the application; prepare or cause to be prepared the Feasibility Study and review the same; conduct discussions and negotiations with the applicant; discuss terms of the Development Agreement to be drafted by the City Attorney or Bond Attorney for Governing Body consideration and recommend to the Governing Body whether the application should be favorably considered.

In reviewing the information, the City Administrator may utilize the services of City staff members or consultants, including but not limited to bond counsel and financial advisors. The City Review Team records, including applications submitted for TIF, may be eligible for withholding from public disclosure as provided under the Kansas Open Records Act, but shall be available for public inspection when otherwise required by law.

## F. Governing Body Action.

No elected or appointed officer, employee or committee of the City, and no Chamber of Commerce Board or other public or private body or individual, shall be authorized to speak for or commit the Governing Body to the provision of TIF, the establishment of a Redevelopment District, nor the approval of a Redevelopment Project Plan.

### 1. Reviewing and Establishing the Redevelopment District.

Upon receiving the recommendation of the City Administrator, the Governing Body shall determine whether to reject the application for creation of a Redevelopment District or to further consider the request. Upon a favorable vote for further consideration, the Governing Body shall take action to establish a Redevelopment District. 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.

#### a. Redevelopment District Resolution – Notice of Public Hearing.

The resolution shall (1) state that the City is considering the establishment of a Redevelopment District; (2) 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; (3) describe the proposed boundaries of the Redevelopment District; (4) 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; (5) state that a description and map of the proposed Redevelopment District are available for inspection at a time and place designated and (6) 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.

#### b. 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 not less than one week or 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 Board of County Commissioners (BOCC) and 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 District area not more than 10 days following the date of the adoption of the resolution.

c. Board of County 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 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.

d. 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.

2. Reviewing and Approving the Redevelopment Project Plan.

a. Feasibility Study.

Before any Redevelopment Project Plan is approved, a Feasibility Study shall be prepared by a person or organization selected by the City. The Feasibility Study must show whether a Redevelopment Project's benefits and tax increment revenue and other available revenues under K.S.A. 12-1774(a)(1), and amendments thereto, are expected to exceed or be sufficient to pay for the Redevelopment Project costs and the effect, if any, the Redevelopment Project costs will have on any outstanding special obligation bonds as authorized pursuant to K.S.A. 12-1774(a)(1)(D) The cost of preparing the Feasibility Study shall be paid by the Applicant. Such study shall be an open public record.

b. The Redevelopment Project Plan.

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, 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 improvements 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.

c. 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 Board of County Commissioners and 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.

d. Governing Body Adoption.

Following the public hearing, the Governing Body may adopt the Redevelopment Project Plan by ordinance passed upon a two-thirds (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.

G. Development Agreement.

Prior to the commencement of development of the Redevelopment Project (including the issuance of bonds) and generally simultaneous with the approval of a Redevelopment Project Plan, the Developer shall execute a Development Agreement as approved by the Governing Body.

H. Bond Issuance.

All bonds, except full faith and credit bonds, may be issued following the public hearing. No full faith and credit bonds may be issued until the sixty-day protest period expires after the date of the public hearing. If a protest petition is signed by 3% of the qualified voters of the City, and filed with the City Clerk in accordance with the provisions of K.S.A. 25-3601 et seq., within 60 days of the date of the public hearing, no full faith and credit tax increment bonds may be issued until the issuance of the bonds is approved by a majority of the voters. Failure of the voters to approve the issuance of the full faith and credit bonds shall not prevent the City from issuing special obligation bonds in accordance with this Policy and K.S.A. 12-1774, and amendments thereto.

## I. Acquisition of Land.

The City may not exercise eminent domain in conservation areas and the City discourages the use of eminent domain in TIF Projects, absent compelling reasons to do so.

### **Section 5. Definitions**

For the purpose of this Policy, the words or phrases as used in this Policy shall have meaning or be construed as follows unless otherwise defined by state statute.

**Applicant:** The individual or business and its officers, employees and agents requesting approval of a Redevelopment District or Redevelopment Project Plan associated with any proposed TIF Project. May also be referred to as Developer.

**Associated Therewith:** As used with respect to tangible personal property shall mean being located within, upon, or adjacent to buildings or added improvements to buildings.

**Base Year Assessed Valuation:** The assessed valuation of all real property (land and buildings) within the boundaries of a Redevelopment District on the date the Redevelopment District was established.

**Blighted Area:** An area of real property which:

1. Because of the presence of a majority of the following factors, substantially impairs or arrests the development and growth of Edwardsville or constitutes an economic or social liability or is a menace to the public health, safety, morals or welfare in its present condition and use:
  - a. a substantial number of deteriorated or deteriorating structures;
  - b. predominance of defective or inadequate street layout;
  - c. unsanitary or unsafe conditions;
  - d. deterioration of site improvements;
  - e. tax or special assessment delinquency exceeding the fair value of the real property;
  - f. defective or unusual conditions of title including but not limited to cloudy or defective titles, multiple or unknown ownership interests to the property;
  - g. improper subdivision or obsolete platting or land uses;
  - h. the existence of conditions which endanger life or property by fire and other causes; or
  - i. conditions which create economic obsolescence; or
2. Has been identified by any state or federal environmental agency as being environmentally contaminated to an extent that requires a remedial investigation, feasibility study and remediation or other similar state or federal action; or
3. Previously was found by resolution of the Governing Body to be a slum or a blighted area under K.S.A. 17-4742, et seq., and amendments thereto.

**Capital Investment:** The acquisition cost of land, buildings and tangible personal property constituting capital assets for accounting purposes.

Conservation Area: Any improved area comprising 15% or less of the land area within the corporate limits of Edwardsville in which 50% or more of the structures in the area have an age of 35 years or more, which area is not yet blighted, but may become a blighted area due to the existence of a combination of two or more of the following factors:

1. dilapidation, obsolescence or deterioration of the structures;
2. illegal use of individual structures;
3. the presence of structures below minimum code standards;
4. building abandonment;
5. excessive vacancies;
6. overcrowding of structures and community facilities; or
7. inadequate utilities and infrastructure.

Development Agreement: A written agreement between the City and a Developer for the construction of a Redevelopment Project. Such agreement shall address issues involved in the Redevelopment Project, including, but not limited to the following: Schedule of construction; acquisition of land; eligible TIF expenses; scope of the development (including development criteria); indemnity of the City and insurance requirements; reimbursement of City costs; financing (private and/or public); transfer restrictions prior to completion; maintenance and restrictive covenants; city inspection and information access rights; reporting requirements and remedies upon default.

Feasibility Study: A study which shows whether a Redevelopment Project's benefits and tax increment revenue and other available revenues under K.S.A. 12-1774(a)(1), and amendments thereto, are expected to exceed or be sufficient to pay for the Redevelopment Project costs and the effect, if any, the Redevelopment Project costs will have on any outstanding special obligation bonds as authorized pursuant to K.S.A. 12-1774(a)(1)(D), and amendments thereto. A Feasibility Study performed by the City or its designee shall be prepared prior to approval of the Redevelopment Project Plan.

Real Property Taxes: Includes all taxes levied on an ad valorem basis upon land and improvements thereon.

Redevelopment District: The specific area declared to be an eligible area in which Edwardsville may develop one or more Redevelopment Projects. This is sometimes referred to as a TIF District.

Redevelopment District Plan: The preliminary plan that identifies all of the proposed Redevelopment Project areas and identifies in a general manner all of the buildings, facilities and improvements in each that are proposed to be constructed or improved in each Redevelopment Project area.

Redevelopment Project: The approved project to implement a project plan for the development of the established Redevelopment District and for which a Redevelopment Project Plan is approved and a development agreement is executed. Any Redevelopment Project must be completed within 20 years from the date of approval of the Redevelopment Project Plan. This is sometimes referred to as a TIF Project.

Redevelopment Project Plan: The plan adopted by the City for the development of a Redevelopment Project or Projects which conforms to K.S.A. 12-1772, and amendments thereto, in a Redevelopment District.

STAR Bonds: Sales tax revenue bonds payable from the revenue sources identified in K.S.A. 12-1774(a)(1)(D) or K.S.A. 12-1774(a)(1)(G), and amendments thereto.

Tax Increment: The amount of real property taxes collected from real property located within the Redevelopment District that is in excess of the amount of real property taxes which is collected from the base year assessed valuation. In certain circumstances, the City may also allow capture of the incremental sales tax revenues and franchise fees generated by the Redevelopment Project.

Taxing Subdivision: Includes the county, the city, the unified school districts and any other taxing subdivision levying real property taxes, the territory or jurisdiction of which includes any currently existing or subsequently created Redevelopment District.

## APPENDIX A

### FUNDING AGREEMENT EXAMPLE

THIS FUNDING AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between \_\_\_\_\_ (the "Applicant"), and the CITY OF EDWARDSVILLE, KANSAS (the "City").

#### RECITALS

- A. The City is a municipal corporation duly organized and existing under the laws of the state of Kansas and authorized by K.S.A. 12-1770 *et seq.*, as amended (the "TIF Act"), to provide tax increment financing for certain qualified projects upon compliance with the procedures set forth in the TIF Act.
- B. The Applicant is a (Type of Company: Limited Liability, Corporation, Partnership, etc.).
- C. The Applicant has requested that the City consider the establishment of a Redevelopment District (as defined in the TIF Act), prepare a Redevelopment Project Plan (as defined in the TIF Act), consider the Redevelopment Project Plan in accordance with the TIF Act, and, if approved, implement and administer the Redevelopment Project Plan through its completion. In order to do so, the City must retain outside administrative and professional staff, outside counsel and consultants, and incur expenses, but is without a source of funds to pay such staff, counsel, consultants and expenses.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter expressed, the parties mutually agree as follows:

#### 1. TIF Application.

By execution of this Agreement, the Applicant is applying to the City for the establishment of a Redevelopment District and the preparation of a Redevelopment Project Plan. The Applicant agrees, represents and warrants that any information provided to the City in connection with the Redevelopment District and the Redevelopment Project Plan shall be accurate and complete to the best knowledge of the manager or member of the Applicant providing such information.

#### 2. Services to be Performed by the City.

The City shall retain outside administrative and professional staff, outside counsel and consultants, and incur expenses which it, in its sole discretion, deems necessary to:

- a. Consider the establishment of a Redevelopment District in accordance with the provisions of the TIF Act, prepare an independent feasibility study and market study on behalf of the City, give all notices, make all publications, hold all hearings as required by the TIF Act, prepare the required resolution and ordinance to establish the Redevelopment District;
- b. If the City Council establishes the Redevelopment District, prepare and consider the Redevelopment Project Plan in accordance with the provisions of the TIF Act, give all notices, make all publications, hold all hearings as required by the Act and prepare the required resolution and ordinance to approve the Redevelopment Project Plan;

- c. If the City Council approves the Redevelopment Project Plan, prepare and negotiate a definitive agreement between the parties for implementation of the Redevelopment Project Plan; and
- d. If a definitive agreement is entered into, administer the Redevelopment Project Plan and definitive agreement until terminated or completed.

3. **Payment.**

The Applicant shall pay the City for its fees and expenses; the time of its outside administrative and professional staff, as the City may from time to time deem appropriate; all charges for the City's outside counsel and consultants; and all other expenses incurred by the City in providing the services set forth in Section 2 (the "Charges"), subject to the following conditions:

- a. In order to insure the prompt and timely payment of the Charges, the Applicant shall establish a fund in the amount of \$ \_\_\_\_\_ (the "Fund") by paying such amount to the City contemporaneously with the execution of this Agreement, receipt of which is hereby acknowledged. Thereafter, the City shall pay all Charges from moneys on deposit in the Fund and shall provide a statement thereof to the Applicant on a monthly basis which statement shall provide the amount expended from the Fund, the purpose of the expenditure, the date of the expenditure and the recipient of the money. If, in the judgment of the City's Finance Director, there are insufficient amounts on deposit in the Fund to pay for the projected Charges expected to be incurred, the Applicant shall make a subsequent deposit or deposits into the Fund in an amount equal to the initial deposit or such other amount which in the judgment of the City's Finance Director is required to provide sufficient funds to pay the projected Charges. Such additional deposit shall be made within seven (7) days of the receipt of the Applicant of notification by the Finance Director of the amount required.
- b. Simultaneously with the execution of the Agreement and the deposit of the initial amount into the Fund, the sum of \$ \_\_\_\_\_ shall be withdrawn from the Fund and paid to the City as a nonrefundable TIF application fee. No additional charges shall be made against the Fund to pay for the City's employees' time for processing the TIF application and performing the services described under subsections a, b and c of Section 2 of this Agreement, however, the City may impose an additional annual administrative fee for administering any Redevelopment Plan described in subsection d of Section 2 of this Agreement and the City shall be reimbursed for all actual out-of-pocket expenses incurred for providing the services set forth in Section 2 including, but not limited to, reimbursement for the cost of publication, postage, mileage and similar expenses.
- c. All statements submitted to the City for Charges from its outside counsel or consultants shall be payable within thirty (30) days of receipt thereof from moneys on deposit in the Fund. If sufficient amounts are not on deposit in the Fund to pay such Charges, the City shall be relieved of its obligations hereunder and no further services or activity will be performed by the City to further the proposed Redevelopment Project Plan until an amount sufficient to pay such Charges, plus an amount sufficient to satisfy any further deposit request made by the Finance Director for projected Charges, is made. All unpaid balances on statements submitted to the City for Charges shall be subject to a penalty of two percent (2%) per month until paid, but in no event shall such penalty exceed eighteen percent (18%).

- d. If the Redevelopment Project Plan is adopted, all payments which are eligible for reimbursement pursuant to the TIF Act shall be reimbursed out of the special tax increment fund created for the Redevelopment Project Plan.

4. **Termination.**

- a. The City may terminate this Agreement upon ten (10) days written notice in the event the Applicant fails to make any payments when due.
- b. The Applicant may terminate this Agreement in the event it determines not to proceed further to complete the Redevelopment Project Plan upon written notice to the City thereof.
- c. If either party terminates this Agreement, the City shall apply the balance of the Fund, if any, to outstanding Charges pursuant to this Agreement and any monies due and owing to the City pursuant to any other agreement and shall pay the remaining balance, if any, to the Applicant within thirty (30) days of such termination. In the event the balance of the Fund is insufficient to pay the outstanding Charges payable hereunder, the Applicant shall pay such Charges within 30 days of receipt of a statement from the City of the balance required to pay such Charges.

5. **No Obligation to Proceed with Redevelopment Project Plan.**

The Applicant acknowledges that the City is not obligated by the execution of this Agreement to establish a Redevelopment District or to approve a Redevelopment Project Plan and that the establishment of the Redevelopment District and the approval of a Redevelopment Project Plan are subject to the sole discretion of the Governing Body of the City and the requirements of the TIF Act.

6. **Notice.**

Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if it is in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:

Phyllis Freeman, City Clerk  
City Hall  
690 South 4<sup>th</sup> Street  
Edwardsville, Kansas 66113

With a copy to:

Scott Anderson  
Kutak Rock LLP  
1010 Grand Boulevard, Suite 500  
Kansas City, Missouri 64106-2220

To the Applicant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Each party may specify that notice be addressed to any other person or address by giving to the other party ten (10) days prior written notice thereof.





**APPENDIX B**  
**Explanation of Application and Administration Fees**

A development agreement will outline all fees to be paid. These application and administration fees are in addition to other fees which may be required by the city, including fees for the issuance of tax-exempt or taxable bonds, costs incurred for preparation of the Feasibility Study as required and costs incurred, if any, for review and work done by the city's financial advisory and bond counsel.

**Redevelopment District – Paid by Applicant/Developer**

- A. Non-Refundable Application Fee: \$5,000
- B. Funding Agreement: Negotiated on a case by case basis, is based upon the size and scope of each Redevelopment District and is due and payable upon signing of the agreement. Money is paid by the Applicant/Developer to the City and the funds are used to pay for professional consultant fees for work on the Redevelopment District.

**Redevelopment Project Plan – Paid by each project area applicant in the district and/or the district applicant/developer.**

- A. **TIF fee:** Non-refundable initial application fee of \$2,500 plus 1% of the total TIF assistance provided based upon the estimated and approved eligible redevelopment project costs in a maximum amount of \$30,000, which fee shall be paid as follows:

Approval Fee:	25% of the TIF fee or \$7,500 (whichever is less)
Balance of Fee:	75% of the TIF fee or \$22,500 (whichever is less)

**Example:**

Total TIF assistance:	\$1,000,000
1% =	\$10,000

Computation:

25% Approval fee:	\$2,500
75% Balance of fee:	<u>\$7,500</u>
<b>Total:</b>	<b>\$10,000</b>

If TIF assistance is over \$3,000,000, maximum TIF fee is \$30,000

**Example:**

Total TIF Assistance:	\$4,000,000
1% of \$4,000,000 =	\$40,000
Maximum TIF Fee:	\$30,000

Computation:

Approval fee (25% of \$30,000):	\$7,500
Balance (75% of \$30,000):	<u>\$22,500</u>
<b>Total:</b>	<b>\$30,000</b>

- B. **Annual Administrative Service Fee** - .5% of the annual increment reimbursed to applicant.

- C. **Funding Agreement:** Negotiated on a case by case basis, is based upon the size and scope of each Redevelopment Project Plan and is due and payable upon signing of the agreement. Money is paid by the Applicant to the City and the funds are used to pay for professional consultant fees for work on the Redevelopment Project Plan.