

Guidelines for the Use of Tax Increment Finance

-City of Brookings, South Dakota-

Adopted by the City Council: January 13, 2009

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Purpose of these Guidelines:

These guidelines are established to outline the City's position governing the intended use of tax increment financing (TIF) as an economic development tool for development. These guidelines operate within the parameters of SDCL 11-9 as amended; and shall be used as a procedural framework for considering applications for its use. The fundamental purpose of tax increment financing in Brookings is to encourage desirable development or redevelopment that would not otherwise occur *but for* the assistance provided through TIF. It shall further be the intent of TIF use to be for the shortest duration possible to achieve the City's desired results for the specific project. The City reserves the right to approve or reject projects on a case-by-case basis, taking into consideration established policies, project criteria, existing ordinances, and demand on city services in relation to the potential benefits from the project. Meeting the criteria does not guarantee the award of TIF to the project. Approval or denial of one project is not intended to set precedent for approval or denial of another project. Each project is unique and must stand on its own merits.

Section I: Objectives governing the use of TIF

The City will consider using TIF to assist private and public development projects provided Item (8) in this Section and one additional of the following public purpose objectives are satisfied.

- 1) To retain local jobs and/or increase the number and diversity of jobs that offer stable employment and/or attractive wages and benefits. These jobs should be at the level sufficient to being considered a living wage/head-of-household income, and be considered *primary* jobs.
- 2) To encourage the redevelopment of deteriorated, contaminated, designated "brownfield", or otherwise blighted real property through the investment of TIF funding; to result in an appreciably higher level of quality redevelopment and private reinvestment.
- 3) To stimulate economic development in Brookings by assisting projects that promote the long term economic vitality of the community; and contributes to the fulfillment of the City's development or redevelopment objectives.
- 4) To stimulate increased private investment in areas that would have otherwise remained undeveloped or under-developed and which will, in the long term, provide a significant source of additional tax revenues to all taxing jurisdictions.
- 5) To encourage additional unsubsidized private development in the area, either directly or indirectly through "spin-off" development.

- 6) To stimulate the construction of safe and affordable housing units for low and moderate income residents and expand the general housing stock. (The latest available housing plan/survey, and information from South Dakota Housing Development Authority should be used as the primary guideline for determining affordability levels.)
- 7) To offset increased costs of redevelopment over and above the costs normally incurred in development.
- 8) To facilitate the development process and to achieve development on sites which would not otherwise be developed *BUT FOR* the use of TIF. Use of TIF shall be considered a financing means of last resort as determined by the City Council.
- 9) To support and assist in the implementation of the City's Comprehensive Plan.
- 10) To broaden and expand the tax base to the benefit of all taxing jurisdictions.
- 11) To support redevelopment efforts that enhance and preserve unique urban features including but not limited to the downtown central business district, historic districts, entryway features and amenities, and public assembly areas.
- 12) To the extent permitted by law, tax increment proceeds may be used to finance eligible city-owned projects and improvements within the district as deemed necessary by the City Council.

Section II: General guidelines governing the use of TIF

- 1) The City of Brookings will comply with all requirements of SDCL 11-9 as amended. The City will undertake a comprehensive analysis to ensure the proposed project satisfies the "*BUT FOR*" criteria. The project must demonstrate to the satisfaction of the City Council, that it is not economically feasible without the use of TIF.
- 2) The City of Brookings will use tax increment financing only when a clearly identified city development objective is served and only to the degree necessary to accomplish that development objective.
- 3) Tax increment financing will only be used in cases where the City has the financial capacity to provide the needed public assistance, the Council deems it fiscally prudent to provide such assistance, and the developer can clearly demonstrate the development will be able to meet its financial and public purpose obligation.
- 4) The financing method of TIF districts shall be a "*pay-as-you-go*" method whereby the applicant fronts the costs and will be reimbursed by the City over time as increment becomes available. The developer shall be considered the borrower under "pay-as-you-go" and the City shall not be liable for debt. As an alternative, the City Council may consider the issuance of bonded indebtedness through tax

increment bonds only when unique circumstances determine “pay-as-you-go” is not feasible.

- 5) As a condition of using TIF, applicants agree to waive their right to use the discretionary formula. The discretionary formula provides a financial incentive in addition to the use of tax increment. Using the discretionary formula lessens the availability of increment needed to finance the project.
- 6) Only those public improvements and redevelopment costs directly associated with, or needed to service the proposed development plan or project, should be financed through tax increment proceeds.
- 7) The amount of increment remitted to the developer shall not exceed the amount in the approved project plan as adopted by the City Council; and shall be only for the lesser of either actual or budgeted expenditures in the approved plan.
- 8) The duration of the tax increment district shall be determined in the approved project plan as adopted by the City and shall terminate at such time as the sufficient increment has been generated pursuant to the approved project plan. In the event sufficient increment has not been generated by the time of the scheduled decertification of the district, the developer shall be responsible for any shortfall.
- 9) Tax increment expenditures shall only be made for items directly related to, and ancillary to, a bona fide public purpose or public benefit as determined exclusively by the City Council.
- 10) The City shall advertise for competitive bids for construction of the project, shall hold the construction contract, and shall make payments to the contractor with reimbursements from the applicant for *pay-as-you-go* projects, or from the bond fund for bonded indebtedness funds. The City shall not make any payments to the contractor until the applicant has made sufficient deposits to the City to cover the contractor payments for *pay-as-you-go* projects.
- 11) All development proposals should seek to maximize the amount of private investment per dollar of public assistance. Public assistance as a percentage of total development costs will be determined for each project as part of the review and compared to other development projects or subprojects of similar scope and magnitude whenever possible.
- 12) The City may, on a case-by-case basis, establish public purpose requirements specific to an application that must be met for the project. Such requirements shall be described in the project plan, development agreement, or other binding document between the City and the applicant, which may be in addition to the scope of applicable city ordinances or policies. Such items which may be included and if included would require performance by the Applicant may include but are not limited to: prescribed valuation of a home or building, acreage or building sizes, wages, number of jobs created/retained, building

materials affecting appearance, landscaping, signage, property valuation increases, sales tax generating capacity, historic preservation, environmental improvements, transportation improvements, blight remediation, parking improvements, etc.

- 13) Applicant shall demonstrate to the satisfaction of the City that sufficient market demand exists for the proposed project. TIF shall not be used to support speculative projects.
- 14) Applicant must provide adequate financial guarantees to constitute a minimum of 10 percent equity investment cash infusion by Applicant into the overall project. Private lender financing and TIF shall not be counted toward the 10 percent equity requirement.
- 15) Applicant must provide adequate financial and legal guarantees to ensure completion of the project, including, but not limited to letters of credit, performance bonds, and personal guarantees.
- 16) For the purposes of underwriting the proposal, the applicant shall provide any requested market, financial, environmental, or other data pertaining to the proposed TIF project requested by the City or its consultants.
- 17) The project must be consistent with the City's Comprehensive Plan, Zoning Ordinances, Subdivision Regulations, Land Use Plan, and any other duly-adopted master plans affected by the use of Tax Increment Financing.
- 18) The applicant shall adequately demonstrate, to the City's sole satisfaction, an ability to complete the proposed project based on past development experience, general reputation, and credit history, among other factors, including the size and scope of the project.
- 19) The City may reject the use of TIF if it determines the project would place an extraordinary demand on city services or if the project that would have significant detrimental impacts on the health, safety, or general welfare of the community.
- 20) The City may consider amendments to either the district boundaries after a district is certified, or to the previously-adopted project plan. Amendments may be necessary to accommodate changes to desired public purpose outcomes.
- 21) The final interest rate and terms on the TIF Note shall be determined by the City Council and incorporated into the Development Agreement.

Section III: Economic Analysis and Risk Assessment Process

- 1) Proposed uses of tax increment will be subject to rigorous economic analysis and risk assessment. This analysis will be conducted by the TIF Review Staff Team through their review process. The analysis may include review and assessment by consultants. (The TIF Review Staff Team shall consist of: City Manager (or

designee), City Finance Officer, City Engineer, Community Development Director, Planning/Zoning Administrator, BEDC Economic Development Director.)

- 2) The analysis and assessment of all proposed uses of tax increment will address the following questions as part of the standard format for reports to the City Council.
 - i. What is the public purpose of the financial assistance for this project?
 - ii. Why is there a financial need for public investment and/or subsidy?
 - iii. What is the total cost of the project?
 - iv. What is the appropriate level of public participation?
 - v. What are the risks associated with the project?
 - vi. What are the alternative plans for managing the risk?
 - vii. How does the proposed project finance plan compare with previously approved comparable projects?
 - viii. What is the project's impact on other publicly financed projects?
- 3) The results of the Economic Analysis and Risk Assessment will be presented to the City Planning Commission and City Council at a time consistent with the schedule provided in Section V. The report shall identify any elements of the proposed project that are not in conformance with this policy.
- 4) Applicants shall pay a TIF application fee as determined by City resolution as a means of cost recovery for time and resources involved with approval of a TIF project. The fee shall be due and payable as part of the application process in Section V, Step 3. The process outlined in Section V shall not proceed until this amount has been paid in full. Applicants shall pay the fees associated with the Bond Counsel and Financial Advisor who shall be retained by the City for review of the TIF project. Applicants shall pay direct costs associated with processing the TIF application including but not limited to postage, hearing notices, surveys, platting, engineering, copying, legal fees, appraisals, recording fees, etc. Such costs shall not be the responsibility of the City.
- 5) The City may require periodic reports on the financial and developmental performance of the TIF district during the term of the district.

Section IV: Eligible costs of tax increment revenue

The City reserves the right to further restrict eligible costs as enumerated in state law in this section as well as for each TIF project. Private buildings, structures, utilities or other private-use improvements are not eligible for TIF assistance. Development costs that are eligible for reimbursement with tax increment revenues are listed below.

Property acquisition
Elimination of slum and blighted conditions on property/land clearance
Soils corrections
Site preparation/clearing and grading of land

Removal of hazardous wastes or remediation of site contamination

Construction of capital public improvements such as:

Streets	Curb and gutter
Storm drainage utilities/ponds	Wastewater utilities
Water utilities	Sidewalks/trails/pathways
Landscaping improvements	Signage & traffic controls
Lighting	Public parking lots

Organizational costs

Capitalized interest/finance charges

Professional service costs

Imputed administrative costs

Relocation costs

Other costs permitted by state law as may be prescribed in the TIF project plan.

Section V: Tax Increment Finance application and approval process

Each step must be approved before the project can move to the next step. The project shall be terminated for failure to meet the requirements of each step unless each step is satisfactorily completed or the step is modified to the satisfaction of the City in order to advance to the next step.

- 1) Applicant submits pre-application for TIF project to Community Development Director. (Attachment 1)
- 2) City Council reviews pre-application to assess viability/feasibility of project.
- 3) Applicant submits full application, including application fee, to Community Development Director. (Attachment 2)
- 4) TIF Review Team undertakes review of the application and project.
- 5) Project Plan is written by Review Team, Bond Counsel, & Financial Advisor.
- 6) Notices of a Public Hearing before Planning Commission are distributed.
- 7) Planning Commission holds public hearing; approves the district boundaries and project plan.
- 8) TIF Review Team develops Development Agreement.
- 9) City Council approves district boundaries and Project Plan.
- 10) City Engineer and Community Development Director give final approval of development plans.
- 11) City Council approves Development Agreement.
- 12) City advertises for bidders for the construction of the project.
- 13) City staff holds bid opening, City Council awards contract for construction.
- 14) City Engineer gives contractor notice to proceed with construction.
- 15) City forwards appropriate records to Dept. of Revenue and County Officers.
- 16) Review/evaluation of project performance. (Attachment 3)

NOTE: In the event the TIF Review Team rejects the project in Step 4, the applicant may appeal to the City Council. The TIF Review Team shall provide the applicant a list of deficiencies as justification for any rejection of the project.

Attachment 1: Pre-application
Tax Increment Finance Policy
-City of Brookings, South Dakota-
Department of Community Development

Applicant Name and Address:

Date:_____

Proposed project location: (Address, legal description) Attach a map

Current zoning: _____ Zoning Change to accommodate proposed project: _____

Project Description:

Improvements to be financed by TIF:

Estimated cost of total project and TIF-eligible expenses:

Current status of development: (platted, zoned, engineered, designed, etc.)

----- FOR CITY USE ONLY-----

Staff Review Comments:

Recommend to go to City Council for Section V; Step 2: ___YES ___NO

If NO, what are the deficiencies?

Community Development Director:_____ Date:_____

Attachment 2: TIF Application
Tax Increment Finance Policy
-City of Brookings, South Dakota-
Department of Community Development

THIS SECTION WILL BE WRITTEN AFTER THE CITY COUNCIL
APPROVES THE OVERALL POLICY

Attachment 3: Evaluation/project performance

Tax Increment Finance Policy

-City of Brookings, South Dakota-

Department of Community Development

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