

Appendix N - Miami County Incentive Procedures

ARTICLE 5. POLICY AND PROCEDURES FOR TAX EXEMPTIONS AND INCENTIVES FOR ECONOMIC DEVELOPMENT

2-501 OBJECTIVES.

- (A) **Purpose.** The proper use of a public financial assistance policy can promote, stimulate and develop the general and economic welfare of and quality of life in Miami County, Kansas (the "County"). This Policy establishes the procedures of the County, for considering Applications for Transportation Development Districts (TDD), Community Improvement Districts (CID), Industrial Revenue Bonds (IRB), Constitutional Abatement, and the Miami County Incentive Fund (MCIF) used for economic development, including county development and tourism and cultural activities, in accordance with the provisions of Kansas State Law.

It is the overall objective of these policies and procedures to support and approve public financing requests for those private investment opportunities that achieve the highest public benefit to Miami County at the lowest public cost. The Miami County Board of County Commissioners (the "Board") may evaluate all requests for the County to provide financial resources for the purposes allowed by law when, in the opinion of the Board, the Project being financed in whole or in part with those resources is reasonably expected to promote, stimulate and develop the welfare of the County through the promotion and advancement of physical health and welfare, industrial, commercial, agricultural, natural resources and recreational development in the County; to encourage and assist in the location of new business and industry in the County and the expansion, relocation or retention of existing business, industry and health development, and the necessary infrastructure related to those investments.

The Board retains the discretion to evaluate Projects on a case by case basis and to be flexible in the amount and form of the public resources provided to the extent allowed under the applicable statutes.

- (B) **Employment Objectives.** Miami County may have a different perspective than cities within the County on pirating or cannibalizing jobs or industries, certainly those that are within the County and possibly even within the region. Therefore, some information regarding the location and service market of the Applicant or ultimate benefiting business should be provided for County consideration.

Miami County reserves the right to make distinctions in the amount of financial assistance to provide each entity based on certain aspects of that business entity, specifically, the number of jobs and wages of those jobs. Miami County will generally favor new job growth. New jobs will be defined as the number of net jobs created in the county.

(R03-04-041)

2-502. **SCOPE.** The authority and decision to approve assistance is within the sole discretion of the Board. The Board is under no obligation to approve a request, nor does the County relinquish its authority to initiate Projects by whatever other financing means it deems necessary to promote the general health and welfare of the County. This policy is intended to provide a guide for the Board in considering Applications and outline the policies and procedures to be followed by Applicants. The Board reserves the right to reject any request for public financial assistance at any time in the review process when it considers such action to be in the best interest of the County. Approval of the public financial participation based on the information presented does not constitute an implied or other approval of a site plan, special use permit, plat,

rezoning or other land development requirement. All proposals for development are subject to land use approvals by the appropriate body.

The policy for considering Applications for Transportation Development Districts used for economic development is in accordance with the provisions of K.S.A. 12-17,140 *et seq.* and any amendments thereto (the "TDD Act").

The policy for considering Applications for Community Improvement Districts used for economic development is in accordance with the provisions of K.S.A. 12-6a26 through K.S.A. 12-6a36, inclusive (the "CID Act").

The policy for considering Applications for Industrial Revenue Bonds used for economic development is in accordance with K.S.A. 12-1740 to 12-1749d, inclusive (the "IRB Act").

The policy for considering Applications for Constitutional Abatement used for economic development is in accordance with Article 11, Section 13 of the Constitution of the State of Kansas and K.S.A. 79-213 and 79-251.

(R03-04-041)

2-503. 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.

- (A) **Abatement.** Annual amount of ad valorem property taxes waived.
- (B) **Applicant.** The individual(s) or business(es) and its officers, employees, and agents requesting approval of the Application for public financial participation.
- (C) **Bonds.** The TDD/CID Bonds shall be special obligation bonds. The debt service on special obligation bonds will be paid from the special assessments or sales tax described above or from any other funds pledged to the payment of the bonds, or a combination of any of the foregoing, and the County will not be obligated to pay principal and interest on the bonds if there is a shortfall in special assessment or sales tax collections. Special bonds issued to finance a Project must mature in no more than 22 years. Special obligation bonds will not count against statutory limitations on bonded indebtedness. Bonds issued pursuant to the Act do not need to be sold at public sale. The interest on all bonds issued pursuant to the Act is exempt from all State taxes except inheritance taxes.
- (D) **CID Project.** Any Project or undertaking whether within or without the CID, to:
 - 1. acquire, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, furnish, equip or extend:
 - a. buildings, structures and facilities;
 - b. sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, pedestrian amenities, abandoned cemeteries, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, heading and electrical services and connections located within or without the public right-of-way, water mains and extensions, and other site improvements;
 - c. parking garages;
 - d. streetscape, lighting, street light fixtures, street light connections, street light facilities, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers;
 - e. parks, lawns, trees and other landscape;

- f. communication and information booths, bus stops and other shelters, stations, terminals, hangars, rest rooms and kiosks;
 - g. paintings, murals, display cases, sculptures, fountains and other cultural amenities;
 - h. airports, railroads, light rail and other mass transit facilities;
 - i. lakes, dams, docks, wharfs, lake or river ports, channels and levies, waterways and drainage conduits.
2. Within the CID, to operate or to contract for the provision of music, news, child care, or parking lots or garages, and buses, minibuses or other modes of transportation.
 3. Within the CID, to provide or contract for the provision of security personnel, equipment or facilities for the protection of property and persons.
 4. Within the CID, to provide or contract for cleaning, maintenance and other services to public or private property.
 5. Within the CID, to produce and promote any tourism, recreational or cultural activity or special event, including, but not limited to, advertising, decoration of any public place in the CID, promotion of such activity and special events and furnishing music in any public place.
 6. Within the CID, to support business activity and economic development, including but not limited to, the promotion of business activity, development and retention and the recruitment of developers and business.
 7. Within the CID, to provide or support training programs for employees of businesses.
 8. Within the CID, to contract for or conduct economic impact, planning, marketing or other studies.
- (E) **Development Agreement.** A written agreement between the County and an Applicant for the completion of a development or redevelopment Project. Such agreement shall address issues involved in the Project, including but not limited to the following: Schedule of construction; acquisition of land; eligible expenses; scope of development (including development criteria); indemnity of the County and insurance requirements; reimbursement of County costs; financing (private and/or public); transfer restrictions prior to completion; maintenance and restrictive covenants; County inspection and information access rights; reporting requirements; and remedies upon default.
- (F) **Enterprise Fund.** A fund established by a governmental entity to account for operations of an enterprise activity. Enterprise funds generally are segregated as to purpose and use from other funds and accounts of the governmental entity with the intent that revenues generated by the enterprise activity and deposited to the enterprise fund will be devoted principally to funding all operations of the enterprise activity, including payment of debt service on securities issued to finance such activity. In some cases, however, the governmental entity may be permitted to use moneys in an enterprise fund for other purposes and to use other funds to pay costs otherwise payable from the enterprise fund.
- (G) **Finance Team.** A Committee comprised of county staff as designated appropriate by the County Administrator, the County Commission Chairman or designee, the County's financial advisor and the County's bond counsel, or their designees, whose function is to review public financial participation applications and make recommendations for approval or denial to the Board.
- (H) **New Jobs.** The number of net jobs created within Miami County.
- (I) **Payment in Lieu of Tax.** An annual payment by the Applicant to the taxing jurisdictions, which is paid in the place of property tax.
- (J) **State Director of Taxation and Disbursement of CID Sales Tax Funds.** The State Director of Taxation shall cause a CID sales tax to be collected upon receipt of a certified copy of the resolution authorizing the levy of the sales tax.

Sales taxes collected are remitted by the Secretary of Revenue to the State Treasurer for deposit in the State Treasury. The State Treasurer credits 2% of all taxes collected to the CID sales tax administration fund (but not to exceed \$60,000 in any fiscal year) for administration and enforcement costs. The remainder of the sales tax collected is deposited in the CID sales tax fund. All funds in the CID sales tax fund are remitted at least quarterly to the County for disbursement to compensate for Project costs.

- (K) **TDD Project.** Any Project or undertaking whether within or without the TDD, to improve, construct, reconstruct, maintain, restore, replace, renew, repair, install, furnish, equip or extend any bridge, street, road, highway access road, interchange, intersection signing, signalization, parking lot, bus stop, station, garage, terminal, hangar, shelter, rest area, dock, wharf, lake or river port, airport, railroad, light rail or other mass transit facility or any other transportation related Project or infrastructure including, but not limited to, utility relocation; sanitary and storm sewers and lift stations; drainage conduits, channels and levees; street light fixtures, connection and facilities; underground gas, water, heating and electrical services and connections located within or without the public right-of-way; sidewalks and pedestrian underpasses or overpasses; and water main and extensions.

(R03-04-041)

2-504.

TRANSPORTATION DEVELOPMENT DISTRICTS (TDD) POLICY

- (A) **Application.** Interested parties shall submit a TDD request via the Application for public financial participation provided by the County. The County staff shall review all TDD Applications for compliance with County policy and Kansas (the "State") law and make a recommendation for preliminary approval and a decision to forward an Application to the Board of County Commissioners for consideration and action. If the Finance Team believes the Application meets the criteria set forth in this Policy and should be recommended for approval, the Finance Team will work with the petitioner(s) to prepare a petition and develop a Finance Plan to present to the Board when it considers the petition to establish the District.
- (B) **Petition.** TDD proceedings shall be initiated by petition, on a form prescribed by the County and containing the information required in K.S.A. 12-1 7,140 *et seq.*, as amended after receiving preliminary approval from the Finance Team. A TDD petition must be submitted with signatures of 100% of the property owners of all of the land area within the proposed District.
- (C) **Boundaries.** The District boundaries and the method of financing the Project shall not require that all property that is benefited by the Project, whether or not the benefited property is within the District, be included in the District or be subject to an assessment or the TDD sales tax.
- (D) **Term.** The Board shall review the financial feasibility of each District proposed for consideration and shall use this information in determining the appropriate term of the District. Any TDD sales tax shall expire no later than the date the bonds issued to finance such Project or refunding bonds issued for the Project mature. TDD Bonds issued to finance the Project shall mature no more than twenty-two (22) years from date of issue, unless otherwise provided by law.
- (E) **Criteria for Use of Transportation Development District.** The decision to establish a transportation development district is within the sole discretion of the Board. In determining whether or not to approve a petition to establish a District, the Board will evaluate whether or not creation of a TDD is in the County's best interest, by considering one or more of the following criteria:
1. Promote and support efforts to redevelop retail sites to provide for reinvestment in the county;
 2. Stimulate quality, retail development to enhance the County's economic base;

3. Attract and promote mixed use, urban development;
4. Allow for the construction of transportation related infrastructure beyond what the County requires or would otherwise build;
5. The Project will be located in an area that has been targeted by the Board for economic development or redevelopment; or has specific site constraints making development more difficult or costly;
6. Recommendation of the Finance Team;
7. Whatever other factors the Board deems relevant to its decision.

(F) **Conformance to Local Requirements, Including:**

1. Compliance with uses anticipated in the Comprehensive Plan;
2. High degree of architectural design and site layout;
3. Enhanced use of landscaping, water quality best management practices and other sustainable features;
4. Design of infrastructure to meet public and/or private standards.

(G) **Additional Considerations**

1. Cost of the proposed improvements identified in the Project;
2. Sources of funding, including the amount of equity funding in comparison to public funding;
3. Payment risk mitigation mechanisms offered by the Applicant;
4. Experience and stability of the Developer;
5. Whether or not tenants are in place, and the nature and quality of the tenants;
6. Economic competition the Project has and is expected to have in the future; and
7. Impact to current businesses within the County.

2-505.

COMMUNITY IMPROVEMENT DISTRICT (CID) POLICY

(A) **Application.** Interested parties shall submit a CID request via the Application for public financial participation provided by the County. The County staff shall review all CID Applications for compliance with County policy and Kansas (the "State") law and make a recommendation for preliminary approval and a decision to forward a petition to the Board for consideration and action. A proposed petition shall accompany each Application for a CID. If the Finance Team believes the Application and proposed petition meets the criteria set forth in this Policy and should be recommended for approval, the Finance Team will work with the petitioner(s) to develop a Finance Plan to present to the Board when it considers the petition to establish the CID.

(B) **Petition.** A valid CID petition must be submitted with signatures of either of the following:

1. 100% of the property owners of all of the land area within the proposed Special Assessment CID who seek financing solely by assessment. If all landowners petition for a CID, then the County may proceed with its creation by a majority vote of the Board and assessments without notice or public hearing; or
2. Property owners representing more than 55% of the land area of the proposed Sales Tax CID and also signed by property owners collectively owning more than 55% of the assessed value of the land within the proposed CID. If this petition method is utilized, then the County will be required to adopt a resolution giving public notice of a hearing on the advisability of the creation and financing of a CID. The Board may adopt a resolution by a majority vote to authorize the Project and create the CID.

(C) **Boundaries.** The CID boundaries and the method of financing for the project shall not require that all property that is benefited by the Project, whether or not the benefited property is within the CID, be included in the CID or be subject to an assessment or the CID sales tax.

- (D) **Term.** The Board shall review the financial feasibility of each CID proposed for consideration and shall use this information in determining the appropriate term of financing for Projects within the CID. Any CID sales tax shall expire no later than the date the bonds issued to finance such Project, or refunding bonds issued for the Project, mature. In the event pay-as-you-go financing is utilized, CID sales tax shall expire twenty-two (22) years from the date the State Director of Taxation begins collecting such tax or when the bonds or pay-as-you-go costs have been paid. CID Bonds shall mature no more than twenty-two (22) years from date of issue.
- (E) **Public Hearing.** No Board public hearing consideration will occur unless all information is provided at least fifteen (15) business days prior to any such scheduled meeting. All fees and requirements of a funding agreement must also be met before Board consideration.
- (F) **Criteria for Use of Community Improvement District.** The decision to establish a CID is within the sole discretion of the Board. In determining whether or not to approve a petition to establish a CID, the Board will evaluate whether or not the creation of a CID is in the County's best interest, by considering one or more of the following criteria:
1. Promotes and supports efforts to develop or redevelop commercial sites to provide for reinvestment in the county;
 2. Stimulates quality, retail development to enhance the County's economic base;
 3. Allows for the construction of infrastructure, including the construction of infrastructure beyond what the County would require or otherwise build;
 4. The Projects will be located in an area that has been targeted by the Board for economic development or redevelopment; or has specific site constraints making development more difficult or costly;
 5. The impact on other infrastructure systems, to include the cost of core system extensions to areas not adjacent to existing systems;
 6. The financial risk to the County and any other government units of the financing proposal, to include exposure of the general property tax levy, enterprise funds positions and credit rating;
 7. Recommendation of the Finance Team;
 8. Other factors the Board deems relevant to its decision.
- (G) **Conformance to Local Requirements, Including:**
1. Compliance with uses anticipated in the Comprehensive Plan;
 2. High degree of architectural design and site layout;
 3. Enhanced use of landscaping, water quality best management practices and other sustainable features;
 4. Design of infrastructure to meet public and/or private standards.
- (H) **Additional Considerations:**
1. Cost of the proposed improvements identified in the CID;
 2. Sources of funding, including the amount of equity funding in comparison to public funding;
 3. Payment risk mitigation mechanisms offered by the Applicant;
 4. Experience and stability of the proposed developer;
 5. Whether or not tenants are in place, and the nature and quality of the tenants;
 6. Economic competition the Projects within the CID has and is expected to have in the future; and
 7. Impact to current businesses within the County.

2-506.

TDD & CID FINANCING METHODS

- (A) **TDD Sources of Funds.** TDD Projects may be financed by any or all of the following sources:

1. Special assessments imposed in the District pursuant to the TDD Act which have been paid in full prior to the date set by the Board as provided in the General Improvement and Assessment Law, K.S.A. 12-6a10, and amendments thereto;
 2. Special assessments imposed in the District pursuant to the TDD Act, to be paid in installments;
 3. A pledge of all of the revenue received from a TDD sales tax on the selling of tangible personal property at retail, or rendering or furnishing services taxable pursuant to the provisions of the Kansas retailer's sales tax act, within a District, in any increment of .10% or .25% not to exceed 1% as authorized by K.S.A. 12-17,145, and amendments thereto ("TDD sales tax"); and
 4. Any other funds annually appropriated by the Board.
- (B) **CID Source of Funds.** Eligible CID Projects may be financed by any single, a combination, or all of the following sources:
1. CID Special Assessments imposed on property in the CID pursuant to the CID Act which have been paid in full prior to the date set by the Board as provided in the General Improvement and Assessment Law, K.S.A. 12-6a10, *et. seq.* Two exceptions to the General Improvement and Assessment Law are provided:
 - a. No assessments can be levied against the County-at-large; and
 - b. If a Project is also financed by a pledge of sales tax revenues or annually appropriated funds of the County, the amount of each annual special assessment may be reduced or eliminated to the extent that sufficient taxes and/or funds have been received to pay the debt service on any bonds issued pursuant to the Act.
 2. A pledge of all of the revenue received from a CID Sales Tax on the selling of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas retailer's sales tax act, within a CID, in any increment of .10% or .25%, not to exceed 2% (the "CID Sales Tax"), as authorized by the Act; or
 3. Any other funds annually appropriated by the Board.
- (C) **Finance Plan.** If the Finance Team reviews the Application and the petition and finds it in the County's best interest to recommend creation of the TDD or CID to the Board, the Finance Team will work with the Applicant to create a Finance Plan which shall be presented to the Board for consideration along with the petition. The Finance Plan shall address the recommended method of financing and specific terms associated therewith.
- (D) **Bonds.**
1. The County may issue TDD or CID Bonds to finance a Project. Guidelines for the issuance of TDD/CID Bonds include:
 - a. If bonds are issued, the sales tax imposed to pay the bonds shall expire no later than the date the bonds mature, unless being used to fund on-going operations;
 - b. If pay-as-you-go financing is utilized, the sales tax imposed shall expire 22 years from the date the State Director of Taxation begins collecting the tax or when all Project costs have been paid; and
 2. Bonds issued under this Policy must include security for the bonds of a sufficient amount to minimize any risk of default and be allowed by State and Federal Tax laws.
 3. Bonds must initially be offered in denominations of \$100,000 or greater. These minimum denominations may be reduced (upon consultation with the County's bond counsel and financial advisor) when one or more of the following are met:
 - a. The Projects being bond financed are substantially leased;

- b. The estimated revenue stream yields significant debt service coverage on the bonds;
 - c. Construction of the Projects being bond financed is 100% complete;
 - d. The repayment term is less than or equal to 60% of the maximum permitted repayment term; and/or
 - e. Waiver of the Board's minimum denomination provision by the Board.
4. If a negotiated sale of the bonds is necessary, the County will normally select the underwriter(s) needed to structure, price, and sell the bonds through a competitive process. Exceptions to this process may be approved by the County Administrator upon consultation with the County's bond counsel and financial advisor. County staff and the County's financial advisor will be directly involved in all negotiated sale pricing.
 5. At its sole discretion, the County may require that an independent feasibility study of future TDD/CID revenues be performed, with any such cost born by the Applicant if not otherwise reimbursed from Bond Proceeds.
- (E) **Annual Appropriation.** The Board may choose, but is not obligated, to annually appropriate funds to secure TDD/CID revenue bonds. In the event this security option is put forth, the financing plan shall specifically address the risk mitigation steps to ensure an extremely low probability of the county having to use its general revenues for debt service.
 - (F) **Reimbursement TDD/CID.** Petitioner(s) may be reimbursed for Projects within the TDD/CID on a "pay-as-you-go" basis until the Board determines issuance of bonds is viable and in the County's best interest.
 - (G) **Funds.** Funds and accounts shall be established in conformance with applicable regulations.
 - (H) **Development Agreement.**
 1. Prior to beginning development of the Project (including the issuance of bonds), the Applicant shall execute a Development Agreement as approved by the Board.

2-507.

INDUSTRIAL REVENUE BONDS (IRB)

- (A) **Goals.** The primary goal of IRB financing is to promote and stimulate economic development in the County by providing a financing tool which does not constitute a debt obligation of the County.
- (B) **Eligibility.** Only those Projects which qualify under Kansas Law will be eligible for IRB financing. IRB financing will generally be discouraged when the effect would be to grant an unfair financial advantage to one firm over other firms within the local market structure.
A housing Project will only be considered for IRB financing if such Project will either set aside a minimum of half of the units for individuals earning 50% or less of the median area income, or set aside a minimum of three-fourths of the units for individuals earning 60% or less of the median area income as defined in State tax credit guidelines for affordable housing Projects.
- (C) **Review Criteria.** The following criteria and factors shall be used in evaluating Applications for IRB financing:
 1. Quality job creation and wages;
 2. Capital investment;
 3. Diversification of the local economy;
 4. The extent to which the Project would meet an identified need in the county.
- (D) **Tax Abatements.** Tax abatements authorized in conjunction with IRBs must follow the policies and procedures set forth in the County's Tax Abatement Policy.
- (E) **Sales Tax Exemptions.** Labor and materials used in construction as well as equipment purchased with IRB proceeds are typically exempted from State and local sales tax. Payments-in-lieu of sales tax may be required and negotiated between the County and the Applicant.

- (F) **Bond Counsel.** Applicants will be encouraged to utilize the County's designated bond counsel. In the event that other bond counsel is selected, the County may require its bond counsel to be involved in the transaction in a review capacity, depending upon the amount of the transaction and the Project involved. Bond counsel fees and other fees associated with the transaction shall be paid by the Applicant.

2-508.

TAX ABATEMENT POLICY

- (A) **Eligibility.** Only those firms which qualify under Kansas law will be eligible for an abatement. Abatements for a business that would compete directly with existing businesses will not be encouraged unless the competing business has received or been offered similar incentives, or unless there is an overriding benefit to the County as a whole.
- (B) **Review Criteria.** The following criteria and factors shall be used in evaluating Applications for tax abatements:
1. Net benefit to the taxing districts as shown in the Cost-Benefit Analysis;
 2. Quality job creation and wages;
 3. Capital investment;
 4. Diversification of the local economy;
 5. The extent to which the Project would meet an identified need in the county.
- (C) **Transfers.** No abatement granted by the County shall be transferred as a result of change in ownership of the exempted property. Any new owner shall file a new Application for abatement. Further, the County shall be notified by the business of any substantive change in the use of the tax exempt property.
- (D) **Special Assessments.** Special assessments are not eligible for exemption under this policy.
- (E) **Cost-Benefit Analysis.** The Finance Review Team will complete a cost-benefit analysis. This analysis will provide the economic impact upon the impacted taxing districts taking into account the public costs (tax abatement and other) and the public benefits (property tax base, sales tax base and other spin-off benefits). Generally, such a cost-benefit analysis will examine a ten-year timeframe, however such timeframe may be shorter or longer depending upon the term requested and the term of any other economic incentives contemplated for the Applicant.
- (F) **Notice to Taxing Jurisdictions/Public Hearing.** Prior to the granting of any tax abatement, the County Clerk shall notify in writing the impacted taxing districts about the public hearing and the proposed abatement at least seven days prior to the public hearing but as early as possible, and provide the taxing jurisdictions with a copy of the cost-benefit analysis and background materials.
The impacted taxing districts will be encouraged to provide input to the County regarding the impact of the proposed abatement on the property tax base as well as other issues.
- (G) **Resolution and Performance Provisions.** After the public hearing, the Board may adopt a resolution specifying the annual abatement and the length of the abatement. The resolution will require two readings.
The resolution shall outline annual job creation and investment targets which the Applicant must meet for all or a portion of the abatement to continue. The resolution shall also outline the method for decreasing the abatement if the annual job creation targets are not met.
- (H) **Payment in Lieu of Taxes (PILOT) Agreement.** In order to grant an Abatement, a PILOT Agreement between the County and the Applicant will be required. The PILOT Agreement is the mechanism whereby the County establishes the level of Abatement (by setting the payment in lieu of taxes) and any performance standards (e.g. levels of payroll, investment and numbers of employees). The PILOT Agreement will establish a PILOT payment required of the business on an annual basis. The PILOT payment usually is a certain

percentage of the taxes the Applicant would have paid without the Abatement. The PILOT Agreement may include a clawback provision as addressed below.

- (I) **Clawback Provisions.** A clawback provision allows the Board to modify or eliminate the tax exemption if they find that the business is not in compliance with the provisions of the PILOT. The tax exemption may be modified or eliminated as the Board deems appropriate, and the County Appraiser and Board of Tax Appeals shall be notified of such action. Provisions requiring specified performance as a condition for granting and maintaining the Abatement may be considered as part of the agreement; and the time within which construction on the abated property must begin and be completed.
- (J) **Submission of Application to the Kansas Board of Tax Appeals.** After the Applicant has completed and submitted all necessary documentation to the County Clerk, the County Clerk will forward all necessary documentation to the County Appraiser's Office, which will be filed with the Kansas Board of Tax Appeals. The Board's decision to grant an Abatement is subject to the final determination of the Kansas Board of Tax Appeals.
- (K) **Annual Certification.** After the first year of the abatement and by February 1 each year thereafter, the Finance Team will review the abatement to certify that use of the property is still in accordance with Kansas law and that all other provisions of the abatement are being met. The Applicant will be required to complete and submit all necessary documentation to the County Clerk for annual submission to the County Appraiser's Office and the Kansas Board of Tax Appeals. It is the Applicant's obligation to see that the appropriate annual information is filed for the abatement to continue.
- (L) **Annual Report to the Board.** Prior to December 31 of each calendar year, the County staff shall prepare an annual report for the Board to review. Such report will include the status of all outstanding tax abatements and achievement of job creation targets.
- (M) **Documents.** All documents related to tax abatements, including the annual certifications, will be kept on file with the County Clerk.
- (N) **Duration and Amount of Abatement.** Application of the criteria set forth below will be considered in determining whether abatement should be awarded, and, if so, the length and amount of abatement granted. The following charts shall serve as a guide for the number of years for abatement and the amount of the abatement.

Amount of Capital Improvements for New Businesses	Years Eligible for Abatement
\$1,000,000 - \$1,999,999	5
\$2,000,000 - \$2,999,999	6
\$3,000,000 - \$3,999,999	7
\$4,000,000 - \$4,999,999	8
\$5,000,000 plus	10

Amount of Capital Improvements for Existing Businesses	Years Eligible for Abatement
\$250,000 - \$999,999	5
\$1,000,000 - \$1,999,999	7
\$2,000,000 - \$2,999,999	8
\$3,000,000 plus	10

% of Abatement for New Business	Number of Net New Employees to Miami County	% of County Average Salary
25%	10 – 20	101% - 150%
50%	21 – 50	101% - 150%
	10 – 20	151% - 200%
75%	51 or more	101% - 150%

	21 or more	151% - 200%
	10 – 20	201% or more
100%	21 or more	201% or more

% of Abatement for Existing Business	Number of Net New Employees to Miami County	% of State Average Salary
25%	5 - 10	101% - 150%
50%	10 - 20	101% - 150%
	5 - 10	151% - 200%
75%	21 plus	101% - 150%
	11 - 21	151% - 200%
	5 - 10	201% or more
100%	11 or more	201% or more

2-509. MIAMI COUNTY INCENTIVE FUND (MCIF)

Miami County maintains a source of flexible funds to be used in the pursuit of economic development Projects. This flexible fund has the benefit of being available to address minor shortfalls in economic development Projects without the cumbersome statutory initiation and authorization costs. In addition, the fund might be used to assist Miami County with the necessary professional analysis for those economic development efforts initiated by the County but do not yet have a private investor or developer. Examples of these types of costs could be market studies, preliminary engineering costs estimates, environmental analysis, real estate purchase options and similar expenses.

(R03-04-041)

2-510. PROCEDURES.

The following basic procedures shall govern the approval of all requests for public financial participation within the County. All requests or Applications for assistance shall be considered and acted upon in accordance with this Policy. These procedures are established under the authority of the Miami County Board of County Commissioners. These provisions may be waived by the County Commissioners, if such waiver is in the best interest of the County and does not conflict with any statutory or procedural requirement of State law.

(A) **Application Process.** The Applicant shall make Application for public participation by completing and filing five printed copies or one reproducible electronic copy of the Application provided by the County.

1. **General Application Procedure.** The County Administrator shall distribute the Application to the Finance Team. The County will only consider full and complete Applications. The Applicant will also be responsible for providing additional information requested by the Finance Team or the Board, as necessary for assisting the County in making its recommendation or decision on the Application and the petition. 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 County through the Act in reliance upon said information.

2. **Application and Administration Fees.** Applications shall be accompanied by an Application fee. This fee is in addition to other fees which may be required by the County, including fees for the issuance of tax-exempt or

taxable bonds, costs incurred for preparation of studies as required by this Policy, and costs incurred, if any, for review and work done by the County's financial advisor and bond counsel. In addition, any Applicant that receives approval 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.

- a. Initial Application Fee. A non-refundable amount shall accompany the Application, based on the fee schedule shown below.

Assistance Requested	Application Fee Amount
TDD/CID	\$1,000
Industrial Revenue Bond	\$1,000
Constitutional Tax Abatement	\$1,000
Miami County Incentive Fund	\$500

- b. Annual Administrative Service Fee. An amount equal to 0.5% of the annual taxes reimbursed to the Applicant or its successor in interest.
 - c. Funding Agreement. The County will retain administrative and professional staff, outside counsel and consultants, and incur expenses which it, in its sole discretion, deems necessary to consider the Application. The Applicant shall enter into a funding agreement in order to pay the County for its fees and expenses; the time of its administrative and professional staff, as the County may from time to time deem appropriate; all charges for the County's outside counsel, including the fees of the County Counselor, and consultants; and all other expenses incurred by the County. The funding agreement for TDD/CID Applications shall call for the Applicant to make an initial deposit to an escrow fund in the amount of ten thousand dollars (\$10,000) in order to insure the prompt and timely payment of the above charges. The funding agreement for IRBs shall call for the Applicant to establish an escrow fund in the amount of five thousand dollars (\$5,000) in order to insure the prompt and timely payment of the above charges. These accounts will be evergreen in nature replenished by the Applicant as needed. The County shall use the Fund to pay for County bond counsel, financial advisor and other professional consultants' fees and apply the hourly fees incurred by the County's professional consultants for work on the Application.
3. Finance Team Review. The Finance Team shall review Applications. The Finance Team will verify that the public financial assistance is necessary to promote the general and economic welfare of the County; 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 County 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 Board whether the Application should be favorably considered.

The recommendation by the Finance Team does not constitute approval or denial of the Project as submitted, and all site plan, rezoning, special use permit, or other regulatory requirements regarding land use must still be satisfied.

In reviewing the information, the Finance Team may utilize the services of consultants, including but not limited to bond counsel and financial advisors. Finance Team records, including Applications submitted for public assistance, 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.

(R03-04-041)

2-511. BOARD ACTIONS.

No elected or appointed officer, employee or committee of the County, or other public or private body or individual, shall be authorized to speak for or commit the Board to the approval of public financial participation.

Upon receiving the recommendation of the Finance Team, the Board shall determine whether to reject the Application for participation or to further consider the request. Upon a favorable vote for further consideration, the Board shall follow the statutorily-prescribed process for the establishment of an assistance program. This process shall be an expression of good faith intent, but shall not in any way bind the County to establishing the assistance.

Approval of the public financial participation based on the information presented does not constitute an implied or other approval of a site plan, special use permit, plat, rezoning or other land development requirement. All proposals for development are subject to land use approvals by the appropriate body.

2-512. WAIVER OF REQUIREMENTS

The Board reserves the right to grant or deny requests for public financial participation 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 Board 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 Board shall not waive any statutory requirement of State law.

(R03-04-041)

ARTICLE 6. TAX INCREMENT FINANCING POLICY (TIF)

2-601. INTRODUCTION

Tax increment financing is a tool that enables governments to fund infrastructure, land acquisition, and other public investments in private redevelopment projects. The use of tax increment financing does not authorize any action not otherwise permitted; it merely allows the sponsoring government to divert taxes levied by it and other governments to pay for those actions. It presumes that if it were not for the public investments being made, the redevelopments and resulting tax increments being diverted to the projects would not otherwise occur.

Kansas state statutes permit only cities to create redevelopment districts and to divert taxes levied by the overlapping taxing districts to the city's Project. Cities must conduct public hearings and adopt ordinances with descriptions of proposed redevelopment districts. After a city passes such an ordinance, the county has 30 days to deny the creation of the redevelopment district. Upon finding that creation of a redevelopment district could cause adverse effects to the county, the Board may deny the proposal, and in such case the city may not proceed with tax increments as a funding tool for the Project. This policy outlines the criteria to be used by Board of County Commissioners in the determination of adverse impacts of redevelopment districts (referred to herein as "TIF districts"), on which the County's decision to approve prospective TIF Districts shall be made. This policy will govern consideration by the County of all TIF districts proposed by every city located in Miami County.

2-602. PURPOSE OF POLICY

This Tax Increment Policy has been approved by the Board for the following purposes:

1. To guide staff in forming recommendations regarding the approval of TIF districts;
2. To provide a framework within which staff and the Board can evaluate proposed uses of tax increment financing; and
3. To inform the public of the County's position on the use of tax increment financing and the process through which decisions regarding the use of the tool are made.

2-603. POLICY STATEMENT

It is the policy of Miami County to support city efforts to eliminate blight and promote redevelopment of substandard areas by allowing the diversion of County tax revenues to TIF districts when such actions are shown to create no adverse effect.

2-604. ADVERSE EFFECT

Adverse effect to the County shall be cause for disapproval of a TIF district. Adverse effect to Miami County shall be evaluated by the following criteria:

1. Considering the service demands placed on the County, the potential redirection of tax revenue would hinder effective future delivery of County public services.
2. Proposed Project is economically feasible without County funding support.
3. Proposed private equity funding is insufficient.
4. Costs to County government are greater than benefits to County government.
5. Sufficient data or notification was not provided for County staff to adequately review the proposal for a TIF district.

2-605. MINIMUM DATA REQUIREMENTS

The proposal for a TIF district shall describe how it would fulfill the basic statutory requirements, follow statutory procedures, and cite specifically applicable statutory references for the creation of TIF districts. K.S.A. §12-1771 *et. seq.* defines the conditions under which a TIF district may be created. Current statutory conditions require the property to be included in the TIF district be blighted; be in need of conservation to avoid becoming blighted; or be a major tourism area, a major commercial entertainment and tourism area, an inter-modal transportation area, a bioscience development area, or an enterprise zone as pursuant to K.S.A. §12-17,107 through 12-17,113 prior to its repeal. Definitions of each of these conditions are specified in state law. The mere existence of any of these conditions is not adequate evidence that creation of a TIF district will have no adverse impact on the County. A city desiring to create a TIF district shall provide the County with sufficient data to demonstrate conclusively the absence of adverse impacts on County government. To enable analysis and consideration before the statutory deadline for County action, the following data elements must be received by the County staff at the earliest possible time, and in no event later than the date of the city's adoption of an ordinance creating a TIF district:

1. Brief description of the Applicant (business – nature of business; non-business – nature of entity or group)
2. Provide status and phasing for obtaining site control for the entire Project area (status such as fee simple, purchase agreement, purchase option, option expiration, etc.).
3. Names and addresses of the owners, and/or officers and directors of the entity requesting the TIF assistance (Applicant).
4. Legal description, address, parcel ID's, the existing assessed valuation of the real estate in the proposed district listing land and building values separately; map or boundary description and legal description of TIF area(s), and a map depicting the existing parcels of real estate.
5. A list of names and addresses of the owners of record of real estate within the district.

6. The existing zoning or rezoning classifications and district boundaries, and the existing and proposed land uses within the area. Description of plans for improving or expanding municipal services within the TIF district including, but not limited to, buildings and facilities, sanitary and storm sewers and lift stations, drainage conduits, channels and levies, refuse collection, road and street maintenance, street lighting and fixtures, underground gas, water, heating, and electrical services and connections in the right-of-way, sidewalks and pedestrian underpasses and overpasses, drives and driveway approaches within the right-of-way, water mains and extensions, plazas and arcades, parking facilities, landscaping and plantings, fountains, shelters, benches, sculptures, lighting, decorations, and similar amenities.
7. A description of the need for any relocation of residential, commercial, or industrial facilities.
8. A detailed description of the proposed Projects for which the TIF district is to be created, including a description of public and/or private improvements, building(s) including square footage, materials, proposed use, etc. and a site plan.
9. A Project pro forma showing detailed sources and uses of Project funding and identifying the shortfall between anticipated private funding and Project costs. Include the status of all sources of financing including private equity. The identified gap between sources and uses without public participation should match the requested participation.
10. A preliminary tax increment funding analysis showing how the public funding will be provided for the proposed Project reflecting requested amounts. The specific information required for this is outlined in the Application for Public Financial Participation.
11. Evidence that the anticipated private funding can be acquired, such as a letter of intent from a financial institution.
12. A market feasibility assessment showing whether the marketplace needs and will support the planned Project.

2-606. **ECONOMIC ANALYSIS AND RISK ASSESSMENT PROCESS**

- (A) Proposed uses of tax increment financing will be subject to rigorous economic analysis and risk assessment. The Finance Team will be responsible for overseeing the analysis and assessment process.
- (B) The analysis and assessment of all proposed uses of tax increment financing will address the following questions as part of the standard format for reports to the Board:
 1. What is the public purpose of the financial assistance to the Project?
 2. Why is there a financial need for public investment and/or subsidy?
 3. What is the total cost of the Project?
 4. What are the proposed levels of public participation and of private equity participation by the developer?
- (C) The results of the economic analysis and risk assessment will be presented to the Board at the time of the request for approval of the proposed use of tax increment financing. The report will identify any elements of the proposed Project that are not in conformance with this Tax Increment Policy.

2-607. **EVALUATION CRITERIA.** The following items will be taken into consideration in the evaluation of any development proposal requesting tax increment assistance.

- (A) **Need For Public Assistance.** In all cases, it is required that the need for tax increment financing to pay for public improvements be demonstrated and documented by the city to the satisfaction of the Finance Team. To the extent it is not part of the Minimum Data Requirements listed above all such documentation, including development budgets, cash flow projections, market studies and other financial and market information, must be submitted upon request. If the request is based on financial gap considerations, the city proposing to create the TIF district will demonstrate the profitability and feasibility of the Project (i.e. gross profit, cash flow

before taxes, cash non-cash return, IRR, etc.), both with and without tax increment financing.

(B) **Amount of Tax Increment Financing versus Private Investment.** All TIF district proposals should seek to maximize the amount of private investment per dollar of tax increment financing. Tax increment financing as percentages of total development costs and private equity funding will be determined for each Project (or discrete portion of a Project receiving a subsidy) and compared to other development projects or subprojects of similar scope and magnitude whenever possible.

(C) **Term of Tax Increment Financing.** The term of the tax increment financing shall be kept to a minimum. The proposed term of any tax increment financing shall be fully documented and explained to the Board.

(D) **Development Benefits and Costs.** The direct and indirect benefits of the development proposal shall be determined and quantified to the degree possible. Benefits shall include, but are not limited to, employment benefits (number of jobs retained or created, percentage of jobs held by County residents, wage and salary information, etc.), tax base benefits (estimated market value of new development, new property taxes generated, etc.), housing benefits (number of new rental or ownership units, number of affordable units, etc.), and other benefits relating to transportation, parking, blight remediation, environmental cleanup and historic preservation. Based on the market study, projections should be provided reflecting the potential impact the Applicant's project would have on existing firms offering competing products. Costs of the development proposal to the County shall also be identified to the degree possible. Such costs shall include, but are not limited to, additional required infrastructure, required local contributions by the County, and the impact on the County's budget if tax increment financing is used. The timeframe used for these cost estimates should equal the timeframe of the Project finance plan.

(R03-04-041)