

Resolution No. 1449-08

A Resolution Adopting a Transportation Development District Policy for the City of Ottawa, Kansas for the purpose of Economic Development.

Whereas, the City of Ottawa, Kansas is authorized by K.S.A 12-17, 140 et seq. as amended, to create a district for the purpose of financing transportation related projects and/or infrastructure from certain revenue generated within the district; and

Whereas, it is recognized that economic development is best achieved through a balanced effort; and

Whereas, the economic development goals of the City include economic diversification, broadening the property tax base, stimulating private investment, support of existing development, preservation and improvement of environmental quality, and the creation of quality employment opportunities;

Now, therefore, be it Resolved that the Governing Body of the City of Ottawa.

Section 1. Adoption. The attached Transportation Development District Policy is hereby approved and adopted by reference.

Section 2. Modifications. The City Manager is authorized from time to time to amend or modify this Policy as needed to conform with all pertinent state and federal regulations, and to clarify wording within the Policy to fit the interpretation, intent and practical aspects of implementing such Policy, all with the acknowledgement that any substantive changes or amendments will come first before the Governing Body for review and formal action.

Section 3. Severability. If any provision of this policy is declared unconstitutional, or the application to any person or circumstance is held to be invalid, the constitutionality of the remainder of the policy and the applicability to other persons and circumstances shall not be affected.

Section 4. Effective Date. This Resolution shall be in full force and effect after its adoption by the Governing Body.

PASSED AND ADOPTED this 4th day of June, 2008.

Attest


Scott D. Bird, City Clerk


Mayor

CITY OF OTTAWA

Transportation Development District (TDD) Financing Policy

I. SCOPE.

The Governing Body is responsible for encouraging and promoting the City's economic health. The Transportation Development District Act ("Act"), K.S.A. 12-17, 140 et seq., as amended, authorizes the City to create Transportation Development Districts (hereinafter referred to as "TDD") for the purpose of financing Transportation Related Projects or other Infrastructure Related Projects from Revenue Sources within the established district. The creation of a TDD is a complex legal and administrative matter requiring clear direction from the Governing Body.

II. AUTHORITY OF GOVERNING BODY; DISCLAIMER.

The Governing Body, by its inherent authority, reserves the right to reject any preliminary proposal or petition for creation of a TDD at any time in the review process when it considers such action to be in the best interest of the city.

The City shall not be bound by any advice, action, agreement, statement or other communication made by city staff or consultants, or the Governing Body, including the information contained herein, until after the Governing Body's approval of an ordinance or resolution creating a TDD.

This policy statement does not constitute legal advice regarding the application or petition to create a Transportation Development District. Those persons or entities considering making application under the act are strongly encouraged to consult private legal counsel.

III. DEFINITIONS.

- a. "Transportation Related Project or Other Infrastructure Project" means 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; storm sewers, sanitary 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 extensions.
- b. "Revenue Sources" include special assessments and/or TDD sales taxes up to 1% which costs are assessed and/or charged only within the district. The City uses proceeds from the TDD to satisfy the financing mechanism established under the TDD. The Act permits the City to issue only special obligation bonds, which are by definition not general obligations of the City. Special obligation bonds are not payable from general City revenues.
- c. "TDD Applicant" means the person or entity who files a preliminary application for a TDD with the City Community and Economic Development Director.
- d. "TDD Petitioner" means the person or entity that has completed the preliminary review process and has properly and timely filed a formal petition to create a TDD with the City Clerk.
- e. All other terms shall have the same meaning as those terms as defined in the Act.

IV. CRITERIA.

It shall be the policy of the City to consider creating a TDD if, in the opinion of the Governing Body: 1) it is in the best interest of the City to create a TDD, and 2) creation of such a TDD would meet one or more of the following criteria:

- a. Attract retail development to positively enhance the economic climate of and benefit the City.
- b. Result in the building of transportation related infrastructure and/or other infrastructure beyond what the City would require or would otherwise build.
- c. Promote new development, rejuvenation and/or redevelopment within the City.

V. PRELIMINARY REVIEW PROCESS.

A preliminary review of a TDD application will be conducted by the Governing Body as outlined in this Section in order to provide the Applicant with an early determination as to whether or not the project would be in the best interest of the City. The creation of a TDD may be initiated and preliminarily reviewed in the following manner:

- a. TDD Applicant shall present, in a form and manner satisfactory to the City, the following preliminary information regarding the proposed TDD to the Community and Economic Development Director for consideration by City staff:
 - i. General nature of the proposed project
 - ii. Maximum cost of the project
 - iii. Proposed method of financing the project
 - iv. Proposed amount and method of assessment
 - v. Proposed amount of transportation development district sales tax
 - vi. Map and boundary description of the proposed district
- b. The Finance Director, in consultation with other City staff, City attorney, City bond counsel and City financial advisor, may request, at any time during the preliminary review process, additional information to assist in the determination of whether this proposed TDD meets one or more of the criteria listed in Section IV, above.
- c. At the time of preliminary application, the TDD Applicant shall pay an initial non-refundable application fee of \$3,000 and shall agree in writing to pay for all of the fees of the City's attorney, bond counsel and financial advisor in conjunction with the TDD preliminary application and process for final approval. On a case by case basis, the City may negotiate with the applicant a sum of money to be included in a Funding Agreement to pay for professional counsel based upon the size and scope of each project. **(See Attachment A – Funding Agreement Example.)**
- d. If, after review of the preliminary information, City staff determines that at least one of the criteria for creating a TDD is met, the Finance Director will forward the preliminary information, as amended and supplemented, through the City Manager to the Governing Body, for its preliminary consideration. If the City Staff determines that the application does not meet any of the criteria set forth above, then the application will be rejected and the TDD Applicant notified in writing.
- e. The preliminary application will be reviewed by the Governing Body in a study session to gain consensus regarding the proposed project and financing plan. If the Governing Body consensus is to move forward, City staff will continue work on the project through the final approval process.

VI. FINAL APPROVAL PROCESS.

The information provided below is a summary of the procedures for filing a TDD petition. Because it does not set forth all the statutory requirements, Applicants are encouraged to read the Act prior to petitioning the City for a TDD and consult its own legal counsel with any questions regarding interpretation of the Act.

- a. Within 180 days after the study session at which the Governing Body has completed its preliminary review of the project, the TDD Petitioner shall file with the City Clerk a formal petition for the creation of a TDD based upon the concept of the proposed TDD and finance plan that was preliminarily reviewed by the Governing Body.
- b. If the Applicant fails to timely file a formal TDD petition, the City shall require the Applicant to renew its application. All costs assessed and/or paid during the preliminary approval process shall be non-refundable/non-creditable to any renewal application. If the Applicant desires to renew the TDD application, the Applicant shall be required to pay all fees and costs associated with said filing.
- c. The petition for approval shall be in such form and contain all such information as is required by the Act, and shall include all additional, supplemental information as may be requested by the City Staff. No petition will be accepted by the City Clerk without 100% of the owners of record of all the property in the proposed TDD having signed said petition. No person shall be able to remove his name from the petition after the Governing Body has commenced proceedings thereon, or after seven days from the date of its receipt, whichever is sooner.
- d. If the petition requests financing only by special assessment, the Governing Body may act without notice or a hearing to make findings authorized by statute. If the petition calls for financing by TDD sales tax or both a sales tax and special assessment, then the City Clerk shall follow the guidelines set forth in the statute for scheduling a public hearing on the matter. Notice of public hearing shall be as required by the Act.
- e. Following the public hearing, the Governing Body may, but is not required to, direct the City staff to take any action described and allowed by statute to create the TDD.
- f. Upon closing and bond issuance, the TDD Petitioner will be charged a fee of up to 5% of the total cost of the TDD project as reimbursement to the City for services rendered by City Staff to administer and supervise the project. The fee may be payable at closing from bond proceeds. The % charged shall be reduced by the \$3,000 preliminary application fee.

VII. COMPLIANCE WITH STATE STATUTE.

All procedures regarding final approval of a petition as herein set forth are intended to follow the procedures and authority as outlined in the Transportation Development District Act, K.S.A. 12-17,140 et seq., as amended, for the creation of Transportation Development Districts. Any conflict between this policy and the Act shall be interpreted in favor of the provisions set forth in the Act.

ATTACHMENT A

TDD FUNDING AGREEMENT EXAMPLE

THIS FUNDING AGREEMENT (the "Agreement") is entered into this date of _____, 2008 between _____ (the "Applicant"), and the City of Ottawa, 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. 12-17, 140 *et seq.*, as amended (the "TDD Act"), to provide Transportation Development District (TDD) financing for certain qualified projects upon compliance with the procedures set forth in the TDD 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 Transportation Development District (as defined in the TDD Act) and, if approved, implement and administer the TDD 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. TDD Application.

By execution of this Agreement, the Applicant is applying to the City for the establishment of a Transportation Development District. The Applicant agrees, represents and warrants that any information provided to the City in connection with the TDD 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 Transportation Development District in accordance with the provisions of the TDD 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 TDD Act, prepare the required resolution and ordinance to establish the TDD;
- b. If the Governing Body establishes the Transportation Development District, prepare and consider in accordance with the provisions of the TDD 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 TDD;
- c. If the Governing Body approves the TDD, prepare and negotiate a definitive agreement between the parties for implementation of the TDD; and
- d. If a definitive agreement is entered into, administer the TDD 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 7 days of the receipt of the Applicant of notification by the Finance Director of the amount required.
- b. Upon closing and bond issuance, the Applicant will pay a fee of up to 5% of the total cost of the TDD project as reimbursement to the City for services rendered by City Staff to administer and supervise the project. The % charged will be dependent upon the size and scope of the project. The fee may be payable at closing from bond proceeds. The % charged shall be reduced by the \$5,000 preliminary application fee.
- 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 TDD 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%).

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 TDD 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 the Transportation Development District.

The Applicant acknowledges that the City is not obligated by the execution of this Agreement to establish or approve a TDD and is subject to the sole discretion of the Governing Body of the City and the requirements of the TDD 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:

Scott D. Bird, Finance Director
City Hall
P.O. Box 60
Ottawa, KS 66067

With a copy to:

Dorothea Riley
Kutak Rock LLP
1010 Grand Boulevard, Suite 500
Kansas City, MO 641-6-220

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.

7. Scope of Agreement. This Agreement pertains to financing requested by the Applicant pursuant to the TDD Act and does not apply to any other financing which may be requested of the City by the Applicant.

8. Governing Law. This Agreement shall be construed in accordance with the laws of the state of Kansas.

IN WITNESS WHEREOF, the parties hereto have cause this Agreement to be executed by their duly authorized representatives the day and year first above written.

(Applicant Name)

By: _____
Its: _____

Attest:

CITY OF OTTAWA, KANSAS

By: _____
Its: Mayor

Attest:

Scott D. Bird, City Clerk

(SEAL)

STATE OF _____)
)ss.
COUNTY OF _____)

On this _____ day of _____, 2008, before me, a notary public, appeared _____ to me personally known, who being by me duly sworn, did say that he/she is the _____, of _____ and that said instrument was signed in behalf of said company and he/she acknowledged said instrument to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal in my office the day and year last above written.

Notary Public

My Commission Expires: _____

STATE OF KANSAS)
)ss.
COUNTY OF FRANKLIN)

On this _____ day of _____, 2008, before me, a notary public, appeared _____ to me personally known, who being by me duly sworn, did say that he/she is the _____, of _____ and that said instrument was signed in behalf of said company and he/she acknowledged said instrument to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal in my office the day and year last above written.

Notary Public

My Commission Expires: _____