



ECONOMIC DEVELOPMENT
GROWTH ENGINE
FOR MEMPHIS & SHELBY COUNTY

COMMUNITY BUILDER
PAYMENT·IN·LIEU·OF·TAX PROGRAM
POLICIES AND PROCEDURES

OF THE ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL
DEVELOPMENT BOARD OF THE CITY
OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE

Effective: June 1, 2019

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I. GENERAL PURPOSE AND PROVISIONS

The City of Memphis and County of Shelby, Tennessee, are committed to the development of distressed areas throughout the City and County, and to ongoing improvement in the quality of life for its citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, the City of Memphis and County of Shelby have established the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee ("EDGE") to lead City of Memphis and Shelby County economic development organizations. One of EDGE's tools to effectuate its economic development mission is the ability to grant a payment in lieu of (property) tax incentive ("PILOT"). PILOTs granted through EDGE are not entitlements, but are reserved for projects that would not be financially feasible in the absence of the PILOT incentive.

It is the intention of EDGE to conduct its activities consistent with the provisions of Tennessee Code Annotated section 7-53-101, et seq., and any and all other laws of the United States and the State of Tennessee applicable and available to EDGE for PILOTs, and with the enactments of the local legislative bodies, the Memphis City Council and the Shelby County Board of Commissioners, in establishing EDGE.

The intent of the Community Builder PILOT Program is to spur investment and job creation in distressed areas of the City of Memphis and unincorporated Shelby County, which areas are defined as Eligible Census Tracts eligible for the federal New Markets Tax Credit Program. The Community Builder PILOT Program shall be available for five (5) years as a trial program, to persons or entities doing business or owning property located in eighteen (18) sites selected by the Mayors of the City of Memphis and/or Shelby County (hereinafter, the "Mayors") for a fifteen (15) year PILOT Term at 75% abatement of City of Memphis and/or Shelby County taxes. In certain circumstances, the EDGE Board of Directors ("EDGE Board") may approve Community Builder PILOTs to terms longer than fifteen (15) years with approval by the respective Memphis City Council and Shelby County Board of Commissioners. Any such terms in excess of twenty (20) years will also require the special approval of the Tennessee Commissioner of Economic and Community Development and of the Tennessee Comptroller of the Treasury. Of those eighteen (18) sites, up to fifteen (15) may be in the City of Memphis and up to three (3) in the unincorporated areas of Shelby County. The Community Builder PILOT Program awards shall be made on a semi-annual basis with the first awards expected to be made approximately six (6) to eight (8) months after creation of the program, with no more than six (6) awards (five (5) in the City of Memphis and one (1) in the unincorporated area of Shelby County) in each of the first two semi-annual periods. If there is an active Community Development Corporation servicing the area in which the proposed Project is located, the Applicant must demonstrate sufficient approval of the PILOT by the CDC. The CDC may also be the Applicant. The aforementioned timeline notwithstanding, the Mayors and EDGE may expedite the award of a PILOT where they deem such expedited treatment of an Application is in the best interests of the City of Memphis and/or Shelby County.

In accordance with the requirements of State law, EDGE must find each Project that is presented for approval to be in the public interest and one that will spur inner-city and/or unincorporated county development within Memphis and Shelby County. It is the intent of EDGE that the Community Builder PILOT Program spur new development in the Designated Sites. Any proposed Project shall not contemplate the shifting of jobs currently located in the City of Memphis

and/or Shelby County. Any Projects that would qualify under another EDGE PILOT Program, such as the Jobs PILOT Program, Destination Retail PILOT Program or the Expansion PILOT Program, will not qualify under the Community Builder PILOT Program. Only Eligible Uses of the Designated Sites shall qualify for a PILOT. Nothing herein shall imply or suggest that EDGE, the City of Memphis, or Shelby County is under any obligation to provide a PILOT to any Applicant. All Applications shall be considered on a case-by-case basis, with the required performance criteria for each Project set accordingly, and the decision to approve or deny an Application shall be at the discretion of the Mayors and EDGE. No Project shall be awarded unless it is recommended in writing by the Mayor of the City of Memphis (if the Project is located in whole or in part in the City of Memphis) and the Mayor of Shelby County. The Mayor of Shelby County shall act alone, if the Project is located in the unincorporated area of Shelby County.

To provide the intended benefit for approved Projects, EDGE shall take title to the real and/or tangible personal properties associated with the Project, and EDGE shall then lease such property back to the Applicant or PILOT Recipient for the duration of the PILOT Term, with the PILOT payments being established consistent with these Policies and Procedures, and as set forth in the Lease Agreement between EDGE and the PILOT Recipient.

Under the Lease Agreement, payments are to be made to the appropriate governmental entities in lieu of ad valorem taxes on the property being utilized for the Project, such properties no longer being subject to ad valorem taxation by virtue of their ownership by EDGE.

For real property, utilized for the Project, both new construction and CRC (when approved for use in the Project by EDGE), such payments are to be based on one hundred percent (100%) of the property taxes which would otherwise be collected and attributable to the unimproved property and twenty-five percent (25%) of the property taxes which would otherwise be collected and attributable to the real property improvements at the time EDGE takes title to the property. Any real property improvements on the Designated Site not being utilized for the Project will generate a payment based upon one hundred percent (100%) of the property taxes which would otherwise be collected and attributable to said real property improvements.

For tangible personal property utilized for the Project, such payments are to be based on twenty-five percent (25%) of the property taxes that would otherwise be collected and attributable to the tangible personal property being utilized for the Project. The PILOT for tangible personal property is limited to tangible personal property that is new or new to Shelby County.

New property may be added to the PILOT through new Lease Agreements every year during the Ramp-Up Period. After the expiration of the Ramp-Up Period, additional property may be added to the Project by amending the last real property or tangible personal property Lease Agreement executed during the Ramp-Up Period.

These Policies and Procedures shall not be construed to deny a PILOT for an Applicant on account of the fact that the actual or equitable ownership of the property to be utilized for the Project resides in an entity or entities other than the Applicant or user. Such cases shall be considered upon their individual merits, but in no event shall property owned by a party other than the Applicant or user of the facility be considered unless all of the facility or a predefined percentage of the facility will be used for the Project.

Each Applicant, in its improvement of the Designated Site, and each PILOT Recipient, in its use of the property in the Designated Site, will be required to comply with all laws, ordinances, orders, rules, regulations, and requirements of the duly constituted public authorities, which are or shall become applicable to the Designated Site, including those applicable to the repair and/or alteration of the properties thereof, and the use or manner of use of said properties and the Designated Site.

In order to support the community's economic development goals, which include enhancing locally owned, small, minority and women owned businesses, Applicants obtaining a PILOT, and other PILOT Recipients, must participate in EDGE's Local Business Partnership Program (as set forth in Section IX).

EDGE may terminate any Lease Agreement entered into with a PILOT Recipient early, consistent with the provisions set forth in Sections VIII. and IX. below. Any PILOT Recipient, in its sole discretion, may choose to terminate any Lease Agreement early, at any time, and receive back ownership of the affected Project property from EDGE with any payments under the Lease Agreement remaining as a lien on the Project's property. Should a PILOT Recipient wish to make a partial termination and only receive back a portion of the Project property, EDGE shall cooperate in the execution of all documents needed to give effect to this result.

In addition, EDGE will encourage Applicants to include significant and verifiable mechanisms to reduce air and water pollution, solid waste, and energy consumption, and consider other investments that will improve the physical environment in Memphis and Shelby County.

EDGE has the right to amend or waive these Policies and Procedures, as needed, upon a majority vote of the EDGE Board of Directors, in order to effectuate its mission of economic development for Memphis and Shelby County, including the adoption, incorporation, and implementation of any and all available programs statutes, or other measures made available by the United States, the State of Tennessee, the County of Shelby, and/or the City of Memphis.

II. DEFINITIONS

“Applicant” means the person or entity which submits to EDGE an Application for a PILOT covering a Designated Site. An Applicant may be a CDC or other non-profit development entity, or a for-profit company.

“Application” means that document prepared, submitted, and, perhaps, amended by the Applicant, in accordance with the provisions of these Policies and Procedures, for the purpose of establishing a Designated Site and obtaining a PILOT from EDGE.

“Brownfield Property” means any real property that has been vacant or abandoned for at least five (5) years, has a prior history of industrial uses, and has potential environmental contamination as indicated by a Phase I Environmental Assessment.

“Capital Investment” means the investment in land, buildings, site preparation, equipment and any other property for the Project at the Designated Site. Capital Investment may also include property that is not transferred to EDGE and which will not receive a PILOT benefit as required by the

EDGE Board. If granted by the EDGE Board, Capital Investment shall include CRC.

“Charter” means the charter of EDGE, the State of Tennessee Amended and Restated Charter of Incorporation of EDGE, effective February 19, 2012, as amended from time to time.

“Community Development Corporation” or “CDC” means a non-profit community based organization operating in Shelby County and focused on revitalizing the areas in which it is located, typically low-income, underserved neighborhoods that have experienced disinvestment.

“Community Reinvestment Credit” or “CRC” means real property located in Shelby County with existing improvements thereon and for which EDGE may award a PILOT, treating said existing improvements as if they are constructed new for the Project. By allowing a PILOT for CRC, EDGE’s intention is to allow the same PILOT benefits for an Applicant or PILOT Recipient utilizing an existing property as are allowed for new property and new construction.

“Contract Employee” means a person employed by a party other than the PILOT Recipient and whose labor is contracted for by PILOT Recipient and who is considered a necessary member of the workforce responsible for duties and assignments required to be performed in order for the PILOT Recipient to operate its business at the Designated Site. All contract employees are subject to the PILOT criteria for determining Net New Jobs, including, but not limited to, Wages and health insurance requirements.

“Designated Site” means a site designated for the Community Builder PILOT Program by the Mayors and approved by the EDGE Board and the property owners comprising each site. Each Designated Site must be located in or be contiguous to an Eligible Census Tract (i.e. that qualifies for the federal New Markets Tax Credit Program).

“Eligible Census Tract” means a tract of real property that is eligible for the United States Treasury Department’s New Markets Tax Credit Program.

“Eligible Uses” shall be retail, office, industrial, distribution, tourism and hospitality, and other commercial or mixed uses other than residential uses. Pawn shops, adult entertainment and product stores, liquor and tobacco stores, payday loan and title loan establishments and car dealerships, as well as other business types determined in EDGE’s sole discretion shall not be considered as Eligible Uses.

“Full-Time Equivalent Jobs” means a job for which a PILOT benefit is awarded and is a full-time job which provides full-time employment of at least 1,600 hours per year, and permanent part-time jobs, which, when combined, total at least 1,600 hours of employment for the Project. For example, if an employer had one worker working 1,600 hours per year and two workers working 800 hours per year each, that employer would be providing employment for two full-time equivalent jobs. A Full-Time Equivalent Job must be paid at least \$13.00/hour and the employer must offer to pay at least one half of health insurance costs for the employee. The \$13.00/hour must be the actual amount paid and not the Wage. This minimum amount paid will reset every three (3) years to one half the Shelby County Annual Average Wage rounded to the nearest ½ dollar. Contract Employees are included as Full-Time Equivalent Jobs.

“Initiation Period” means that period described in Section IV. D. below.

“Lease Agreement” means the formal contract pertaining to the lease of real and/or tangible personal property which is the subject of a Project, and contains all of the terms and conditions with which all parties of said Lease Agreement must be in compliance. The Lease Agreement is between EDGE, as lessor, and as lessees, the PILOT Recipient, a Related Party and/or an Unrelated Party as applicable.

“Local Business Participation Commitment” means the commitment by Applicant to spend or cause to be spent a certain amount related to the Project with MWBE’s between the date of the Resolution and the expiration of the Term.

“Local Business Participation Program” means the EDGE Local Business Participation Program as set forth in Section X.

“Net New Jobs” means the number of new Full-Time Equivalent Jobs in Shelby County created by the Project at the Designated Site. Net New Jobs in Shelby County shall not include any Full-Time Equivalent Jobs being provided by Applicant in Shelby County at the time the PILOT Application is submitted to EDGE, including any jobs located at another site in Shelby County at the time of the PILOT Application and moved by Applicant from said other site(s) in Shelby County to the Designated Site.

“New Markets Tax Credit Program” means a federal program created under the Community Renewal Tax Act of 2000 to stimulate economic and community development in America’s low-income communities, as set forth in Section 45(d) of the Internal Revenue Code, as amended.

“PILOT Recipient” means the person or entity receiving a PILOT from EDGE and/or a Sponsor. PILOT Recipient includes Applicant’s tenants, assignees and/or vendees who contribute property to the Project, entering into Lease Agreement(s) with EDGE for such property, so as to enjoy a PILOT benefit.

“PILOT Term” means the fifteen (15) years for which a PILOT is provided for a Designated Site under the Community Builder PILOT Program unless a longer term is approved, not to exceed twenty (20) years without prior approval from the Tennessee Commissioner of Economic and Community Development and of the Tennessee Comptroller of the Treasury.

“Policies and Procedures” means these Community Builder PILOT policies and procedures, being the Community Builder Payment In Lieu of Tax Program Policies and Procedures of the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee.

“Project” means the project which brings together the real and/or tangible personal property (e.g., the buildings, structures, machinery, equipment, and land), jobs, wages, capital investment, and other rights and obligations of the PILOT Recipient and EDGE, as approved by the EDGE Board and memorialized in the Resolution and Lease Agreement.

“Ramp-Up Period” means the time period within which the PILOT Recipient must meet Net New

Jobs, Wages, and Capital Investment and any other benchmarks required in the Resolution. During the Ramp-Up Period, the PILOT Recipient receives its approved PILOT benefit and is subject to all reporting criteria, but is not subject to compliance requirements. The Ramp-Up Period commences on the date of the first Lease Agreement executed between EDGE and the PILOT Recipient for the Project, or if the Project is to be completed in phases, the date of the first Lease Agreement for that phase, and shall end one (1) year thereafter; provided, however, the Ramp-Up Period may not extend beyond the Initiation Period unless such an extension is approved by EDGE. Local Business Participation Commitment shall be measured pursuant to Article X and shall not have a Ramp-Up Period.

“Related Party” means the parent, owner or affiliate, including, brother/sister entities of the Applicant or PILOT Recipient.

“Resolution” means the resolution approved and executed by EDGE setting forth the Designated Site, the benefits to be provided directly or indirectly to the PILOT Recipients for the Project.

“Sponsor” means any person or entity with legal or economic responsibility for the Project. Typically, the Sponsor is the Related Party of the PILOT Recipient. If the Project includes a Sponsor, then both the Sponsor and the PILOT Recipient will be parties to the Lease Agreement.

“Unrelated Party” means any party that is not a Related Party.

“Wage” or “Wages” means the Project’s annual average wage for Full-Time Equivalent Jobs. Accordingly, “Wage” shall include regular wages, overtime pay, paid holidays, and paid vacation.

III. ELIGIBILITY

Only Eligible Uses proposed by an Applicant for locations in, contiguous to or adjacent to New Markets Tax Credit Program Eligible Census Tracts are eligible for a Community Builder PILOT.

Housing or residential projects shall not be considered for a PILOT under the Community Builder PILOT Program. Additionally, licensed transportation personal property, such as motor vehicles, watercraft, railcars, and aircraft, shall not be eligible for inclusion in a Project. Unlicensed transportation property may be included in a Project and receive PILOT benefits if it is solely used at the site of the Project.

No Designated Site will be awarded a PILOT unless said award is recommended in writing by the Mayor of the City of Memphis (if the Designated Site is located in whole or in part in the City of Memphis) and the Mayor of Shelby County. The Mayor of Shelby County shall act alone, if the Designated Site is located in the unincorporated area of Shelby County.

CRC may be utilized for a Project, and PILOT benefits may be extended to CRC property in those cases where the EDGE Board specifically so provides.

A Brownfield Property may be utilized for a Project, and PILOT benefits may be extended to a Brownfield Property where the EDGE Board specifically so provides.

PILOT Recipients must demonstrate compliance with and payment of all municipal, county, and state taxes due for all properties owned by it and located in Shelby County at the time of closing the Lease Agreement and during the entire PILOT Term. Payment of taxes which are under appeal shall not be required until the appeal is finally resolved, as provided under law.

All Projects must comply with the Local Business Participation Program as set forth in Section IX by the end of the Term.

Under Lease Agreements, PILOT payments are to be made to the appropriate governmental entities in lieu of ad valorem taxes on the property involved in the Project, such properties no longer being subject to taxation by virtue of their ownership by EDGE.

Generally and subject to exceptions set forth herein, for real property, such PILOT payments are to be based on one-hundred percent (100%) of the property taxes which would otherwise be collected and attributable to the land and a fraction of the property taxes which would otherwise be collected and attributable to the real property improvements resulting from the Project at the time EDGE takes title to the property. At the present time, the minimum allowable fraction is subject to change from time to time by action of the Memphis City Council, Shelby County Commission, and/or EDGE Board, but no such change shall be applied retroactively to any previously approved PILOT. PILOT payments shall be based on 100% of the land value of the Real Property, as determined annually by the Shelby County Assessor. The minimum allowed PILOT payment for real property is based on twenty-five (25%) of the improvement tax assessment for the City of Memphis, if located in whole or in part within the City of Memphis, and twenty-five (25%) of the improvement tax assessment for Shelby County.

Generally and subject to exceptions set forth herein, for tangible personal property, such PILOT payments are to be based on a fraction of the property taxes that would otherwise be collected and attributable to the tangible personal property that is new to Shelby County at the time EDGE takes title to the property. The tangible personal property must be new to Shelby County at the time it is included into the PILOT. The minimum allowable fraction is subject to change from time to time without notice by action of the Memphis City Council, Shelby County Commission, and/or the EDGE Board, but no such change shall be applied retroactively to any previously approved PILOT. At the present time, the minimum allowed PILOT payment is twenty-five percent (25%) for the City of Memphis, if located in whole or in part within the City of Memphis, and twenty-five percent (25%) for Shelby County.

No Project shall receive a PILOT Term beyond a total of fifteen (15) years, absent special approval thereof by the Memphis City Council (if located in whole or in part within the city limits of Memphis) and the Shelby County Board of Commissioners. Any such terms in excess of twenty (20) years will also require the special approval of the Tennessee Commissioner of Economic and Community Development and of the Tennessee Comptroller of the Treasury. These term limits apply to all PILOTs granted by EDGE.

New property may be added to the PILOT through new Lease Agreements every year during the Ramp-Up Period. After the expiration of the Ramp-Up Period, additional property may be added to the Project by amending the last real property or tangible personal property Lease Agreement

executed during the Ramp-Up Period. For personal property, the value of such property added from a year (or years) preceding the effective date upon which transferring to the EDGE will be based on the PILOT Recipient's historic value recognized by the Shelby County Tax Assessor.

IV. APPLICATION PROCESS

Any Applicant seeking a PILOT for a Designated Site to encourage community development and growth within the City of Memphis and/or the unincorporated areas of Shelby County shall be required to comply with the following Application policies and procedures. Nothing within these Policies and Procedures shall imply or suggest that EDGE, the City of Memphis, and/or Shelby County are under any obligation to provide a PILOT in any amount or value to any Applicant.

EDGE will consider applications for PILOTs covering Designated Sites at duly called meetings conducted in compliance with the State of Tennessee's open meeting and open records laws. Monthly meetings may be waived or held at different locations and on dates selected at the discretion of EDGE.

A. Pre-Application. Potential Applicants and/or their representative(s) shall hold a pre-application meeting with the EDGE staff to review the Project and discuss the projected use of the Project, and the Net New Jobs, Wages, Capital Investment and other community impact measures, as applicable. Please note that EDGE is subject to the public records laws of the State of Tennessee, and any information submitted to EDGE may be viewed or copied by any citizen of the State of Tennessee.

B. Explaining the Need for a PILOT. Applicants shall submit a statement demonstrating that the PILOT sought is an important component of an overall plan to achieve the subject economic development/Project. The Community Builder PILOT Program is not an entitlement program and is granted only when the Applicant's need is demonstrated and the community's net benefit is identified.

C. Application. An Application for a Designated Site shall be made on EDGE's Community Builder PILOT application form or in conformance with said form. An application fee in the amount of \$250 will be charged if the Applicant is a non-profit entity, or \$1,000 will be charged if the Applicant is a for-profit entity, and payment of same must accompany any Application. The application fee is non-refundable. Applications must be filed with EDGE staff in accordance with a published schedule for the Community Builder PILOT Program. The Application shall include: (i) a description of the intended Project, including principals (if known) and anticipated timelines; (ii) economic, aesthetic and/or environmental impact, including projected quantifiable measures (e.g. Net New Jobs, Wages and Capital Investment); (iii) a clear and precise identification of the land area of the Designated Site, along with letters from all existing property owners indicating their knowledge and support of the Project; (iv) required public improvements at the proposed Designated Site (for example: sidewalks, lighting and planting); (v) projected sources and uses of funds; (vi) letter(s) of support from CDCs or other neighborhood development organizations active in the area around the Designated Site; (vii) a commitment to comply with the Local Business Participant Program; and (viii) all other information needed to fully explain the Project. Preference shall be given to (i) Projects that can be initiated within one (1) year of Application approval and fully closed within three (3) years of Application approval; (ii) non-profit Applicants; (iii) for-

profit Applicants that demonstrate support for the community/neighborhood in which the Designated Site is located beyond the development of the Project; (iv) Projects that are part of a larger community redevelopment effort; and/or (v) Projects that address significant documented community needs.

Applications will be received and organized by EDGE staff, and then reviewed jointly by the Mayors of the City of Memphis and Shelby County for Projects within the City, or by the Mayor of Shelby County alone for Projects in the unincorporated areas of Shelby County. The Mayors shall make their recommendations to EDGE (jointly, if located within the City), and EDGE will then consider the Applications for approval.

D. Initiation Period. A PILOT Recipient must close on all its real property Lease Agreements and its tangible personal property Lease Agreements within five (5) years of the approval of the PILOT Resolution for the Designated Site by EDGE Board (i.e. the Initiation Period). If the Project is completed in phases, at least one-third (1/3) of the Designated Site must be included in the first real property Lease Agreement for the Designated Site. Real and/or tangible personal property Lease Agreements for phases of the Project may be closed separately, but all PILOT closings must occur within five (5) years of approval of the PILOT Resolution.

E. Project Amendment. Projects may be modified without further approval by the Mayor(s) or EDGE Board so long as the Project does not expand or contract by more than twenty percent (20%) in the Designated Site or prorated investment or employment. If the Project changes by more than twenty percent (20%) then the Mayor(s) and EDGE Board must provide written approval before the modification is undertaken.

F. Conflicts of Interest. EDGE shall follow its and Shelby County's Policies and Procedures regarding conflicts of interest to ensure that no board member or staff member of EDGE, and no EDGE counsel, consultant or contractor working on a Project has a material interest, financial or personal, with the Applicant, the PILOT Recipient or the Project.

V. PAYMENTS

A. Application Fees. The Application must be completed and submitted to EDGE with an application fee, as set forth in Section IV.C. above.

B. Fees Paid at Closing

1. Closing Fees. At the time of closing, the closing fees associated with the closing shall be calculated based on the factors in existence at closing. Closing fees are based on the benefits that a PILOT Recipient will receive (i.e., the estimated value of the tax savings over the anticipated term of the Lease Agreement). The closing fee will be calculated at five percent (5%) of the estimated property tax savings (for real property, the PILOT Recipient's projected real property investment as shown in the Resolution shall be used to determine the value rather than the Assessor's value of the property), with a minimum of \$1,500 owed. A maximum total closing fee, taking into account all closing fees paid for all phases of the Project, of \$300,000 shall be owed for any single Project, including both the City of Memphis and the Shelby County portions. The PILOT Recipients will also be responsible

for paying any additional related expenses (i.e., recording fees, transfer tax, courier, copies and postage). The PILOT Recipients shall not be required to pay or reimburse EDGE's attorney and consultant fees. For non-profit or CDC developers only, the closing fee will be owed to EDGE and paid on a prorated basis over ten (10) years, payable as of January 1st of each year, (i) beginning on the first January 1st after closing, if closed in the first three quarters of the year, or (ii) beginning on the second January 1st after closing, if closed in the last quarter of the year.

2. Inner City Fees. In addition to the Closing Fees set forth above, for all tangible personal property that is the subject of a PILOT located in the City of Memphis, the PILOT Recipient shall pay an additional fee in the amount of five percent (5%) of the property taxes otherwise due to the City of Memphis up to a maximum fee of \$50,000, and a fee in the amount of five percent (5%) of the property taxes otherwise due to Shelby County up to a maximum fee of \$50,000.

For all tangible personal property that is a subject of a PILOT located in Shelby County but outside of the City of Memphis, the PILOT Recipient shall pay a fee in the amount of five percent (5%) of the property taxes otherwise due to Shelby County, up to a maximum fee of \$50,000.

3. PILOT Payments and Rent. All PILOT Recipients shall pay their PILOT Payments as set forth in the Lease Agreement; and shall pre-pay net basic rent for the entire PILOT Term of PILOT at the rate of \$100 per year at the time of closing any Lease Agreement.
4. Termination Fee. All PILOT Recipients must pre-pay a termination fee of \$1,000 at the time of closing any Lease Agreements.
5. PILOT Recipients may terminate PILOT and all the real property or personal property leases at any time; however, for personal property, the PILOT Recipient shall be responsible for the full year of PILOT payments in the year the purchase option is exercised or the year the Lease Agreements are terminated for any reason. These payments will be invoiced as part of the closing process.

C. Termination Penalties. Upon the expiration of a Lease Agreement, EDGE shall provide written notification to the PILOT Recipient advising it of PILOT Recipient's duty, pursuant to the Lease Agreement, to submit to EDGE all required documentation and approvals needed to enable it to execute any deeds and bills of sale necessary to transfer ownership of Project property to the PILOT Recipient. PILOT Recipient's failure to submit the required documentation and approvals within ninety (90) days of said notification shall result in a penalty of \$2,000 per month, which shall accrue for each month or part of a month during which PILOT Recipient fails to submit these documents, beginning ninety (90) days after said notification has been submitted by EDGE.

D. Lease Amendment and Other Documentation. Amendments and other documentation, including, but not limited to joinder/estoppel fees, assignment/consents to or for existing PILOT Lease Agreements shall require a fee of \$1,000. For other documentation not included with adding or removing property from the PILOT, the PILOT Recipient shall be responsible to reimburse EDGE's actual expenses, costs and reasonable attorney fees incurred in reviewing closing documents

or otherwise expended by EDGE as a result of PILOT Recipient's transactions.

E. Assignment of PILOT Benefits. In the event that the application for assignment of a PILOT, to an Unrelated Party is approved by EDGE, transfer fees shall be charged on the following basis and payable immediately upon such assignment:

1. For non-profit entities and CDCs: a fee of \$3,000.
2. For for-profit entities:
 - a. One percent (1%) of the property tax savings up to \$1,000,000, with a minimum fee of \$4,000; plus
 - b. 0.5% of any property tax savings over \$1,000,000, provided that the maximum transfer fee payable for any assignment shall be \$25,000.

VI. CLOSING REQUIREMENTS

A. Insurance. EDGE must be listed as an additional insured on all property insurance contracts, including, without limitation, casualty and liability insurance policies and property insurance policies which cover property utilized for the Project and whose title has been conveyed to EDGE. Insurance coverage limits shall be in an amount not less than \$5,000,000 for injury or death of a single person, \$5,000,000 for a single accident, and \$5,000,000 for property damage combined single limit coverage.

B. Environmental Report Requirements. The Applicant must submit a Phase I Environmental Report ("Environmental Reports") with no recognized environmental conditions for the Designated Site, unless waived by the EDGE Board, dated no more than three (3) months prior to the first Lease Agreement closing on the Designated Site, if on developed real property or six (6) months prior to the first Lease Agreement closing on undeveloped real property. All Environmental Reports must explicitly grant to EDGE the right to rely on such reports. All Environmental Reports, which must be certified to EDGE, shall comply with the All Appropriate Inquiries Rule (40 C.F.R. §312), as amended from time to time, and the following applicable standards designed by the American Society for Testing and Materials ("ASTM") (all as subsequently amended or modified):

1. Standard Practice for Environmental Site Assessments: ASTM E 1528-06 Assessments;
2. Standard Practice for Site Assessments: Phase I Environmental Site Assessment Process, ASTM E 1527-05; and
3. Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process, ASTM E1903-11.

Subject to the specific provisions of a Lease Agreement, the Applicant and the PILOT Recipient shall comply and ensure compliance with all applicable local, state, and federal environmental laws and regulations. In the event that the Applicant or the PILOT Recipient discovers or receives notice

from any governmental agency with regards to any environmentally hazardous material or condition affecting the PILOT property which is the subject of the Lease Agreement, the Applicant or PILOT Recipient shall promptly provide written notice thereof to EDGE; shall conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other related actions required, if any; and shall indemnify and hold harmless EDGE for any and all costs associated therewith, including costs of litigation, if any.

C. Personal Property Depreciation. At the initial and any subsequent closing of any tangible personal property Lease Agreement, the PILOT Recipient shall submit to EDGE and/or its agents, if any, a then current pro forma Tennessee tangible personal property schedule for tangible personal property that will be the subject of the Lease Agreement.

D. Deadlines. EDGE counsel must receive notice of PILOT Recipient's intent to close on a Lease Agreement at least thirty (30) days prior to the expected closing date, but in no event later than November 1 of each year for closings to be effective December 31. All Lease Agreements must close by the second Friday in February of the following year in order to be made effective as of the immediately prior December 31.

VII. ASSIGNMENT

PILOT benefits are freely assignable to a Related Party, provided the PILOT Recipient or Sponsor remains legally obligated to EDGE for the performance of all obligations set forth in the Resolution. The PILOT Recipient and intended assignee must provide written notice of such assignment to EDGE at or before the date of assignment. PILOT benefits are not assignable to an Unrelated Party without the prior written consent of EDGE.

VIII. EVALUATION/COMPLIANCE

To demonstrate that its actions in granting PILOT incentives for specified Projects promote the public good, EDGE requires PILOT Recipients to certify each year that their performance commitments are met, and, if not, to explain fully.

Each year the PILOT Recipient shall provide information in the manner described in the Lease Agreement and complete an Annual PILOT Compliance Report Form ("Annual Report") as approved by EDGE.

Such Annual Reports shall be submitted by the PILOT Recipient to EDGE and its designated agent (if any). To the extent that any agency of the City of Memphis, Shelby County, or the State of Tennessee shall require of EDGE any information or documentation regarding the Project, the PILOT Recipient shall provide or otherwise assist EDGE, as needed, in the production of such information or documentation.

In addition, EDGE retains the right for its staff and/or its agents to visit and inspect the Project periodically during the PILOT Term, typically once every four (4) years after the Ramp-Up Period, to ensure conformance with statements and representations made in the Lease Agreement. Such inspections shall be made during the Project's regular business hours, after reasonable advance notice (at least 48 hours) has been given. EDGE's costs of such inspections

shall be borne by EDGE. If an Annual Report is more than thirty (30) days late, then EDGE shall inspect the Project with the costs of such inspection borne by the PILOT Recipient.

During such inspections, EDGE staff and/or EDGE's consultants may physically inspect the premises and any improvements thereon, and may require non-proprietary information including, but not limited to, any necessary books, records, and accounts relating to the Project. In addition, unless prohibited by law, EDGE may obtain copies of any and all reports filed by the PILOT Recipient with the State of Tennessee or any other governmental entity, including, without limitation, reports concerning the employees or business operations of the Project.

EDGE's staff and/or agents shall have their initial on-site compliance visit and inspection of the Project upon the end of the Ramp-Up Period. During this site visit, if the Capital Investment criteria are met, then the Project will be considered in compliance for Capital Investment purposes for the balance of the PILOT Lease Term.

Upon the expiration of the Ramp-Up Period, if the performance requirements by PILOT Recipient do not meet the conditions that the EDGE Board placed on the Project in the Resolution, the PILOT Recipient shall be deemed to be in default, and action may be taken as provided under these Policies and Procedures and the Lease Agreement, including but not limited to (i) termination of the PILOT Project, or (ii) shortening the PILOT Term.

No default shall be deemed to have occurred so long as the Project would qualify for PILOT incentives no less than those provided in the Resolution, as the same would be determined taking into consideration the totality of the terms contained in the Resolution and actually retained, maintained, created, paid, made or achieved Resolution requirements (as the case may be) by PILOT Recipient.

Staff or the designated agent of EDGE shall provide EDGE, on an annual basis, a compilation of the past year's activities, and the ongoing activities of the Projects operating under the then current Lease Agreements.

X. LOCAL BUSINESS PARTICIPATION PROGRAM

A. **Minimum Requirement.** In order to encourage growth locally, each PILOT Recipient shall participate in EDGE's Local Business Participation Program. PILOT Recipient shall meet with EDGE's LBP Consultant within twelve (12) months of the effective date of the first Lease Agreement to discuss its plan for achieving the Local Business Participation Commitment. PILOT Recipient must spend with Local Business Participants an amount equal to at least 25% of the PILOT Recipient's hard construction costs and site work plus an amount equal to at least 15% of projected PILOT savings for real and/or tangible personal property as shown in the Resolution, for every year of the PILOT Term ("Minimum LBP Standard"). To count toward the requirements of this Article X, expenditures must be for the Project. If the Project is (i) a manufacturing project with \$75,000,000 or more in tangible personal property, or (ii) a Project with 75% of its total Capital Investment in manufacturing, machinery or equipment tangible personal property, the required minimum for PILOT Recipient is an amount between 25% and 34% of hard construction costs and site work plus an amount between 15% and 24% of real property PILOT savings and an amount equal to at least 5% of tangible personal property PILOT savings over the PILOT Term.

For the purpose of this Policy, “Local Business Participant” or “LBP” means any business that is certified as a Minority/Woman Business Enterprise (“MWBE”) by the City of Memphis or Shelby County government. A vendor shall be recognized as a LBP if included in MWBE lists maintained by City of Memphis or Shelby County government for that purpose during the year in which the vendor contract is entered into with or the purchase is made by the PILOT Recipient.

Expenditures for a Local Business Participant who provides contract workers (“LBP Temp Agency”) to the PILOT Recipient shall be restricted to the LBP Temp Agency’s administrative fee and not include the wages paid to the contract workers or the cost of their benefits. The PILOT Recipient shall either (i) be credited for documented administrative fee payments to the LBP Temp Agency of contract workers; or (ii) be credited with an amount equal to two percent (2%) of the payment to the LBP Temp Agency contract workers.

B. Exceptional Performance. Additionally, PILOT Recipient shall receive the following additional years to its PILOT Term for meeting its exceptional Local Business Participation Commitment and maintaining its exceptional Local Business Participation Commitment throughout the entire PILOT Term. The additional years shall be added at the end of the PILOT Term:

1. One (1) additional year:

- a. If it spends an amount between 35% and 44% of hard construction and site work plus an additional amount between 25% and 34% of the PILOT savings with LBPs over the PILOT Term; or
- b. If the Project is (i) a manufacturing project with \$75,000,000 or more in tangible personal property, or (ii) a Project with 75% of its total Capital Investment in manufacturing machinery or equipment tangible personal property, and the PILOT Recipient spends an amount between 35% and 44% of hard construction costs and site work plus an additional amount between 25% and 34% of real property PILOT savings and an amount greater than or equal to 15% of personal property PILOT savings over the PILOT Term.

2. Two (2) additional years:

- a. If it spends an amount greater than or equal to 45% of hard construction and site work participation plus an additional participation amount greater than or equal to 35% of the PILOT savings with LBPs over the PILOT Term; or
- b. If the Project is (i) a manufacturing project with \$75,000,000 or more in tangible personal property, or (ii) a Project with 75% of its total Capital Investment in manufacturing machinery or equipment tangible personal property, and the PILOT Recipient spends an amount greater than or equal to 45% of hard construction costs and site work plus an additional amount greater than or equal to 35% of real property PILOT savings and an amount greater than or equal to 25% of personal property PILOT savings over the PILOT Term.

See Section III. I for maximum limits on PILOT Terms.

C. Enforcement. Local Business Participation Commitment shall be measured over the duration of the PILOT Term; however, the PILOT Recipient shall meet with EDGE staff prior to the annual anniversary that is at least three (3) years before the expiration of the PILOT Term for the first lease. For example, if the PILOT Recipient receives a 10 year PILOT Term, it must meet prior to the seventh anniversary of the first lease closing. PILOT Recipient must demonstrate to the Board's or its Compliance Committee's reasonable satisfaction that it has or will meet the Local Business Participation Commitment by the expiration of the PILOT Term or the Board may reduce the PILOT Term up to two years as provided below. For enforcement purposes in this Article X, EDGE may reduce (or "clawback") years from the end of the PILOT Term. The clawback will be a proportional reduction based upon the difference between the required participation terms and the accomplished LBP expenditures with the maximum clawback period being the lesser of (i) twenty percent (20%) of the PILOT Term; or (ii) two (2) years. For example, a PILOT with a 10 year term and the Applicant achieving 90% of the Minimum LBP Standard would result in a 1 year clawback. While an Applicant with a 10 year PILOT achieving 75% of the Minimum LBP Standard would compute to a 2.5 year clawback which would be reduced to a 2 year clawback for enforcement purposes. The evaluation and potential clawback starts in the third year before the expiration of the PILOT Term and for each year thereafter. All claw-back reductions shall be cumulative.

1. A LBP must be on an approved City of Memphis or Shelby County list during the year in which the vendor contract is approved.
2. Unless waived in the Resolution, the PILOT Recipient is required to list all Net New Jobs with the Workforce Investment Network and the Greater Memphis Alliance for a Competitive Workforce, and give due consideration to individuals referred by those organizations for open positions.

ADOPTED BY THE BOARD OF THE ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE ON JUNE 21, 2017 AND FURTHER AMENDED BY THE BOARD OF THE ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE ON _____.

By: _____
Reid Dulberger
President

ATTEST:

By: _____
Al Bright, Jr.
Chairman