

STATEMENT OF POLICIES AND PROCEDURES FOR ISSUING TAXABLE AND TAX-EXEMPT INDUSTRIAL REVENUE (DEVELOPMENT) BONDS OF ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE

INTRODUCTION

Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (hereinafter the “Board”) is a public corporation authorized by the laws of the State of Tennessee. T.C.A. Section 7-53-101 et seq. (the “Act”).

The Board constitutes a public instrumentality of the City of Memphis and the County of Shelby, Tennessee (the “City” and the “County”) for the purposes, among others, of providing opportunities to finance, acquire, own, lease, or dispose of properties, to the end that such entities may be able to maintain and increase employment opportunities, increase the production of agricultural commodities, and increase the quantity of housing available in affected municipalities by promoting industry, trade, commerce, tourism and recreation, agriculture and housing construction by inducing manufacturing, industrial, governmental, educational, financial, service, commercial, recreational, and agricultural enterprises to locate in or remain in this state and further the use and production of its agricultural products and natural resources and to provide for the acquisition and installation of devices, equipment and facilities for the collection, reduction, treatment, and disposal of such wastes and pollutants.

The Board is authorized by the Act to issue revenue bonds payable solely from the revenues and receipts from the applicable Project and secured by a pledge of said revenues and receipts and a mortgage on any land, buildings, improvements, furnishings, and equipment so acquired.

While the Board is an instrumentality of the City and the County, neither the City, the County, the State, nor any political subdivision thereof shall be liable in any event for the payment of the principal of, or premium or interest on the Bonds or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever undertaken by the Board and none of the Bonds nor any of the Board's agreements or obligations shall be construed to constitute an indebtedness of the County, the State, or any political subdivision thereof within the meaning of any constitutional or statutory provisions whatsoever. The Board has no taxing power.

The Board is composed of nine voting members and two non-voting members representing the Memphis City Council and the Shelby County Commission. Members of the Board serve staggered six-year terms.

The Board's Charter authorizes it to exercise all the powers and authority of an Industrial Development Corporation as set forth in the Act and the Board intends that the scope of its authorized activities be as broad as is permitted under the laws of the State of Tennessee.

THE BOARD DOES NOT MAKE ANY RECOMMENDATIONS WITH REGARD TO THE PURCHASE OF BONDS OR NOTES, NOR SHOULD ITS APPROVAL OF A FINANCING BE CONSTRUED AS A REPRESENTATION OF ANY SORT WITH REGARD TO THE FINANCIAL CONDITION OR SUITABILITY OF ANY PROJECT OR ISSUANCE. ALL BOND OR NOTE PURCHASERS ARE EXPECTED TO MAKE AN INDEPENDENT INVESTIGATION OF THE BONDS OR NOTES OF THE BOARD AND THEIR SECURITY.

ARTICLE I DEFINITIONS

1.1. Definitions. As used herein, the following words and phrases shall have the following meaning:

"**Application**" means the application, on a form provided by Board staff, to the Board for issuance of Bonds by the Board.

"**Bonds**" means bonds issued pursuant to a bond indenture.

"**Inducement Agreement**" means the initial written understanding between the Board and the Applicant with respect to a Project, in the form approved by Board staff hereto.

"**Project**" shall only mean the land and facilities located entirely or in part in Shelby County, Tennessee which are financed by the Board for the purposes of carrying out any of the Board's purposes.

"**Trustee**" means the Trustee appointed under the bond indenture, any co-trustee or any successor thereto.

ARTICLE II PROCEDURES

2.1 Meetings. Regular meetings of the Board are held on the third Wednesday of each month at 3:00 p.m. or such other day and time set by the Board at a location set forth in the notice of each meeting. All meetings of the Board will be public meetings as required by law. Regular meetings may be waived or held on a different date, time, or location at the discretion of the Chairman of the Board and notice thereof to the public. Bond counsel will be responsible for the preparation and publication of TEFRA Notices with the assistance of Board Counsel.

2.2 Application. No later than ten (10) days prior to the meeting at which the Application will be considered, unless a shorter period is approved by Board staff, the entity submitting the Application (the "Applicant") should file a hard copy and an electronic version of the Application with the Board staff along with an application fee of \$2,000.00 made payable to the Board. This fee is not refundable, but will be credited against the final closing fee.

2.3 Inducement. The Applicant must attend the Board meeting to explain the nature and purpose of the proposed Project and to answer questions from the Board. If a Project is approved, the Board will take official action in the form of an Inducement Agreement with the Applicant, in which the Board agrees to issue its Bonds to finance the proposed Project, subject to drafting of documentation in form satisfactory to the Board, the receipt of further information by the Board, and other contingencies. The Applicant shall submit a final bond resolution for approval by the Board, or seek a six month extension of the term of the underlying Inducement Agreement, on or before the Board meeting held six months following the month in which the Inducement Agreement was approved, or at the next ensuing meeting of the Board if no meeting is held in such month. A fee of \$500.00 shall be paid to the Board for each extension.

2.4 Final Bond Resolution. No later than ten (10) days prior to the meeting at which the Final Bond Resolution will be considered, the Applicant should file copies of the preliminary official statement or offering memorandum, Certificate of Interim Compliance with Business Opportunity Goals in the form of Exhibit D, and a copy of the resolution with the Board staff. Passage of a final bond resolution will occur after documentation has been prepared by Bond Counsel. Applicants shall close the bond transaction, prior to, or seek a three month extension of the final bond resolution for good cause shown, at the Board meeting held three months following the month in which the final bond resolution was approved, or at the next ensuing meeting of the Board if no meeting is held in such month. A fee of \$500.00 shall be paid to the Board for each extension.

2.5 Extensions. A new Application need not be submitted for an extension unless there have been material changes in the information presented in the original Application. Any Applicant requesting approval of an extension of time will be required to present to the Board a complete Project update. No extension shall be granted unless the Applicant gives written certification that there have been no adverse material changes in all financial statements theretofore submitted to the Board. Extension fees will be credited toward the final closing fee.

ARTICLE III REQUIREMENTS

3.1 The Public Interest. No financing will be approved unless the Board has first determined that it is in the public interest as required by law.

3.2 Ratings and Credit Enhancement. Bonds issued by the Board shall be so collateralized as to bear an investment grade rating from a nationally recognized rating agency; or, if not so rated, should be secured by credit enhancement or collateral of a type and nature satisfactory to the Board; or contain provisions on the face of the Bonds and in the bond documents restricting initial and subsequent transfers to "accredited investors" or "qualified institutional buyers" as such terms are defined in 17 CFR §230.501(a) and 17 CFR §230.144A and require accredited investors who are natural persons to purchase the Bonds in minimum denominations of \$25,000.00.

3.3 Local and Minority Participation. The use of local professionals in the issuance of the Bonds and the operation of the Projects and the use of local labor, suppliers, contractors and businesses in the acquisition, construction, rehabilitation, and operation of the Projects is strongly encouraged. The Board has established a goal of at least 25% participation by city certified minority and women owned businesses and county certified locally owned small business in the provision of labor, supplies, construction services and professional services in the issuance of the Bonds and in the acquisition, construction, rehabilitation, and operation of the Projects. The Applicant must address in the Application its diversity plan and in its presentation before the Board the good faith efforts it will make to achieve these goals. Applicant shall file interim and final certificates, in the form approved by the Board staff, with the Board regarding its compliance with Applicant's diversity plan during the construction phase of the Project. Thereafter, Applicant will file an annual report confirm its compliance with the diversity plan for the prior calendar year by March 1 each reporting year.

Additionally, Applicant shall file an annual report by March 1 of each year the Bonds are outstanding for the prior calendar year that provides the jobs, average wages, and capital improvement associated with the project during the prior calendar year. Board staff will provide the format for these reports.

3.4 Governmental Approvals.

A. The Board will not approve any Project that has not been appropriately zoned by, or received all required variances, from the governing body having jurisdiction over the land on which the facilities are to be constructed. Additionally, should changes in design necessitate zoning variances after execution of an Inducement Agreement, the Board reserves the right to withdraw its Inducement Agreement and to refuse to finance such Projects until and unless the appropriate variances are obtained and substantiated by certificate provided to the Board.

B. The Board will not approve any hospital, congregate elderly facility, or nursing home Project which has not received a certificate of need from the Tennessee Health Facilities Commission.

C. The Applicant is responsible for obtaining any required reservation of private activity bond authority from the Tennessee Department of Economic and Community Development.

3.5 Securities Laws. Adequate provision, in the form of an indemnity or otherwise, shall be made to assure the Board that full disclosure is made with regard to each financing and that all securities laws have been complied with. Adequate provisions shall be made for continuing disclosure by the Applicant.

3.6 Trustee. All Bond issues must utilize a financial institution or trust company to act as Trustee, unless such Bond issue is acquired in full by a financial institution or trust company for its own account. The Board encourages the use of qualified local institutions. At the time of

appointment, each Trustee (or in the case of a Trustee included in a bank holding company, the parent bank holding company) should have a combined capital stock, surplus, and undivided profits of at least \$100,000,000.00.

3.7 Conflicts. To avoid conflicts of interest, no financing will be approved if,

A. Board Counsel or Bond Counsel has a professional legal relationship or direct or indirect ownership in the Applicant or any sponsor of the financing other than incidental representation, but the Board may waive this condition in appropriate circumstances. In the event of a conflict involving Board Counsel, special counsel shall be retained by the Board to represent it in connection with the particular Project being considered; or

B. Any current Board member receives a benefit in violation of the Board’s conflict rules contained in the Board’s bylaws.

3.8 Bond Fees, Board Counsel Fees, and Expenses.

A. The Board shall receive a closing fee equal to one half of one percent of the first one million dollars of the bonds and one tenth of one percent for the issued bonds in excess of one million dollars (“Closing Fee”). The \$2,000.00 filing fee shall be deducted from the Closing Fee.

B. The Applicant is responsible for payment at closing of Board Counsel's legal fees and expenses as outlined below:

<u>Amount of Bond Issue</u>	<u>Fee</u>
\$0 - \$2,000,000	The greater of .003 of face amount of Bond issue or \$2,000
\$2,000,001 - \$4,000,000	\$6,000 plus .0025 of face amount of Bond issue over \$2,000,000
\$4,000,001 - \$6,000,000	\$11,000 plus .002 of face amount of Bond issue over \$4,000,000
\$6,000,001 - \$8,000,000	\$15,000 plus .0015 of face amount of Bond issue over \$6,000,000

Over \$8,000,000

\$18,000 plus .001 of
face amount of Bond issue
over \$8,000,000

Notwithstanding the above fee structure, in normal bond issues with no unusual complications, Board Counsel's fee will not exceed fifty per centum (50%) of Bond Counsel's fee provided that Bond Counsel's fee has been determined by an arm's length negotiation without any volume or other discount. Board counsel and the Applicant shall establish any additional and reasonable fee to be paid by the Applicant prior to Board action.

C. Normal expenses, including long distance phone calls, travel expenses, and photocopies will be billed in addition to the above. The quoted fees are for normal issues with no unexpected or unusual complications. In the event of any such complications, the fee will be adjusted accordingly. In the event the proposed Bond issue fails to close, fees will be on an hourly basis for time actually expended to date.

3.9 PILOTs. Applicants wishing to apply for the Board's PILOT program shall make a separate application pursuant to the Board's PILOT policy.

3.10 Post-Issuance Tax Compliance. The Board requires every conduit borrower to certify that it has in place post-issuance tax compliance policy and procedures consistent with the standards promulgated by the Internal Revenue Service in its relevant pronouncements. The Board is not responsible for monitoring or approving such policies. Every conduit borrower will complete with the aid of Bond Counsel and submit to Board Counsel at the closing of the bond or note financing, the Certificate of Written Procedures for Post-Closing Ongoing Compliance in the form provided by Board staff.

ARTICLE IV DEBT MANAGEMENT POLICY

4.1 Transparency. The Board shall comply with all legal requirements for notice and for open public meetings related to debt issuance. The Board will comply with all legal requirements regarding adequate public notice of all meetings of the Board. In the interest of transparency, all costs (including interest, issuance, continuing, and one-time) shall be disclosed to the Board members, Board counsel, and other stakeholders in a timely manner. The Board will make available copies of each Report on Debt Obligation (State Form No. CT-0253) to any person upon request. All documents, transcripts, applications, and materials related to any debt issuance shall be treated as public documents available for review and copying by the public upon request, except for those documents and communications protected by attorney client privilege or otherwise protected from disclosure by federal or state law.

4.2 Professionals. The Board shall require all professionals engaged in the process of issuing debt to clearly disclose all compensation and consideration received related to services provided in the debt issuance process by both the Board and the lender or other conduit issuer, if

any. This includes “soft” costs or compensations in lieu of direct payments. Such disclosure shall be made in the Project Application and the Report on Debt Obligation.

4.3 Counsel. The Board shall enter into an engagement letter agreement with each lawyer or law firm representing the Board in a debt transaction. No engagement letter is required for any lawyer who is an employee of the Board or lawyer or law firm which is under a general appointment or contract to serve as counsel to the Board. The Board does not need an engagement letter with counsel not representing the Board, such as underwriters’ counsel. Bond Counsel will be nominated by the Applicant. However, Bond Counsel must be listed in the most recent edition of The Bond Buyer’s Municipal Marketplace publication (“Red Book”). Bond Counsel shall either enter into an engagement letter with the Board or shall state in writing that it does not represent the Board. If Bond Counsel does not represent the Board in a transaction, the Board will enter into a fee payment letter agreement with such Bond Counsel’s firm specifying the party represented in the debt transaction and that the Board is not obligated with respect to the payment of such Bond Counsel’s fees and expenses.

4.4 Financial Advisor. If the Board chooses to hire financial advisors, the Board shall enter into a written agreement with each person or firm serving as financial advisor for debt management and transactions. Whether in a competitive or negotiated sale, the financial advisor shall not be permitted to bid on, privately place, or underwrite an issue for which they are or have been providing advisory services for the issuance.

4.5 Underwriter. If there is an underwriter, the Board shall require the Underwriter to clearly identify itself in writing (*e.g.*, in a response to a request for proposals or in promotional materials provided to an issuer) as an underwriter and not as a financial advisor from the earliest stages of its relationship with the Board with respect to that issue. The Underwriter must clarify its primary role as a purchaser of securities in an arm’s-length commercial transaction and that it has financial and other interests that differ from those of the Board. The Underwriter in a publicly offered negotiated sale shall be required to provide pricing information both as to interest rates and to takedown per maturity to the Board or Board counsel in advance of the pricing of the debt.

4.6 Conflicts. Professionals involved in a debt transaction hired or compensated by the Board shall be required to disclose to the Board existing client and business relationships between and among the professionals to a transaction (including but not limited to financial advisor, swap advisor, bond counsel, swap counsel, Trustee, paying agent, underwriter, counterparty, and remarketing agent), as well as conduit issuers, sponsoring organizations and program administrators. This disclosure shall include that information reasonably sufficient to allow the Board to appreciate the significance of the relationships. Professionals who become involved in the debt transaction as a result of a bid submitted in a widely and publicly advertised competitive sale conducted using an industry standard electronic bidding platform are not subject to this disclosure. No disclosure is required that would violate any rule or regulation of professional conduct.

ARTICLE V AMENDMENTS

The Board may amend or modify its Statement of Policies and Procedures as it deems necessary; however, any amendment to the Board's Statement of Policies and Procedures occurring after issuance of Bonds for a particular Project shall not apply to such Project unless written approval is obtained from the Applicant and the Trustee obtains an opinion satisfactory to the Board, the Trustee, and the Applicant by counsel knowledgeable in such matters to the effect that such amendments will not adversely affect the rights of holders of the Bonds issued in connection with such Project. The Board has specifically granted authority to the Board staff to create all necessary forms for the bond application process pursuant to these policies.

The Board reserves the right to impose additional specific requirements with respect to any Project prior to approval of a Final Bond Resolution. The requirements of these Policies and Procedures may be waived by a majority vote of Board members present at the meeting at which a Project is considered.