



## STATE OF MINNESOTA OFFICE OF THE STATE AUDITOR

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### Statement of Position TIF Plan Requirements

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*This Statement of Position is not legal advice and is subject to revision.*

To form a tax increment financing (TIF) district, the TIF Act requires the development authority to describe in a TIF plan the project to be financed with tax increment and to provide specific information about the development activity that is to occur.<sup>1</sup> The TIF plan, created by the authority, reviewed by the county and school district, and approved by the municipality, authorizes the establishment of the TIF district.<sup>2</sup>

#### The Basics

The TIF plan must identify the development activity to take place within the project or project area.<sup>3</sup> The TIF plan must include:

#### Statement of the Authority's Objectives

Each type of TIF district has different statutory requirements governing its creation.<sup>4</sup> The statement of an authority's objectives for improvement of a project should be tailored to the type of TIF district being created and to specific facts.<sup>5</sup>

#### Statement of Property to Be Acquired

A statement as to property within the project that the authority intends to acquire must be included and must identify specific property by parcel number, property name, block, or other appropriate means.

#### List of Proposed Development Activities

The TIF plan must include development activities that are proposed to take place within the project and for which the authority has entered into an agreement or designated a developer.

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<sup>1</sup> Minn. Stat. § 469.175, subd. 1. The TIF Act is found at Minn. Stat. §§ 469.174 through 469.1794 inclusive, as amended.

<sup>2</sup> A "tax increment financing district" is defined, in part, as "a contiguous or noncontiguous geographic area within a project delineated in the tax increment financing plan." Minn. Stat. § 469.174, subd. 9.

<sup>3</sup> Minn. Stat. § 469.175, subd. 1(a) (1) through (4).

<sup>4</sup> Statutory types of TIF districts currently in existence are: Redevelopment, Housing, Economic Development, Renewal and Renovation, and Soils Condition.

<sup>5</sup> A "project" is a term used to identify the geographic area in which tax increment is to be spent to further proposed development activity. In addition, within the context of the TIF plan, "project" means the development activity that will occur within the TIF district and project area. See, generally, Minn. Stat. § 469.174, subd. 8. See also Minn. Stat. § 469.002, subd. 12.

The list of development activities for which there are agreements or designated developers must identify: (i) the names of the parties or designated developer; (ii) the activity governed by the agreement or designation; and (iii) the expected date of completion of that activity.<sup>6</sup>

### Description of Other Expected Specific Development Activities

The TIF plan must identify or describe any other specific development reasonably expected to occur within the TIF district. This includes activity for which a contract has not yet been signed. The plan must include the date when the development activity is likely to occur.<sup>7</sup>

### Estimates of Costs and Tax Increments

A TIF plan must identify two cost estimates: the “cost of the project” and “interest as a financing cost.”<sup>8</sup> The “cost of the project” includes administrative expenses and only includes costs which will be paid or financed with tax increments from the district.<sup>9</sup> Specific development activity costs include:

- i. acquisition of land and buildings through condemnation or purchase;
- ii. site improvements or preparation;
- iii. installation of public utilities, parking facilities, streets, roads, sidewalks, or other similar public improvements;
- iv. administrative activities; and
- v. for housing districts, construction of affordable housing.<sup>10</sup>

“Interest as a financing cost” which will be paid or financed with tax increments from the district must be identified separately from the project costs in the TIF plan.

The TIF plan must also contain an estimate of tax increment generated by the development activity.<sup>11</sup> This includes all forms of tax increment revenue, including interest, sales or lease proceeds, and other increment revenues.<sup>12</sup>

The estimates of costs and tax increment revenues should be reasonable. The plan should contain a single set of estimates; it should not include a separate set of speculative or contingent estimates. Speculative, broad estimates should not substitute for future modifications.

If an authority comes to expect that costs will exceed the estimated “cost of the project” stated in the TIF plan, or otherwise decides to increase the project costs, the authority must modify the TIF plan by using the same procedure required for approval of the original TIF plan.<sup>13</sup> The TIF plan must be modified before the additional tax increment expenditures are made.

An increase in financing cost, however, does not necessitate a TIF plan modification. If actual costs of the project are less than the estimate in the TIF plan, the difference can be used to pay extra financing

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<sup>6</sup> Minn. Stat. § 469.175, subd. 1(a) (3).

<sup>7</sup> Minn. Stat. § 469.175, subd. 1(a) (4).

<sup>8</sup> Minn. Stat. § 469.175, subd. 1(a) (5) (i).

<sup>9</sup> See Minn. Stat. § 469.175, subd. 1(a) (5) (i); 2009 Minn. Laws, ch. 88, art. 5, §4; and ch. 101, art. 2, § 90. The 2009 Amendment clarified what “cost of the project” is not: It is not the total public and private costs of the development activity, or all public costs necessary to make the development occur.

<sup>10</sup> Minn. Stat. § 469.175, subd. 6 (c) (14). This list of development activities is not a comprehensive list. For more information on administrative costs, for example, see OSA’s Statement of Position: [TIF Administrative Costs](#). See also Sample Format in Attachment to this Statement of Position.

<sup>11</sup> Minn. Stat. § 469.175, subd. 1(a) (5) (i).

<sup>12</sup> See Minn. Stat. § 469.174, subd. 25. See Sample Format in Attachment.

<sup>13</sup> Minn. Stat. § 469.175, subd. 4(b) (5).

costs. If the financing costs turn out to be less than the original estimate stated in the TIF plan, the difference in the estimated amount cannot be reallocated to project costs.

The TIF Act also requires that the total estimated costs to be paid with tax increment cannot exceed the amount of estimated tax increment to be generated from the development activity in the district.<sup>14</sup>

Costs that exceed that amount may not be paid for or financed with tax increment and, therefore, are not “costs of the project” and should not be included in the TIF plan.<sup>15</sup>

## Bonds

The use of bonds allows the “cost of the project” to be paid over time as tax increment becomes available. An estimate of the total amount of bonds expected to be issued over the life of the TIF district is required to be included in the TIF plan.<sup>16</sup>

The definition of “bonds” in the TIF Act is broad and includes the following:<sup>17</sup>

- general obligation or revenue bonds issued by an authority under section 469.178 of the TIF Act;
- obligations issued in aid of a project under any other law, except private activity bonds, prior to August 1, 1979;
- refunding bonds;
- notes, including pay-as-you-go (PAYG) notes;
- interim certificates;
- debentures; and
- interfund loans or advances qualifying under section 469.178, subd. 7.

## Original Net Tax Capacity

The TIF plan must contain an estimate of the original net tax capacity (ONTC) of the taxable real property located within the TIF district and in any hazardous substance subdistrict.<sup>18</sup> Upon or after adoption of a TIF plan, the county auditor for the county in which the district is located is required, upon request of the authority, to certify the ONTC of the TIF district.<sup>19</sup> The ONTC generally remains the same for the duration of the district, but can be subject to adjustments for various changes in property taxation.<sup>20</sup>

## Estimated Captured Net Tax Capacity

The TIF plan must include the estimated captured net tax capacity at completion.<sup>21</sup> The difference between the estimated net tax capacity at completion of the district and the ONTC equals the estimated captured net tax capacity. The estimate of captured net tax capacity at completion must be reasonable and can reflect market forces, inflation, and future phases of expected development activity. A TIF plan that contains a seemingly unsupported estimate of captured net tax capacity may receive a request by

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<sup>14</sup> Before the 2009 Amendment, TIF plans commonly contained estimates of total project costs (paid from any source), which did not effectively identify costs to be paid by tax increment.

<sup>15</sup> If non-TIF expenditures are included in the TIF plan document, they must be identified separately.

<sup>16</sup> Minn. Stat. § 469.175, subd. 1(a) (5) (ii). See also the OSA’s Statement of Position, [TIF Bond Financing of Project Costs](#) and the attached Sample Format.

<sup>17</sup> See Minn. Stat. § 469.174, subd. 3.

<sup>18</sup> Minn. Stat. § 469.175, subd. 1(a) (5) (iii).

<sup>19</sup> Minn. Stat. § 469.177, subd. 1(a).

<sup>20</sup> Minn. Stat. § 469.177, subd. 1.

<sup>21</sup> Minn. Stat. § 469.175, subd. 1(a) (5) (iv).

the OSA to provide additional information. The estimate of captured net tax capacity forms the basis of the estimate of tax increment.

### **Duration Limit**

The TIF plan should identify the duration limit of the district.<sup>22</sup> Each type of TIF district has a different statutory maximum duration limit.<sup>23</sup> In addition, at the time of approval of the TIF plan, a municipality may provide for a shorter maximum duration limit than the statutory limit. If the original TIF plan provides a shorter maximum duration limit, the shorter limit applies unless the authority later modifies the plan.<sup>24</sup> An authority may request decertification prior to a specified duration limit.<sup>25</sup>

Durations begin with the year of first receipt of tax increment. An authority may elect to specify in the TIF plan the first year in which it elects to receive the first increment, allowing a delay of up to four years following the year of approval of the district.<sup>26</sup> For example, an authority that approved a district in 2022 could specify as late as 2026 to be the first year of receipt.

The identification of a duration limit should be specific, clear, and free of tentative qualifications (i.e., a “reservation of rights”) so as to give the county auditor a clear date to apply.<sup>27</sup> Durations that are expected to run for the statutory maximum are typically expressed by acknowledging the number of years of tax increment collection allowed for the type of district and then a reference to the expected or anticipated year of first receipt and the corresponding final year of the duration.<sup>28</sup>

Any estimate of the statutory duration limit in a TIF plan will be superseded by the actual statutory limitations should first receipt occur earlier or later than anticipated.

A district must be decertified under the Six-Year Rule when outstanding obligations pursuant to the TIF plan have been paid, defeased, or had sufficient increment set aside for their payment.<sup>29</sup>

### **Existence of Any Subdistrict**

The TIF plan must identify the existence of a hazardous substance subdistrict if one exists.<sup>30</sup>

### **Alternate Impact of TIF**

The authority must make, and the TIF plan must contain, two alternate statements of impact of tax increment financing on the net tax capacities of all taxing jurisdictions in which the TIF district is located.<sup>31</sup> One statement must be based on the assumption that all estimated captured net tax capacity would be available to the taxing jurisdictions without creation of the TIF district. The second statement

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<sup>22</sup> Minn. Stat. § 469.175, subd. 1(a) (5) (v).

<sup>23</sup> Minn. Stat. § 469.176, subd. 1b(a)

<sup>24</sup> Minn. Stat. § 469.176, subd. 1(a). See Minn. Stat. § 469.175, subd. 4(b) (TIF plan modifications).

<sup>25</sup> See Minn. Stat. § 469.177, subd. 12(5).

<sup>26</sup> Minn. Stat. § 469.175, subd. 1(b). The election to delay receipt of the first tax increment does not apply to economic development districts. For additional information, see the OSA’s Statement of Position, [Election to Delay Receipt of First TIF Revenues](#).

<sup>27</sup> Example: “The city elects, pursuant to Minn. Stat. § 469.175, subd. 1(b), to receive first increment in 2026 and estimates that the district will terminate December 31, 2051.”

<sup>28</sup> Example: “A redevelopment district may collect increment for 25 years after first receipt of increment. The city anticipates first receipt of increment in 2020, and estimates the district will terminate December 31, 2045.”

<sup>29</sup> See Minn. Stat. § 469.1763, subd. 4(b) and the Statement of Position: [TIF Five-Year Rule and Six-Year Rule](#).

<sup>30</sup> Minn. Stat. § 469.175, subd. 1(a) (5) (v).

<sup>31</sup> Minn. Stat. § 469.175, subd. 1(a) (6).

must be based on the assumption that none of the estimated captured net tax capacity would be available to the taxing jurisdictions without the creation of the district.

### Support for Required Findings

One of the findings required when establishing a TIF district is commonly known as the “but-for” test, and it must be discussed in the TIF plan.<sup>32</sup>

The TIF plan must include identification and descriptions of studies and analyses used to make the determination that, in the opinion of the municipality: 1) the proposed development would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future, and 2) for districts other than housing districts, the increased market value of the site without the assistance of tax increment would be less than the increased market value with the assistance of tax increment.<sup>33</sup> The reasons and supporting facts for the second component of this finding must include:

1. an estimate of the amount of market value increase of the site without the use of TIF;
2. an estimate of the increase in the market value that will result from the development being assisted with TIF; and
3. the present value of the projected tax increments for the maximum duration of the district permitted by the TIF plan.<sup>34</sup>

Before or at the time of approval of the TIF plan, the municipality must make certain additional findings.<sup>35</sup> The various findings and the reasons and supporting facts for each of them must be in writing, a copy of which is retained by the authority, and they must be made available to the public by the authority until the district has been terminated. These required additional findings may also be included in the TIF plan for clarity.

### Identification of Parcels

All parcels to be included in the district or any subdistrict must be identified in the TIF plan.<sup>36</sup> The parcels must be legally described, usually by using property identification numbers (or PINs). The legal description must be clearly stated to enable the county to correctly record all the parcels in the district in the county records. A map of the district is typically included and is required for the published notice for the approval hearing.<sup>37</sup>

### County Road Costs

A county board may require the authority to pay all or a portion of county road costs if the planned development will, in the judgment of the county, substantially increase the use of county roads and require improvements not scheduled in county plans within five years, and, in the opinion of the county, would not be needed in the reasonably foreseeable future.<sup>38</sup> If the county elects to use increment to finance these road costs, the authority must include the road improvements in the TIF plan.<sup>39</sup>

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<sup>32</sup> Minn. Stat. § 469.175, subd. 3(b) (2)

<sup>33</sup> Minn. Stat. § 469.175, subd. 1(a) (7).

<sup>34</sup> Minn. Stat. § 469.175, subd. 3(d).

<sup>35</sup> Minn. Stat. § 469.175, subd. 3(b).

<sup>36</sup> Minn. Stat. § 469.175, subd. 1(a) (8). In addition, county auditors may require a map as part of the request for certification (see Minn. Stat. § 469.177 subd. 1(e)).

<sup>37</sup> Minn. Stat. § 469.175, subd. 3(a).

<sup>38</sup> Minn. Stat. § 469.175, subd. 1a (a).

<sup>39</sup> Minn. Stat. § 469.175, subd. 1a (b).

## Attachment

Following is an example of (“budget”) estimates in a format that could be used in a TIF plan. Note the separation of costs of the project and interest as a financing cost, and the separation of the estimate of bonds to be issued. The total project costs may not exceed the total tax increment revenues, and authority administrative costs may not exceed ten percent of the tax increment distributed by the county.

### Sample Format

#### Estimated Tax Increment Revenues

Tax increment distributed from the county .....	\$ _____
TIF credits .....	\$ _____
Interest .....	\$ _____
Loan/advance repayments .....	\$ _____
Sales/lease proceeds .....	\$ _____
Repayment or return of increment per agreements ..	\$ _____
<b>TOTAL TAX INCREMENT REVENUES .....</b>	<b>\$ _____</b>

#### Estimated Total Project Costs

Land/building acquisition .....	\$ _____
Site improvements/preparation costs .....	\$ _____
Utilities .....	\$ _____
Other public improvements .....	\$ _____
Construction of affordable housing .....	\$ _____
Authority administrative costs <sup>40</sup> .....	\$ _____
County administrative costs .....	\$ _____
Total Costs of the Project .....	\$ _____
<b>TOTAL PROJECT COSTS .....</b>	<b>\$ _____</b>

#### Estimated Financing Costs

Interest as a financing cost <sup>41</sup> .....	\$ _____
<b>TOTAL FINANCING COSTS .....</b>	<b>\$ _____</b>

**TOTAL PROJECT AND FINANCING COSTS .....** \$ \_\_\_\_\_

**Estimated Amount of Bonds to Be Issued .....** \$ \_\_\_\_\_

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<sup>40</sup> See Minn. Stat. § 469.174, subd. 14. If administrative expenses are to be paid with tax increment, administrative expenses should be included in the cost of the project in the TIF plan.

<sup>41</sup> Interest costs include capitalized interest costs.