Guidelines for the Community Development Law

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DISCLAIMER: A municipality must always consult statutes prior to attempting any redevelopment project as the Community Development Law is subject to change by the Nebraska Legislature. Municipalities are also strongly encouraged to consult with their city or village attorney or hire a legal counsel specializing in TIF. This document is not intended to replace the advice of an attorney.

Community Development Agency or Community Redevelopment Authority: Powers and Duties

Generally, the first step a municipality takes before beginning a TIF project is forming a community redevelopment authority (CRA), a Limited Community Redevelopment Authority (Limited CRA), or a community development agency (CDA). While these municipal divisions primarily carry out the same functions, governance of each varies.

The governing body of a municipality must create a CDA by ordinance. The CDA can be a stand-alone agency or integrated into an existing municipal division (usually the City Council or Village Board of Trustees). While ultimate approval of a redevelopment plan vests in the governing body, a stand-alone CDA functions as the gatekeeper for redevelopment projects. Typically, a city or village will wish to form a stand-alone CDA if there is an abundance of redevelopment activity to avoid overloading the governing body. If there is not an abundance of redevelopment, most municipalities enable the governing body to act as the CDA. CDAs can meet regularly or as needed, depending on the volume of redevelopment activity. The essential functions of the CDA (both stand-alone and integrated) include: submission of redevelopment plans to the planning commission, recommendation of redevelopment plans to the governing body, preparation of cost-benefit analyses, preparation and adoption of redevelopment agreements, issuance of TIF bonds/notes, record keeping and administration required under the Community Development Law, and policing of the redeveloper's adherence to the redevelopment plan and agreement.

The governing body of a municipality also creates a CRA or a Limited CRA by ordinance. Both entities maintain the same essential functions and powers as a CDA. Upon forming a CRA or Limited CRA via ordinance, the governing body of a city or village appoints 5 to 7 individuals to serve on the CRA for terms of up to 5 years (staggered at initial creation). A CRA exists in perpetuity. In contrast, cities and villages form a Limited CRA to carry-out a single redevelopment project. After completion of the redevelopment project, the Limited CRA ceases to exist.

While most cities and villages form a CDA or CRA to carry-out redevelopment projects, the Community Development Law grants the governing body of cities and villages with inherent power and authority to carry out community development activities as well. Accordingly, while rare, a city or village may undertake redevelopment projects absent the creation of a CDA or CRA, or more commonly, a city council or village board will act as the CDA or CRA in a seamless way.

A CRA (for the remainder of this manual, the use of the term CRA will also include a CDA) is required to keep an accurate account of all its activities and of all receipts and disbursements and make an annual report of such activities, receipts, and disbursements to the governing body of the municipality. All

income, revenue, profits, and other funds received by a CRA are required to be deposited with the city or village treasurer as ex officio treasurer of the CRA without commingling the money with any other money.

The Community Development Law authorizes a CRA to levy a property tax. The CRA must place the proceeds from such tax in a special account, which the CRA can use to defray any expenses of redevelopment plans and projects. A CRA is required to certify on or before September 30 of each year to the governing body of the municipality the amount of tax to be levied for the succeeding fiscal year for community redevelopment purposes, not to exceed two and six-tenths cents on each one hundred dollars upon the taxable value of the taxable property in such city.

Redevelopment Plan

General Plan

A municipality must have a general plan for the development of the city or village before a CRA can recommend a redevelopment plan to the governing body. The comprehensive plan is usually the general plan for the development of the city or village.

Substandard and Blighted Declaration

Once a comprehensive plan is in place, a municipality may designate areas as substandard and blighted and in need of redevelopment. The first step in declaring an area to be substandard and blighted is to have the governing body of a municipality conduct a study or analysis on whether the area is substandard and blighted. If the study (and ultimate designation of a substandard and blighted area) comes at the request of a redeveloper for a redevelopment project, the municipality may delegate the duty and cost of obtaining the study to the redeveloper.

After obtaining a study, a governing body of a city or village submits the question of whether an area is substandard and blighted to the planning commission or board of the municipality for its review and recommendation prior to the governing body of the municipality making the declaration of whether an area is substandard and blighted. The planning commission or board is required to hold a public hearing and give notice. Notice is given by publication at least once a week for 2 consecutive weeks in a legal newspaper of general circulation. The time of the hearing needs to be at least 10 days from the last publication. The notice needs to include a map showing the area to be declared substandard and blighted or contain information on where to find the map. Notice also needs to include information on where to find a copy of the substandard and blighted study. In addition to published notice, the municipality must mail the notice at least 10 days prior to the public hearing to all neighborhood associations within a one-mile radius of the proposed substandard and blighted area and all taxing entities with jurisdiction within the area.

The planning commission or board submits its written recommendations to the governing body of the municipality within 30 days after the public hearing. Upon receipt of the recommendations or after 30 days if no recommendations are received, the governing body of the municipality holds a public hearing after giving notice. Notice is given by publication at least once a week for 2 consecutive weeks in a legal newspaper of general circulation. The time of the hearing needs to be at least 10 days from the last publication. The notice needs to include a map showing the area to be declared substandard and

blighted or information on where to find the map. Notice also needs to include information on where to find a copy of the substandard and blighted study. In addition to published notice, the municipality must give notice at least 10 days prior to the public hearing to all neighborhood associations within a one-mile radius of the proposed substandard and blighted area and all taxing entities with jurisdiction within the area.

Copies of the substandard and blighted study must be posted on the city's or village's website or made available at a location designed by the city or village.

After the public hearing, the governing body makes its declaration if it finds the property is both substandard and blighted by adoption of a resolution. The resolution should include a declaration that the area is a "substandard and blighted area in need of redevelopment."

The area retains the designation of substandard and blighted until the governing body makes a declaration that it is no longer substandard and blighted. There is no statutory process to remove the substandard and blight designation, but some municipalities have done it. The removal of the designation is done by a resolution of the governing body. It is important to not remove the substandard and blight designation for property subject to an active TIF project, as that may end the legal ability to divide taxes to pay the TIF debt.

The Legislature has set limits on the amount a municipality can designate as blighted. A city of the metropolitan, primary, or first class cannot designate more than 35% of the city as blighted, a city of the second class cannot designate an area larger than 50% of the city as blighted, and a village cannot designate an area larger than 100% of the village as blighted. Areas in a former defense site and any area declared to be extremely blighted shall not count towards these percentage limitations.

A CRA cannot prepare a redevelopment plan for a redevelopment project area, and the city council or village board cannot approve a redevelopment plan, until there is a substandard and blighted declaration for that area. Additionally, the CRA cannot divide taxes for a redevelopment project unless the property is inside the corporate limits of a municipality, except for former defense sites.

In *Fitzke v. City of Hastings,* 255 Neb. 46, 58 (1998), the Nebraska Supreme Court determined the substandard and blighted designation applies to areas rather than individual properties and refused to invalidate blight determinations merely because single parcels within the area would not be considered blighted if viewed in isolation.

(Example of a substandard and blighted study is provided in the Appendix)

Extremely Blighted Declaration

For any redevelopment plan for which more than 50% of a property in the redevelopment project area has been declared extremely blighted, ad valorem taxes may be divided for a period not to exceed 20 years.

Extremely blighted area means a substandard and blighted area in which: (a) The average rate of unemployment in the area during the period covered by the most recent federal decennial census or American Community Survey 5-Year Estimate is at least 200% of the average rate of unemployment in

the state during the same period; and (b) the average poverty rate in the area exceeds 20% for the total federal census tract or tracts or federal census block group or block groups in the area.

For any municipality that intends to declare an area as extremely blighted, the governing body of a city or village is required to conduct a study or analysis on whether the area is extremely blighted.

After obtaining a study, a governing body of a city or village submits the question of whether an area is extremely blighted to the planning commission or board of the municipality for its review and recommendation prior to the governing body of the municipality making the declaration of whether an area is extremely blighted. The planning commission or board is required to hold a public hearing and give notice. Notice is given by publication at least once a week for 2 consecutive weeks in a legal newspaper of general circulation. The time of the hearing needs to be at least 10 days from the last publication. The notice needs to include a map showing the area to be declared extremely blighted or contain information on where to find the map. Notice also needs to include information on where to find a copy of the extremely blighted study. In addition to published notice, the municipality must give notice at least 10 days prior to the public hearing to all neighborhood associations within a one-mile radius of the proposed extremely blighted area and all taxing entities with jurisdiction within the area.

The planning commission or board submits its written recommendations to the governing body of the municipality within 30 days after the public hearing. Upon receipt of the recommendations or after 30 days if no recommendations are received, the governing body of the municipality holds a public hearing after giving notice. Notice is given by publication at least once a week for 2 consecutive weeks in a legal newspaper of general circulation. The time of the hearing needs to be at least 10 days from the last publication. The notice needs to include a map showing the area to be declared extremely blighted or information on where to find the map. Notice also needs to include information on where to find a copy of the extremely blighted study. In addition to published notice, the municipality must give notice at least 10 days prior to the public hearing to all neighborhood associations within a one-mile radius of the proposed extremely blighted area and all taxing entities with jurisdiction within the area.

Copies of the extremely blighted study must be posted on the city's or village's website or made available at a location designed by the city or village.

After the public hearing, the governing body makes its declaration if it finds the property is extremely blighted by adoption of a resolution. The resolution should include a declaration that the area is an "extremely blighted area."

The extremely blighted study may be conducted in conjunction with the substandard and blighted study and the extremely blighted hearings may be held in conjunction with the substandard and blighted hearings.

Preparing and Contents of the Redevelopment Plan

A CRA may prepare, or cause to be prepared, a redevelopment plan. Also, any person or agency, public or private, may submit a redevelopment plan to a CRA. Often, a private redeveloper will prepare and submit a redevelopment plan to a CRA.

A redevelopment plan must be sufficiently complete to outline local objectives such as appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and

other public improvements, and the proposed land uses and building requirements in the redevelopment project area.

The redevelopment plan must also include, but not be limited to, the following:

(a) The boundaries of the redevelopment project area, with a map showing the existing uses and condition of the real property. This information should provide sufficient detail for the CRA to determine the existing conditions in the area and potential benefits of the project.

(b) A land-use plan showing proposed uses of the area. Like the boundary maps, the land-use plan enables the CRA to understand how the redevelopment fits within the general plan and how the redevelopment plan may provide for the redevelopment of substandard and blighted areas.

(c) Information showing the standards of population densities, land coverage, and building intensities in the area after redevelopment. It may be appropriate for a municipality to reevaluate its general plan in light of a proposed project to ensure it is current. A redevelopment plan may include multiple projects and phases associated with a single plan for redevelopment. In such a case, the redevelopment plan needs to include a sufficient level of detail regarding each project or phase to allow a municipality and CRA to make an informed decision regarding the redevelopment plan. However, if information for later phases is tentative or unavailable, the CRA may amend the redevelopment plan in the future.

(d) A statement of the proposed changes, if any, in zoning ordinances or maps, street layouts, street levels or grades, or building codes and ordinances. Like other information that is required to be considered, this information demonstrates whether the project is viable with respect to public infrastructure and current zoning laws.

(e) A site plan of the area.

(f) A statement regarding the kind and number of additional public facilities or utilities which will be required to support the new land uses in the area after redevelopment.

In summary, the basic requirements of a redevelopment plan include:

1. A governing body adopting a general plan for redevelopment.

2. The redevelopment plan clearly outlining the relationship between its objectives and the local objectives.

3. The redevelopment plan including maps of the project area that show the existing uses and condition of the property; a land-use plan showing the proposed uses of the area; information detailing the projected population densities, land coverage, and building intensities in the area after redevelopment; a statement of the proposed changes in zoning ordinances or maps, street layouts, street grades, or building codes; a site plan of the area; and a statement regarding the additional public facilities or utilities required.

CRA Submits Plan to Planning Commission

A CRA submits the proposed redevelopment plan to the planning commission or board of the municipality for review and recommendations as to its conformity with the general plan of the municipality.

The planning board or planning commission of the city or village is required to conduct a public hearing on the redevelopment plan or substantial modification of the plan after giving notice. Notice is given by publication at least once a week for 2 consecutive weeks in a legal newspaper of general circulation. The time of the hearing needs to be at least 10 days from the last publication. The notice needs to include a map to show the area to be redeveloped or information on where to find the map. The notice needs to also include information on where to find copies of the cost-benefit analysis conducted. In addition to published notice, the municipality must mail the notice at least 10 days prior to the public hearing to all neighborhood associations within a one-mile radius of the proposed redevelopment area and all taxing entities with jurisdiction within the area.

The planning commission or board submits its written recommendations on the proposed redevelopment plan to the CRA within 30 days after receipt of the plan for review.

CRA Considers Plan

After a CRA receives the recommendations of the planning commission or board or, if no recommendations are received within 30 days, then without such recommendations, a CRA may recommend the redevelopment plan to the governing body of the municipality for approval after it considers the plan. The CRA also has the option of not recommending the plan or requesting modifications.

The CRA considers whether the redevelopment plan is designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated and harmonious development of the municipality.

Factors for the CRA to consider include whether the plan promotes "health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of insanitary or unsafe dwelling accommodations or conditions of blight." It is best practice for a CRA to document these determinations in writing via a resolution.

(Examples of redevelopment plans are included in the Appendix)

Cost-benefit Analysis

A CRA conducts a cost-benefit analysis for each proposed redevelopment project that requests a division of taxes (TIF). For very large or complex redevelopment projects, the CRA may decide to hire a third-party to conduct such an analysis.

A CRA is required to use a cost-benefit model developed for use by local projects. A cost-benefit model used must consider and analyze the following factors:

(a) Tax shifts resulting from the approval of the division of taxes;

(b) Public infrastructure and community public service needs impacts and local tax impacts arising from the approval of the redevelopment project;

(c) Impacts on employers and employees of firms locating or expanding within the boundaries of the area of the redevelopment project;

(d) Impacts on other employers and employees within the city or village and the immediate area that are located outside of the boundaries of the area of the redevelopment project;

(e) Impacts on the student populations of school districts within the city or village; and

(f) Any other impacts determined by the authority to be relevant to the consideration of costs and benefits arising from the redevelopment project.

Copies of the cost-benefit analysis are required to be posted on the municipality's website or made available for public inspection at a location designated by the municipality.

If a CRA amends a redevelopment plan, the CRA should determine whether any changes need to be made to the cost-benefit analysis.

(Example of a cost-benefit analysis is provided in the Appendix)

Recommending Plan to Governing Body

A CRA needs to include with the recommendation of a redevelopment plan to the governing body the following information:

(a) the recommendations, if any, of the planning commission or board concerning the redevelopment plan;
(b) a statement of the proposed method and estimated cost of the acquisition and preparation for redevelopment of the redevelopment project area and the estimated proceeds or revenue from its disposal to redevelopers;
(c) a statement of the proposed method of financing the redevelopment project; and
(d) a statement of a feasible method proposed for the relocation of families to be displaced from the redevelopment project area.

It is best practice for a CRA to document these determinations in writing via a resolution.

Duties of the Governing Body

After the planning commission or board holds its public hearings, the governing body of the municipality must hold a public hearing on any redevelopment plan or substantial modification recommended by the CRA after notice. Notice is given by publication at least once a week for 2 consecutive weeks in a legal newspaper of general circulation. The time of the hearing needs to be at least 10 days from the last publication. The notice also needs to include a map of sufficient size to show the area to be redeveloped or information on where to find the map. Finally, the notice also needs to provide information on where to find copies of the cost-benefit analysis. In addition to published notice, the municipality must mail the notice at least 10 days prior to the public hearing to all neighborhood associations within a one-mile radius of the proposed redevelopment area and all taxing entities with jurisdiction within the area.

Requirements of Public Notice for Substandard and Blighted, Extremely Blighted, and Redevelopment Plan Hearings

- Notice must be given by publication in a legal newspaper at least once a week for 2 consecutive weeks.
- The municipality must give notice at least 10 days prior to the public hearing to all neighborhood associations within a one-mile radius of the proposed blighted and substandard area or redevelopment area and all taxing entities with jurisdiction within the area.
- Time of the hearing must be at least 10 days from the last publication.
- The notice must describe the time, date, place, and purpose of the hearing.
- Interested parties must be given the opportunity to express their views on the plan at the public hearing.

Notice to Neighborhood Associations:

At least 10 days prior to the public hearing, the governing body of the municipality must provide notice of the hearing to each registered neighborhood association whose area of representation is located in whole or in part within a one-mile radius of the area to be declared substandard and blighted, extremely blighted, or redeveloped in the manner requested by the association.

Each neighborhood association wanting to receive notice of any hearing is required to register with the municipality's planning department or, if there is no planning department, with the municipal clerk, and include the following information: a description of the area of representation of the association, the name of and contact information for the individual designated by the association to receive the notice on its behalf, and the requested manner of service, whether by email, first class mail or certified mail.

Notice to Political Subdivisions:

At least 10 days prior to the public hearing, the governing body of the city or village must provide notice of the hearing by certified mail, return receipt requested, to the president or chairperson of the governing body of each county, school district, community college, educational service unit, and natural resources district in which the real property to be declared substandard and blighted, extremely blighted, or subject to the redevelopment plan or major modification is located.

A governing body is encouraged to maintain a record of the notices sent to each registered neighborhood association and affected political subdivisions. A municipality may structure the registration process for a neighborhood association in accordance with rules and regulations adopted by the municipality. The registration process may determine the manner of service, whether by email or by regular, certified, or registered mail.

(Examples of notices to neighborhood associations and political subdivisions are included in the Appendix)

Modifying a Redevelopment Plan

A CRA may modify a redevelopment plan at any time. However, any substantial modification to a redevelopment plan must be approved by the governing body. The Community Development Law defines substantial modification as a change to a redevelopment plan that (a) materially alters or reduces existing areas or structures otherwise available for public use or access, (b) substantially alters

the use of the community redevelopment area as contemplated in the redevelopment plan, or (c) increases the amount of ad valorem taxes pledged by more than 5%, if the amount of such taxes is included in the redevelopment plan.

In the event housing units are eliminated by a redevelopment project, the redevelopment plan needs to include plans for equivalent replacement housing elsewhere in the community. The plan should also provide for relocation of businesses occupying premises to be acquired for the project pursuant to the Relocation Assistance Act.

Approving the Redevelopment Plan

When the governing body approves the redevelopment plan (or amendment) it must make specific, written findings. A governing body may approve a redevelopment plan after the public hearing if:

(a) it finds that the plan is feasible and in conformity with the general plan for the development of the municipality and the plan is in conformity with the legislative declarations and determinations; and

(b) it finds that, if the plan uses tax-increment financing (TIF):

(i) the redevelopment project in the plan would not be economically feasible without the use of TIF,

(ii) the redevelopment project would not occur in the community redevelopment area without the use of TIF (the but-for test), and

(iii) the costs and benefits of the redevelopment project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the governing body and have been found to be in the long-term best interest of the community impacted by the redevelopment project.

The but-for test outlined above must be in writing.

A redevelopment plan which has not been approved by the governing body when recommended by the CRA may again be recommended to it with any modifications deemed advisable. With expedited review (micro-TIF), the redeveloper may submit a new redevelopment plan to the governing body with modifications.

A CRA is not allowed to acquire real property for a redevelopment project unless the governing body of the city in which the redevelopment project area is located has approved the redevelopment plan.

(Examples of documentation for the "but-for" test are included in Appendix)

Safe Harbor List of Eligible TIF Expenses

The following is a non-exclusive list of expenses that may be paid for with tax-increment financing (TIF):

1. Acquisition and site preparation of redevelopment sites including demolition, grading, special foundations, environmental remediation and related work prior to construction of the project.

2. Public improvements associated with a redevelopment project, including the design and construction of public streets, utilities, parks, and public parking, and enhancements to structures that exceed minimum building standards to prevent the recurrence of substandard and blighted conditions.

3. Repair or rehabilitation of structures within the redevelopment project area.

4. Architectural and engineering service fees related to the project, as well as the municipality's attorney's fees.

District-Wide TIF

While most redevelopment projects involve individual parcels of real estate and improvements located thereon, some communities employ district-wide TIF projects. District-wide TIF projects identify redevelopment areas and divide the taxes on all properties within the area to fund public improvements therein. As such, district-wide TIF utilizes the natural increases in property taxes (together with the increases due to redevelopment in the area) to make expansive improvements throughout a larger redevelopment area. If there are existing or planned (individual) redevelopment projects in the redevelopment area, it may be important for the municipality to exclude those parcels from the district-wide TIF project to avoid diluting the tax increment for such projects.

OPTIONAL: Construction of Workforce Housing

In a rural community or an extremely blighted area within a municipality, construction of workforce housing may be part of a redevelopment project.

Rural community means any municipality in a county with a population of fewer than 100,000 inhabitants (every county except Douglas, Lancaster, and Sarpy).

Extremely blighted area means a substandard and blighted area in which: (a) The average rate of unemployment in the area during the period covered by the most recent federal decennial census or American Community Survey 5-Year Estimate is at least 200% of the average rate of unemployment in the state during the same period; and (b) the average poverty rate in the area exceeds 20% for the total federal census tract or tracts or federal census block group or block groups in the area.

For any municipality that intends to declare an area as extremely blighted, the governing body of a city or village is required to conduct a study or analysis on whether the area is extremely blighted. *See Extremely Blighted Declaration section for more details.*

The extremely blighted study may be conducted in conjunction with the substandard and blighted study and the extremely blighted hearings may be held in conjunction with the substandard and blighted hearings.

Again, it's important to remember that only municipalities in counties with a population greater than 100,000 need to go through the process of declaring an area to be extremely blighted to do workforce housing using TIF. For every other municipality wanting to use TIF for workforce housing, declaring an area extremely blighted is not required.

Prior to approving a redevelopment project that expressly carries out the construction of workforce housing, a governing body needs to do the following:

(1) receive a housing study which is current within 24 months,

(2) prepare an incentive plan for construction of housing in the municipality targeted to house existing or new workers,

(3) hold a public hearing on the incentive plan with the same notice as required for public hearings on substandard and blighted declarations or redevelopment plans, and

(4) after the public hearing find that the incentive plan:

a) is necessary to prevent the spread of blight and substandard conditions within the municipality;

b) will promote additional safe and suitable housing for individuals and families employed in the municipality; and

c) will not result in the unjust enrichment of any individual or company.

An incentive plan is a flexible document that embodies the municipality's vision and guidelines for workforce housing in the community. The incentive plan should identify the areas in which workforce housing projects may occur and detail any specific goals or specifications that a redeveloper must achieve to take advantage of workforce housing TIF. While its terms can be flexible and specifically suited to the individual municipality's needs, every incentive plan should provide that the incentive plan is necessary to prevent the spread of blight and substandard conditions within the municipality, will promote additional safe and suitable housing for individuals and families employed in the municipality, and will not result in unjust enrichment of any individual or company. The public hearing required on the incentive plan needs to be separate from the public hearing that is required to be held to approve a redevelopment plan or substantial modification.

OPTIONAL: Enhanced Employment Area (EEA)

Enhanced employment areas (EEAs) can be utilized as part of a redevelopment plan but can also be used in areas not designated as substandard and blighted. The two types of EEAs are separate and distinct from each other and different statutes control depending on which one is being utilized, including the authority to levy the occupation tax and issue bonds. The intent of the Legislature was to designate a separate scope of costs and expenses that may be paid for through the occupation tax depending on whether the project is within a community redevelopment area or outside a community redevelopment area.

<u>As Part of a Redevelopment Plan</u>

If the redevelopment plan includes the designation of an enhanced employment area, the governing body must find, before it approves such plan, that any new investment will result in a certain amount of investment and new employees based on population of the county.

Specifically, the governing body may approve the redevelopment plan if it determines that any new investment within the EEA will result in at least (a) two new employees and new investment of one hundred twenty-five thousand dollars in counties with fewer than fifteen thousand inhabitants, (b) five new employees and new investment of two hundred fifty thousand dollars in counties with at least fifteen thousand inhabitants but fewer than twenty-five thousand inhabitants, (c) ten new employees and new investment of five hundred thousand dollars in counties with at least twenty-five thousand

inhabitants but fewer than fifty thousand inhabitants, (d) fifteen new employees and new investment of one million dollars in counties with at least fifty thousand inhabitants but fewer than one hundred thousand inhabitants, (e) twenty new employees and new investment of one million five hundred thousand dollars in counties with at least one hundred thousand inhabitants but fewer than two hundred thousand inhabitants, (f) twenty-five new employees and new investment of two million dollars in counties with at least two hundred thousand inhabitants but fewer than four hundred thousand inhabitants, or (g) thirty new employees and new investment of three million dollars in counties with at least four hundred thousand inhabitants. Any business that has one hundred thirty-five thousand square feet or more and annual gross sales of ten million dollars or more will provide an employer-provided health benefit of at least three thousand dollars annually to all new employees who are working thirty hours per week or more on average and have been employed at least six months. The creation of new employees is measured against the number of employees within the EEA in the year immediately prior to adoption of the redevelopment plan.

If a redevelopment plan includes the designation of an EEA, the redevelopment contract must include a statement of the redeveloper's consent to the designation.

A municipality may levy a general business occupation tax upon the businesses and users of space within an EEA for paying all or any part of the costs and expenses of any redevelopment project within the EEA. Any occupation tax imposed needs to make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing the tax.

Outside a Community Redevelopment Area

Designation of an area outside a community redevelopment area as an EEA requires the same determinations and thresholds with regard to new investment and the creation of new employees as the designation of an EEA within a community redevelopment area. However, the creation of new employees is measured against the number of employees within the EEA in the year immediately prior to the designation of the EEA (rather than the year immediately prior to the adoption of a redevelopment plan). Additionally, rules governing the occupation tax differ, as detailed below.

A municipality may levy a general business occupation tax upon the businesses and users of space within the EEA for paying all or any part of the costs and expenses of authorized work within such EEA. Authorized work for EEAs outside of a redevelopment plan includes:

(a) The acquisition and construction of public off-street parking facilities;
(b) Improvement of any public place or facility in the enhanced employment area;
(c) Construction or installation of pedestrian shopping malls, sidewalks, parks, meeting and display facilities, and other useful or necessary public improvements;
(d) Acquiring, constructing, or repairing parking lots or parking garages;
(e) Creation and implementation of a plan for improving the general architectural design of public areas;
(f) The development of any public activities and promotion of public events;
(g) Maintenance, repair, and reconstruction of any improvements or facilities authorized by the Community Development Law;
(h) Any other project or undertaking for the betterment of public facilities;
(i) Enforcement of parking regulations and security; or

(j) Employing or contracting for personnel.

Any occupation tax imposed needs to make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax

The occupation tax levied by the municipality needs to remain in effect so long as the municipality has bonds outstanding and which are secured by the occupation tax. The assessments or taxes levied must be specified by ordinance and the proceeds cannot be used for any purpose other than the making authorized improvements in the EEA and for the repayment of bonds issued for the financing of these improvements.

Report to Property Tax Administrator

On or before December 1 each year, each municipality that has approved one or more redevelopment plans financed by TIF is required to report to the Property Tax Administrator on each such redevelopment plan including a copy of the redevelopment plan and any amendments. A short narrative of the type of development undertaken by the municipality also needs to be included.

This report must be filed every year even if nothing in the report has changed, except that a municipality is not required to refile the redevelopment plan or an amendment if it has previously been filed.

If a city or village has approved one or more redevelopment plans using an expedited review (micro-TIF), the city or village may file a single report to the Property Tax Administrator for all the expedited review redevelopment plans.

Report to Governing Body and Other Political Subdivisions

On or before May 1 of each year, each CRA is required to compile information on the progress of redevelopment projects that are financed in whole or in part through TIF and report to the governing body of the municipality.

The CRA must also send the progress report to the governing body of each county, school district, community college area, educational service unit, and natural resources district whose property taxes are affected by such division of taxes.

The report must include the following information:

(1) The total number of active redevelopment projects within the city or village that have been financed in whole or in part through TIF;

(2) The total estimated project costs for all such redevelopment projects;

(3) A comparison between the initial projected valuation of property included in each redevelopment project as described in the redevelopment contract or, for redevelopment projects approved using an expedited review (micro-TIF), in the redevelopment plan, and the assessed value of the property included in each redevelopment project as of January 1 of the year of the report;

(4) The number of redevelopment projects approved by the governing body in the previous calendar year;

(5) Information specific to each such redevelopment project approved by the governing body in the previous calendar year, including the project area, project type, amount of financing approved, and total estimated project costs;

(6) The number of redevelopment projects for which financing has been paid in full during the previous calendar year and for which taxes are no longer being divided; and

(7) The percentage of the city that has been designated as blighted.

(Example of a report to the governing body is included in the Appendix)

Costs Reimbursed Prior to Approval of Redevelopment Project

A redevelopment project that includes TIF cannot provide for the reimbursement of costs incurred prior to approval of the redevelopment project, except for the following costs:

(1) The preparation of materials and applications related to the redevelopment project;

(2) The preparation of a cost-benefit analysis;

(3) The preparation of a redevelopment contract;

(4) The preparation of bond and other financing instruments;

(5) Land acquisition and related due diligence activities, including, but not limited to, surveys and environmental studies; and

(6) Site demolition and preparation.

While such costs may be reimbursed via a later redevelopment project, a municipality should be careful not to make any guarantees to redevelopers regarding the reimbursement of such costs via TIF prior to approval of the redevelopment plan. Also, the law does not require the reimbursement of legal fees incurred prior to approval of a redevelopment project.

Redevelopment Contract

After the governing body approves the redevelopment plan, the CRA and the redeveloper negotiate the terms of a redevelopment contract.

The redevelopment contract describes the action to be taken by the redeveloper to implement the redevelopment project, the timeline for performance by the redeveloper, the obligation of the CRA to issue the TIF debt, the making of a grant to the redeveloper, and the provisions for remedies in the event of default.

In a redevelopment contract, it is important that the CRA and the municipality are protected to the greatest extent possible from adverse consequences. The redevelopment contract should clearly define the limits of the obligations of the CRA and note that the liability of the CRA is limited to the issuance of the debt and payment of the debt only from the taxes pledged and received from the county treasurer. The redevelopment contract should include a clause that any amounts remaining on the TIF debt at the end of the applicable statutory period must be forgiven by the redeveloper.

A redevelopment contract may include any additional requirements the municipality deems necessary to ensure the plan or project complies with the municipality's comprehensive development plan, affordable housing action plan, zoning regulations, and any other reasonable planning requirements or goals established by the municipality.

If a CRA wants a redeveloper to redevelop land owned or to be owned by the CRA, a process with a public request for proposals must be used. A CRA must give notice of the invitation for proposals in a legal newspaper once a week for 2 consecutive weeks. A CRA must consider all redevelopment proposals and financial and legal ability of the redevelopers to carry out their proposals.

A CRA must give at least 30 days' notice to the governing body of its intention to accept a redevelopment contract proposal. If a redeveloper owns the land to be developed, no public request for proposals is necessary.

Prior to entering into a redevelopment contract for a redevelopment plan that includes the use of TIF, the redeveloper must certify the following:

(a) Whether the redeveloper has filed or intends to file an application with the Department of Revenue to receive tax incentives under the Nebraska Advantage Act or the ImagiNE Nebraska Act for a project located or to be located within the redevelopment project area;

(b) Whether such application includes or will include, as one of the tax incentives, a refund of the municipality's local option sales tax revenue; and

(c) Whether such application has been approved under the Nebraska Advantage Act or the ImagiNE Nebraska Act.

Applicants for TIF need to provide information to the CRA to document the need for TIF and provide detail for the type of improvements and the cost and timeline for redevelopment. Some municipalities have application forms with the data to be provided to the CRA prior to contract negotiation.

(Example of an application form is included in the Appendix)

Items to be included in Redevelopment Contract

The following are some of the items included in a redevelopment contact:

1. **Project Plans:** A redevelopment contract should provide project plans showing design standards, lot coverage, and setbacks. The plans form the basis for the project justification. The redevelopment contract should require that the project be built in accordance with the plans and specifications.

2. **Project Schedule:** A project development timeline is important for two reasons. First, a timeline should establish performance standards. Failure to timely perform should be defined as default under the contract. Second, the development schedule will impact the calculation of assessed valuation for purposes of determining the pledge date of the division of taxes and the amount of the TIF bond.

3. **Anticipated Base Year and Effective Date:** In relation to the project schedule, the redevelopment contract should include the anticipated base year and effective date for the division of taxes (division year). The effective date establishes the first year in which excess ad valorem real estate taxes are divided (although such taxes will not be collected until the following year, as real estate taxes are paid in arrears in Nebraska). The effective date typically coincides with the first year in which the assessed valuation of the real property increases due to the project.

   Under the Community Development Law, the base year will always be the year prior to the year of the effective date. The base year establishes the assessed valuation of the real property within the project area for which all incremental ad valorem taxes above such assessed value are collected during the statutory TIF period. While the Community Development Law previously required that the base year occur in the same year as redevelopment plan approval, this is no longer the case. To provide protection against unanticipated delays in construction, it is advantageous to include a clause in the redevelopment contract stating that the base year and effective date provided therein are subject to change and will ultimately be established in the resolution approving issuance of the TIF bond or note.

4. **Itemization of Project Costs:** Because the proceeds of the TIF bond may only be used to pay for eligible redevelopment project costs, the redeveloper should list items to be paid from those proceeds. The Community Development Law provides the categories of expenditures for which TIF funds may be used and the itemized costs need to align with those categories. The costs should be based on actual good faith estimates from contractors and subcontractors. For redevelopers that want to do some of the listed work themselves, the CRA should require the redeveloper to document that the redeveloper costs are reasonable. The itemized list of expenditures should include the qualifying expenditures as well as the total project itemization.

5. **Proof of Financial Resources:** The redeveloper should provide proof that he or she has the financial resources to complete the project based on the estimated costs. With respect to the construction of public infrastructure, the redevelopment contract should require that redeveloper obtain payment and performance bonds. Proof of financial resources includes proof that the redeveloper can obtain such bonds. Proof of resources also includes a showing of equity and lender commitments for construction of the redevelopment project.

6. **Organization Documents:** The redeveloper should provide copies of corporate or limited liability company organizational documents, including a certificate of good standing and authority to conduct business in the state. Documents showing authority of the individuals to sign on behalf of the redeveloper should be provided prior to the redevelopment contract being finalized.

7. **Title Commitment:** In order to eliminate questions as to the correct legal description of the redevelopment project real estate, a title commitment or abstracter's certificate of title should be provided.

8. **Proof Project Not Economically Feasible:** Redevelopment project funding from a TIF bond is not authorized unless the CRA finds that the redevelopment project meets the "but-for" test. For a commercial property, proof of meeting the "but-for" test may consist of a projected cash flow demonstrating the rate of return on investment (ROI). If the ROI is below market, TIF assistance is appropriate to increase the ROI to market rate.

9. **Assessed Valuation:** In order for the CRA to determine the potential for TIF funds, the current assessed valuation is required. Additionally, the assessed valuation on January 1 next following project commencement and for each January 1 thereafter will provide the basis for estimating the tax-increment available for retirement of the TIF bond. Assessed valuation may increase or decrease over the term of TIF bond repayments. Additional construction on the project site, or a simple increase in valuation or tax levy will raise the projected tax receipts. The amount invested in the redevelopment project construction does not necessarily equate to the assessed valuation. Particularly in smaller communities, project cost does not always equal the assessed valuation, due to limited marketability.

10. **Projected Amortization of TIF Bond:** The redeveloper should provide a projected amortization of the TIF bond with a proposed interest rate based on the current consolidated levy, the project schedule and the estimated valuation on completion.

11. **Relocation Information:** The Community Development Law imposes relocation costs on the CRA if a redevelopment project results in the relocation of individuals, families or businesses. If housing units are eliminated as a result of a redevelopment project, equivalent replacement of those housing units must be provided elsewhere in the municipality. Because of this requirement, the redeveloper must disclose whether the redevelopment project will result in relocation and all the details of the redeveloper's plan to provide relocation pursuant to the Relocation Assistance Act.

12. **Public Improvements and Costs:** If the proposed redevelopment project requires that the CRA or the municipality undertake costs or improvements that will not be paid by the redeveloper, those improvements should be described and engineering drawings for such improvements should be attached. An estimate of expenditures for those costs should be provided.

13. **Purchasing TIF Debt:** The redevelopment contract should require that the redeveloper or its lender purchase TIF debt via private issuance for the principal amount of the TIF debt. As part of the purchase contract, the redeveloper should be required to execute a purchase letter with acknowledgement that the debt is not registered with the Securities and Exchange Commission and that the debt is exempt from registration. The TIF debt is not generally sold to the public nor funded by the municipality.

14. **Contact Information:** The contract should include the entity name, address and chief contact information of the redeveloper and the CRA. Contact information for the project engineer and architect should also be provided.

15. **Paying Taxes:** The contract should include a provision requiring that the redeveloper must pay all ad valorem taxes before the taxes become delinquent for the project to receive TIF funds.

(Examples of redevelopment contracts are included in the Appendix)

Obligations of the Redeveloper

The obligations of the redeveloper should clearly delineate timeline and performance standards. The following lists the minimum of redeveloper obligations:

1. Construct the project in accordance with the plans and specifications provided to the CRA.

2. Invest a minimum amount in improvements in the redevelopment project by a specified date. The minimum investment will not necessarily equate to the project assessed valuation.

3. Obtain all required state, local and federal permits required prior to commencement of construction of the project.

4. Provide for relocation of individuals and businesses displaced because of the project.

5. Provide insurance at a level commensurate with the project and include the CRA and municipality as an additional insured.

6. If significant demolition will be involved, the redeveloper should provide a payment and performance bond to complete the demolition in favor of the CRA. In the event of a failure to complete the project, the CRA should have the option, but not the obligation, to properly secure the incomplete project and not leave a partially demolished project.

7. If the redevelopment project provides for installation of public infrastructure, the contract should provide for approval by the municipality of the plans and specifications of the public improvement. The redeveloper and CRA should agree as to the manner of bidding for and installing that infrastructure.

8. The redeveloper should provide a penal bond prior to commencement of construction in an amount determined by the CRA.

9. A contractor working on the project must utilize the federal immigration verification system to determine eligibility of new employees performing work on public infrastructure.

10. The redeveloper should timely provide the CRA proof that all TIF funds were utilized for payment of eligible expenses. The redeveloper is required to retain copies of all supporting documents that are associated with the redevelopment plan or project that are received or generated by the redeveloper for 3 years following the end of the last fiscal year in which taxes are divided.

11. Any TIF funds not utilized for eligible project expenditures are required to be repaid. The repayment of the funds should be utilized to reduce the TIF debt. The redeveloper should hold the CRA and municipality, its members, employees, agents and attorneys harmless for any action or claim because of the CRA and municipality approving the redevelopment plan and redevelopment contract.

12. The redeveloper should make reports from time to time related to the progress of the construction and after completion of the project as the CRA may require.

13. The CRA may require covenants regarding the use and maintenance of the redevelopment project. The covenants may be provided by the terms of the contract or as a separate document.

14. The redeveloper must agree not to discriminate against occupants, employees and prospective employees and invitees of the property based on race, religion, color, sex, national origin or disability as defined in the Americans with Disabilities Act.

15. The redeveloper should provide security as required by the CRA for liquidated damage collection in the event of default.

16. The redeveloper should be prohibited from conveying the redevelopment project to an entity that would be exempt from the payment of real property taxes or apply for a reduction of assessed valuation below an agreed level.

17. The redeveloper should agree to pay real estate taxes on the redevelopment project prior to delinquency.

18. The redevelopment contract should require redeveloper to defer shortfalls or make payments to the CRA in lieu of real estate taxes if property tax levels are insufficient to amortize TIF bond.

19. A redevelopment project assignment or conveyance should be restricted and require approval of the CRA and require that any assignee assume all obligations of original redeveloper.

(A redeveloper checklist is included in the Appendix)

Obligations of the CRA

The CRA will want to limit its liability to the greatest extent possible. Generally, this means it is required to do no more than issue the TIF debt and make a grant of the proceeds. The following are the minimum obligations for a CRA:

1. Issuance of TIF debt according to the terms and conditions set forth in the contract. Before issuing debt, the redeveloper should provide the CRA with signed construction contract for the improvements; proof of financial ability to complete the project; payment and performance bonds as provided in the contract; proof of insurance as provided in the contract; and a TIF debt purchase letter signed by the developer in a form acceptable to the CRA's legal counsel.
2. File notice of redevelopment contract with the Register of Deeds.
3. File annual reports with the Property Tax Administrator and governing body as required by law.
4. File timely notices to divide taxes with county assessor and county treasurer.
5. From the proceeds of divided taxes, make interest and principal payments on the TIF debt to the registered holder of the TIF debt.
6. File notice with county assessor and county treasurer to terminate division of taxes on TIF debt satisfaction or expiration of the applicable number of years of tax division.

Expedited Reviews of Redevelopment Plans (Micro-TIF)

A city council or village board may decide by resolution to allow expedited reviews of redevelopment plans that meet certain requirements. The redevelopment plan is expedited because it is exempted from several requirements of "regular TIF." Expedited review or micro-

TIF is optional for cities and villages. If a city or village decides it does not want to allow expedited review, it does not need to.

Projects Eligible for Expedited Review

A redevelopment plan is eligible for expedited review if:

(a) The redevelopment plan includes only 1 redevelopment project;

(b) The redevelopment project involves: the repair, rehabilitation, or replacement of an existing structure that has been within the corporate limits for at least 60 years and is located within a substandard and blighted area; or the redevelopment of a vacant lot located within a substandard and blighted area that has been in the corporate limits for at least 60 years and has been platted for at least 60 years;

(c) The redevelopment project is located in a county with a population of less than 100,000 inhabitants, meaning every county except Douglas, Lancaster and Sarpy County; and

(d) The assessed value of the property within the redevelopment project area when the project is complete is estimated to be no more than: (i) $350,000 for a redevelopment project involving a single-family residential structure; (ii) $1,500,000 for a redevelopment project involving a multifamily residential structure or commercial structure; or (iii) $10,000,000 for a redevelopment project involving the revitalization of a structure included in the National Register of Historic Places.

Steps for Expedited Review

The expedited review consists of the following steps:

(1) A redeveloper prepares the redevelopment plan using a standard form. ***The standard form is included in the Appendix.*** The form needs to include:

(i) the existing uses and condition of the property within the redevelopment project area;

(ii) the proposed uses of the property within the redevelopment project area;

(iii) the number of years the structure or vacant lot has been within the corporate limits of the municipality;

(iv) the current assessed value of the property within the redevelopment project area;

(v) the increase in the assessed value of the property within the redevelopment project area that is estimated to occur as a result of the redevelopment project; and

(vi) an indication of whether the redevelopment project will be financed in whole or in part through the division of taxes (TIF funds).

(2) The redeveloper submits the redevelopment plan directly to the governing body along with any building permit or other permits necessary to complete the redevelopment project and an application fee in an amount set by the city council or village board. The application fee cannot exceed $50, which is separate from any fees for building permits or other permits needed for the project.

(3) If the city council or village board has elected to allow expedited reviews of redevelopment plans and the submitted redevelopment plan meets the requirements listed under "**Projects Eligible for Expedited Review**", the city council or village board is required to approve the redevelopment plan within 30 days after submission.

Each city or village may select an appropriate employee or department to conduct expedited reviews.

Steps NOT Required for Expedited Review (micro-TIF)

The redevelopment plan is expedited because it is exempted from several requirements of "regular TIF". Some of the steps that are excluded from expedited review TIF include: the detailed redevelopment plan as required in section 18-2111; the review of the redevelopment plan by planning commission; the cost-benefit analysis; and the requirement to have public hearings on the redevelopment plan before the planning commission and the city council or village board.

Requirements if Project is Financed by TIF

For any approved expedited review redevelopment project that is financed by division of taxes (TIF funds), the CRA is required to incur indebtedness in the form of a promissory note issued to the owner of record of the property within the redevelopment project area.

The total amount of indebtedness cannot exceed the amount estimated to be generated over a 15-year period. The terms of the promissory note needs to clearly state that the indebtedness does not create a general obligation on behalf of the CRA or the city or village in the event that the amount of TIF funds generated over the 15-year period does not equal the costs of the agreed-upon work.

(An example of a promissory note is included in the Appendix)

Role of County Assessor in Expedited Review (micro-TIF)

After completing the agreed-upon work, the redeveloper notifies the county assessor. The county assessor then determines:

(1) Whether the redevelopment project is complete. Redevelopment projects must be completed within 2 years after the redevelopment plan is approved; and
(2) The assessed value of the property within the redevelopment project area.

After the county assessor makes the above determinations, the county assessor certifies to the CRA: that the improvements have been made and completed; that a valuation increase has occurred; the amount of the valuation increase; and that the valuation increase was due to the improvements made.

After the certification is made, the CRA may begin to use TIF funds to pay the indebtedness incurred by the CRA. The payments are given to the owner of record of the property within the redevelopment project area. A single fund may be used for all redevelopment projects that receive an expedited review.

Length of Expedited Review (micro-TIF) Project

For redevelopment plans that receive an expedited review (micro-TIF), TIF funds cannot exceed 15 years after the effective date as identified in the redevelopment plan.

Role of County Personnel

Although the Community Development Law is based in local law, the county's involvement is inherent in TIF. Specifically, the county treasurer and county assessor play vital roles in every project that uses TIF.

TIF involves the division of property taxes collected by the county. As such, the county treasurer oversees dividing the taxes and sending all excess ad valorem taxes (above the base valuation) to the CRA for placement in a special fund created for the TIF project. The CRA should specify the role of the county treasurer in the resolution authorizing the issuance of a TIF bond or note. For sizing the amount of TIF available for a given project, it is important to recognize that the county treasurer will take a 1% administrative fee from all property taxes collected.

The county assessor also plays an important role in TIF projects. As a public service, many county assessors review preliminary plans and provide input on the anticipated increase in valuation after redevelopment to determine the most accurate estimate of tax increment. It can also be helpful for redevelopers to discuss with the county assessor how certain improvements will impact valuation of the base year. While the amount of input will vary by county, it is worthwhile to involve the county assessor at the planning stages of redevelopment projects in an effort to obtain accurate estimates and information for incorporation into a redevelopment plan. In the case of expedited review (micro-TIF), the county assessor plays a significant role with several duties specifically outlined in statute.

Length of TIF Project

For “regular TIF” projects and expedited review (micro-TIF), ad valorem taxes can be divided for a period not to exceed **15** years after the effective date in the project redevelopment contract or in the resolution authorizing the issuance of bonds.

In 2020, a constitutional amendment was passed that allows cities and villages to extend the maximum length of indebtedness not to exceed **20** years if, due to a high rate of unemployment combined with a high poverty rate, more than one-half of the property in the project area is designated as extremely blighted.

Other Provisions to Consider

A municipality may undertake a redevelopment project that includes property outside the corporate limits if the property is a formerly used defense site.

In cities of the second class or a village, a redevelopment project area may include, when it involves the construction of an agricultural processing facility, annexed land that is not contiguous or adjacent or urban or suburban in character.

If the provisions of the Community Development Law are inconsistent with the provisions of any other law or of any city charter, the provisions of the Community Development Law are controlling.

City or village charters may include additional notice and fact-finding requirements for approval of redevelopment contracts.

Bonding

A CRA may issue bonds including the payment of principal and interest upon any advances for surveys and plans for redevelopment projects.

The funds to pay the TIF bond have two significant limitations. First, the source of repayment is limited to the increased ad valorem property taxes from the real estate improved as part of the redevelopment project. The second limitation is that the payment period is not to exceed 15 or 20 years depending on the type of TIF from the effective date. Valuations and levies can go down for various reasons.

The redevelopment contract should not provide for the simple reimbursement of real estate taxes even if limited to qualifying expenditures. This violates the Nebraska constitution and the statutes which require the CRA to incur debt.

Any lawsuit, action, or proceeding involving the validity or enforceability of any bond or agreement of a city, village, or CRA brought after the lapse of 30 days after the issuance of the bonds or agreement has been authorized will be conclusively deemed to have been authorized and the redevelopment project will be conclusively deemed to have been carried out in accordance provisions of the Community Development Law.

Division of Taxes (TIF)

A redevelopment plan may contain a provision to divide taxes after the effective date as identified in the project redevelopment contract or in the resolution of the CRA authorizing the issuance of bonds. For regular TIF, the taxes can be divided for up to 15 years, and for projects that meet the definition of extremely blighted, up to 20 years.

The CRA must incur a debt before the taxes can be divided on a redevelopment project. The debt can be in the form of a bond, a note, an advance of money, or other form of indebtedness.

To the extent that a redevelopment plan authorizes the division of ad valorem taxes levied upon only a portion of the real property included in the redevelopment plan, any improvements funded by TIF funds must be related to the redevelopment plan that authorized the funds.

The effective date for dividing ad valorem taxes will not occur until the real property in the redevelopment project is within the corporate boundaries of the municipality, other than the exception for a formerly used defense site.

The notice for dividing ad valorem taxes must be sent to the county assessor on or before August 1 of the year of the effective date of the provision on forms prescribed by the Property Tax Administrator.

The division of the real property tax on the redevelopment project cannot exceed the applicable number of years from the effective date of the notice provided to the assessor by the governing body. This is the notice to divide.

(Example of notice to divide is provided in Appendix).

If the CRA fails to provide the notice to divide to the county assessor on or before August 1 of the calendar year the taxes were to be divided, the taxes will remain undivided and allocated to the political subdivisions for that year. The untimely notice will result in the division of the real property taxes being delayed until the following year for the remainder of the financing term of the project.

When the bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the CRA is required to notify the county assessor and county treasurer and all ad valorem taxes upon taxable real property in such a redevelopment project will be paid into the funds of the various political subdivisions.

The county assessor of the county in which the redevelopment project is located is required to transmit to a CRA and the county treasurer, upon request of a CRA, the redevelopment project valuation.

The county assessor is required to annually certify, on or before August 20, to the CRA and the county treasurer the current valuation for assessment of taxable real property in the redevelopment project.

In each year for which the current assessed valuation on taxable real property in the redevelopment project exceeds the redevelopment project valuation, the county treasurer is required to remit to the CRA, instead of to any public body, that proportion of all ad valorem taxes on real property paid that year on the redevelopment project which such excess valuation bears to the current assessed valuation. These funds are what is referred to as TIF funds.

There is often confusion when the TIF term commences, when it expires and how the excess taxes are collected and disbursed to a redeveloper. Redevelopment project excess valuation means the total assessed valuation on the real property in a redevelopment project for the current year less the redevelopment project base valuation. The division of the real property tax is determined by subtracting the redevelopment project valuation from the current year assessed value to arrive at the redevelopment project's excess value.

Example 1 for a 15-year TIF Term. TIF Notice filed timely, on or before August 1.

2015: Calendar year the division of real property taxes begin for TIF project.

2014: Base value determined as last value certified in year prior to the division of tax.

2015 through expiration of the project: Taxes are divided for TIF for a period not to exceed 15 years.

Example 2. TIF Notice filed untimely.

2015: Effective date to divide taxes for an approved TIF project but TIF notice received by county assessor after August 1, 2015. Taxes will not be divided for the current year and will be distributed in full to political subdivisions.

2014: Base value still determined as last value certified in year prior to the effective date to divide tax.

2016 through expiration of project: Taxes are divided for TIF using 2014 as the base value.

Timeline of a Tax Increment Financing Project Hypothetical Case

January 1, 2015 – Base Year. Establish Base Year Valuation.

Spring 2015 - 24-month construction commences.

January 1, 2016 – Division Date (Effective Date). Assessor creates a base and excess account for the property for 2016 and future taxes. (Value established on January 1, 2016- year 1 of possible excess ad valorem taxes levied on October 1st, 2016 due and payable on December 31st, 2016) –Likely to be partial valuation or no increase in assessed value. Notice to divide submitted prior to August 1st, 2016. Assessor collects 2015 taxes to close out the existing account. Construction continues.

January 1, 2017 – Possible partial or full valuation based on 18-month progress of construction. 2016 assessed value did not increase or may have partial valuation increase. Semi-Annual payments 1 and 2 for 2016 levy received by municipality (likely small or none) and paid to developer/ lender. No or small increment received. Construction complete.

January 1, 2018 – Full valuation of project. Semi-Annual payments 3 and 4 received for taxes levied in 2017. If there is no increase in assessed value in 2017 it will result in no increment. Partial valuation in 2017 results in partial increment. Full valuation by January 1, 2017 results in full increment received.

January 1, 2019 – Full valuation of project. Semi-Annual payments 5 and 6 received for taxes levied in 2018. Full increment received.

2020 – Payments 7 and 8 received for taxes levied in 2019. Full Increment.

2021 – Payments 9 and 10 received for taxes levied in 2020. Full Increment.

2022 – Payments 11 and 12 received for taxes levied in 2021. Full Increment.

2023 – Payments 13 and 14 received for taxes levied in 2022. Full Increment.

2024 – Payments 15 and 16 received for taxes levied in 2023. Full Increment.

2025 – Payments 17 and 18 received for taxes levied in 2024. Full Increment.

2026 – Payments 19 and 20 received for taxes levied in 2025. Full Increment.

2027 – Payments 21 and 22 received for taxes levied in 2026. Full Increment.

2028 – Payments 23 and 24 received for taxes levied in 2027. Full Increment.

2029 – Payments 25 and 26 received for taxes levied in 2028. Full Increment.

2030 (15th year of taxes levied) – Payments 27 and 28 received for taxes levied in 2029. Full Increment.

2031 – Payments 29 and 30 received for taxes levied in 2030. Full Increment. Legal counsel for the state Property Tax Administrator's office has taken the position that taxes for year 15, paid after the 15th anniversary of the effective date of the division of taxes are to be paid by the county treasurer and allocated to the TIF bond. In the above example, taxes levied in 2030, but paid in 2031 are allocated to the TIF bond.

Record Retention:

Each municipality that has approved one or more redevelopment plans or redevelopment projects that are financed in whole or in part through TIF must retain copies of:

(a) all redevelopment plans, and

(b) all supporting documents associated with the redevelopment plans or redevelopment projects and with any related substandard and blighted declaration that are received or generated by the municipality.

The municipality must retain the redevelopment plans and supporting documents (which includes substandard and blight studies, cost-benefit analyses, and any invoice, receipt, or claim received or generated by the municipality) for the period required under any applicable records retention schedule adopted under the Records Management Act or for 3 years following the end of the last fiscal year in which ad valorem taxes are divided, whichever period is longer.

(A record retention checklist is included in the Appendix)

Important Terms:

Blighted area: an area (a) which, by reason of the presence of a substantial number of deteriorated or deteriorating structures, existence of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations, or constitutes an economic or social liability and is detrimental to the public health, safety, morals, or welfare in its present condition and use and (b) in which there is at least one of the following conditions: (i) Unemployment in the designated area is at least one hundred twenty percent of the state or national average; (ii) the average age of the residential or commercial units in the area is at least forty years; (iii) more than half of the plotted and subdivided property in an area is unimproved land that has been within the city for forty years and has remained unimproved during that time; (iv) the per capita income of the area is lower than the average per capita income of the city or village in which the area is designated; or (v) the area has had either stable or decreasing population based on the last two decennial censuses. In no event shall a city of the metropolitan, primary, or first class designate more than thirty-five percent of the city as blighted, a city of the second class shall not designate an area larger than fifty percent of the city as blighted, and a village shall not designate an area larger than one hundred percent of the village as blighted. A redevelopment project

involving a formerly used defense site or any area declared to be extremely blighted does not count towards the percentage limitations.

Extremely blighted area: a substandard and blighted area in which: (a) The average rate of unemployment in the area during the period covered by the most recent federal decennial census or American Community Survey 5-Year Estimate is at least two hundred percent of the average rate of unemployment in the state during the same period; and (b) the average poverty rate in the area exceeds twenty percent for the total federal census tract or tracts or federal census block group or block groups in the area.

Redevelopment plan: a plan, as it exists from time to time for one or more community redevelopment areas, or for a redevelopment project, which (a) conforms to the general plan for the municipality as a whole and (b) is sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the community redevelopment area, zoning and planning changes, if any, land uses, maximum densities, and building requirements.

Redevelopment project: any work or undertaking in one or more community redevelopment areas: (a) To acquire substandard and blighted areas or portions thereof, including lands, structures, or improvements the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such substandard and blighted areas; (b) to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, parks, playgrounds, public spaces, public parking facilities, sidewalks or moving sidewalks, convention and civic centers, bus stop shelters, lighting, benches or other similar furniture, trash receptacles, shelters, skywalks and pedestrian and vehicular overpasses and underpasses, enhancements to structures in the redevelopment plan area which exceed minimum building and design standards in the community and prevent the recurrence of substandard and blighted conditions, and any other necessary public improvements essential to the preparation of sites for uses in accordance with a redevelopment plan; (c) to sell, lease, or otherwise make available land in such areas for residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or for public use or to retain such land for public use, in accordance with a redevelopment plan; and may also include the preparation of the redevelopment plan, the planning, survey, and other work incident to a redevelopment project and the preparation of all plans and arrangements for carrying out a redevelopment project; (d) to dispose of all real and personal property or any interest in such property, or assets, cash, or other funds held or used in connection with residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or any public use specified in a redevelopment plan or project, except that such disposition shall be at its fair value for uses in accordance with the redevelopment plan; (e) to acquire real property in a community redevelopment area which, under the redevelopment plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitate the structures, and resell the property; (f) to carry out plans for a program of voluntary or compulsory repair, rehabilitation, or demolition of buildings in accordance with the redevelopment plan; and (g) in a rural community or in an extremely blighted area within a municipality that is not a rural community, to carry out construction of workforce housing.

Substandard area: an area in which there is a predominance of buildings or improvements, whether nonresidential or residential in character, which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, (which cannot be remedied through construction of prisons), and is detrimental to the public health, safety, morals, or welfare.