

# UTAH INLAND PORT AUTHORITY

## PROPERTY TAX DIFFERENTIAL USE POLICY

January 2019

### 1) Guiding Principles

- a) The purpose of this Property Tax Differential Policy (“Policy”) is to establish procedures and guidelines for property tax differential use by the Utah Inland Port Authority (“Authority”) established pursuant to Utah Code Chapter 58, Title 11 (“Authority Act”). Pursuant to the Authority Act, the Authority is authorized to receive and use property tax differential (“Tax Differential”) in a project area (“Project Area”).
- b) The Authority’s responsible use of scarce public resources—specifically the use of Tax Differential—should be focused on the purposes, polices, and objectives described in the Authority Act, including encouraging economic development and high-quality job creation, fostering healthy communities, and supporting environmentally and economically sustainable development to ensure a thriving area, regional, and state economy.
- c) The Authority supports collaborative efforts to effectively manage commercial and industrial development and redevelopment to meet the robust growth anticipated in the State. The Authority’s use of Tax Differential for development shall be based in part on linkages to various long-term sustainable growth strategies and plans.
- d) The Authority’s Tax Differential participation in a Project Area will include a negotiation process that will define the terms of the Authority’s involvement. The guidelines set forth in this Policy are to assist this process and to educate requesting parties, guide the negotiation process, and allow the public to be informed.
- e) In certain cases, an application may have unique characteristics that do not fully conform to the guidelines yet have significant community and economic impact. In this case, the Authority reserves the right to participate at or above the stated participation rates outlined in the Policy. Conversely, there may be a project that meets the guidelines, but the Authority does not believe it serves a significant community benefit. In this case, the Authority reserves the right not to participate. Proposals for use of the Development Fund, defined below, that contain a majority of Favorable Project Considerations listed below and provide significant community benefit will receive the most favorable terms.

### 2) Tax Differential Funds

- a) The Authority Act requires and allows Tax Differential to be used in 4 different ways. The Authority:
  - i) May use up to 2% of the Tax Differential, plus any litigation legal expenses, to fund its administrative expenses (“Administrative Fund”). [§11-58-602(1)(b) and (4)]

- ii) Shall pay 10% of the Tax Differential generated from land located within a community reinvestment agency to that agency, to be used for affordable housing (“Affordable Housing Fund”). [11-58-601(1)(d)]
  - iii) Shall use Tax Differential to pay a municipality and other taxing entities for providing municipal services (“Taxing Entity Services Fund”). [§11-58-205(7) through (9) and §11-58-602(1)(f) and (g)]
  - iv) May use the remainder, after (i) through (iii) are paid to fulfill the purposes, policies, and objectives described in (1) above. Specifically, the Authority may use Tax Differential to pay for land development, ongoing operation of a facility, publicly owned infrastructure and improvements, and for bonds (“Development Fund”). [11-58-602(a), (c) through (e), and (h)]
- b) If the Authority chooses to receive all of the Tax Differential and after payments to the Administrative Fund (assuming no litigation costs) and Affordable Housing Fund, 88% of the Tax Differential is remaining.
- i) The Authority Act sets out mandatory factors the Authority must consider in paying for taxing entity services and requires reviewing and reassessing what the Authority retains and what it shares so that the Authority retains what it reasonably needs to meet its responsibilities and adjusts the amount the authority shares with the taxing entities to cover the costs of providing those services accordingly. Consequently, the Authority cannot set an exact percentage that will be used for the Taxing Entity Services Fund. Nevertheless, a target percentage for estimation purposes is 15%.
  - ii) The remainder for the Development Fund is 73%. Another target is to set aside up to 5% for sustainability initiatives. If the target percentages are met, the remaining amount to negotiate with the landowners is 68% to achieve the development goals outlined in this Policy.
- 3) **Development Fund Guidelines.** These principles will help determine the allocation of time and resources for economic development efforts. In order to ensure the successful implementation of these principles, metrics will be developed, implemented, and tracked to objectively measure the success of economic development and redevelopment efforts. Projects shall provide sufficient evidence that Tax Differential funding is necessary for the Project to succeed, to verify that the request is reasonable, and that it involves significant private investment of capital so as to assure adequate yield of Tax Differential. These guiding principles are:
- a) Retain and expand existing businesses and stimulate new commercial and industrial development.
  - b) Generate sufficient and sustainable revenues to taxing entities.
  - c) Diversify revenue sources to minimize potential revenue shortfalls and leveraging of private investment
  - d) Development Fund recipients will not receive more than 68% of the available Tax Differential, unless significant need can be demonstrated.

- e) Development Fund will be shared on a need-based system only, using the “but for” test. Tax Differential will only be used to eliminate impediments to the development, be they physical or economic impediments.
- f) No Tax Differential will be provided to businesses that are coming from neighboring communities or adjacent counties, unless the business is expanding its employment base and/or its capital investment.
- g) Priority for Tax Differential will be given to the following four categories:
  - i) Public infrastructure, including issuing assessment bonds
  - ii) Costs associated with building an inland port intermodal facility, including issuing CPACE bonds
  - iii) Costs associated with significant impediments to site development
  - iv) Corporate incentives based on a “but for” analysis as part of a recruitment.

**4) Development Funds Processes, Policy and Procedures:**

- a) It is the policy of the Authority to provide a standardized procedure to process, review, and make recommendations on all Tax Differential use from the Development Fund requests (“Projects”).
- b) Because Tax Differential funding is complex, the Authority may take up to 120 days following receipt of all requested documents to respond to proposed Projects. For this reason, project developers are encouraged to contact the Authority early in the process.
- c) The following are primary favorable project considerations (“Favorable Project Considerations”). Projects meeting the following criteria will be viewed favorably by the Authority:
  - i) Projects that will create “new incremental jobs” that are “high paying jobs”, as such terms are defined in Section 63N-2-103 of the Utah Code.
  - ii) Projects that include a significant amount of capital investment or capital density within a small geographic footprint—for instance, from taxable personal property or equipment (such as robotic machinery, electronic equipment, computing devices, etc.)—without substantially increasing the cost of services of taxing entities.
  - iii) Projects for which Tax Differential participation rate is typically limited to 68% or less.
  - iv) Project’s that are confined to a reasonably sized geographic footprint for the Project’s intended and defined purpose, and do not include excess land for yet-to-be defined future projects or project expansion.
  - v) Projects for which the proposed Tax Differential is shared only upon achieving a specified dollar amount of capital investment.
  - vi) Projects for which the Tax Differential participation amount or rate is conditioned upon achieving certain Project benchmarks.
  - vii) Projects where the environmental impact of power-consuming, water-consuming, or other resource-consuming personal property will be mitigated, to the maximum extent possible, by a renewable energy project, water conservation project, or other resource conservation project, whichever is applicable.

- viii) Projects where best available water control technology is used.
- d) Projects meeting any of the following criteria may be viewed unfavorably by the Authority:
  - i) Projects that have any housing.
  - ii) Projects that are predominately retail, unless there is a material justification to do so, which shall be evaluated on a case-by-case basis.
  - iii) Projects that would merely cause a relocation of jobs or retail sales from one area in the State to another area in the State, unless it is an expansion of the number of jobs or taxable value from what is currently existing.
  - iv) Projects that would involve development on sensitive land designated as open space, wetlands, or wildlife habitat.

**5) Project Participation Request Timeline, Submission, and Evaluation Process.** Absent extenuating circumstances, Authority staff will attempt to respond to all completed Project participation requests within 120 days of receipt. The Authority and the applicant submitting the Project participation request (“Applicant”) shall adhere to the following procedures:

- a) Step One. The Applicant shall provide written notice to the Authority’s executive director (“Executive Director”) indicating its intent to create a Project, containing a short description of the proposed Project, and requesting Authority participation. Following receipt of this written notice, the Executive Director shall direct the entity to submit a Project participation request and may arrange a meeting with Authority representatives.
- b) Step Two. The Applicant shall submit a completed Project participation request. The Project participation request will be submitted in writing to the Executive Director. A completed Project participation request, includes but is not limited to, all of the following materials:
  - i) Project boundary map and legal description; (GIS map with supporting files);
  - ii) A detailed narrative Project summary;
  - iii) A Draft Project Area Plan if the Project is not already in a Project Area; and
  - iv) A Project budget setting forth:
    - (1) Total Project revenues by source and expenditures by category;
    - (2) The amount of requested Tax Differential and its use, including whether such uses are Project Improvements or System Improvements, as defined in Section 10 below;
    - (3) The amounts and description of tax benefits requested, promised or received from any other federal, state, county, local or other public entity;
    - (4) Administrative Fund, Affordable Housing Fund, and Taxing Entity Services Fund revenues generated;
    - (5) Project term; and,
    - (6) Any pass-through scenarios.
- c) Step Three. Following receipt of a completed Project participation request, the Executive Director shall conduct a due diligence review. The due

diligence review shall include consulting with the Governor's Office of Economic Development and completing a third-party financial analysis paid for by the Applicant. If the participation request is for less than \$1,000,000, the third-party financial analysis may be waived. The analysis shall include:

- i) The public benefit anticipated to be derived from the proposed Project;
  - ii) A determination of financial need and whether or not the proposed Project might reasonably occur through private investment without the Tax Differential;
  - iii) If applicable, conduct an analysis of comparable values of equivalent properties (both the difference and the percentage relative to comparable values) to ensure that the Tax Differential is not being used to reimburse overvalued land costs.
- d) Step Four. After the due diligence is completed, the Executive Director shall provide a written recommendation to the Authority's governing body ("Board") indicating whether the Authority should participate in the proposed Project and to what extent.
  - e) Step Five. Following receipt of a written recommendation from the Executive Director, the Board shall review the Executive Director's recommendation and shall request a briefing at a Board meeting, at which time the Board may provide additional guidance, request additional information or request modifications. If any incentives are being offered to the Applicant, or if any participation agreements have been entered into or will be entered into with Applicant, this must be disclosed or known publicly at, or prior to, the briefing during the Board meeting.
  - f) Step Six. After the Board meeting, the Executive Director, shall, consistent with the Executive Director's recommendation and any guidance provided by the Board, negotiate terms of an agreement, consistent with Section (6) below, with the Applicant and work with the Authority's legal counsel to draft a final agreement consistent with the negotiated terms. The Executive Director shall then review and approve the agreement and submit it to the Board for final approval.
  - g) Step Seven. Upon receipt of the agreement, the Board shall schedule a public hearing. At the public hearing, the Board shall take public comment. Following the public hearing, the Board shall either approve and adopt or deny and reject the proposed agreement in a public meeting. If at the public meeting the Board votes to approve and adopt the agreement, the Board shall adopt a resolution authorizing the Executive Director to execute the Board agreement in substantially the form submitted.
  - h) Step Eight. Following adoption of a resolution authorizing the Executive Director to execute the agreement, the Executive Director (or authorized designee) shall execute the same.

**6) Tax Sharing and Reimbursement Agreement with the Applicant**

- a) The Authority shall enter into an agreement with the requesting Applicant for each approved Project. The agreement shall be in the form prescribed by the Authority.

- b) The agreement shall not be amended unless authorized and approved by the Board in a public meeting following a public hearing.
- c) The agreement shall include the following:
  - i) The Authority intends that the beneficiary of the Tax Differential reimbursement will be the owner of the Project for the life of the agreement. In the event of a transfer or sale of the property, the agreement and all benefits conferred under the agreement shall benefit the Project and be recorded against the property to run with the land, with the intent that all Tax Differential reimbursements will remain with the owner of the real property and Project. In the event that the ownership of the real property and improvements are severed, the Authority will have sole discretion to determine the beneficiary of the Tax Differential.
  - ii) If the agreement is executed and the real property and Project are conveyed to a third party while the improvements are still being constructed, the Authority will retain the right, in its sole discretion, to consent or refuse to consent to the transfer of the agreement to the new owner, in order to ensure that the benefits the Authority anticipated receiving under the original agreement with the original developer are consistent with and will be honored by the new developer and that the new developer is financially and otherwise able, willing, and committed to perform the developer's obligations thereunder. If the Authority does not consent to the transfer of the agreement, the Tax Differential reimbursement will cease, and the agreement will terminate.

## **7) Annual Disclosure Reports**

- a) Each Applicant that receives Tax Differential shall, for the duration of the Project funds collection period: (a) submit a disclosure report to the Board and Executive Director no later than May 1st of each year for the previous calendar year; and (b) submit information to and otherwise participate in the Authority's public project area database (i.e., a database established by the Authority for the collection and display of Project information).
  - i) All annual disclosure reports submitted under this section shall be posted on a conspicuous place on the Authority's public website.
  - ii) The annual disclosure report shall include the following:
    - (1) The name, street and mailing address, phone number, business license number (if applicable), and chief officer of each Applicant receiving Tax Differential.
    - (2) A status report and updated GIS map documenting the status of the economic development objectives completed in the approved Project plan and a summary of any material changes to said objectives.
    - (3) The applicable expenses and eligible Project uses of the Tax Differential
    - (4) Matching public and private contributions toward the project.

- (5) Annual itemized reporting of completed and planned development expenditures and related agreements, to be published on the Authority's public website.
  - (6) Any new company relocations and/or expansions.
  - (7) A certified reconciliation statement reflecting the actual amount of Tax Differential disbursed over the prior year as compared to the amount of Tax Differential projected for that year in the original Project budget.
  - (8) Verification:
    - (a) Of performance and compliance by Applicant of all benchmarks, conditions, covenants and obligations in the agreement, including detailed evidence of such performance and compliance;
    - (b) That the Applicant is not in default under any of the terms and conditions of the agreement; and,
    - (c) That Applicant has no claims against the Authority (or, in the alternative, provides a detailed identification of all claims that Applicant has against the Authority).
  - (9) An affidavit signed by the chief executive officer and chief financial officer of each Applicant receiving Tax Differential certifying as to the accuracy of the information provided in the annual disclosure report.
- b) Any Applicant that fails to comply with the annual disclosure report obligations of this Section may be subject to forfeiture of all or a portion of future Tax Differential, as the Authority may determine in its sole discretion.

## **8) Project Access**

- a) The Authority shall have access at all reasonable times to the Project and the Project records of any Applicant receiving the Tax Differential, whether directly or indirectly, to monitor the project and verify compliance with the Project agreements.
- b) Any Applicant that fails to provide the Authority access to the Project at a reasonable time may be subject to forfeiture of all or a portion of future Tax Differential, as the Authority may determine in its sole discretion..

## **9) Eligible Categories for Tax Differential Use.** Eligible Tax Differential uses shall be categorized as either project-specific improvements or system-wide improvements, as follows:

- a) Improvements Tax Differential reimbursements may facilitate project-specific improvements ("Project Improvements") that benefit a single parcel or parcel assemblage. Project owners/developers will receive a portion of the Tax Differential generated by the Project Improvements over a limited period of time.
- b) Tax Differential reimbursements may facilitate system-wide improvements ("System Improvements") that benefit more than one parcel and property owner. A portion of the new, additional taxes generated by development that has been facilitated by the System Improvements may be paid toward the cost of System Improvements on a pro-rata basis. Applications for

reimbursement for System Improvements will be given priority based on the date the application is made, and the Authority will commit Tax Differential based on priority of the application.

- c) Projects in Salt Lake City that are approved for Tax Differential reimbursement must consider the City's Northwest Quadrant Master Plan and utilize the guidelines as practicable, promote green building standards, and encourage good planning design. Projects will be required to be in conformance with all applicable policies, ordinances, and codes.

**10) Reimbursement terms**

- a) The maximum amount of Tax Differential available for reimbursement shall be 68% of the annual Tax Differential generated from the Project. Exceptions may be made by the Board dependent upon the following criteria:
  - i) Capital expenditures in excess of one billion (\$1,000,000,000);
  - ii) Projects that will create 50 or more high-paying jobs; or,
  - iii) Projects that create a unique economic opportunity as defined by the Board.
- b) The maximum reimbursement term shall be twenty-five (25) years.

**11) Sufficient Tax Differential.** The actual total of the Tax Differential reimbursement may fluctuate. Tax Differential is dependent on the development of the Project and the taxable value being assessed, and Projects that do not generate sufficient Tax Differential during the reimbursement term will not receive the full Tax Differential reimbursement amount.

- a) The Authority shall only be obligated to capture and reimburse Tax Differential generated from property taxes paid on from the Project.
- b) Interest will not accrue against the Authority on the anticipated or projected Tax Differential to be reimbursed to the Project.
- c) All reimbursement recipients shall be required to notify the Authority if they have applied for a property tax appeal with county where the property is located related to the Tax Differential reimbursement. In the event that any such appeal results in a reduction in property taxes, the percentage share of the Tax Differential payable to the recipient shall be decreased, and the percentage share of the Tax Differential payable to the Authority shall be increased, so that the dollar amount payable to the Authority is the same as if no appeal of the assessed value had been made.