

**Town of Oakland  
Work Session  
Monday, August 26, 2024  
6:00 P.M.  
Town Hall Courtroom  
AGENDA  
*Open to the Public***

- I. Call to Order**
  - II. Prayer and Pledge of Allegiance**
  - III. Items of Discussion**
    - (A) Ceasing Fluoridation in Oakland's Water Supply
    - (B) Industrial Development Board
    - (C) Kroger Company Design Review Appeal
  - IV. Adjourn**
- 

**Town of Oakland  
Board of Mayor and Aldermen  
Special Call Meeting  
Monday, August 26, 2024  
IMMEDIATELY FOLLOWING WORK SESSION  
AGENDA  
*Open to the Public***

- I. Call to Order**
- II. Establish Quorum**
- III. Board Vote - Kroger Company Design Review Appeal**
- IV. Adjourn**

# TOWN OF OAKLAND

170 DOSS CIRCLE  
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## Fluoride Addition to the Water Supply

### Background

At last month's meeting, a resident inquired if the town would cease the use of fluoride in drinking water. This document outlines the necessary steps and regulatory requirements to cease fluoride addition.

### Regulatory Compliance for Fluoride Adjustment

#### Monitoring and Reporting Requirements

1. **Quarterly Monitoring:**
  - Public water systems adjusting fluoride content must monitor fluoride levels quarterly using a certified laboratory.
  - Fluoride levels are calculated as an annual running average.
2. **Exceedance Protocol:**
  - If a quarterly sample exceeds 1.5 mg/L:
    - Notify customers of the exceedance as per Rule 0400-45-01-.19(8).
    - Begin monthly fluoride monitoring with a certified laboratory.
    - Resume quarterly monitoring after three consecutive months of fluoride levels below 1.5 mg/L.
3. **Recommended Fluoride Level:**
  - The target fluoride level in the finished water is 0.7 mg/L.

#### Notification Requirements

**0400-45-01-.17(20)** Each public water system adjusting the fluoride content to the finished water must monitor for fluoride quarterly using a certified laboratory and the calculation of the fluoride

level will be by running annual average. If the quarterly analysis of a water sample from a public water system by a certified laboratory confirms that the level of fluoride in the sample exceeds 1.5 mg/L, the public water system must provide notification to its customers of the exceedance in the same manner as prescribed in paragraph (8) of Rule 0400-45-01-.19. The water system must begin monthly fluoride monitoring using a certified laboratory for analysis. Once the monthly analyses confirm that the fluoride level is less than 1.5 mg/L for three (3) consecutive months, the public water system may resume quarterly monitoring for fluoride. The recommended level of fluoridation in the finished water is 0.7 mg/l. **Any public water system which determines to initiate or permanently cease fluoridation treatment of its water supply shall notify its customers, the local environmental field office within the Department of Environment and Conversation, and the Commissioner of the Department of Health in the manner and within the timeframe as specified by T.C.A. § 68-221-708(c). 68-221-708.** Notification to public and regulatory agencies.

(a) Whenever a public water system is not in compliance with the current primary drinking water regulations, the supplier shall inform the division of such noncompliance as soon as practicable, but not later than twenty-four (24) hours after learning of the noncompliance.

(b) The supplier shall also give such public notification as may be prescribed by regulations.

(c) **Any public water system or waterworks system, as defined in this title, which determines to initiate or permanently cease fluoridation of its water supply, shall notify the department of environment and conservation and the department of health of its intention thirty (30) days prior to any vote. The water system shall additionally give public notice to its customers in a general mailing at least thirty (30) days prior to the meeting at which said vote shall take place.**

## Historical Context and Cost Considerations

- **Fluoride Addition Initiation:**
  - Oakland began adding fluoride to its water supply in 2001.
  - Currently, only 2 out of 5 municipalities in Fayette County add fluoride to their water.
- **Cost of Fluoridation:**
  - The annual cost of adding fluoride to the water supply is approximately \$10,000.
  - Daily tests cost \$4.55 each, totaling \$1,660 annually.
  - Quarterly tests cost \$17 each, totaling \$68 annually.
- **Annual Budget for Chemicals:**
  - The town's annual budget for chemicals is \$58,000.

## Opinion on Ceasing Fluoride Addition

Given the costs and regulatory requirements, it is worth considering discontinuing fluoride addition if it is not mandatory. Several factors support this position:

- **Employee Safety:** Handling the chemical poses risks to employees.
- **Customer Feedback:** Multiple customers have requested discontinuation of fluoride use.

However, it is essential to remain compliant with state requirements and respect the board's decision. Should the board decide to continue fluoride addition, adherence to the regulations and maintaining safety standards is crucial.

### **Summary of Steps to Cease Fluoridation**

1. **Continue Monitoring:** Adhere to quarterly monitoring and exceedance protocols.
2. **Notify Relevant Parties:** Inform customers, relevant departments, and officials 30 days prior to any vote.
3. **Public Communication:** Send out a general mailing to customers 30 days before the decision-making meeting.

### **Conclusion**

Ceasing fluoride addition involves strict adherence to monitoring, reporting, and notification guidelines. Ensuring compliance with these regulations is crucial for maintaining transparency and safeguarding public health. The decision should also consider employee safety and customer preferences.

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TOWN OF [REDACTED] TENNESSEE  
RESOLUTION [REDACTED]

**A RESOLUTION AUTHORIZING THE ORGANIZATION OF THE INDUSTRIAL  
DEVELOPMENT BOARD OF THE TOWN OF [REDACTED] TENNESSEE**

WHEREAS, municipalities are authorized under Section 7-53-101 et. seq. of the Tennessee Code Annotated to organize industrial development organizations to promote industry and develop trade; and

WHEREAS, the Town of [REDACTED] seeks to promote industry and trade in order to provide added job opportunities for its people; and

WHEREAS, the Board of Mayor and Alderman have received from [REDACTED], [REDACTED], and [REDACTED] (the "Applicants"), each of whom is a duly qualified elector of and taxpayer in the Town of [REDACTED], the attached Application Seeking Permission to Incorporate an Industrial Development Board (the "Application") and the attached proposed Certificate of Incorporation for the Industrial Development Board of the Town of [REDACTED] Tennessee (the "Certificate of Incorporation");

WHEREAS, the Town of [REDACTED] finds that it is wise, necessary, and advisable that such a corporation be formed; and

WHEREAS, the Town of [REDACTED] desires to authorize the Applicants to proceed to form the proposed corporation, and to approve the form of the Certificate of Incorporation.

NOW, THEREFORE, BE IT RESOLVED by the Board of Mayor and Aldermen of the Town of [REDACTED], that the Board hereby authorizes the Applicants to proceed to form the proposed corporation, and hereby approves the form of the Certificate of Incorporation proposed for the corporation, and hereby authorizes the Applicants, as incorporators, to organize a public corporation as provided for in Tennessee Code Annotated 7-53-101 et seq., and to register the Certificate of Incorporation with the Secretary of State.

Passed and so ordered, this the \_\_\_\_\_ day of \_\_\_\_\_, [REDACTED], the public welfare requiring it.

\_\_\_\_\_  
[REDACTED] Mayor

Attest: \_\_\_\_\_  
[REDACTED] Town Recorder

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BY LAWS OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF [REDACTED],  
TENNESSEE

## ARTICLE 1 — THE BOARD

Section 1. Not-for-profit Organization. The Corporation is a public benefit, not-for-profit corporation. The Corporation is irrevocably dedicated to and operated exclusively for non-profit purposes, and no part of the income or assets of the Corporation shall be distributed or inure to the benefit of any individual. The Corporation, however, shall be authorized and empowered to pay reasonable compensation for furtherance of the purposes set forth herein. In the event of dissolution, the residual assets of the Corporation shall be turned over to the Town of [REDACTED], pursuant to Tennessee Code Annotated Section 7-53-103 or the corresponding provision of any future State of Tennessee law.

Name of Board. The name of the board shall be "The Industrial Development Board of the Town of [REDACTED] Tennessee".

Section 2. Seal of Board. The seal of the board shall be in the form of a circle and shall bear the name of the board and the year of its organization.

Section 3. Office of Board. The offices of the Board shall be at [REDACTED] Town Hall currently located at [REDACTED] in the Town of [REDACTED], or as otherwise designated by the Board of Mayor and Aldermen of the Town of [REDACTED].

## ARTICLE II - BOARD OF DIRECTORS.

Section 1. Board of Directors. The Board of Directors of the Corporation (the Board) shall consist of seven (7) members who shall be duly qualified voters and residents of the Town of [REDACTED] Tennessee. The Directors shall serve without compensation, except that they may be reimbursed for actual expenses incurred in the performance of their duties as authorized by the Board of Mayor and Aldermen of the Town of [REDACTED]. Reimbursable expenses must be authorized in advance by the Chairman and Treasurer of the Board.

Section 2. Appointment of Directors. The Directors shall be appointed by the Board of Mayor and Aldermen of the Town of [REDACTED], by majority vote of the Board. The initial appointment of Directors shall be for a term as follows: Two Directors shall be appointed for an initial term of 2 years. Two Directors shall be appointed for a term of 4 years. Three Directors shall be appointed for a term of 6 years. Thereafter each term shall be for a period of six years or until a successor is named. The beginning of each initial term shall be as designated by the Board of Mayor and Aldermen. After the initial appointments, each term be based on a calendar year beginning on January 1 of each calendar year.

Should any position of the Board become vacant, the Board of Mayor and Alderman shall appoint a successor to fill the unexpired term. Members of the Board of Directors may be removed from office without cause, by majority vote of the Board of Mayor and Aldermen.

Section 3. Conflicts of Interests and Code of Ethical Conduct. A Director shall discharge his/her duties as a Director, including his/her duties of any committee, in good faith, which the care an ordinarily prudent person in a like position would exercise under similar circumstances, in a manner he/she reasonably believes to be in the best interest of the corporation. Each Director shall follow a code of ethical conduct established by the Town of [REDACTED]. Each Director shall



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have a responsibility to disclose a conflict of interest and recuse themselves from any actions relevant to the conflict of interest in accordance with State of Tennessee conflicts of interest laws or rules established by the Board of Mayor and Aldermen of the Town of [REDACTED].

Officers. The directors of the board shall be a Chairman, a Vice-Chairman, a Secretary and a Treasurer. The office of the Secretary and Treasurer may be combined as directed by a majority approval of the Officers.

Section 2. Chairman. The Chairman shall preside at all meetings of the board of directors of the corporation. Except as otherwise authorized by resolution of the board of directors, the chairman shall sign all contracts, bonds, deeds and other instruments made by the Board. At each meeting the Chairman shall submit such recommendations and information as he may consider proper concerning the business, affairs and policies of the board.

Section 3. Vice-Chairman. The Vice-Chairman shall perform the duties of the Chairman in the absence or incapacity of the chairman; and in case of the resignation or death of the Chairman, the Vice-Chairman shall perform such duties as are imposed on the Chairman until such time as a new Chairman shall be selected.

Section 4. Secretary. The Secretary shall keep the records of the board, shall act as Secretary of the meetings of the Board of Directors of the corporation and record all votes, and shall keep a record of the proceedings of the board of directors of the corporation in a journal of proceedings to be kept for such purposes and shall perform all duties incident to his/her office. The Secretary shall keep in safe custody the seal of the board and shall have the power to affix such seal to all contracts and instruments authorized to be executed by the board.

Section 5. Treasurer. The duties of the Treasurer may be combined with the duties of the Secretary. The Treasurer shall have the care and custody of all funds of the corporation and shall deposit the same in the name of the corporation in such bank or banks as the board of directors of the corporation may select. The Treasurer, or Secretary/Treasurer, shall sign all orders and checks for the payment of money and shall disperse such moneys under the direction of the board of directors of the corporation, all such orders and checks shall be countersigned by the Chairman.

Section 6. Additional Duties. The officers of the board shall perform such other duties and functions as may from time to time be required by the board of directors of the corporation or the bylaws or rules and regulations of the board.

Section 7. Election or Appointment. The Chairman, Secretary and Treasurer, or Secretary/Treasurer, shall be elected at the annual meeting of the board of directors of the corporation from among the directors of the corporation, and shall hold office for one year or until their successors are elected and qualified.

Section 8. Vacancies. Should any office become vacant, the board of directors of the Corporation shall elect a successor from its membership at the next regular meeting, and such election shall be for the unexpired term of said office.

Section 9. Personnel. The board may from time to time employ such personnel as it deems necessary to exercise its powers, duties, and functions as prescribed by the industrial development board law of Tennessee and all other laws of the State of Tennessee applicable



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thereto. The selection and compensation of such personnel shall be determined by the board of directors of the corporation subject to the laws of the State of Tennessee.

## ARTICLE III —MEETINGS

Section 1. Annual Meeting. The annual meeting of the board of directors of the corporation shall be held on \_\_\_\_\_, at the offices of the board, or at such other time and place as may be designated by the Board.

Section 2. Regular Meeting. Regular meetings shall be held at the offices of the board, or at such other time and place as may be designated by the board.

Section 3. Special Meetings. The Chairman of the board may, when he/she deems it necessary, or upon the written request of at least two directors may call a special meeting of the board of directors of the corporation for the purpose of transaction any business designated in the call. All members of the board shall be given at least 48 hours notice by phone, written notice, or electronic methods provided each member acknowledge receipt of the notice a minimum of 48 hours in advance of the meeting. Adequate public notice, as may be defined by State of Tennessee Open Meetings Law, or other provisions of law, shall be provided in advance of any special called meeting. At such special meeting, no business shall be considered other than as designated in the call, but if all of the directors of the corporation are present at special meeting, but if all the members of the corporation are present at a special called meeting, any and all business may be transacted.

Section 4. Quorum. The powers of the corporation shall be vested in the directors thereof in office. Four Directors shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, but a smaller number may adjourn from time to time until a quorum is obtained. When a quorum is in attendance, action may be taken by the board upon a vote of a majority of the directors present.

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## CHARTER OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF [REDACTED], TENNESSEE

1. The name of the applicants to this Certificate of Incorporation area as follows:

Each of the applicants is an elector and taxpayer in the Town of [REDACTED], Tennessee

2. The name of the corporation is THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF [REDACTED], TENNESSEE.
3. Permission to organize this corporation was granted by resolution duly adopted by the Board of Mayor and Aldermen, the governing body of said municipality, on \_\_\_\_\_
4. The Corporation's registered office is [REDACTED] Town Hall \_\_\_\_ The Corporation's registered agent at that office is \_\_\_\_\_
5. The purposes for which the corporation is proposed to be organized are as follows:
  1. To acquire, sell, lease and dispose of properties to the end that the corporation may be able to promote industry and develop trade by inducing manufacturing, industrial, and commercial enterprises to locate and/or expand in and near the Town of [REDACTED]
  2. To do and perform any and all acts as set forth and authorized in Section 7-53-101 et. Seq. of the Tennessee Code Annotated.
6. The corporation shall have a Board of Directors consisting of seven (7) members, all of whom shall be duly qualified electors of and taxpayers in the Town of [REDACTED].
7. The corporation shall have a perpetual existence unless sooner dissolved in accordance with statutory provisions.

We, the undersigned, apply to the State of Tennessee, by virtue of the laws of the land, for a Charter of Incorporation for the purposes declared in the foregoing instrument.

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WITNESS OUR HANDS this \_\_\_\_\_ day of \_\_\_\_\_, 

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## INTERLOCAL AGREEMENT BY AND AMONG SHELBY COUNTY, TENNESSEE AND THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF COLLIERVILLE, TENNESSEE

This Interlocal Agreement is entered into this \_\_\_ day of December, 2010, by and between Shelby County, Tennessee, and The Industrial Development Board of The Town of Collierville, Tennessee (the "CIDB").

### PREAMBLE

The Tennessee General Assembly enacted legislation permitting the creation of Industrial Development Corporations and under such legislation provided that such corporation and all properties at any time owned by it may be exempted from taxation from the State of Tennessee.

The various towns and cities of Shelby County, except The Town of Lakeland, have created their Industrial Development Board (the "Board" or "Boards") and have delegated to such Board the authority to negotiate and accept from any of its lessees, payment in lieu of ad valorem taxes ("PILOT"), upon determination that such an agreement is undertaken for the furtherance of the public purpose as defined in section 7-53-305(b) of Tennessee Code Annotated.

The Boards have used this authority to provide PILOTs as an economic development incentive and thus encourage the location or expansion of an industrial and commercial activity ("Project") in their city or town.

The Boards also have the authority to exempt Shelby County taxes for properties in their city or town and to have their own criteria and processes for evaluating and providing a PILOT incentive to an eligible industrial or commercial activity.

Shelby County recognizes the need to provide its share of economic development incentives throughout the County and to provide such incentives in an equitable, consistent and coordinated manner, and to ensure the cooperation of all the municipalities in the pursuit of economic development opportunities for Shelby County.

### AGREEMENTS AND UNDERSTANDINGS

Shelby County, Tennessee, and the CIDB hereby acknowledge that the following provisions: (i) represent their mutual understandings as to the matters addressed herein; (ii) reflect their mutual intent to do all things necessary and proper to implement these understandings; and (iii) serve as an agreement that satisfies Tennessee Code Annotated Section 7-53-305(g). Shelby County and the CIDB for and in consideration of the covenants and agreements set forth herein, hereby agree as follows:

1. When the CIDB considers a Project, it shall request a letter of approval and the terms thereof, from the Mayor of Shelby County for any Shelby County PILOT incentives provided to a project before accepting any property into its PILOT program which has the effect of freezing or exempting any county ad valorem taxes.
2. Shelby County's PILOT incentive shall in all cases be the level of incentives that the Project would be granted if the Project were scored using the Memphis & Shelby County Industrial Development Board ("M&SC IDB") matrix (as modified, amended and/or interpreted from time to time),

including the additional points available under the Location category for sites within a Renewal Community, New Market Tax Credit Area, State & Federal Designated Brownfield, and Urban Economic Revitalization Areas as designated by the County &/or Municipality. Provided the PILOT applicant, any of its affiliates and/or owners is not relocating from a Shelby County location, nor has a PILOT application pending with the Memphis & Shelby County IDB, the CIDB may provide up to 10 additional location points for projects located in a targeted development area established by the CIDB which comprises less than 25% of the territory of the municipality. Except when the M&SC IDB matrix provides for more years than the maximum years allowed under a published and publicly available CIDB matrix as of the effective date of this Resolution and when the CIDB PILOT is at the maximum term allowed, neither the term nor the percentage of the county taxes reduced for the PILOT shall be greater (i.e., more favorable to the PILOT recipient) than the CIDB PILOT. Jobs created by the Project shall provide wages not less than \$10 per hour and shall include health benefits. Each applicant seeking a PILOT incentive shall develop a Diversity Plan, approved by the CIDB and the Shelby County Mayor's Office, to encourage the support of minority, women, and locally owned small businesses and citizens in the economic development of the local community, which will allow for the award of up to two additional years of PILOT benefit in the event the Project meets or exceeds such Diversity Plan's goals. Furthermore, no Shelby County PILOT incentive shall be granted if the Project's cost benefit ratio exceeds 1.5 in regard to Shelby County's ad valorem taxes, unless the County Mayor grants an exception in writing. Shelby County, by and through the Shelby County Mayor's Office, shall give written notice to representatives of the parties to this agreement prior to any changes to the M&SC IDB matrix or written policies. Shelby County may charge closing fees consistent with the typical M&SC IDB closing fees as to the Shelby County portion of the benefit.

3. All Real and Personal Property Lease Agreements shall contain language that stipulates that non-compliance with PILOT application representations on jobs, wages and capital investment as approved by the CIDB is a cause for default under the Lease. Such language will establish a process for evaluating compliance with PILOT application representations and institute default provisions, which may result in increased PILOT payments, lease term adjustment or termination. Compliance requirements related to jobs, wages and capital investment shall be established by the CIDB but may be no less stringent than those set forth by the M&SC IDB with respect to Shelby County's portion of the tax benefit. The CIDB will provide annual reports to the Shelby County Mayor's Office regarding its compliance review of each Project. The CIDB shall follow procedures and schedules similar to those the M&SC IDB has with its PILOT grantees with respect to the reporting and default proceedings. If the Memphis and Shelby County IDB amends their PILOT program policies to provide for less frequent reporting, then the CIDB may provide similar reporting. The CIDB will notify Shelby County when exercising default provisions.
4. In regard to any provisions pertaining specifically to Shelby County PILOT incentives, all real and personal property lease agreements shall contain the language in a form substantially similar to that utilized in leases executed by the M&SC IDB, as amended from time to time, consistent with the requirements of this Agreement. Shelby County, by and through the Shelby County Mayor's Office, agrees to advise CIDB of changes to its lease language as soon as practicable, but in no case later than 20 days after said change is approved.
5. The CIDB shall submit a copy of each executed real and personal property lease agreement to the Mayor of Shelby County as currently stipulated by state law on January 1 of each calendar year.




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6. The CIDB shall submit an annual listing of projects under the CIDB PILOT program to the Mayor of Shelby County as currently stipulated by Tennessee state law no later than January 1<sup>st</sup> of each calendar year.
7. In the event the M&SC IDB considers a PILOT Project located in the unincorporated area of Shelby County but within the annexation reserve area of The Town of Collierville, Shelby County, by and through the Shelby County Mayor's Office, shall do the following:
  - a. Inform the Mayor of Collierville of the PILOT incentive granted by the M&SC IDB.
  - b. Include stipulations in the real and/or personal property lease agreement that the Town of Collierville's PILOT schedule applicable upon annexation by The Town of Collierville be equal to the tax that would otherwise be due. Furthermore, the real and/or personal property lease agreement shall state that the Project must request a PILOT incentive from the CIDB before changes to its PILOT schedule can be initiated as a result of annexation.
  - c. Provide copies of the real and/or personal property lease agreement for such property to the Mayor of The Town of Collierville.
  - d. Provide an annual listing of projects under PILOT agreements located in the annexation reserve area of The Town of Collierville to the Mayor of The Town of Collierville no later than January 1<sup>st</sup> of each calendar year.
8. Either party to this Agreement may terminate this Agreement upon sixty (60) days written notice to the other party.

IN WITNESS WHEREOF, the parties acting in their duly elected and authorized capacities, have executed this Agreement effective as of the date and year first above written.

SHELBY COUNTY

  
Mark H. Luttrell, Jr.  
Mayor

THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF COLLIERVILLE,  
TENNESSEE

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Ron Lawrence  
Chairman

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## **THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF COLLIERVILLE, TENNESSEE**

### **POLICY STATEMENT AND CRITERIA FOR PAYMENT IN LIEU OF TAXES (PILOT) POLICY STATEMENT FOR PROJECTS (Revised as of [date of IDB MTG Approving revisions]\_\_\_\_\_, 2022)**

The Town of Collierville, Tennessee (“the Town”) is committed to promoting high quality development in the Town and in Shelby County (“the County”) and to ongoing improvement in the quality of life for its citizens. Enhancement and expansion of the local economy generally serve these objectives. To these ends, the Town will, on a case-by-case basis, give consideration to providing payment-in-lieu-of-tax (“PILOT”) incentives as stimulation for economic development. Certain types of business investment result in the creation of new jobs, new income and provide for positive economic growth and economic stabilization which is beneficial to the Town and the County as a whole.

The Town established The Industrial Development Board of the Town of Collierville (“the Board”) to assist in the financing of new business and industry and to promote local economic expansion. The Board was organized in accordance with the Tennessee Industrial Development Corporation Act (“the Act”). It is the intention of the Board to conduct its activities consistent with the provisions of the Act and the intent of the Board of Mayor and Aldermen (“BMA”). This PILOT Policy Statement (“Policy”) provides the general guidelines for all PILOT projects in the Town, and includes the following:

- This Policy will be considered, in accordance with state law, on a case-by-case basis in evaluating projects for a potential PILOT.
- All PILOTS are subject to approval by the BMA, in their discretion.
- There is no entitlement to a PILOT under any circumstances. The approval of any PILOT is totally in the discretion of the Board and the BMA. Nothing in the Policy shall be construed as obligating the Board or BMA to approve any PILOT Application, regardless of whether the criteria in this policy or the matrix used to evaluate applications would indicate the approval of a PILOT.
- The decision to approve or deny a PILOT shall be at the Board’s discretion.
- This Policy applies to developer entities involved in any PILOT and also to the ultimate beneficiaries of all PILOT incentives.
- PILOT applications for leased facilities as well as owner occupied facilities will be considered.

- The Board will not grant a PILOT for the leasehold estate created by any lease between the Board and any person or entity or any sublease with respect to the property on which the Project is located other than as expressly approved by the IDB and the BMA.
- Applicant, Developer and Beneficiary must read and agree to comply with all requirements of the Application procedures and policies of the Board.
- The maximum term of a PILOT granted by the IDB shall be 15 years.

## **Section I. General Purpose and Objectives**

A. In accordance with State law, the Board must find each project that is presented to the Board for action to be in the public interest and likely to increase employment within the State of Tennessee. The Board has also determined that projects must increase the median income paid to employees in Collierville. Therefore, the Board generally will not consider applications containing Jobs with median income less than \$45,000.00 per year. The Board will generally consider the following types of projects for PILOT incentives:

1. Manufacturing Projects that do not adversely impact the environment or the quality of life in Collierville;
2. Distribution Facilities;
3. Office Buildings to the extent that they contain national and regional corporate headquarters of major companies;
4. Projects that include significant capital investment in the Collierville Historic District.
5. Other projects as determined by the Board in its sole discretion.

B. Each developer entity and PILOT beneficiary will be required to comply at all times with all laws, ordinances, orders, rules, regulations, and requirements of duly constituted public authorities that are or shall become applicable to the Project.

C. Speculative development will not be considered as qualifying for PILOT incentives. This shall not, however, prevent consideration by the Board of projects owned by a developer entity or entities that are not the ultimate PILOT beneficiary. No PILOT application shall be considered if it would constitute an artifice or device to circumvent the Board's prohibition on speculative development.

### **D. Conflict of Interest**

1. To avoid conflicts of interest, no incentive will be approved if Board Counsel has a professional legal relationship with the Developer, the Applicant or any Developer's or Applicant's source of financing. The Board may waive this condition in appropriate circumstances. In the event of a conflict involving Board Counsel, special counsel shall be retained by the Board to represent it in connection with the particular Project being considered.

2. Each Board member shall be responsible for disclosing to the Chairman of the Board and Board Counsel any material interest that he or she may have in or with a Developer, the Beneficiary, an Applicant or a financing source. Board Counsel shall advise both the Board and Board member whether the member needs to recuse himself or herself from consideration of the Application. Such recommendation of Board Counsel shall be conclusive. If recusal is recommended, the Board will then consider the Application without participation from the member or members who recuse themselves.

## Section II. Definitions

**“Applicant”** means the entity identified in the PILOT application and may be the Developer or the Beneficiary of PILOT incentives. In the case of all approved PILOT projects, the Applicant, the Developer and the Beneficiary of the PILOT benefits will be subject to the terms of this Policy, all duly adopted and applicable Board Resolutions, and the terms of the Project Lease.

**“Beneficiary”** means the recipient of PILOT benefits and the business that creates the jobs, median wages and capital investment upon which the PILOT application is evaluated. The Beneficiary may also be the Applicant.

**“Benefit”** means

- (i) with respect to Real Property, during each year of the PILOT term, (i) the acquisition cost of the land plus the cost of construction of Improvements multiplied by forty percent (40%) of the assessed commercial value of the buildings and structures associated with the Project times the real property ad valorem tax rates for Shelby County and the Town of Collierville in effect at the time the Board grants the real property PILOT, less (ii) the PILOT payment owed for such year; and
- (ii) with respect to Personal Property, during each year of the PILOT term, the initial acquisition cost for the personal property subject to the PILOT (deducting the accumulated depreciation applicable for that year) times the personal property ad valorem tax rates for Shelby County and the Town of Collierville in effect at the time the Board grants the personal property PILOT, less (ii) the PILOT payment owed for such year.

*Personal  
Property  
v.  
Additional  
Tax Years*

**“Developer”** means the entity in a three-party PILOT transaction with joint and several legal or economic responsibility for any Project proposed to be conveyed to the Board for it to grant a PILOT. The Developer is the fee owner of the real property upon which the Project will be located. The Developer will convey the real property to the Board, the Board will lease the real property to the Developer and the Developer will sublease the real property to the Beneficiary. The Beneficiary will also be a party to the Lease with the Board, and will be jointly and severally obligated (with the Developer) on all obligations contained in the Lease, including but not limited to all indemnities in favor of the Board.

**“Expansion”** means the addition of buildings, structures, machinery, or equipment for the purpose of expanding a Project previously approved for a PILOT program. Any Expansion will be evaluated independently from the original Project, and will require a new application.

**“Facility” (or Facilities)** means property improvements completed or in the process of or proposed for construction that together comprise a Project, including real property and tangible personal property.

**“Job” (or Jobs)** means the full-time or part-time positions created and maintained by Applicant and which are filled and the wages paid for that position for no fewer than ten (10) months out of each calendar year of the PILOT term, and which are to be located at the Project or within sixty (60) miles of the Town. The median annual income for all Jobs shall be not less than \$45,000.00. The Applicant’s failure to create or maintain for at least ten (10) months in any calendar year a minimum of ninety percent (90%) of the Jobs represented in the PILOT Lease Agreement is an event of default under the Board’s form lease agreement.

**“Modernization”** means the replacement and/or upgrading of existing facilities that increases production, updates technology, or substantially lowers the cost of operation and extends the economic life of the facility.

**“Payment-in-Lieu-of-Taxes” (PILOT)** means payments established by the Board to be made in lieu of ad valorem taxes on the property involved in the Project. Generally, for real property, such amounts are to be based on the assessed value of the Project assuming a commercial use and the then current tax rate at the time the Board takes title to the property, considering only the value of the unimproved property. Generally, for tangible personal property, such amounts are to be based on the taxes being generated at the time the Board takes title to the property.

*Negotiable*

**“Project”** means buildings, structures, machinery, equipment, land, new employees and applicable wages defined in the Application. The Board generally requires that the Applicant start addition of buildings, structures, machinery, or equipment that is committed by the Applicant within one (1) year of approval of the PILOT by the Board. Also, jobs to be created as represented in the application must be created and employees hired within one (1) year of the date the Project is occupied, unless otherwise agreed to in advance by the Board.

*- Clarify in each contract*

### Section III. PILOT Application Criteria and Procedure

A PILOT can be considered only for the increase in Assessed Value above the existing Assessed Value (assuming a commercial use) of a particular property.

A. The amount and terms of the PILOT will be determined by factors such as the cost to the Town and County, the project’s increased valuation to the tax base, and the number and types of new jobs and new or expanding local businesses resulting from the project. To be considered for a PILOT, the project will be evaluated according to the following criteria:

Capital Investment  
Wages

## Job Creation

The Board places a higher value on those projects that create capital investment, wages and new jobs in the Town and do not simply shift resources and employees within the County. The Board will evaluate the proposed numbers of existing jobs to be transferred from other portions of the County, and is more likely to view favorably those projects that do not relocate jobs to the Town at the expense of the County.

The Board will also view more favorably Project Applications that propose to achieve the goals of capital investment, wages and job creation early in the PILOT term. Projects that extend the time for achieving proposed levels of investment and employment well into the life of the PILOT are less likely to be approved by the Board.

B. The Application for PILOT form must be completed and filed with the Town Clerk with an application fee as found in Section V of this Policy. The Applicant is also required to submit with the application a Phase I environmental survey, dated within 90 days of the application date, addressed to the Board.

An application fee as provided in Section V must accompany the Application. The fee must be paid prior to the Board's consideration of the Project, and will be non-refundable.

### C. Application Procedures.

1. The Board has the right to approve, deny or approve with conditions any PILOT Application presented to the Board. The Board also has the authority to phase in the PILOT benefits in accordance with the phased construction of the Project under review.

2. The Applicant and Developer (if applicable) shall complete all forms and information and file them with the Town Clerk, Town of Collierville, 500 Poplar View Pkwy, Collierville, Tennessee 38017.

3. The Town staff will review the Application under the principal direction of the Town Administrator. The Town staff will also prepare a written economic analysis of the PILOT benefits sought by the Applicant. The Application will be distributed to members of the Board for internal review and comment. The Board, Town staff, and Board Counsel may request additional information to assist in the review of the Application.

4. The Town Staff will prepare an economic analysis to provide a review of the Application that focuses on the cost-to-benefit ratio of the proposed PILOT Project. This review will comply with all standards adopted by the State of Tennessee for the review of PILOT applications and to satisfy certain applicable statutory requirements contained in Tennessee Code Annotated Section 7-53-305(b) that became effective January 2002.

5. The Board will consider Applications that otherwise satisfy the requirements of this Policy at meetings conducted in compliance with the open meetings Laws of the State of Tennessee. The Industrial Development Board will hold meetings on an as-needed basis at



Collierville Town Hall, 500 Poplar View Pkwy, Collierville, Tennessee 38017 as provided in the Bylaws of the Board.

6. The Board will consider Applications that otherwise satisfy the requirements of the Policy at no fewer than two (2) meetings. The purpose of the Board's first meeting will be to receive information regarding the Application. The Applicant and Beneficiary (or their duly appointed representatives) can present at this first meeting information relevant to the Board's consideration of the Application. At a subsequent meeting(s), the Board will deliberate the Application and possibly act upon it.

D. Application Guidelines.

The Application, when fully completed and executed by Applicant, Beneficiary and Developer, together with all required supporting documentation, must be filed with the Town Clerk, Town of Collierville, Tennessee. Incomplete or unsigned applications will not be accepted.

E. Standard Form Lease Agreement.

Along with the application form, Town staff will also provide the Applicant with a copy of the Board's pre-approved standard lease agreement and annual compliance certificate. With the possible exception of certain minor changes, the Board will not allow modifications to the standard lease agreement and annual compliance certificate unless approved by the Board. If the Applicant wishes to change a provision(s) in the Board's adopted standard lease and compliance report, the Applicant must request consideration of its proposed changes when it submits the Application.

F. Diversity Plan.

For projects in which Shelby County benefits are sought, the Applicant will be required to develop a Diversity Plan satisfactory to the Board, the BMA, and the Memphis & Shelby County Industrial Development Board (M/SC IDB) .

G. Audit Provisions in Standard Lease Agreement.

Under the provisions of the Board's standard lease agreement, the Applicant and the Beneficiary must agree to the Board's right to inspect and audit the books, records and accounts of either or both of the Applicant or the Beneficiary. Further, the Board may periodically during the term of the PILOT require that the Applicant and/or Beneficiary produce at their expense an audit conducted by an independent auditor appointed by the Board. The purpose of these audit provisions is to determine compliance with the representations made by the Applicant and the Beneficiary in all of the PILOT documents (including the Application and lease), and to confirm the accuracy of the annual compliance report.

## H. Minimum Required Taxation for School Purposes and General Fund Purposes.

The Board requires that each approved PILOT must provide that taxation will occur throughout the term of the PILOT based upon at least twenty-five (25%) percent of the then current Assessed Value for each year at the then current Shelby County tax rate for each year of the PILOT for school purposes and also at the then current Town of Collierville tax rate for general fund purposes for the Town of Collierville.

## I. Reporting Requirements.

Under the Act, and as provided in the Board's standard form lease agreement, the Applicant and/or Beneficiary must annually file a report with the Tennessee State Board of Equalization a report that complies with the requirements contained in Tennessee Code Annotated Section 7-53-305(e).

## **Section IV. Inspection and Financial Verification**

The Board reserves the right to review and verify the Applicant's, the Developer's and the Beneficiary's financial statements prior to granting a PILOT and to review the financial condition of the Project during the term of the PILOT. The Board, in conjunction with the Town of Collierville, reserves the right for a representative to inspect the Project during the term of the PILOT and to verify the information provided in the PILOT Lease Agreement. Provisions to this effect shall be incorporated in the PILOT Lease.

## **Section V. Fees**

The PILOT application form must be completed and submitted with an application fee of Two Thousand Dollars (\$2,000.00). The PILOT Applicant is responsible for paying closing costs in the amount of two percent (2%) of the Benefit, not to exceed One Hundred Fifty Thousand dollars (\$150,000.00).

Applicants are responsible for all attorney's fees, or other costs and expenses incurred by the Town due to the application process, the consideration of any application by the Board and the Board of Mayor and Aldermen, the negotiation and drafting of documents, closing the PILOT transaction or at any time during the term of the PILOT. Applicants are also responsible for all costs associated with the annual reporting requirements contained in the Board's form lease agreement and the auditing of these reports (without regard to whether Town staff conducts the audit or an outside firm). The Applicant shall bear all costs associated with the performance of an economic analysis of the Project that is required for all PILOT leases that are effective after January 2002.

The Board will bill the Applicant directly for attorney's fees and for the cost of publishing newspaper notices. With the exception of closing costs, the Applicant is responsible for the payment of these fees, costs and expenses regardless of whether a PILOT is granted or

whether a lease is executed. The PILOT transaction will not be closed until all fees, expenses and costs have been paid.

## **Section VI. Continuing Compliance With PILOT Terms**

The PILOT documents, including the Lease will require compliance during the entire term of the Lease with representations made as to job creation, wages and capital investment in the Project. Failure to comply with these requirements at any time during the Lease term will be an Event of Default under the PILOT documents and will result in forfeiture of the PILOT benefits to the Beneficiary, as provided for in the lease.

A Certificate of Compliance that the Developer and the Beneficiary must annually execute under oath and file with the Town Clerk certifying continuing compliance with the requirements for the creation and maintenance of jobs, wages and capital investment in the Project will be exhibited to the Lease. The Lease will also provide that the Board may, at its discretion, and at the expense of the Lessee, periodically engage an auditor or other agent to audit Lessee's compliance with the terms of the Lease. Such audit will include, but not be limited to, a review of compliance with the requirements for job creation, wages and capital investment in the Project.

## **Section VII. Effect of Sale, Assignment or Lease of Property**

The Beneficiary may not sell, assign or transfer any interest in the Project or the PILOT benefits to another user of the property on which the Project is located, and may not change the use of the property without obtaining in advance the express written consent of the Board. If the PILOT is granted to a person or entity other than the Beneficiary (for example, the Developer) and the Beneficiary uses the property on which the Project is located as a sublessee or under some other arrangement with the Developer, the Developer may freely assign, sell or transfer its interest in the Property or the PILOT without the Board's consent.

Any attempt to sell, assign or otherwise transfer the PILOT benefits or to sell, assign or transfer the PILOT benefits or a change in the use of the property on which the Project is located will constitute a default under the PILOT documents, including the Lease, and will result in a forfeiture of the PILOT benefits.

Regardless of the Developer's ability to freely assign, sell or transfer according to the provisions of the Project Lease, all assignments or subleases will be subject to the terms and purposes of the underlying Lease between the Board, the Developer and the Beneficiary.

## **Section VIII. Annual or Aggregate PILOT Program Limits.**

The Town may at any time adopt an annual or aggregate limit on the amount of PILOT program incentives available, as deemed necessary by the Board in its sole discretion to protect the interests of the Town.

## **Section IX. Indemnities.**

The Board will require all parties to the Lease including the Applicant, the Developer and the Beneficiary to indemnify jointly and severally the Town and the Board from all claims of any nature that may arise in connection with the Project or related to the Project. The Applicant, the Developer and the Beneficiary shall be jointly and severally liable to the Town and the Board for all representations and warranties made in all PILOT documents, including, but not limited to the Application and the Lease.

## **Section X. Effective Date of PILOT.**

The effective date of the PILOT program (for both real property and personal property) is the date upon which (i) the property that is the subject of the Project is conveyed to the Board and (ii) the PILOT lease agreement is executed. If the PILOT Applicant, Beneficiary, or Developer wishes the PILOT to commence on some other date, it must request so from the Board in advance. Under appropriate circumstances and in its sole discretion, the Board may entertain the option of executing the PILOT lease agreement with a future effective date for the PILOT benefits. For purposes of determining the value of the PILOT property and calculating any tax freezes granted by the Board in connection with the PILOT, the value of the property is determined as of the date the Board adopts the resolution approving the PILOT incentives.

## **Section XI. Retention PILOTs.**

Notwithstanding any provision contained herein to the contrary, retention PILOTs are authorized to be approved by the Board in accordance with the foregoing provisions of this Policy Statement and with the provisions of this Section XI. The foregoing provisions of this Policy Statement shall apply to any retention PILOT, except to the extent that same conflict with the provisions below, in which case the provisions below shall control.

**\*\* RETENTION PILOTS AND THE GUIDELINES THEREFOR ARE SUBJECT AT ALL TIMES TO CHANGE IN THE DISCRETION OF THE BMA OF THE TOWN OF COLLIERVILLE OR THE IDB. ALL POTENTIAL APPLICANTS MUST CHECK WITH IDB STAFF TO VERIFY CURRENT RETENTION GUIDELINES THEN IN EFFECT\*\***

To qualify for a payment-in-lieu-of-tax (PILOT) retention incentive from the Board as to Town property taxes:

1. Company must have been operating and directly employing workers in the Town for at least 10 years prior to submitting an application for this retention assistance.
2. Company must be financially sound.
3. Company history and performance regarding any past PILOT agreements will be reviewed by the Board.
4. The Board places a higher value on those projects which expand operations or upgrade technology or processes to better position the company for longevity.

5. Company must demonstrate a long-term commitment to Collierville by buying or building a facility to house its operations, expanding an existing facility, or by signing or extending a lease for at least as long as the term of the incentive.
6. Company must invest a minimum of \$1 million in real and/or personal property for this project in Collierville.
7. Company must retain a minimum of 50 jobs in Collierville with an average annual pay of at least the most recently published per capita income for residents of Collierville.
8. Financial benefit within Shelby County from the jobs retained must exceed the opportunity cost of the tax incentive by a ratio of at least 2 to 1 over the term of the incentive agreement.
9. Additional years may be added to the PILOT incentive term for exceeding Diversity Program requirements as outlined in the Board's Policy Statement; these additional years may bring the benefit to cost ratio below minimum requirement, however, the benefit to cost ratio must always exceed 1 to 1.
10. Company must comply with all application, fee, compliance and Diversity Plan requirements in the Board's Policy Statement.
11. If the Company does not comply with the number of jobs to be retained or the amount of capital investment for the project, the PILOT Evaluation Matrix will be applied to the actual jobs retained and capital investment made to determine the appropriate reduction or termination of incentive benefits.
12. A relevant ramp-up period will be established for retention projects, to the extent applicable.

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**MEMORANDUM OF UNDERSTANDING BY AND AMONG  
SHELBY COUNTY, TENNESSEE AND  
THE TOWN OF COLLIERVILLE, TENNESSEE**

This Memorandum of Understanding is entered into this \_\_\_ day of \_\_\_\_, 2002, by and between Shelby County, Tennessee, and The Town of Collierville, Tennessee.

**PREAMBLE**

The Tennessee General Assembly enacted legislation permitting the creation of Industrial Development Corporations and under such legislation provided that such corporation and all properties at any time owned by it may be exempted from taxation from the State of Tennessee.

The various towns and cities of Shelby County, except The City of Lakeland, have created their Industrial Development Board (the "Board" or "Boards") and have delegated to such Board the authority to negotiate and accept from any of its lessees, payment in lieu of ad valorem taxes (PILOT), upon determination that such an agreement is undertaken for the furtherance of the public purpose as defined in section 7-53-305(b) of Tennessee Code Annotated.

The Boards have used this authority to provide PILOTs as an economic development incentive and thus encourage the location or expansion of an industrial and commercial activity (The Project) in their town or city.

The Boards also have the authority to exempt Shelby County taxes for properties in their town or city and to have their own criteria and processes for evaluating and providing a PILOT incentive to an eligible industrial or commercial activity.

Shelby County recognizes the need to provide its share of economic development incentives throughout the County and to provide such incentives in an equitable, consistent and coordinated manner, and to ensure the cooperation of all the municipalities in the pursuit of economic development opportunities for Shelby County.

**AGREEMENTS AND UNDERSTANDINGS**

Shelby County, Tennessee, and The Town of Collierville, Tennessee hereby acknowledge that the following provisions represent their mutual understandings as to the matters addressed herein, and reflect their mutual intent to do all things necessary and proper to implement these understandings. Shelby County and The Town of Collierville for and in consideration of the covenants and agreements set forth herein, hereby agree as follows:

1. When the Collierville Industrial Development Board ("CIDB") considers a Project, it shall request a letter of approval and the terms thereof, from the Mayor of Shelby County for any Shelby County PILOT incentives provided to a project before accepting any property into its PILOT program which has the effect of freezing or exempting any county ad valorem taxes.



2. Shelby County's PILOT incentive shall in all cases be the level of incentives that the Project would be granted if the Project were scored using the Memphis & Shelby County Industrial Development Board (the M & SC IDB) matrix. Shelby County, by and through its Office of Economic Development, shall give written notice to representatives of the parties to this agreement prior to any changes to the M & SC IDB matrix.
3. All Real and Personal Property Lease Agreements shall contain language that stipulates that non-compliance with PILOT application representations on jobs, wages and investment is a cause for default under the Lease. Such language should stipulate compliance for jobs, wages and investment consistent with the requirements of the M & SC IDB. The CIDB shall establish a process to evaluate compliance with PILOT application representations and to institute default provisions, which could result in increased PILOT payments or lease term adjustment or termination. The CIDB shall also request Shelby County's input before and after exercising default provisions.
4. The CIDB shall submit a copy of each Real and Personal Property Lease Agreement to the Mayor of Shelby County as currently stipulated by State Law.
5. The CIDB shall submit an annual listing of projects under the PILOT program to the Mayor of Shelby County as currently stipulated by State law.
6. In the event the M & SC IDB considers a PILOT Project located in the unincorporated area of Shelby County but within the annexation reserve area of The Town of Collierville, Shelby County, by and through its Office of Economic Development, shall do the following:
  - a. Inform the Mayor of Collierville of the PILOT incentive granted by the M & SC IDB.
  - b. Provide copies of the Real and/or Personal Property Lease Agreement for such property to the Mayor of The Town of Collierville.
  - c. Provide an annual listing of projects under PILOT agreements located in the annexation reserve area of The Town of Collierville to the Mayor of The Town of Collierville.

Furthermore, for any PILOT project located in the unincorporated area of Shelby County but within the annexation reserve area of The Town of Collierville, the Mayor of Shelby County shall not recommend to M & SC IDB approval of any PILOT unless the Real and/or Personal Property Lease Agreement in relation to said Project contains a provision requiring that, upon annexation by the Town of Collierville, a payment is made equal to the tax that would otherwise be due to the Town of Collierville until the Project receives a PILOT incentive from the CIDB.

7. Either party to this Memorandum of Understanding may terminate this agreement upon sixty (60) days written notice to the other party.

# DRAFT

**IN WITNESS WHEREOF**, the parties acting in their duly elected and authorized capacities, have executed this Memorandum of Understanding effective as of the date and year first above written.

## **SHELBY COUNTY**

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**Jim Rout, Mayor**

## **TOWN OF COLLIERVILLE**

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**Linda Kerley, Mayor**

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