

870-RICR-30-00-6

## **TITLE 870 – RHODE ISLAND COMMERCE CORPORATION**

### **CHAPTER 30 – TAX CREDITS AND EXEMPTIONS**

#### **SUBCHAPTER 00 – N/A**

PART 6 – Rules and Regulations for the Rhode Island Tax Increment Financing Act

#### **6.1 Purpose**

These rules (the “Rules”) are promulgated to set forth the principles, policies and practices of the Rhode Island Commerce Corporation in implementing and administering Pursuant to R.I. Gen. Laws Chapter 42-64.21, the Rhode Island Tax Increment Financing Act of 2015 (“Act”).

#### **6.2 Authority**

These Rules are promulgated pursuant to R.I. Gen. Laws Chapter 42-64.21. These Rules have been prepared in accordance with the requirements of the Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

#### **6.3 Scope**

These Rules shall apply to any application for an incentive under the Act. Notwithstanding anything contained in these Rules to the contrary, the Rhode Island Commerce Corporation shall have and may exercise all general power set forth in the Act that are necessary or convenient to effect its purposes and these Rules shall be liberally construed so as to permit the Rhode Island Commerce Corporation to effectuate the purposes of the Act, the public interest, and other applicable state laws and regulations. The Rhode Island Commerce Corporation, upon an affirmative vote of its board of directors, may provide exemption from the application of such portion of these Rules as may be warranted by extenuating circumstances arising from such application, based upon the written recommendation of the staff of the Rhode Island Commerce Corporation delineating the reasons for such exemption.

#### **6.4 Severability**

If any provision of these Rules, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules shall not be affected thereby.

## 6.5 Definitions

- A. The following words and terms, when used in these Rules, shall have the following meanings, unless the context clearly indicates otherwise:
1. “Act” means R.I. Gen. Laws Chapter 42-64.21 known as the Rhode Island Tax Increment Financing Act of 2015.
  2. “Airport district” means the area within a one-mile radius of the outermost boundary of T.F. Green State Airport located in Warwick, Rhode Island.
  3. “Annual TIF payment” means that portion of the Total TIF Payment that an Applicant receives in a given year.
  4. “Applicant” means a Developer proposing to enter into a TIF Agreement.
  5. “Application” means the application, promulgated by the Corporation, which must be completed and submitted by an Applicant pursuant to the requirements of the Act and these Rules.
  6. “At risk business” means a business at substantial risk of moving to a viable location out-of-state as verified by the Corporation.
  7. “Board” means the board of directors of the Corporation.
  8. “Contiguous” means any area of land that is adjacent to the Project Area; land may be considered contiguous irrespective of property boundaries or any road, waterway, right-of-way, easement, railroad track, marshland, or utility line.
  9. “Corporation” means the Rhode Island Commerce Corporation established pursuant to R.I. Gen. Laws Chapter 42-64.
  10. “Corporation TIF fund” means a dedicated fund established at the Corporation for the purpose of depositing funds received from significant taxpayers as provided under R.I. Gen. Laws § 42-64.21-5(d) of the Act.
  11. “Developer” means a person, firm, corporation, partnership, association, political subdivision, or other entity that proposes to divide, divides, or causes to be divided real property into a subdivision or proposes to build, or builds a building or buildings or otherwise improves land or existing structures, which division, building, or improvement qualified for benefits under the Act.

12. “Eligible revenue” means the revenues from taxes assessed and collected under R.I. Gen. Laws Chapters 44-11, 44-13, 44-14, 44-17, 44-18, 44-19, 44-30 or realized from such venue ticket sales or parking taxes as may be established and levied under state law as set forth in R.I. Gen. Laws § 43-64.21-5 of the Act.
13. “Existing revenue at substantial risk of loss” means revenue resulting from the retention of one or more At Risk Businesses located in a Qualified Development Project as determined by calculating the difference between the Revenue Increment Base of the Qualifying TIF Area with the At Risk Business(es) against that Revenue Increment Base without the At Risk Business(es) shall exclude not only the revenue generated from the At Risk Business(es) but shall also exclude the revenue generated from any business(es) that are at substantial risk of closing or leaving the State if the At Risk Business(es) close or leave the State.
14. “Hope community” means a municipality for which the five (5) year average percentage of families with income below the federal property level exceeds the state five (5) year average percentage, both most recently reported by the U.S. Department of Commerce, Bureau of the Census.
15. “Incremental revenue” means:
  - a. Net new revenue to the State or
  - b. Existing revenue at substantial risk of loss to the state.
16. “Industrial park” means a property-based venture zoned and planned for the purpose of industrial development.
17. “Letter of good standing” means a letter from the Division of Taxation certifying that the taxpayer is in good standing for purposes of these Rules; a taxpayer shall be entitled to a letter of good standing so long as
  - a. the tax payer is current on all outstanding filings and declared tax liabilities subject to audit
  - b. the taxpayer and the Division of Taxation have a workout payment agreement or other settlement with respect to any known delinquent tax liability and the taxpayer is current on that workout payment agreement or settlement, or
  - c. the taxpayer has timely commenced or engaged in an administrative or judicial proceeding concerning a tax liability the

status of which would otherwise preclude the issuance of a letter of good standing.

18. “Net new revenue” means the actual net revenue resulting from a Qualified Development Project as determined for any given year by subtracting the Revenue Increment Base for a Qualifying TIF Area from the total net revenues generated in the Qualifying TIF Area in that given year.
19. “Placed in service” means the earlier of:
  - a. a determination by the Corporation that substantial construction or rehabilitation work has been completed which would allow for occupancy of an entire structure or some identifiable portion of a structure, or
  - b. receipt by the Developer of a certificate, permit or other authorization allowing for occupancy of the Qualified Development Project or some identifiable portion of the Qualified Development Project by the municipal or state authority having jurisdiction.
20. “Port district” means such areas that are within one mile of the Port of Davisville, Port of Providence, Port of Newport, or Port of Galilee.
21. “Project area” means land or lands under common ownership or control as certified by the Corporation.
22. “Project cost” means costs incurred in connection with the Qualified Development Project by the Applicant until the issuance of a permanent certificate of occupancy, or until such other time specified by the Corporation, including, but not limited to, lands, buildings, improvements, real and personal property or any interest therein, including the site, space or air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, and any environmental remediation costs, plus reasonable soft costs as determined by the Corporation, and ancillary infrastructure projects and infrastructure improvements, as permitted in the sole discretion of the Corporation.
23. “Project financing gap” means:
  - a. The part of the total Project Cost that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, applicant’s equity, a reasonable assumption of debt on the project, and any other capital source that is reasonable available given the nature of the project; or

- b. The amount of funds that the State may invest in a Qualified Development Project to gain a competitive advantage over a viable comparable location in another state by means described in the Act and Rules.
- 24. “Qualified development project” means a specific construction project or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights and air rights, acquired, owned, leased, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, undertaken by a Developer, owner or tenant, or both, within a specific geographic area, meeting the requirements of the Act, as set forth in the Application made to the Corporation.
- 25. “Qualifying TIF area” means an area containing a Qualified Development Project identified by the Corporation as a priority because of its potential to generate, preserve or otherwise enhance jobs or its potential to produce, preserve or otherwise enhance housing units. The Corporation shall take into account the following factors in determining whether a Qualified Development Project is a priority:
  - a. General or preservation of manufacturing jobs;
  - b. Promotion of Targeted Industries;
  - c. Location in a Port District or Airport District;
  - d. Location in an Industrial or Research Part
  - e. Location in a Transit Oriented Development Area;
  - f. Location in a Hope Community;
  - g. Location in an area designated by a municipality as a Redevelopment Area;
  - h. Location in an area located within land approved for closure under any federal commission on base realignment and closure action.
- 26. “Redevelopment area” means an area designated as a redevelopment area in accordance with R.I. Gen. Laws § 45-32-4.
- 27. “Revenue increment base” means the amounts of all Eligible Revenue from sources within the Qualifying TIF Area in the calendar year preceding

the year in which the TIF Agreement is executed, as certified by the Division of Taxation.

28. “Research park” means a property-based venture consisting of primarily research and development facilities intended to encourage technology-led economic development that is associated with one or more institutions of higher learning.
29. “Request of authorization” means a request by a Developer to the Corporation for authorization to submit an Application for a TIF Incentive.
30. “State” means the State of Rhode Island and Providence Plantations.
31. “Targeted industries” means any advanced, promising or otherwise prioritized industry identified in the economic development vision and policy promulgated pursuant R.I. Gen. Laws § 42-64.17-1 or, until such time as any such economic development vision and policy is promulgated, as identified by the Corporation from time to time and published on the Corporation’s website.
32. “TIF agreement” means an agreement between the Corporation and a Developer, under which, in exchange for the benefits of the funding derived from qualification under the Act and these Rules, the Developer agrees to perform any work or undertaking necessary for a Qualified Development Project, including the clearance, development or redevelopment, construction, or rehabilitation of any structure or improvement of commercial, industrial, or residential property; public infrastructure; preexisting municipally-owned stadium of 10,000 seats or greater; or utilities within a Qualifying TIF Area.
33. “TIF incentive” means any incentive awarded by the Corporation under the Act and these Rules.
34. “Total TIF payment” means reimbursement of all or a portion of the Project Financing Gap of a Qualified Development Project from the Division of Taxation as provided under the Act and these Rules.
35. “Transit oriented development area” means either of:
  - a. an area that the Corporation, after consultation with the Rhode Island Department of Transportation and the Rhode Island Public Transit Authority, designates as a Transit Oriented Development Area because it supports, or has the potential to support, development that is in close proximity to, compatible with, and supportive of public transit; such discretionary designation can

occur in response to an Application for an incentive under the Act or in a request submitted by a municipality to the Corporation in a for prescribed by the Corporation on its website; or

- b. an area with ready access to freight rail, air, and/or marine transportation where manufacturing, warehousing, distribution, and freight forwarding operations are or could be located.

## **6.6 Eligibility**

- A. In order to be eligible for a TIF Incentive the following requirements shall be satisfied:
  - 1. The project must be located in a Qualifying TIF Area;
  - 2. A Project Financing Gap exists;
  - 3. The project is:
    - a. a new facility and not a replacement or relocation of an existing facility already located in the State;
    - b. an expansion of an existing facility that will increase the number of full-time employees in the State; or
    - c. necessary to retain one or more At Risk Businesses;
  - 4. The Applicant must enter into a TIF Agreement with the Corporation on or before ~~December 31, 2018~~ June 30, 2020.
- B. The Developer of a Qualified Development Project may be eligible for receipt of payment of a portion of the Incremental Revenues directly realized from projects or businesses operating in the Qualifying TIF Area from the taxes assessed and collected under the R.I. Gen. Laws Chapters 44-11, 44-13, 44-14, 44-17, 44-18, 44-19, 44-30 or realized from such venue ticket sales or parking taxes as may be established and levied under State law.

## **6.7 Request for Authorization**

- A. No Application can be filed for a TIF Incentive without written authorization from the Corporation.
- B. The Corporation may authorize Developers to file an Application for a TIF Incentive through a public request for proposal process; may authorize a Developer who has applied for an economic development incentive under

another program administered by the Corporation to supplement that application by filing an Application under the TIF Incentive program; and the Corporation may authorize a Developer to apply for a TIF Incentive after review and approval of a Request for Authorization received from the Developer, in the form promulgated by the Corporation, which shall:

1. demonstrate that a TIF incentive is appropriate for the Developer's project because no alternative method of private or public financing, including any and all federal, state, and local grants, incentives, or tax abatements, is readily available to complete the project; and/or a TIF Incentive is the optimal financing source for a project; and/or the project creates direct public benefits, such as, but not limited to, public infrastructure, utilities, and other public amenities; and
  2. identify the Qualifying TIF Area for the project and the taxes to be included in the Eligible Revenues. The Corporation may request such analyses regarding taxes as may be necessary or helpful.
- C. In reviewing a Request for Authorization, the Corporation may consider, among other factors, whether other financing options reasonably exist for the project and whether the project has a public interest rationale and is consistent with state and local planning and development objectives.
- D. If the Corporation determines that it will not grant a Request for Authorization, it shall notify the Developer in writing of such decision.

## **6.8 Designation of a Qualifying TIF Area**

- A. The Corporation may designate areas within one or more contiguous municipalities that meet the necessary criteria to become a Qualifying TIF Area.
- B. The Qualifying TIF Area for a Qualified Development Project shall be no greater than the Project Area for said project, unless:
1. the Qualified Development Project includes the development of infrastructure or utilities to serve areas beyond the boundaries of the Project Area, in which case the Applicant may request that the proposed Qualifying TIF Area include, in addition to the Project Area, such additional real estate contiguous to the Project Area as will be directly or indirectly benefitted by the development of such infrastructure or utilities; or
  2. the Applicant can demonstrate, to the satisfaction of the Corporation in its discretion, that the Qualified Development project will directly result in the generation of Incremental Revenue beyond the boundaries of the Project Area and can propose, provide justification for, and identify an



administrable method, as determined in the sole discretion of the Corporation, for determining the portion or percentage (not greater than 75%) of the Incremental Revenue generated beyond the boundaries of the Project Area as a result of the project, in which case the Applicant may request that the proposed Qualifying TIF Area include additional real estate contiguous to the Project Area.

## **6.9 Application**

- A. The Application promulgated by the Corporation shall require submission of the following information from each Applicant:
1. The name, address and principal contact for the Applicant;
  2. State and Federal tax identification numbers;
  3. The location of the project;
  4. For a commercial project or a mixed use project, identification of prospective businesses that will occupy the project, type of businesses and principal products and services (if applicable or known);
  5. For a residential project or a mixed use project, a complete description of unit sizes/layouts, projected sales/lease pricing and affordability mix;
  6. The status of control of the entire Project Area shown for each plat and lot as indicated on the municipal assessor's tax map(s);
  7. A construction schedule for the project or each phase of the project;
  8. A detailed itemization of the estimated Project Cost;
  9. A detailed description of the financing for the project including all sources and amounts of funding, projected internal rate of return, net margin, return on investment and cash on cash yield;
  10. A pro forma demonstrating that the project is likely to be realized with the provision of the TIF Incentive requested but is not likely to be accomplished in this State by private enterprise without the TIF Incentive;
  11. A list and status of all required Federal, State and/or municipal approvals and/or permits required for the project;
  12. A delineation of any other federal, State or local incentives, grants, tax credits or other aid that will or may be received or requested by the Developer in relation to the project;

13. Whether the Applicant has obtained a tax stabilization agreement from the municipality in which the project is located or, if applicable, the unavailability of a tax stabilization agreement despite commercially reasonable efforts by the Applicant to obtain such an agreement and a description of such efforts;
14. A detailed description of the proposed Qualifying TIF Area, which shall include a description of the boundaries of the proposed Qualifying TIF Area; a description of the existing uses and permitted uses of the land located in the Qualifying TIF Area; a description of the existing commercial activity and specific businesses in the Qualifying TIF Area; a delineation of the taxes to be included in the Eligible Revenue; and the percentage of Incremental Revenue proposed to be eligible for a TIF Incentive;
15. If the Qualifying TIF Area is greater than the boundaries of the Project Area, the Application shall also include the following additional items with respect to the portion of the proposed Qualifying TIF Area located outside of the Project Area (the “benefitted properties”):
  - a. A listing of each parcel by lot and block number, including for each parcel the name of the title owner, the assessed value, the local zoning designation, and whether the parcel is improved or unimproved, and a copy of any field or proposed development plan relating to such parcel;
  - b. For each parcel, a certification by the Applicant that it has mailed a copy of a notice of the Application, in a form to be prescribed by the Corporation, to such title owner, by certified mail to the address of the title owner on file with the local tax assessor, which notice shall advise the title owner that it may provide written comment to the Corporation within thirty (30) days following the date of mailing of the notice;
  - c. A description of the development expected or planned on the benefitted properties, including the identification of the developers, if any, and their contractual relationship, if any, with the Applicant;
  - d. If the project involves the development of infrastructure or utilities or serve areas beyond the boundaries of the Project Area, a description of the proposed infrastructure or utilities to be developed by the Applicant that will directly or indirectly benefit the benefitted properties, including the cost thereof and any proposed contributions or reimbursements expected to be made by the benefitted properties, together with an assessment of whether any

additional infrastructure or utilities beyond those to be provided by the Applicant (e.g., house connections and/or connection main to link to a water or sewer project to be constructed by the Applicant) would need to be provided in order for such benefitted properties to be developed in the manner contemplated by the Application, and a description of any other known development constraints; and

- e. If the project does not involve the development of infrastructure or utilities: for each tax the Applicant proposes to include in Eligible Revenue, a description, supported by data, of how the Qualified Developed Project will directly result in an increase of revenue generated from that tax on the benefitted properties; and delineation of the method by which Incremental Revenues on the benefitted properties will be calculated and by which an identified portion or percentage of thereof shall be eligible for any TIF Incentive;
- 16. any other necessary and relevant information as determined by the Corporation; and
  - 17. A certification from the Applicant as to the following:
    - a. A Project Financing Gap exists on the project; and
    - b. The project meets the statutory criteria for approval by the Board as a Qualified Development Project.

## **6.10 Fees**

- A. An Applicant shall be charged a one-time, non-refundable application fee by the Corporation and may be charged fees for ongoing administration in relation to the project if approved by the Board. The Corporation shall annually publish a fee schedule on its website commencing on or before December 31, 2015.
- B. An Applicant may be required to pay to the Corporation the full amount of direct fees and costs paid to third-parties by the Corporation in relation to the consideration and/or approval of the Applicant's project.

## **6.11 Review Process**

- A. Each Application shall be reviewed to confirm compliance with the Act and these Rules, and the Corporation may reject any incomplete or deficient Application.

- B. The Corporation may require the submission of additional information in connection with any Application, the revision of an Application, and may permit the resubmission of an Application rejected as being incomplete or deficient.
- C. Prior to recommending a project to the Board for approval, the Corporation shall review each project to determine if a Project Financing Gap exists. This review shall include testing the validity of the Applicant's financial information and assumptions through the use of financial models and, to the extent necessary, seeking input from third-party consultants.
- D. After submission of a complete Application and review by the Corporation in accordance with the requirements of the Act and these Rules, the Corporation will determine whether to recommend to the Board that it approve a TIF Incentive for the Applicant. In developing a recommendation, the Corporation may take into account, in consideration with other factors deemed relevant by the Corporation:
  - 1. The evaluation of the Applicant's pro forma;
  - 2. The project's catalytic impact, impact on private investment, employment, and state and local revenues, and overall impact on the State;
  - 3. Whether the project furthers State or municipal planning and development objectives, or both;
  - 4. Whether the project maximizes the value of vacant, dilapidated, outmoded, or underutilized property,
  - 5. If the Application provides for a Qualifying TIF Area that is larger than the Project Area, the Corporation shall consider the positive impact of the provision of infrastructure or utilities upon the development, or potential for development, of the benefitted properties, and shall also review any comments provided by the title owners of the benefitted properties; and
  - 6. Whether there exists an opportunity for the State or the Corporation to recoup or receive a return on all or portion of the TIF Incentive to be issued to Applicant by virtue of a receipt of an equity stake or other interest in or return from the project.
- E. If the Corporation determines that it will not recommend a complete Application to the Board for approval of a TIF Incentive, it shall notify the Applicant in writing of such decision.
- F. The Corporation may set periodic Application deadlines that will be published on the Corporation's website from time to time.

## **6.12 Discretion and Judicial Review**

- A. The Corporation shall not have any obligation to make any award or grant any benefits under the Act or these Rules.
- B. A review of a Request for Authorization or of an Application shall not constitute a “contested case” under the Administrative Procedures Act, R.I. Gen. Laws § 42-35-9, and no opportunity to object to a Request for Authorization or an Application shall be afforded, nor shall judicial review be available from a decision rendered by the Corporation or the Board in connection with any Request for Authorization or any Application.

## **6.13 Board Approval**

- A. Prior to Board consideration for approval of any TIF Incentive the following conditions shall be satisfied:
  - 1. The Applicant has submitted a completed Application;
  - 2. The Chief Executive Office of the Corporation has provided written confirmation to the Board
    - a. that the Corporation has reviewed the Application and of any determination regarding the potential impact on the Qualified Development Project’s ability to promote the retention and expansion of existing jobs, stimulate the creation of new jobs, including good-paying jobs, attract new business and industry to the State, and stimulate growth in real estate developments and/or businesses that are prepared to make meaningful investment and foster job creation in the State; and
    - b. identifying the proposed boundaries of the Qualifying TIF Area, length of the TIF Agreement and the percentage of Incremental Revenues to be allocated under the TIF Agreement; and
    - c. The Secretary of Commerce has provided written confirmation to the Board that the recommendation provided to the Chief Executive Officer is consistent with the purposes of the Act; and
    - d. The Division of Taxation has provided certification of the Revenue Increment Base.
- B. Within thirty (30) days after satisfaction of the requirements of § 6.13(A) of this Part, or such later date as the next meeting of the Board is convened, the Board

shall undertake review and consideration of the approval of a TIF Incentive for the Qualified Development Project.

- C. In addition to those findings require under R.I. Gen. Laws § 42-64-10(a), the Board shall make the following findings in connection with approval of a TIF Incentive under the Act and these Rues:
1. That there is a Project Financing Gap;
  2. That the TIF Incentive is the lesser of thirty percent (30%) of the total Project Cost or the amount needed to close the Project Financing Gap; provided that if the Board chooses to exempt a project for the development of public infrastructure, a preexisting municipally-owned stadium of 10,000 seats or greater, or utilities from said 30% limit requirement pursuant to R.I. Gen. Laws § 42-64.21-6(f), the Board need only find that the TIF Incentive does not exceed the amount needed to close the Project Financing Gap;
  3. That the Chief Executive has provided written confirmation required by the Act;
  4. That the Secretary of Commerce has provided written confirmation required by the Act; and
  5. For an Applicant qualifying as a significant taxpayer as determined by the Board, that the Incremental Revenues may be exempted up to the levels permitted by the Act and the Applicant shall be required to contribute payments in lieu of taxes, pursuant to procedures set forth in § 6.18 of this Part, into the Corporation TIF Fund equal to the amount of such Incremental Revenues as are exempted and awarded as a TIF Incentive.

#### **6.14 TIF Payments**

- A. The Total TIF Payment shall be paid in annual installments and shall be subject to appropriation.
- B. An Annual TIF Payment shall not be allowed prior to the taxable year in which the Qualified Development Project is Placed in Service.
- C. The Annual TIF Payment shall not exceed 75% of the actual Incremental Revenues for the year corresponding to the Annual TIF Payment.
- D. The Total TIF Payment received by any Applicant for a given Qualified Development Project shall not exceed the lesser of

1. thirty percent of the Project Cost as provided in the Application; or
2. thirty percent of the total Project Cost as certified by the Corporation pursuant to these Rules; provided, however, that the limitation of this Subsection shall not apply to projects for public infrastructure, a preexisting municipally-owned stadium of 10,000 seats or greater, or utilities.

## **6.15 TIF Agreement**

- A. Upon approval of TIF Incentive by the Board and in order to safeguard the expenditure of public funds and sure that the disbursement of funds further the objectives of the Act, the Corporation and the Applicant will enter into a TIF Agreement, which shall include, among others, the following terms:
1. A detailed description of the boundaries of the Qualifying TIF Area;
  2. The period in years in which the Applicant will be eligible for Annual TIF Payments, the maximum amount of Project Cost, the maximum percentage reimbursement amount, the maximum aggregate dollar amount of the TIF Incentive to be awarded to the Applicant, the maximum annual percentage of reimbursement, the particular tax or taxes to be included in the Eligible Revenues and the order in which multiple taxes will be applied to determine the TIF Incentive grant amount;
  3. The TIF Incentive shall be issued prior to the Qualified Developed Project being Placed in Service or such later date as determined by the Board in its approving resolution;
  4. If applicable, a provision requiring that the receipt of TIF Payments for any year be subject to the Applicant meeting any job creation or retention requirements or any other conditions that the Corporation, in its sole discretion, shall set as a condition of its approval of TIF Incentive for the Applicant;
  5. Evidence that the Applicant is in good standing with the Secretary of State and Division of Taxation at the time of execution of the TIF Agreement; a Letter of Good Standing from the Division of Taxation shall be evidence of good standing;
  6. A provision indicating whether the TIF Incentive is allowed as a payment from the State subject to annual appropriation or as an exemption subject to payment to the Corporation as provided in the Act;

7. At the Corporation's discretion, a provision requiring the Applicant to pay the Corporation's reasonable costs, including attorneys' fees, incurred in connection with the negotiation, execution and enforcement of the TIF Agreement;
8. Indemnification and insurance requirements;
9. Default and remedies including events, if any, that would trigger forfeiture, revocation, and/or repayment of the TIF Incentive;
10. Reporting requirements including, but not limited to, any requirements under the Act;
11. The imposition of such restrictions or covenants upon the Qualified Development Project as may be necessary to ensure continued compliance with the Act and the Rules;
12. The procedure by which the Developer may pledge and assign as security for any loan, any or all of its rights, title and interest in and to the TIF Agreement and in the TIF Incentive;
13. A certification procedure, which shall include, but not be limited to, the following:
  - a. Representations that the Qualified Development Project complies with all applicable laws and regulations;
  - b. Evidence that the Applicant is in good standing with the Secretary of State and the Division of Taxation at the time the Applicant files its certification for issuance of the TIF Incentive; a Letter of Good Standing from the Division of Taxation shall be evidence of good standing;
  - c. A requirement that the Applicant submit, prior to issuance of any TIF Payment, satisfactory evidence of the actual Project Cost, as certified by a certified public accountant. If the actual Project Cost is less than the estimated Project Cost forming the bases for the approval of the awarded TIF Incentive, then the awarded incentives shall be reduced based upon the actual Project Cost;
  - d. Evidence that the Qualified Development Project has been Placed in Service and/or meets such other criteria as imposed by the Board in its approving resolution; and



- e. If applicable, evidence that the Applicant has met any additional job creation or retention requirements or any other conditions that the Corporation, in its sole discretion, set as a condition of its approval of TIF Incentive for the Applicant.

## **6.16 Assignment of TIF Agreement**

- A. A Developer that has entered into a TIF Agreement with the Corporation pursuant to this section may, upon notice to and consent of the Corporation, pledge and assign as security for any loan, any or all of its right, title and interest in and to the TIF Agreement and in the TIF Payments due thereunder, and the right to receive the same, along with the rights and remedies provided to the Developer under such agreement. Any such assignment shall be an absolute assignment for all purposes, including the federal bankruptcy code.
- B. Any pledge of TIF payments made by the Developer shall be valid and binding from the time when the pledge is made and filed in the records of the Corporation. The TIF Agreement and payments so pledged and thereafter received by the Developer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind of tort, contract, or otherwise against the Developer irrespective of whether the parties have notice thereof.

## **6.17 Certification**

- A. Prior to the issuance of any TIF payments, the Applicant must submit satisfactory evidence as determined in the sole discretion of the Corporation of the following:
  - 1. actual Project Costs, as certified by a certified public accountant. If the actual Project Costs are less than the estimated Project Costs forming the bases for the approval of the TIF Incentive, then the awarded incentives shall be reduced based upon the actual Project Costs; and
  - 2. evidence that the Qualified Development Project has been Placed in Service and/or meets such other criteria as imposed by the Board in its approving resolution.

## **6.18 Corporation TIF Fund**

- A. An Applicant who is granted an exemption as a significant taxpayer under R.I. Gen. Laws § 42-64.21-5(d) shall make payments in lieu of taxes of all exempted amounts directly to the Corporation or as directed by the Corporation to a bond trustee. Except to the extent assigned to a bond trustee pursuant to § 6.18(D) of

this Part, all payments in lieu of taxes collected from an Applicant shall, promptly upon receipt by the Corporation, be deposited into the Corporation TIF Fund. There shall also be deposited into the Corporation TIF Fund the proceeds of any bonds issued by the Corporation pursuant to § 6.18(D) of this Part.

- B. Amounts in the Corporation TIF Fund shall be used to fund the making of TIF Payments by the Corporation to any Developer in accordance with the TIF Agreement in respect of such Developer's Qualified Development Project. The Corporation shall establish separate accounts within the Corporation TIF Fund to account for the receipt and application of specific funds in support of each separate Qualified Development Project to be funded from the Corporation TIF Fund. Up to the amount provided in the related TIF Agreement, moneys deposited into the Corporation TIF Fund with respect to a particular Qualified Development Project shall be used only for that purpose, unless the Corporation determines that any such amount is no longer needed or eligible for payment.
- C. As provided in R.I. Gen. Laws Chapter 42-64, the Corporation may issue bonds from time to time in order to fund a deposit into the Corporation TIF Fund. A resolution authorizing such bonds may either identify the particular TIF Agreement(s) and the related Qualified Development Project(s) for which TIF Payments are to be funded through the bond proceeds, or may provide that the disposition of bond proceeds shall be determined by subsequent resolution of the Corporation. Such resolution shall also specify the payments in lieu of taxes that will secure the repayment of such bonds, which may constitute all or any portion or percentage of such payments in lieu of taxes derived from all or any combination of present and/or future TIF Agreements. The debt service on the bonds shall be structured to correspond to the projected receipt of such payments in lieu of taxes.
- D. If the Corporation issues bonds pursuant to § 6.18(C) of this Part, the Corporation shall pledge and assign the payments in lieu of taxes specified in the resolution authorizing such bonds directly to the bond trustee for such bonds, as payment or security for the bonds. Such pledge and assignment shall be an absolute assignment of all of the Corporation's right, title and interest in such payments in lieu of taxes, notwithstanding the Corporation's continuing enforcement of said payments on behalf of the bond trustee.
- E. Obligations issued under the provisions of these Rules shall not constitute a debt, liability or obligation of the State or of any political subdivision of the State other than the Corporation or a pledge of the faith and credit of the State or any political subdivision other than the Corporation but shall be payable solely from the payment in lieu of taxes pledged by the Corporation. Each obligation issued by the Corporation shall contain on its face a statement to the effect that the Corporation shall not be obligated to pay the obligation or interest on the

obligation except from revenues or assets pledged therefor and that neither the faith and credit nor the taking power of the State or any political subdivision of the State other than the Corporation is pledged to the payment of the principal of or the interest on the obligation.

### **6.19 Administration and Examination of Records**

The Corporation may examine any books, paper, records or memoranda bearing upon the approval of incentives awarded under the Act, and may require the attendance of any person executing any Application, report or other statement, or of any officer or employee of any taxpayer, or the attendance of any other person, and may examine such person under oath respecting any matter which the Corporation deems pertinent or material in determining eligibility for incentives claimed under the Act.

### **6.20 Inspection Rights**

The Corporation shall have the right at reasonable times to make an inspection and to enter upon any property that is the subject of an application for certification, whether the Qualified Development Project is ongoing, or completed, and during the term of a TIF Agreement to verify compliance with the Act, the Rules and such other conditions imposed by the Corporation.