

MEMPHIS & SHELBY COUNTY INDUSTRIAL DEVELOPMENT BOARD

PAYMENT-IN-LIEU-OF-TAX (PILOT) PROGRAM OVERVIEW



125 North Main Street, Room 468
Memphis, Tennessee 38103
Phone: 901-576-7107
Fax: 901-576-7101

Approved 12-03-09
Amended October 20, 2010

**CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE
INDUSTRIAL DEVELOPMENT BOARD
PAYMENT-IN-LIEU-OF-TAX (PILOT)
PROGRAM OVERVIEW**

TABLE OF CONTENTS

PILOT PROGRAM OVERVIEW

Section I	General Purpose and Objectives
Section II	Conflict of Interest
Section III	Definitions
Section IV	PILOT Incentive Criteria
Section V	Community Reinvestment Credit Criteria
Section VI	National Corp Headquarters Criteria
Section VII	Special Incentives
Section VIII	Retention PILOT Criteria
Section IX	Application Process
Section X	Fees
Section XI	Closing Requirements
Section XII	Evaluation/Compliance

PILOT EVALUATION MATRIX	Section XIII
-------------------------	--------------

IDB DIVERSITY PROGRAM	Section XIV
-----------------------	-------------

PILOT APPLICATION	Section XV
-------------------	------------

PILOT ANNUAL REPORT FORM	Section XVI
--------------------------	-------------

**CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE
INDUSTRIAL DEVELOPMENT BOARD
PAYMENT-IN-LIEU-OF-TAX (PILOT)
PROGRAM OVERVIEW**

Section I. General Purpose and Objectives

The City of Memphis and County of Shelby, Tennessee, are committed to the promotion of high quality development in all parts of the City and County and to ongoing improvement in the quality of life for its citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, the City of Memphis and County of Shelby will, on a case-by-case basis, give consideration to providing Payment-in-Lieu-of-Tax (PILOT) incentives to stimulate economic development.

The Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (IDB) was established by City and County governments to assist in the financing of new business and industry and to promote local industrial expansion. The corporation was organized in accordance with the State of Tennessee Industrial Development Corporation Act, codified at Tennessee Code Annotated §§ 7-53-101 et seq. It is the intention of this Board to conduct its activities consistent with the provisions of the Act and the intent of the local legislative bodies in establishing the Corporation.

To this end, the IDB will conduct its business within the following guidelines in the consideration of applications for PILOT incentives. **Nothing herein shall imply or suggest that the City of Memphis and County of Shelby is under any obligation to provide a PILOT to any applicant.** All applicants shall be considered on a case-by-case basis, and the decision to approve or deny a PILOT shall be at the discretion of the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (IDB).

The IDB is supported by the Office of Economic Development which is a department of the Memphis and Shelby County Division of Planning and Development.

General PILOT Program Requirements:

1. In accordance with the requirements of State law, the IDB must find each project that is presented for approval to be in the public interest and one which will increase employment within the State of Tennessee. The IDB will evaluate projects for PILOT eligibility based primarily on the following performance standards:

- A. Number of jobs created
- B. Wages paid, medical benefits provided
- C. Capital Investment
- D. Diversity Plan
- E. Benefit/Cost Ratio where public revenue to the city and county exceeds public costs for the PILOT incentive

2. The types of projects that may apply for and be considered for PILOT incentives are:
 - A. Industrial Projects constructed to manufacture, assemble, process, fabricate and distribute agricultural, mining, biomedical, electronics, food, chemical, alternative fuels, automobile or other manufactured products.
 - B. Pollution Control projects, approved by the City of Memphis or Shelby County, promoting the health, welfare and safety of the citizens of Memphis and Shelby County have been found by the legislature to be in the public interest without regard to employment factors.
 - C. Distribution Facilities constructed to receive and forward final goods to various locations.
 - D. Office Buildings and Service Facilities which the project will occupy for at least the term of the PILOT.
 - E. Major Tourism Projects that meet the threshold set for participating projects under the Convention Center and Tourism Development Financing Act of 1998 (Title 7, Chapter 88, Tennessee Code Annotated)
 - F. Other Non-Retail Projects not defined above may be considered for PILOT on a case-by-case basis.

The following types of Projects shall not be considered by the Board:

- A. Projects that are already underway or have begun construction. A project must meet the “but for” test, which affirms that but for a PILOT incentive the project is not viable.
 - B. General Commercial Projects, Housing Projects, Retail Centers, and Entertainment and Recreation Facilities with the exception of a Qualified Tourism Project.
 - C. Speculative development: This Policy shall not be construed to prevent Projects for single users, even though actual ownership of such Projects may reside in an entity or entities other than the user. Such cases shall be considered upon their individual merits, but in no event shall a Project owned by a party other than the primary user of the facility be considered unless: All of the Facility or a predefined percentage of the Facility will be used for the Project which is the subject to the PILOT. No PILOT Application shall be approved if it would constitute an artifice or device to circumvent the Board’s requirement that “speculative” rental projects not be approved.
3. The Board shall take title to the real and/or personal property associated with the Project as approved by the Board, and shall lease the property to the Applicant for the PILOT Term, with PILOT payments as set forth in the Lease Agreement.

4. Under a Payment-in-Lieu-of-Taxes (PILOT) agreement, payments are made to the IDB 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 taxes being generated at the time the Board takes title to the property typically considering only the value of the unimproved property. Generally, for tangible personal property, such amounts are to be based on the taxes being generated on the current assessed value of the property at the time the Board takes title to the property. The PILOT payment will include at minimum 25% of Shelby County taxes that would otherwise be due on the property, and 10% of City of Memphis taxes otherwise due if the property is located in the City of Memphis.
5. Each Applicant in its development, ownership and operations will be required to comply with all laws, ordinances, orders, rules, regulations, and requirements of duly constituted public authorities, which are or shall become applicable to the Project, the repair and alteration thereof, and the use or manner of use of the Project.
6. In order to support the community's economic development goals which include enhancing locally owned, small and minority business development, project companies receiving a PILOT incentive must participate in the IDB Diversity Program. The guidelines for the Diversity Program are located in Part 3 of this program overview.
7. No project shall receive a PILOT incentive lease term beyond a total of 15 years per the Memphis City Council's Resolution dated February 20, 1996, and the resolution by the Board of Commissioners of Shelby County, Tennessee, dated February 27, 1996. A new, totally separate project may locate on property previously under a PILOT lease agreement, and if eligible for a PILOT, could result in the property being in the PILOT program for more than 15 years.
8. The length of the PILOT term is based upon an evaluation of the project's merits. Each project coming before the IDB will be scored based on the PILOT Evaluation Matrix included in Section XIII of this Program Overview.

Section II. Conflict of Interest

Each IDB member shall be responsible for disclosing any material interest which he or she may have in or with an Applicant, Sponsor or financing source. Any Board member having any material interest in a Project or a financial or family relationship with an Applicant or Sponsor or financing source shall submit to the IDB Counsel a representation of that interest, and IDB Counsel shall advise both the IDB and IDB 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 IDB will then consider the Application without participation from the member or members who recuse themselves.

IDB Counsel shall not have a professional legal relationship with the Applicant or any Sponsor's source of financing other than incidental representations in connection with proposed financing or similar financing. In the event of a conflict involving IDB Counsel, special counsel shall be retained by the IDB to represent it in connection with the particular project being considered.

Section III. Definitions

“Annual Average Wage” for Shelby County is the annual average wage for all businesses and industries operating in Shelby County as calculated and reported by the Tennessee Department of Labor and Workforce Development in the Quarterly Census of Employment and Wages – Annual Average. The annual average wage as reported by the Department includes regular wages, overtime, paid holidays, and paid vacation.

The PILOT evaluation will compare the project annual average wage to the Shelby County annual average wage, so the project annual average wage is likewise to include regular wages, overtime, paid vacation, and paid holidays.

“Brownfield” means properties that have been vacant or abandoned for at least five (5) years, have a prior history of industrial use and have potential environmental contamination as indicated by a Phase I Environmental Assessment. Additionally, only those properties in excess of five acres or structures with more than 20,000 square feet of gross floor area will be considered an eligible as an eligible brownfield.

“Contract Employee” means a person employed by a party other than the primary user of a facility who will directly benefit from the PILOT incentive, but who is assigned to work for the primary user of the facility as a full-time equivalent and is considered a necessary member of the workforce responsible for duties and assignments required to meet production levels of the primary user. All contract employees are subject to the PILOT criteria for determining net new jobs, including but not limited to wages and benefits.

“Expansion” means the addition of buildings, structures, machinery, or equipment for the purpose of expanding a Project. The Expansion will be evaluated independently from the original Project, and shall require a new application. Expansion projects will be considered only if they create net new jobs.

“Identified Labor Source” means Workforce Investment Act customers who are unemployed, underemployed and/or employed and certified by the Memphis Career Center.

“Full-Time Equivalent Jobs” means full time jobs which provide full time employment of 1,600 hours per year, and permanent part time jobs, which when combined, total 1,600 hours of employment. For example if an employer had one employee working 1,600 hours per year and two employees working 800 hours per year each, that employer would be providing employment of two full-time equivalent jobs.

“Lease Agreement” means the formal contract between the lessee and the Industrial Development Board containing all the conditions with which all parties of said contract must be in compliance.

“Minority/Small Business” firms are defined for the IDB PILOT and Diversity Programs as those businesses certified as minority and/or small businesses by the City of Memphis or Shelby County.

“Net New Jobs” means the number of new full time equivalent jobs in Shelby County, Tennessee created by the project, and located at the site that is the subject of the PILOT Lease Agreement. Net New Jobs in Shelby County, Tennessee shall not include any jobs moved or replaced from any other site(s) in Shelby County, Tennessee. Net new jobs shall include contract jobs as defined in this document.

“PILOT Evaluation Matrix” summarizes the methodology for determining the number of years recommended for a PILOT lease term agreement. The matrix outlines the points that are awarded for various aspects of a project that meet the defined purpose of the PILOT Program. The PILOT evaluation matrix is included in Section XII of this Program Overview.

“Primary User” means corporation or other business entity, or a group of individual entities that jointly operate a project, and who in total contribute to the total number of jobs and the capital investment of project.

“Project” means buildings, structures, machinery, equipment, land, new employees and applicable wages defined in the Application. This may include the addition of buildings, structures, machinery, as well as equipment approved to be added by the IDB within two years of the PILOT lease date.

“Qualified Tourism Project” means any project that (a) qualifies as a “Qualified public use facility” as defined in the Convention Center and Tourism Development Financing Act of 1998, T.C.A. 7-88-103 or (b) any other tourism project approved by a majority of the Board.

“Ramp-Up Period” means the initial time period in which the company is provided in order to meet its job, wage, capital investment and diversity plan commitments, and comply with special circumstance commitments in applicable cases. The ramp-up period shall be two years unless a waiver is granted by the IDB.

“Relocation” means the movement of an Applicant’s operation within Shelby County, Tennessee resulting from an expansion. Such movement results in the cessation of operations at the applicant’s existing facility and the establishment of operations at another site in Shelby County, Tennessee. In such case, the benefits of the PILOT incentive shall apply only to the incremental investment or property (based on square footage of new facility and the square footage of the existing facility) associated with the relocated project. The PILOT payments shall be calculated to reflect, at the minimum, the taxes paid on the applicant’s facility prior to the move.

“Sponsor” Any entity with legal or economic responsibility for any project proposed to be financed by the IDB or any entity with legal or economic responsibility for any project proposed to be conveyed to the IDB in a PILOT lease agreement. A Sponsor may be the applicant or the proposed project lessee.

In a three-party PILOT transaction, the sponsor is the fee owner of the real property upon which the Project will be located. The sponsor will convey the real property to the Board, the Board will lease the real property to the sponsor and the Sponsor will sublease the real property to the Applicant. The Applicant will also be a party to the lease with the IDB. The basic operating lease term between the lessee (sponsor) and the sub-lessee (applicant) for the real property must be equal to (or with option to renew or extend sub-lease) or greater than the approved PILOT lease term to ensure continuous applicant accountability during the approved PILOT term.

Section IV. PILOT Incentive Criteria

The IDB has established the criteria listed below for the review of PILOT applications. These criteria are based upon the economic and physical development policies of the City of Memphis and Shelby County, Tennessee, and may be changed by the IDB without notice. These criteria will be considered, in accordance with state law, and applied on a case-by-case basis in evaluating projects for PILOT incentives. Nothing herein, however, shall obligate the Board or Memphis or Shelby County to approve a PILOT incentive.

These criteria address the basic responsibility of the Board to demonstrate that an incentive for a project is in the public interest and creates jobs. If a project meets the basic criteria to be considered for a PILOT incentive, the length of any PILOT Lease term that may be awarded will be determined based upon the PILOT Evaluation Matrix.

- A. Jobs A project must create net new jobs to be considered for a PILOT incentive. Points will be awarded according to the PILOT evaluation matrix based upon the number of net new full-time-equivalent jobs employed directly by the project operations including contract employees.

Project employees must be paid at least \$10 per hour (actual wage per employee, not average wage) to be considered in the determination of net new jobs for a PILOT incentive. This criterion may be waived for a qualified tourism project.

- B. Wages Projects that pay annual average wages (including paid vacation and holidays) that equal or exceed 75% of the current Shelby County annual average wage will be awarded points according to the evaluation matrix.
- C. Benefits Project employers must provide medical benefits and pay at least 50% of the cost of those benefits to be eligible for a PILOT incentive. This criterion may be waived for a qualified tourism project.
- D. Capital Investment The project investment in land, building, site preparation, equipment and any other tax producing improvements will be awarded points according to the evaluation matrix.

Additional capital investment in an amount not to exceed **10%** of the value initially approved by the IDB may be added to the PILOT lease for the term of the incentive.

Investment capital cannot be transferred between real and personal property categories once the IDB has approved the Applicant's application. Subsequent investment capital reassignment by the Applicant will require re-submittal of another application for IDB approval.

Monthly or annual rental payments during the PILOT Lease term will not be construed as part of the leasehold property improvement or as increasing the value of the Applicant's capital investment.

- E. Location Projects locating within the City of Memphis and/or Target Areas will be awarded points according to the evaluation matrix.

Target Areas currently include:

- Renewal Community as defined by HUD
- Renewal Market Tax Credit Area as defined by the U. S. Department of the Treasury
- Other City Target Areas
 - Frank Pidgeon Industrial Area
 - State and Federal designated brownfields
 - Urban Economic Revitalization Areas

- F. Diversity Plan All Applicants must submit a Diversity Plan developed in conjunction with the IDB's consultant to be eligible for a PILOT incentive. See the IDB Diversity Program in Section for complete information regarding Diversity Plan requirements.

If an Applicant submits a Diversity Plan that significantly exceeds basic diversity plan goals, and the project achieves the plan's goals, the IDB may authorize a one or two year extension of the PILOT incentive lease term. Also listed under Special Incentives, Section VII.

- G. Benefit to Cost Ratio The public benefit, as measured by new local tax revenues generated for the city and county by the project, must exceed the public cost as measured by the city and county property tax revenues forgone as the PILOT incentive. The ratio of benefits to costs must exceed one to one unless a two-thirds majority of the board votes to waive this requirement for a project.

- H. Special Consideration Points The IDB shall have at its discretion to consider pertinent information that demonstrates a significant beneficial impact upon the economic and physical plans of Memphis and Shelby County.

Accordingly, the IDB may, but is not required to, grant additional points to projects that meet any of the following criteria listed below.

The maximum points awarded for meeting these criteria are noted in the evaluation matrix. In no event shall special consideration exceed 25% of the matrix score calculated prior to the addition of special consideration points.

If any special consideration points are awarded, the project must still meet the criteria of a benefit to cost ratio that exceeds one to one as noted in criterion G above.

1. Targeted Industries

- a. Biomedical (research and manufacturing)
- b. Electronics (assembly, repair and manufacturing)
- c. Manufacturing (food processing, chemical, alternative fuels, automobile and other manufacturing)
- d. Information Technology
- e. Logistics Music and Film Tourism (Key Targets from *Memphis, ED Plan*)

2. Regional, District, National, or International Corporate Headquarters

3. U. S. Fortune 500/Global 1,000 companies, or Nationally Recognized Industry Leader
4. Major Employers (500 + jobs)
5. Minority/Women-owned Business
6. Benefit to Cost Ratio for the project exceeds 3 to 1.

Any PILOT lease term adjustment caused by Applicant's default regarding special consideration points will be limited to a two (2) year maximum adjustment.

PILOT Incentive Benefits and PILOT Payments

A PILOT incentive benefit is 75% of Shelby County property taxes, and if located in Memphis 90% of City of Memphis property taxes, for the number of years in the PILOT lease term as determined by scoring criteria listed above.

The PILOT payment is based on 25% of Shelby County taxes, plus 10% of City of Memphis taxes if the property is located in the City of Memphis. Additional fees apply as listed in Section IX of this Program Overview.

Section V. Community Reinvestment Credit PILOT Criteria

Community Reinvestment Credit (CRC) applies to:

- i) currently assessed real properties, or portions of currently assessed real property (except for unutilized leased or owned floor area) within the corporate limits of the City of Memphis **or**
- ii) centrally assessed property for companies set forth in T.C.A. 67-5-13 or as amended with property in the Corporate City Limits of the City of Memphis

CRC Criteria:

- A. Capital Investment (Minimum Net New Investment): The Community Reinvestment Credit will be applied based on the then current appraised value of the CRC related real estate. The points earned for a CRC project capital investment cannot exceed 10 points.
- B. Jobs: A minimum requirement of 15 Net New Jobs or Net New Jobs equal to 25% of the current workforce, whichever is greater, (the 25% jobs requirement applies only in projects locating to properties that already have been occupied) is required for a CRC incentive. Jobs are scored the same as for a basic PILOT in accordance to the evaluation matrix.
- C. Wages and Benefits: The wage and benefit requirements and scoring are the same as the basic IDB wage criteria.
- D. Location: Is evaluated for points in the same manner as a basic PILOT in accordance with the PILOT evaluation matrix.

- E. Diversity Plan: Must meet the same requirements as a basic PILOT and in accordance with the Shelby County IDB Diversity Program.
- F. Benefit to Cost Ratio: The same requirement of a ratio that exceeds one to one applies as in a basic PILOT
- G. Discretionary Points: CRC projects are eligible for the same special consideration points as a basic PILOT and are awarded at the discretion of the IDB.

CRC PILOT Incentive Benefits and Payments

The CRC PILOT incentive benefit and payments are the same as for a basic PILOT except:

A. Land: The Real Property Lease Agreement will reflect a PILOT assessment basis equal to at least 100% of the assessed value of the land on which the CRC property is located.

B. Net New Square Footage: Real Property Netting: If the primary user already owns or leases real property in Shelby County when the project application is filed, real property will be deducted on a square foot basis from the project real property for the determination of CRC benefits.

However, the IDB may not apply netting to a project if:

- The PILOT applicant company is a Greater Memphis Chamber of Commerce targeted industry, and
- The PILOT applicant company presents evidence that expansion at its current location is not practicable.

C. CRC Annual Real Property Cap: The CRC benefit is capped at \$2.1M per year in actual property tax payments otherwise due at current approved tax values and rates, and adjusted based upon reappraisals and tax increases, (City of Memphis \$.9M and Shelby County \$1.2M less the 25% PILOT payment) will be set and monitored through quarterly reporting by the Office of Economic Development.

The CRC annual cap calculation will not apply to projects which are located in:

- Renewal Community and the New Markets Tax Credit areas, and other economic development target areas declared by the City of Memphis and Shelby County.
- Properties containing space with improvements that have never been leased or occupied.

Section VI. National Corporate Headquarters PILOT Criteria:

Projects which are not eligible for CRC Credit because they are locating outside the corporate limits of the City of Memphis may seek a PILOT benefit on real property that is to be used as the Primary North American Corporate Headquarters for the primary user. The project company must satisfy the following criteria to be eligible to apply for a Corporate Headquarters PILOT benefit:

- A. The company must be a corporation of national significance;
- B. A significant percentage of the decision making officers or employees of the corporation must work and maintain their primary offices at the proposed national corporate headquarters in Shelby County;
- C. The proposed headquarters should be the office location of a majority of the management employees of the corporation;
- D. The corporation must make a significant financial commitment to the property, which is the headquarters location; and
- E. The corporation and project must meet the normal requirements for an approved PILOT.

Section VII. Special Incentives

Special PILOT incentives may be granted by the IDB in an effort to more aggressively pursue a more sustainable community, to encourage sustainable, “green” buildings, as well as to reduce recidivism rates for released prisoners.

No property, or portions of property under the PILOT program, shall receive PILOT benefits beyond the 15-year maximum term as a result of these special incentives.

1. Special Incentive: Green Initiative

This incentive awards additional time to the term of approved PILOTs for carrying out environmentally friendly practices through two possible components:

- i.) Leadership in Energy and Environmental Design (LEED) Green Building Rating System Certification; or
- ii.) an Environmental Commitment Plan.

A. LEED Certification:

LEED is a third party certification program and nationally accepted benchmark for the design, construction and operation of high performance green buildings. Projects that are awarded these LEED designations will be eligible for the following additional years of real and personal property PILOT incentives:

Certified	Add one year
Silver	Add one year
Gold	Add two years
Platinum	Add two years

This designation must be awarded during the ramp-up period for approved PILOT incentives.

B. Environmental Commitment Plan:

As an *alternative* to having a building designated as a LEED property, an Environmental Commitment Plan can be presented for approval and implementation. Approval of and compliance with an Environmental Commitment Plan would add one (1) additional year to the PILOT term on real and personal property for companies clearly showing performance in two (2) or more of the key areas of human and environmental sustainability during the term of the PILOT: sustainable site development, water savings, energy efficiency, materials selection and indoor environmental quality.

Specific performance measures for this component of the Green Initiatives Special PILOT incentives include:

- Company Fleets: Utilization of alternative energy or environmentally friendly "street designated" company fleets (autos, delivery trucks, etc., but not including fork lifts). At least 25% environmentally friendly vehicles must be in this fleet. This fleet must include at least fifty environmental friendly vehicles. "Environmentally friendly" can include, but are not limited to vehicles which: are hybrid or battery powered; use alternative fuels such as bio-fuels; use fuel cells; or are clearly identifiable vehicles which in their use, lessen negative impacts on the environment.
- Renewable Energy: Use of onsite renewable energy such as solar, wind, micro-turbines, fuel cells, or other which represents at least 25% of a PILOT facility's annual energy use.
- Green Rooftops: Installation of Green Rooftops on PILOT facilities, which are designed to reduce energy costs, capture rainwater, and reduce storm water runoff. These rooftops must be more than incidental plantings or rooftop gardens, but designed to environmental standards which provide substantial reductions of adverse environmental factors. They can be designed as either extensive or intensive eco-roofs.
- Waste: Eighty-five percent or more of manufacturing or processing waste is to be used in recycling, composting, or reuse in other processes. The intent is to keep waste products out of landfills and to have them used constructively. Waste stream audits, reports from recycling facilities, and other forms of documentation shall be required.
- Ridesharing: Companies with 50 or more employees who can document that at least 25% of their employees use carpooling, company vans, or public transportation strategies to commute to work on a daily basis. The intent is to encourage PILOT companies to keep private vehicles off of public streets in their daily commute. Memphis and Shelby County Health Department manages the local rideshare program and can provide the needed resources and tracking for this component.

- Water Conservation: Installation of water conservation measures and mechanisms including, but not limited to low flow/waterless plumbing components, recycling, limited use or no use of lawn sprinkler systems, storm water site detention, and other strategies. Documentation must be provided that these measures reduce the use of water by a significant measure (at least 25%) as compared to buildings which do not utilize water conservation measures. Documentation can include but not be limited to gallons used per person, overall water usage percentage for comparable facilities, or related measures.
- Other factors not specifically mentioned here which lessen adverse environmental impacts, and reduce the use of non-renewable resources as approved by the Industrial Development Board.

Green Initiative Incentives Approval The IDB reserves the right to retain or secure outside expertise to review any or all of these situations to determine that the spirit and letter of the regulations is upheld.

2. Special Incentive: Prisoner Re-Entry

For companies who work with local and/or State programs in hiring formerly incarcerated individuals through a Prisoner Re-Entry Plan approved by the City, County and/or State, the following incentives may be awarded:

- Companies that hire 5-15 re-entry employees may be eligible for a one (1) year PILOT lease term extension;
- Companies that hire 16-29 re-entry employees may be eligible for a two (2) year PILOT lease term extension;
- Companies that hire 30 or more re-entry employees may be eligible for a three (3) year PILOT lease term extension.

All companies receiving benefits under this program must retain the specific number of re-entry employees committed to, for the full term of the PILOT.

Memphis, Shelby County and the State of Tennessee are fully invested in providing effective prisoner re-entry programs to reduce recidivism rates among released prisoners. They are:

City of Memphis Second Chance: Participants include ex-offenders with one felony conviction who reside within Memphis and Shelby County; and businesses interested in hiring ex-felons. Partners include the City of Memphis, U.S. Department of Labor, public/private ventures and local businesses.

Shelby County Prisoner Re-Entry Program/3 R Project: Expanding on the original Shelby County "Building for the Future" construction trades inmate training program started in 1990 and now collaborating with the Operation Safe Community initiative to make Memphis one of the safest communities of its size by 2011, the Shelby County Re-Entry Program has expanded to "The 3 R Project: Rehabilitate, Renew, Reconnect". The 3 R Project is an intensive voluntary program that supports prisoners through housing, mental and physical health services, family unification, life skills and employment. The program allows inmates with six months to one year remaining on their sentence to apply for the program and work for local companies.

State of Tennessee Reentry Collaborative: Successful transition of offenders from State prison to community through a collaborative effort of State agencies, community resources and the offender is available through the Tennessee Reentry Collaborative (TREC). Participating agencies include a wide range of disciplines: the Tennessee Department of Correction, Mental Health and Developmental Disabilities, Veterans Affairs and Labor and Workforce Development and others. The mission of TREC is "The Tennessee Reentry Collaborative (TREC) will provide a continuum of services for all offenders reentering society that seeks to: restore victims, communities and offenders and helps offenders to be successful in order to reduce recidivism and promote public safety".

Prisoner Re-Entry Incentive Approval: The IDB reserves the right to retain or secure outside expertise to review any or all of these situations to determine that the spirit and letter of the regulations is upheld.

3. Special Incentive: Diversity (See Diversity Program in Section XIV)

If an Applicant submits a Diversity Plan that significantly exceeds basic IDB Diversity Plan goals, and the project achieves the plan's goals, the IDB may authorize a one or two year extension of the PILOT incentive lease term. The Diversity Plan must be performed successfully over the life of the initial PILOT lease term for the extension to receive final authorization.

Diversity Incentive Approval: Plan must be developed with the IDB's consultant. The consultant must recommend to the IDB that the plan exceeds the Diversity Program Requirements for the project to be considered by the IDB for a special incentive benefit.

Section VIII. Retention PILOT Criteria

Adopted by the IDB

11-18-09

To qualify for a payment-in-lieu-of-tax (PILOT) retention incentive from the Shelby County IDB:

- A. Company must have been operating and directly employing workers in Shelby County for 10 years prior to applying for this retention assistance
- B. Company must be financially sound
- C. Company history and performance regarding any past PILOT agreements will be reviewed by the IDB
- D. Company must be expanding its operations and upgrading its technology or processes to better position the company for longevity
- E. Company must demonstrate a long-term commitment to Shelby County 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
- F. Company must invest a minimum of \$10 million in real and/or personal property for this project in Shelby County

- G. Company must retain a minimum of 100 jobs in Shelby County with an annual average pay that equals or exceeds the Shelby County Average Annual Wage
- H. 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, however:
 - 1. This ratio may be lowered (not below 1 to 1) when the Shelby County unemployment rate exceeds 8.5%, or raised if the unemployment rate is below 5%
 - 2. If the benefit to cost ratio significantly exceeds 3 to 1 the IDB may lower the minimum requirements for job retention and/or capital investment, so long as the resulting benefit to cost ratio exceeds 2 to 1
- I. Additional years may be added to the PILOT incentive term for achieving Green Initiatives and for exceeding Diversity Program requirements as outlined in Section VII of this Program Overview; these additional years may bring the benefit to cost ratio below minimum requirement of 2 to 1, however, the benefit to cost ratio must always exceed 1 to 1
- J. As with all PILOTS granted by the Shelby County IDB, the term of the retention PILOT agreement shall not exceed 15 years
- K. Company must comply with all Shelby County IDB application, fee, compliance, and Diversity Plan requirements in the Shelby County Payment in Lieu of Tax Program Guidelines
- L. Each Shelby County IDB Retention PILOT project will contain provisions designed to provide a benchmark for measuring the Company's compliance with the program. The benchmark may be based on the PILOT Evaluation Matrix or another appropriate set of standards for measuring capital investment and job retention, as approved by the IDB Board.
- M. Each Shelby County IDB Retention PILOT project will contain provisions designed to adjust benefits awarded under the program based on the evaluation of the Company's compliance with the approved PILOT project objectives and the program requirements.
- N. A relevant ramp-up period will be established for each retention project

Section IX. Application Process

Any person who wants to have a project considered the Memphis and Shelby County Industrial Development Board for a PILOT to encourage location, expansion and/or modernization of operations within the City of Memphis and/or the unincorporated areas of Shelby County shall be required to comply with the following application guidelines. Nothing within these guidelines shall imply or suggest that Memphis and Shelby County is under any obligation to provide a PILOT in any amount or value to any applicant.

The IDB meets to consider applications for PILOT incentives on the third Wednesday of each month, with the exception of December when it meets on the second Wednesday. The IDB considers applications at duly called meetings conducted in compliance with the Sunshine Laws of the State of Tennessee. Monthly meetings may be waived or held at a different location or date at the discretion of the IDB.

Pre-Application:

Potential Applicants or their representative(s) shall submit to the Industrial Development Board its estimates on the number of jobs, wages, capital investment, potential location, diversity plan, and any other informative company data.

The applicant must hold a pre-application conference with Staff prior to the submission of a formal application. It would be beneficial to the Staff and the applicant if the meeting were held prior to the submission of the preliminary information.

Reason for PILOT Application:

Applicants shall submit a statement outlining the reason why this project requires public investment to stimulate private investment and what competitive advantages exist in other markets under consideration. The PILOT program is not considered to be an entitlement program. Each application shall include a **written statement** from the Applicant demonstrating that the PILOT incentive is necessary to stimulate private investment and reflect the competitive advantage of other markets under consideration, when applicable.

Application:

An application for a PILOT incentive shall be made on the PILOT Application form (Section XV) or in conformance with said form. An application fee in accordance with Section IX below must accompany any application. The application fee is non-refundable. **An application shall be filed with the Industrial Development Board Staff no later than the close of business 14 calendar days prior to the IDB meeting.**

The Applicant shall provide an audited financial statement supporting the Applicant's net worth, unless the condition is waived by vote of at least five (5) IDB members (revised July 16, 2003).

Each application shall include a statement that the Applicant complies with Title VI of the 1964 Civil Rights Act (42 U.S.C. § 2000d) and will provide certification of ongoing compliance in this regard with its annual report to the IDB.

Application Amendment:

The Applicant has twelve (12) months from the initial date of the Board's approval to amend its PILOT Application.

Period to Close Lease Agreement:

Applicants must close on their real property within a one year limitation and close on their tangible personal property within a two-year limitation. Otherwise, the Applicant would have to apply for an extension or submit a new application.

Section X. Fees

Application Fees:

The Application for a PILOT must be completed and submitted with an Application fee calculated as follows:

<u>Estimated Project Investment at the Time of Application</u>	<u>Application Fee</u>
\$ 0 - \$ 750,000	\$1,000
\$ 750,001 - \$1,000,000	\$1,500
\$1,000,001 - \$2,500,000	\$2,000
\$2,500,001 - \$5,000,000	\$3,000
\$5,000,001 - and greater	\$4,000

The application fee shall be credited against the closing fee.

Application Amendment Fee:

Amendment to an existing PILOT Application shall require a fee of \$1,000.

Closing Fees:

A closing fee computed as follows will be paid to the Board prior to or at the closing of the PILOT Lease: PILOT closing fees are based on the benefits that a company will receive (i.e., value of the tax savings over the applicable tax freeze term) rather than on the total project investment.

The PILOT Lease closing fee will be calculated at 5% of the tax savings with a minimum of \$1,500 not to exceed a maximum of \$300,000. The Company receiving the PILOT will also be responsible for paying any additional, unusual expenses (i.e., attorney fees caused by project compilation, copies, postage, long distance telephone calls, etc).

In the event that a property is annexed into the City of Memphis, an additional closing fee shall be assessed to the PILOT grantee based upon the estimated City of Memphis tax savings that would accrue to the PILOT grantee as a result of the annexation.

All Applicants are required to submit drafts of all closing documentation (including Deeds, Bills of Sale and Leases) to both the IDB Counsel and IDB Staff within 30 days of the Board's approval of the PILOT closing date. An additional copy of the documentation should be sent to the Board's staff. If Board Counsel has not received the required documentation within the 30 the Applicant will forfeit one-fourth (1/4) percentage per month of the PILOT Application fee for every month the documentation is late.

Personal Property Fees:

For all personal property that is subject to a PILOT agreement for projects located in the City of Memphis, the Applicant shall pay a fee in the amount of 5% of the taxes otherwise due, up to \$50,000, to the City and a fee in the amount of 5% of the taxes otherwise due, up to \$50,000, to the County. For projects located outside of the City of Memphis, the Applicant shall pay a fee in the amount of 5% of the taxes otherwise due, up to \$50,000, to the County. These fees are in

addition to the closing fees and will be invoiced as part of the closing process. The revenue from these fees will be used for inner city economic development purposes.

Penalties:

Upon termination of the Lease, the Board shall provide written notification to the Applicant advising of Applicant's duty, pursuant to the Lease, to submit to the IDB all required documentation and approvals to execute the quit claim deeds and bills of sale necessary to transfer ownership of all PILOT property to the Applicant. Applicant's failure to submit required documentation and approvals within ninety (90) days of the notification shall result in a penalty of \$2,000 per month, which shall accrue for each month in which Applicant fails to submit these documents after notification has been submitted by the Board.

Lease Amendments:

Amendments to existing leases shall require a fee of \$1,000.

Termination Fee

All applicants must pay a termination fee of \$1,000 at the time of closing any lease agreements.

Assignment of PILOT Benefits:

PILOT benefits are not assignable without the prior consent of the IDB. Parties seeking a transfer of an existing PILOT or determining whether a new PILOT should be sought shall confer with the staff of the IDB to determine the proper procedure in the specific transaction. The PILOT Evaluation Committee shall make a recommendation to the Board after conferring with the staff, concerning the proper procedure with regard to the specific transaction as to whether an assignment or a new application is recommended.

In the event an assignment is approved, the fees for such assignments will be as follows:

Transfer Fees shall be charged on the following basis and must accompany the Application for the assignment of PILOT benefits:

1% of the tax savings up to \$1,000,000 with a minimum fee of \$4,000.

1/2% of such savings over \$1,000,000 with a maximum fee of \$25,000.

The Applicant shall also be responsible for all attorney fees incurred by the Board in processing the application for transfer of PILOT benefits.

Purpose of Fees:

The above quoted fees are for reimbursement of the cost and expenses of the Board, and other economic development programs as approved by Memphis and Shelby County Administrations. The Applicant is responsible for payment of its counsel's fees and other expenses attendant to the application.

Section XI. PILOT Closing Requirements

- A. The IDB will be listed as an additional insured party on real property insurance contracts.
- B. Environmental Report Requirements:

The Applicant must submit an Environmental Report. The Environmental Report for developed property should be dated no more than three (3) months prior to the conveyance to the Board for improved real property and no more than six (6) months prior to the conveyance to the Board for undeveloped real property. All environmental reports must grant to the IDB the right to rely on such reports. The Environmental Report and Applicant's pre-acquisition review which must be certified to the Board, shall comply with the *All Appropriate Inquiries Rule* (40 C.F.R. §312) and the applicable standards designed by the American Society for Testing and Materials ("ASTM") as set forth below:

1. Standard Practice for Environmental Site Assessments: ASTM E 1528-06 Screening Assessments;
2. Standard Practice for Site Assessments: Phase I Environmental Site Assessment Process, ASTM E 1527-05; and
3. Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process, ASTM E1903-97 (2002rev).

All Phase I and Phase II Environmental Site Assessments submitted as part of the PILOT Application process should substantially conform to the ASTM standards.

C. Deadlines:

Real Property Projects that will have real property improvements to the site by December 31 of the year of the PILOT Application should close on the Real Property Lease Agreement by December 31. The IDB will use the January 1 assessment for the year in which the subject real property is conveyed to the IDB. Leases should be submitted to the IDB's Counsel as early as possible, but no later than December 1 for review.

Personal Property Projects that will have personal property on site by January 1 following the year of PILOT Application should close on the Personal Property Lease Agreement on December 31 of the application year. Leases should be submitted to IDB Counsel as early as possible, but no later than December 1 for review.

Additions and replacements to Personal Property subject to the PILOT incentive beyond those represented in the application may be allowed upon approval by the IDB.

Section XII. Evaluation/Compliance

The IDB will demonstrate that its actions in granting PILOT incentives to specified projects promote the public good. Pursuant to that responsibility the Board requires the project applicant to annually certify that the number of jobs, initial wages, capital investment and IDB Diversity Program commitments are met. The Industrial Development Board will annually (or at such other times deemed appropriate) evaluate each Project receiving a PILOT incentive to ensure compliance with the terms of the Lease.

Each year any individual or entity receiving a PILOT incentive from Memphis and Shelby County shall provide information in the manner described in the PILOT Lease Agreement and complete an Annual Performance Report Form (see Section XVI), including, but not limited to, the following criteria:

- A. Capital Investment - Real Property/Tangible Personal Property
- B. Employee Report - The total number of employees of the company (multiple locations head count), their total salaries for the employees at the Project, the number of employees for the Project who reside in Memphis and Shelby County and their gross annual salaries with benefits delineated. These jobs shall be reported in job classifications as required by the Industrial Development Board.

In addition to A. and B. above, the company will document through the IDB's Diversity Program consultant the following:

- C. Minority/Small Businesses - The dollar amount of contracts awarded to Minority/Small Businesses as committed through the Diversity Program or Jobs Plus Initiative.
- D. Identified Labor Source - The employee retention level (turnover and new hires) of employees emanating from the Memphis Career Center
- E. IDB Diversity Program Companies shall demonstrate a "good faith effort" in complying with their IDB Diversity Plan. They shall document compliance of annual contracting terms and document the employment (turnover and new hires) from the Shelby County Identified Labor Source

If the investment, employment, wages, Diversity Plan and other commitments **do not meet the conditions that the IDB placed on the Project**, the party receiving the PILOT shall be subject to default as specified in the Lease Agreement. Unless extended by the board, Companies may have a two (2) year ramp-up period to reach compliance levels as approved in the PILOT for investment, employment, and wages.

Staff shall provide the IDB, on an annual basis, a compilation of the past year's activities, and the ongoing activities of the projects operating under current leases to the Industrial Development Board.

The Board retains the right to visit and inspect the project during the term of the PILOT to ensure conformance with statements and representations made in the PILOT Lease Agreement and the PILOT Application. Such inspection shall be made during the Project's regular business hours, after reasonable advance notice (at least 48 hours) has been given.

During the inspection, the Board may physically inspect the premises and any improvements thereon, and may require information including, but not limited to, the necessary books, records, and accounts relating to the Project. In addition, **unless prohibited by law**, the Board may obtain copies of any and all reports filed by the Applicant with the State of Tennessee or any other governmental entity, including, without limitation, reports concerning the employees or business operations of the Project.

While compliance inspections may be made at any time during the year, the Board will conduct no less than ten (10) such inspections a year, on Projects to be selected on a random basis, in accordance with the provisions above.

Section XIII. PILOT Evaluation Matrix

Section XIV. IDB Diversity Program

Section XV. PILOT Application

Section XVI. PILOT Annual Report Form