

# INCENTIVE APPLICATION REVIEW GUIDANCE DOCUMENT

## 1. Application Receipt & Review

- a. Confirming Receipt – Once an analyst has received an incentive application for review, the applicant should be contacted to let them know that review of the application has started and the analyst may have questions for them soon.
- b. Checking for completeness – The initial review of an application should be to confirm that the entire application including all application fields have been completed, application signed, and any required certifications initialed/signed. After initial review, the analyst should confirm the internal consistency of the application. Ex: Do the jobs and payroll information make sense? Do the total sources of funds equal the total uses of funds? Etc.
- c. Follow-up on incomplete items – If application fields are inaccurate or incomplete, the applicant must revise the application document and resubmit as this is the official application document. If the inaccurate or incomplete information is in an attachment, the applicant can provide correct information by email or in a supplemental document. If the applicant has not provided attachments to the application that you need based on the incentive request, inform the applicant which attachments they will need to provide. It is strongly recommended that you send emails listing the information that you are missing and that you cannot proceed in your review until the information is provided. This ensures that you have documented that the application is waiting on action by the applicant.
- d. Application Fees – Most incentive requests have a City Council mandated application fee. While the fee should be submitted with the application, as it is non-refundable, there may be situations where the fee can be requested after the application is submitted (but before any agreement is sent to City Council). Examples of these situations would include company recruitment (where an official application has not been completed) and incentive applications where the applicant has requested a different incentive than the City intends to offer (TIF vs CRA). As a general practice, all application fees should be collected with the application unless your division manager has approved of a delay due to the unique circumstance involved.

## 2. Application Attachments

- a. Document types – Organization Information

- i. Articles of Organization / Articles of Incorporation / Certificate of Partnership – The applicant should be a legal entity recognized in the State of Ohio. The applicant should provide the document from the State of Ohio verifying they are a legal entity in the state. For an LLC this would be Articles of Organization; for a Corporation this would be Articles of Incorporation; and for a Partnership this would be a Certificate of Partnership. Note that out-of-state entities would have a different registration to provide. This will confirm the exact legal entity who is applying for an incentive and prevents the City from drafting a contract with a non-existent entity.
  - ii. Corporate Bylaws / Operating Agreement – While not required by Ohio law, most organizations will have an agreement that spells out how the organization functions, who makes decisions for the organization and how profits are distributed. This is helpful to understand who controls an entity and who receives the profits from the business.
  - iii. Corporate Resolution / Authorization to Sign – While the company’s operating agreement or bylaws may state who can sign for the company, a Corporate Resolution or Authorization to Sign will state which individual is authorized to bind the company for a specific transaction. This will help confirm that the person signing the incentive agreement for the City has been authorized by the company to bind the company.
  - iv. Development Team Resumes – The resumes of a development team will include their relevant experience in the field related to the incentive request. This is useful for determining whether the project team has sufficient experience to undertake the project that they are proposing. It’s helpful to see if the development group has worked with other Department staff members so they can be used as an internal reference for past performance.
  - v. Information on Completed Projects – While development team resumes show the individual experience of the principals involved in the applicant project, the information on completed projects should show the projects that the development team has previously completed together.
- b. Document types – Review to Determine Financial Need of Incentive
- i. Real Estate/Business Operating Pro-forma – Whether the application is from a developer proposing a real estate project or a business owner requesting loan/grant assistance, an operating pro-forma will show the revenue and expense projections the applicant is making for the project.
  - ii. Sources & Uses of Funds – The budget provided by the applicant should show in detail the investment that the applicant is proposing to make and what sources that the applicant intends to use to make the

investment. A budget that is overly simplified should not be accepted when the application is being reviewed for financial need.

- iii. Evidence of Secured Financing (Bank & Private) – Depending on the sources of funds listed in the budget, the applicant should provide evidence of commitment from each of those sources. Whether the applicant provides a bank financing letter or term sheet may depend on the financing institution and how far along the applicant is in their discussions with the lender. The applicant should also be able to provide evidence that they have the equity proposed in their budget with a letter from the financing institution who holds their capital. The form of evidence of secured financing for other sources will depend on the specific source. These documents help confirm that an applicant is financially capable of performing the project that they are proposing.
  - iv. Business Tax Returns – If the applicant is an existing business, the tax return type will depend on the type of business. The most common types of business returns are the 1120 (C-Corp), 1120s (S-Corp), and 1065 (partnership) and if the owner files the business on their personal return it would be a Schedule C. These returns will show the business expenses as represented to the IRS including personnel costs, owner’s compensation, cost of goods, etc. and will be very helpful in determining business viability for a loan. In some cases, it may be best to confirm with City income tax that a company is in good standing with income tax and has filed returns from their City address for the past few years. City income tax returns can also help set a baseline payroll figure for job creation tax credits.
  - v. Profit & Loss Statement / Income Statement – If the applicant is an existing business, the profit and loss/income statement shows the revenue and expense details for a business for a full year or portion thereof. Similar to tax returns, these documents will show details of how the business is receiving and spending cash for the purposes of determining the appropriateness of an incentive.
  - vi. Balance Sheet – If the applicant is an existing business, the balance sheet will show the current assets and liabilities of the business. This information is helpful for determining collateral of a business.
  - vii. Cost documentation (supporting project “gap”) – Some incentive application requests will have certain abnormal project costs which are the basis for the incentive application request. In these cases, the applicant should provide contractor cost estimates or other documentation that shows the details of the cost.
- c. Document types – Additional Project Information
- i. Property Legal Description – This is the information contained in the property deed(s) where the applicant is requesting a real estate property incentive, or if any of the City agreements/docs will require a legal description (mortgages, covenants, easements, TIF ordinance,

etc). A legal description is obtained either through the deed for an existing property or by a survey for a new consolidated parcel to be created. The burden is on the applicant to provide the legal description when necessary. For property-based incentives, the legal description is included in the contract and it saves time in the contract drafting process if this information can be provided with the application.

- ii. Proposed Renderings – These are computer images by an architect or designer of the proposed project as built. While not every applicant will pay for a rendering of their project to be created, project renderings are useful to provide visual depictions of the proposed project to City Council and the public.
- iii. Development Site Plan – This is a plan of how the building(s) will be laid out and will usually include a breakdown of each floor (if different). This helps to show the layout of the project as proposed and may help explain additional costs in the budget (ex: a building layout must be completely changed in reuse).
- iv. Documentation of LEED or other certification pursuit – If the applicant is pursuing an environmental designation that requires registration prior to construction, they would provide this registration. This supports an applicant’s request for an incentive based on an environmental designation.
- v. Documentation of Community Support – If the applicant has already received support from community organizations, they should provide the letters of support and/or CBA (sometimes applicable) from those organizations. This is helpful to show that the project has the support of the community prior to consideration by City Council.
- vi. Company Employment Information – The applicant may need to provide more granular employment information than the application document contains. An attachment may show additional information on job roles, salaries, current locations, current residences, etc. and may be helpful to determining the appropriate incentive offer.
- vii. Verification of tenant/end user commitment – If the applicant is a developer who is relying on a company to lease the space prior to commencing construction, it is important to understand the commitment level of the tenant. While commitment of an tenant is not required, it helps determine the most advantageous proposal in a competitive process as well as whether or not a proposal is viable or realistic.
- viii. Market Feasibility Stud(ies) – Part of gauging whether the applicant’s proposal is economically feasible is to review any market studies that they have conducted for their lender to support the project. These may include hotel studies to prove room demand and residential studies to prove rents within an area.
- ix. Evidence of Site Control – The applicant must have evidence of site control of the property or an adequate plan to obtain site control by

the time an agreement would be executed. If the applicant does have site control, then a deed may be submitted. Otherwise the applicant must present a plausible plan to acquire site control within an acceptable timeframe. This could come in the form of a deed, purchase option, lease agreement, or other similar document

- d. How to determine necessary attachments to application?
  - i. Organization Information – At minimum, the City needs to know the legal entity it will be contracting with and who is authorized to sign. Information on the project team and their past experience is recommended. In rare circumstances, the City may need information on how the entity is structured and who controls the entity.
  - ii. Financial Need Review – At minimum the applicant should be providing a budget with their sources and uses of funds to complete the capital project along with evidence of the private financing they have secured. An operating pro-forma is required to determine the financial need of an applicant if the offer is to be based on financial need to make the investment. Note that the tax returns, profit & loss statement, and balance sheet would only be requested in the rare circumstance that a business is requesting a loan or other direct subsidy.
  - iii. Additional Project Information – A legal description is needed for all property tax incentives. If an applicant has a site plan, project rendering or community support letter, those should be provided with the application. If the company is pursuing LEED certification for a CRA application, that registration should be provided.

### **3. Incentive Timeline**

- a. Collecting a complete application & supporting documents (timing dependent on applicant)
  - i. Until the CED receives a complete incentive application with all necessary supporting documents, CED is under no time constraint to act on the application.
  - ii. It's important to quickly review submitted materials (within 2-3 days of receipt) and let applicants know of what documents/information they are still missing. Email is preferred correspondence, so you can document notification of missing items if an applicant is concerned about timely response to the application. Each time you receive new information for an application, you should respond with further questions or confirmation of receipt within 2-3 days.
- b. Application review and offer approval by CED (4 weeks)
  - i. Once staff has received and reviewed all application materials and reviewed CED policies on the relevant incentives requested, reviewer will discuss with their manager and craft a recommendation for Director approval.

- ii. Staff may also utilize services of NDC as a second review of the application materials to confirm CED position on the appropriate level of incentive.
- c. Sending an offer or denial to an applicant– Optional
  - i. Once CED Director has approved of an incentive offer, an offer letter can be crafted to notify the applicant of the incentive CED intends to propose to City Council. Note that offer letters are not required.
  - ii. Offer letters should be signed by Director.
  - iii. If an applicant is not eligible for an incentive, a denial letter should be drafted for signature by the Director as soon as ineligibility has been determined. The denial letter should be run by Law before being sent out and should provide a reason for denial. Note that application fees are generally non-refundable.
- d. Obtaining legal agreements & ordinance
  - i. Once the offer letter has been received and accepted by the applicant, a Request for Legal Services (RLS) should be sent to Law including the accepted offer letter and all application materials received. (See the RLS Standard Operating Procedure for instructions on submitting an RLS.)
  - ii. If timing is a concern, CED staff should request that their manager prioritize the RLS with Law.
- e. Council Approval process
  - i. From City Manager Approval to passage by full Council is approx. 4 weeks. Consult the council approval process guide for details on required meetings.

#### **4. Offer Letters/Term Sheets**

- a. When are they useful?
  - i. Offer letters and term sheets are useful in confirming CED’s official offer to a business and the business’s initial acceptance of that offer.
  - ii. Offer letters are best suited for simple incentives like CRA tax abatements and JCTCs.
  - iii. Term sheets are better suited for complicated financing structures like construction loans (NOFA) and tax increment financing structures.
  - iv. Term sheets can simplify the drafting of development agreements by listing all relevant deal points at a high level and save time in later negotiations.
- b. What should they include??
  - i. Offer letters should include: the rate and term of the incentive, a post incentive retention term (if any), the contingencies of the incentive (Company commitments to investment, jobs and payroll; Council approval etc.), and the date by which the offer must be accepted.
  - ii. Term sheets can cover more complex issues like financing terms, involvement of additional parties (Port Authority), and coordination

with other City Departments, in addition to the basic information included in an offer letter.

## **5. Incentive-Specific Diligence Items**

### **a. Pre-Council:**

- i. Required Notifications for CRAs for Businesses moving from outside Cincinnati – The Ohio Revised Code Section 3735.673 requires that if a business is relocating from another Ohio jurisdiction to receive a CRA abatement, that the City must notify that jurisdiction of the City's intent to enter into a CRA agreement with the company prior to consideration of the legislation by City Council. CED has a form letter for this notification when it is applicable. It is best to make your applicant aware of this requirement when it applies before you send the notice.
- ii. Required Notification of CPS for CRAs and TIFs – The City's master agreement with Cincinnati Public Schools requires notification by the City of incentives prior to their consideration by City Council. Law has provided a template letter to send to CPS with the draft agreement attached.
- iii. Planning Commission for real estate transfers/leases – Planning Commission is required to approve of real estate sales and leases (including conveyance-reconveyance transactions for TIF) prior to consideration of the legislation by City Council. Planning Commission must normally occur before the ordinance is introduced to City Council. To get on the Planning Department agenda, send an email to the designated Planning Department representative (as identified by your Division Manager) with details about the real estate sale or lease and a request to be on the agenda. Generally these requests must be submitted 16 days in advance of the next Planning Commission meeting.

### **b. Post-Council**

- i. Required ODSA application fee (CRA) – Due to the time between an initial application and Council approval, the check for ODSA should not be submitted to the City by the applicant until after Council approval to ensure the check does not expire before the City sends it to ODSA.
- ii. Required School Board PILOT Agreement (CRA) – The School Board PILOT boilerplate should be revised appropriately and sent to the company for signature of two original copies. These can be submitted to the staff in Monitoring and Compliance, who will send the originals to the school board for signature, and return one to the Company when it is signed.
- iii. VTICA (if required for CRA) – Two originals of the Voluntary Tax Incentive Contribution Agreement (VTICA) should be signed by the company. They can be submitted to the staff in Monitoring and

Compliance, who will send the originals to Downtown Cincinnati, Inc. (for Streetcar Operations VTICAs) or the Third-party Administrator (for Neighborhood VTICAs), and return one to the company when they have been executed.

- iv. Hand-off to Monitoring and Compliance should occur after the above agreements are signed by the company, and before Completion Applications (for CRAs and TIFs) are submitted.