

**RULES and REGULATIONS  
VIRGIN ISLANDS ECONOMIC DEVELOPMENT AUTHORITY**

**TITLE 29 V.I.R.R.  
TAX INCREMENTAL FINANCING PROGRAM**

**APPROVED:**

\_\_\_\_\_ day of \_\_\_\_\_, 2020

**The Honorable Albert Bryan, Jr.  
Governor of the U.S. Virgin Islands**

**Kevin A. Rodriguez  
Chairman  
Virgin Islands Economic Development Authority**

## **CERTIFICATION**

**It is hereby certified that the document below is a true and correct copy of the Tax Incremental Financing Rules and Regulations (“Tax Incremental Financing R&R”) adopted pursuant to the authority granted in V.I. CODE ANN. tit. 29, § 1204(j) and 3 V.I.C. § 913.**

Virgin Islands Economic Development Authority

---

Kevin A. Rodriquez  
Chairman

The copy below interprets or applies title 29 V.I. Code Ann., chapter 22.

**RULES and REGULATIONS  
VIRGIN ISLANDS ECONOMIC DEVELOPMENT AUTHORITY**

**TAX INCREMENTAL FINANCING PROGRAM**

**Table of Contents**

|                 |                                                                          |    |
|-----------------|--------------------------------------------------------------------------|----|
| SUBCHAPTER 1201 | TITLE and AUTHORITY                                                      |    |
| Section 1201-1  | Title                                                                    | 1  |
| Section 1201-2  | Authority                                                                | 1  |
| SUBCHAPTER 1202 | SCOPE and PARAMETERS                                                     |    |
| Section 1202-1  | Scope                                                                    | 1  |
| Section 1202-2  | Parameters                                                               | 1  |
| SUBCHAPTER 1203 | DEFINITIONS                                                              |    |
| Section 1203-1  | Definitions                                                              | 2  |
| SUBCHAPTER 1204 | POWERS                                                                   |    |
| Section 1204-1  | Powers of the Virgin Islands Authority Economic<br>Development Authority | 6  |
| Section 1204-2  | Powers of the Public Finance Authority                                   | 8  |
| SUBCHAPTER 1205 | ELIGIBILITY and APPLICATION                                              |    |
| Section 1205-1  | Eligibility                                                              | 9  |
| Section 1205-2  | Application                                                              | 9  |
| SUBCHAPTER 1206 | CERTIFICATION and PROCEDURES                                             |    |
| Section 1206-1  | Certification                                                            | 15 |
| Section 1206-2  | Procedures                                                               | 15 |
| Section 1206-3  | Public Hearing                                                           | 15 |
| Section 1206-4  | Decision Meeting                                                         | 18 |
| Section 1206-5  | Reconsideration                                                          | 22 |
| Section 1206-6  | Modification                                                             | 24 |
| SUBCHAPTER 1207 | APPROVAL BY THE LEGISLATURE                                              |    |
| Section 1207-1  | Approval by the Legislature                                              | 24 |
| SUBCHAPTER 1208 | TAX INCREMENT TRUST FUND                                                 |    |
| Section 1208-1  | TAX Increment Trust fund                                                 | 25 |
| SUBCHAPTER 1209 | TIF BOND AUTHORIZATION                                                   |    |
| Section 1209-1  | TIF Bond Authorization                                                   | 27 |

|                 |                                      |    |
|-----------------|--------------------------------------|----|
| SUBCHAPTER 1210 | TIF BOND SECURITY                    |    |
| Section 1210-1  | TIF Bond Security                    | 29 |
| SUBCHAPTER 1211 | DEFAULT                              |    |
| Section 1211-1  | Default                              | 31 |
| SUBCHAPTER 1212 | DEVELOPMENT AGREEMENT                |    |
| Section 1212-1  | Negotiation of Development Agreement | 32 |
| SUBCHAPTER 1213 | LIMITATION OF LIABILITY              |    |
| Section 1215-1  | Limitation of Liability              | 33 |
| SUBCHAPTER 1214 | PROJECT FINANCING                    |    |
| Section 1214-1  | Project Financing                    | 33 |

DRAFT

**UNITED STATES VIRGIN ISLANDS RULES AND REGULATIONS  
TITLE 29 PUBLIC PLANNING AND DEVELOPMENT  
CHAPTER 22  
TAX INCREMENTAL FINANCING PROGRAM**

**SUBCHAPTER 1201  
TITLE AND AUTHORITY**

**Section 1201-1. Title**

These Rules and Regulations shall be known and may be cited as the Rules and Regulations of the Tax Incremental Financing Act.

**Section 1201-2. Authority**

These Rules and Regulations are promulgated pursuant to the authority granted to the Virgin Islands Economic Development Authority in 29 V.I. Code § 1204(j).

**SUBCHAPTER 1202  
SCOPE AND PARAMETERS**

**Section 1202-1. Scope**

These Rules and Regulations govern the operation of the United States Virgin Islands Tax Incremental Financing Act, 29 V.I. Code, chapter 22, as amended (hereinafter referred to as "TIF Program"), including the procedures of the Virgin Islands Economic Development Authority. These rules shall be construed to be consistent with the basic parameters and objectives of the TIF Program as set forth in 29 V.I. Code § 1202. These regulations should be read together with the TIF Program law.

**Section 1202-2. Parameters**

(a) The TIF Program:

- (1) may use tax incremental financing for the financing of capital improvements in areas where a finding has been made by the Virgin Islands Economic Development Authority, and approved by the Legislature where the need for tax increment financing has been documented to be significant in enhancing the economic viability of the project, but may not be used to supplant existing private investment or government funds for such projects.

- (2) must, to the extent practicable, work in conjunction with existing programs and efforts such as Virgin Islands Enterprise Zone Act, historic preservation and other economic development efforts;
  - (3) must address the need for residential and neighborhood treatment, capital improvements to neighborhood public schools, as well as commercial and industrial development;
  - (4) must, to the maximum extent feasible, allow full, public knowledge and participation in the decision making under 29 V.I. Code, chapter 22;
  - (5) must promote conservation, preservation, environmental protection and rehabilitation while demolition, clearance and relocation must be minimized where possible; and
  - (6) must develop and apply clear standards, criteria and threshold limits that are applicable to all similar property and areas.
- (b) The TIF Program may not be used in violation of the standards established above.

### **SUBCHAPTER 1203 DEFINITIONS**

#### **Section 1203-1. Definitions.**

As used in these rules and regulations and the TIF Program the following words and terms shall have the following meanings, unless the context otherwise requires:

- (a) "Affiliate" shall mean a person or entity, related to the Development Sponsor as defined in this subchapter.
- (b) "Assessor" means the Tax Assessor, or such other person or office responsible for assessing the value of real property.
- (c) "Authority" means the Virgin Islands Economic Development Authority established under chapter 21 of title 29 of the Virgin Islands Code.
- (d) "Available gross receipts tax revenue" means the proceeds of the gross receipts taxes paid to the Virgin Islands Bureau of Internal Revenue for deposit into the General Fund of the Government pursuant to section 43, 33 V.I. Code, chapter 3; excluding the first \$250,000 of the tax collected during each Fiscal Year which is required to be deposited into the Moderate Income Housing Fund pursuant to title 33 V.I. Code, Chapter 111 section 3027(a)(3), including any penalties and interest charges, in excess of the amount

of such revenues which is required to be remitted as security for the payment of bonds, issued pursuant to Act No. 6514, that are secured by such gross receipts taxes.

- (e) “Available real property tax revenues” means the revenues resulting from the imposition of the tax provided for in 33 V.I. Code chapter 81 section 2302 and payments in lieu of real property taxes, exclusive of the portion required to be deposited in the St. John Capital Improvement Fund and the Housing Trust Fund under chapter 81 of Title 33.
- (f) “Capital improvement” means those improvements that are treated as capitalized expenses according to generally accepted governmental accounting principles.
- (g) “CEO” means the Chief Executive Officer of the Virgin Islands Economic Development Authority.
- (h) “Current assessed value” means for any tax year, the assessed value of each lot of taxable real property within a Tax Increment Financing (hereinafter “TIF”) area as then recorded on the land records of the Government of the Virgin Islands as of the end of the preceding tax year.
- (i) “Designated gross receipts tax increment” means the amount of percentage and priority of available gross receipts tax revenues as determined by the Authority prior to the issuance of a series of TIF bonds.
- (j) “Development costs” means any actual or estimated cost for a project;
  - (1) Costs of studies, surveys, plans and specifications, including professional service costs for architectural, accounting, engineering, legal, marketing, financial and planning services;
  - (2) Property assembly costs, including acquisition or leasing of land and other property, real or personal, or rights or interests in property, demolition of buildings and other structures, remediation of environmental hazards, and the clearing and grading of land, in each case within the TIF area or as necessary for rights-of-way or other easement to or from the TIF area;
  - (3) Costs of construction, preservation, rehabilitation, reconstruction, repair or remodeling of new or existing public or private buildings, structures and fixtures, in each case within the TIF area, and costs of any public works or improvements undertaken by, or at the direction of the Government of the Virgin Islands or any other government unit.

- (4) Costs of parking and transportation facilities, pedestrian walkways and parks that are owned by the Government of the Virgin Islands or any other government unit or are privately owned, in each case within the TIF area or as necessary for rights-of-way or other easements to or from the TIF area;
- (5) Costs of construction of new public or privately owned low to moderate income housing units and community facilities within the TIF area and costs of preservation, rehabilitation, reconstruction, repair or remodeling of public or private buildings for use as housing units and community facilities within a TIF area;
- (6) Costs of maintaining and operating public works and improvements within the TIF area or as necessary for rights-of-way or other easements to or from the TIF area;
- (7) Financing costs, including but not limited to all expenses related to the issuance of TIF bonds, principal of and interest and any premium on TIF bonds, TIF bonds reserves, credit enhancements, and costs related to the performance by the PFA of its covenants or agreements with the holders of its TIF bonds;
- (8) Working capital and working capital reserves directly related to the development of a TIF infrastructure project; and
- (9) Administrative costs of the PFA and the Authority in certification of the Project and issuance of TIF bonds pursuant to this subchapter; and
- (10) Costs of construction, maintenance and repair, upgrade, and operation of any improvement that generates electricity from any renewable sources including without limitation the following:
  - (A) wind;
  - (B) closed-loop biomass;
  - (C) open-loop biomass;
  - (D) geothermal energy;
  - (E) solar energy;
  - (F) municipal solid waste;
  - (G) hydropower; and
  - (H) marine and hydrokinetic renewable energy.

Provided however, that electricity from renewable sources shall only be used within the TIF area or sold directly to the United States Virgin Island Water and



Power Authority. Sale to any other party other than the United States Virgin Island Water and Power Authority outside of the TIF area is prohibited.

- (i) "Development Sponsor" means any organization or person that seeks to undertake, a TIF project.
- (j) "District" means each of the geographic areas of St. Croix or St. Thomas/St. John, individually defined as the St. Croix District and the St. Thomas/St. John District, respectively, and collectively the Districts.
- (k) "Eligible project" means a project that has been certified by the Authority as complying with the requirements set forth in the TIF Program and section 1205 of these rules and regulations.
- (l) "Gross receipts tax increment revenues" means the portion of the available gross receipts tax revenues constituting a designated gross receipts tax increment and allocable to one or more tax increment funds pursuant to the TIF Program and this chapter.
- (m) "Increment revenues" means gross receipts tax increment revenues and/or real property tax increment revenues, and, if applicable, Designated Casino Tax on Gross Revenues and Designated Hotel Room Occupancy Tax as those terms are defined in the Hotel Development Act, 29 V.I. Code, chapter 23, section 1303, subsections (c) and (d).
- (n) "Initial assessed value" means the assessed value of each lot of taxable real property within a tax increment area on the date determined by the Authority as set forth in section 1206-4(f) of these rules and regulations.
- (o) "PFA" means the Virgin Islands Public Finance Authority authorized pursuant to Chapter 15 of title 29 of the Virgin Islands Code.
- (p) "Project" means any capital improvement undertaken within a TIF area or within rights-of-way or other easements that are individually or collectively contiguous with the TIF area to develop the infrastructure of the TIF development or low to moderate housing or a "Project" as defined in 29 V.I. Code, chapter 23, section 1303(k).
- (q) "Real property tax increment revenues" means the portion of the available real property tax revenues levied and collected within a TIF area on the positive difference, if any, of current assessed value over the initial assessed value and allocable to one or more than tax increment funds pursuant to 29 V.I. Code, chapter 22.

- (r) "Tax Increment Development Plan" means a land use and land development plan for a TIF area that has been approved by the Authority pursuant to section 1206-4 of this chapter.
- (s) "Tax increment trust fund" means a trust fund established for a TIF area pursuant to 29 V.I. Code, chapter 22.
- (t) "TIF area" means a specific geographic area designated within the District pursuant to 29 V.I. Code, chapter 22 for development using tax increment financing.
- (u) "TIF bonds" means tax increment financing bonds, notes or other obligations issued by the PFA pursuant to 29 V.I. Code, chapter 22.

## **SUBCHAPTER 1204 POWERS**

### **Section 1204-1. Powers of the Virgin Islands Economic Development Authority**

- (a) The Authority has the following powers with respect to tax increment financing:
  - (1) To make and execute contracts, and all other instruments desirable, convenient or necessary for the exercise of its powers and functions under 29 V.I. Code, chapter 22, including agreements with note holders, bondholders, guarantors, or others interested in any matters pertaining to TIF bonds, including limitations of the activities and indebtedness of the Authority;
  - (2) To prepare or cause to be prepared a tax increment development plan for a TIF area and to modify such plan from time to time as the Authority considers necessary or appropriate following a hearing and certification of project eligibility and the tax increment development plan as set forth in § 1209 of 29 V.I. Code, chapter 22;
  - (3) To contract with any department, agency or instrumentalities of the Government of the Virgin Islands or with any person, firm, partnership, corporation, development company or other entity to monitor TIF projects' progress and compliance with their respective TIF Plans and TIF agreements;
  - (4) Any agency, development company or other entity with which the Authority contracts under subparagraph (3) must have experience in land use planning, land development and management of developments similar to the project to be monitored in type and scope, and expertise in financial feasibility analysis;

- (5) To make recommendations to the Department of Public Works or Office of Highways and Motor Vehicles, as applicable, with respect to the planning, replanning, opening, dedicating, creation or closing of private or public streets, roads, roadways, alleys, sidewalks and other rights of way in compliance with applicable rules and regulations, and to provide and furnish, or contract with the Government of the Virgin Islands or any other department, agency or instrumentalities or others for the providing and furnishing of any public facilities or services, including local transportation facilities in connection with a development project, provided that where the Virgin Islands Water and Power Authority supplies utility service or services within the area comprising the project shall provide and furnish nor contract for the providing and furnishing of such service and services without the consent of the Virgin Islands Water and Power Authority;
  - (6) To make recommendations to the Department of Planning and Natural Resources for the creation of land use restrictions, building restrictions and architectural and aesthetic controls by covenants, declarations, and regulations or otherwise on any real property comprising a project;
  - (7) To make available to the federal government, the Government of the Virgin Islands, or any appropriate department, agency or instrumentality, the recommendations of the Authority affecting any TIF area or property therein, which it may consider likely to promote the public health, morals, safety, or welfare;
  - (8) To exercise the power of eminent domain for the purpose of forwarding the objectives of a tax increment development plan, such power of eminent domain to be utilized whenever necessary to carry out the purposes of 29 V.I. Code, chapter 22, except that eminent domain may not be exercised to take real property containing occupied dwelling units for any purpose, including any public purpose; and
  - (9) To do all things necessary or convenient to carry out the purpose of 29 V.I. Code, chapter 22 and exercise the powers given and granted thereunder.
- (b) The Authority shall make express findings by resolution that it believes that the activity in question and the benefits to be derived from the project will:
- (1) promote significant opportunities for employment of its citizens;
  - (2) attract new business enterprises within the TIF areas;
  - (3) retain or expend an existing business enterprise in the TIF area;

- (4) provide affordable housing in the TIF area;
- (5) increase revenues to the Government through increased real property taxes and/or gross receipt taxes;
- (6) be beneficial to the general economic development of the TIF area as set forth in such resolution;
- (7) be less likely to be developed without the TIF Program; and
- (8) where applicable, a feasible method exists for the compensation of individuals, families and small businesses that may be displaced by the project and for their relocation to decent, safe, and sanitary dwelling accommodations within their means without undue hardship to the individuals, families and businesses.

#### **Section 1204-2. Powers of the Public Finance Authority**

The PFA has the following powers with respect to tax increment financing:

- (a) To make contracts, incur liabilities, borrow money at such rates of interest, maturities and on such other terms and conditions as the PFA, in consultation with the Authority, may determine, issue its notes, bonds and other obligations, as authorized by Section 922, title 29, chapter 15 of the Virgin Islands Code and secure any such obligations by mortgage, deed, of trust, security agreement or other pledge of all or any of its real or personal property or any interest therein, whether then owned or thereafter acquired, and to pledge the revenues and receipts from all or any of such real or personal property and to assign or pledge the income received by virtue of the lease or leases and, subject to the provisions of any contract with noteholders, bondholders, or guarantors, to consent to the modification, with respect to rate of interest, time of payment of any installment of principal or interest secured or any other term, of any mortgage, mortgage loan, mortgage loan commitment, contract, or agreement of any kind to which the PFA is a party;
- (b) In connection with any property on which it has made a mortgage loan or otherwise holds a lien or security interest, to foreclose on any such property or commence any action or protect or enforce any right conferred upon it by any law, mortgage, security agreement or other agreement and to bid for and purchase such property at any foreclosure or at any other sale or otherwise acquire or take possession of any such property; and in such event the PFA, may complete, administer, pay the principal of and interest on any obligations incurred in connection with such property, dispose of and otherwise deal with such property in such manner as may be necessary or desirable to protect the interest of the PFA therein;

- (c) To make available to the federal government, the Government of the Virgin Islands, or any appropriate department, agency or instrumentality, the recommendations of the PFA affecting any TIF area or property therein, which it may deem likely to promote the public health, morals, safety, or welfare; and
- (d) To do all things necessary or convenient to carry out the purposes of 29 V.I. Code, chapter 22 and exercise the powers given and granted therein.

## **SUBCHAPTER 1205 ELIGIBILITY AND APPLICATION**

### **Section 1205-1. Eligibility**

To be eligible for TIF, a development sponsor of any proposed project shall apply to the Authority in the manner set forth in § 1205-2 of this chapter for certification that the project complies with the requirements of 29 V.I. Code, chapter 22.

### **Section 1205-2. Application**

- (a) A Development Sponsor wishing to develop a Project shall apply to the Authority, on forms prescribed and made available by the Authority. Each application for certification shall be accompanied by a preliminary development plan for the Project which consists of the following:
  - (1) A delineation of the proposed TIF area;
  - (2) A description of the proposed land uses of the project;
  - (3) The use of the financing proceeds made available pursuant to this chapter;
  - (4) A pro forma projection of the revenues and the expenses of the project, both with and without the requested public benefits;
  - (5) An assessment of the financial feasibility of the project;
  - (6) A description of the timing and phasing of the project;
  - (7) A description of the project's compliance with all provisions and requirements of all applicable environmental, development and land use laws; and
  - (8) An analysis of the projected tax revenue and benefits to be generated by the project as set forth in an independent financial assessment;

(b) The application must also contain the following information:

- (1) A commitment letter from a financial institution for any financing anticipated in the pro forma projection and a copy of all documents submitted to the financial institution;
- (2) Narrative in support of the application;
- (3) Name, physical and mailing address of the applicant;
- (4) Name, address, and telephone number of the local attorney or representative of the applicant, if any.

(5) **Additional information:**

(A) In the case of a partnership:

- (i) the name and address of each partner;
- (ii) a copy of the partnership agreement;
- (iii) in the case of each partner that is a corporate entity (e.g. a partnership, corporation, limited liability company, trust or other entity), all information required in subsection (E) below.

(B) In the case of a corporation:

- (i) The names and addresses of all persons, firms, corporations, etc. owning stock or holding an equitable interest in the applicant and the percentage owned by each;
- (ii) a certified copy of the certificate of incorporation;
- (iii) a copy of the Articles of Incorporation and all amendments thereto;
- (iv) a current Certificate of Good Standing from the Office of the Lieutenant Governor of the Virgin Islands;
- (v) in the case of a foreign corporation, evidence that the corporation is authorized to do business in the United States Virgin Islands.

(C) In the case of a limited liability company or other legal entity, in addition to the appropriate information required in (A) or (B) above:

- (i) The names and addresses of all members and managers of the limited liability company and the percentage ownership owned by each.
- (ii) A certified copy of the certificate of formation, articles of organization or other formation document of the limited liability company.
- (iii) A copy of the limited liability company agreement, operating agreement or such other similar governance document of the limited liability company
- (iv) A current Certificate of Good Standing from the Office of the Lieutenant Governor of the Virgin Islands;
- (v) In the case of a foreign limited liability company, evidence that the limited liability company is authorized to do business in the United States Virgin Islands.

(D) In the case of a trust:

- (i) A copy of the full, unredacted trust agreement, which shall include at minimum
  - (a) the creator of the trust
  - (b) the terms and provisions of the trust between the grantor, trustee, and beneficiary;
  - (c) the state/territory under which the terms and provisions of the trust agreement are to be governed; and
  - (d) the purpose of the trust.
- (ii) The tax identification number of each trust
- (iii) A stamped copy of Internal Revenue Service Form 56 (Notice Concerning Fiduciary Relationship) for the trust

- (iv) A current ownership/organization chart, which clearly identifies the trust and the percentage owned;
- (v) In the case of each trustee or beneficiary that is a corporate entity (e.g. a partnership, corporation, limited liability company, trust or other entity), all information required in subsection (E) below.

(E) For any partner, stockholder, member, manager, trustee, beneficiary or other entity holding ownership of control of any entity applying for benefits under the TIF Program, such entity shall also provide similar disclosure for such partner, stockholder, member, manager, trustee, beneficiary or other entity similar in scope as is required for such type of entity as set forth in Subsections (A)-(D). Such disclosure is further required for any partner, stockholder, member, manager, trustee, beneficiary or other entity holding ownership of control of any entity disclosed hereunder, provided however that no disclosure is required if the entity providing such disclosure holds less than [ten percent (10%) of the beneficial ownership or fifty percent (50%) of the control] of the entity applying for benefits under the TIF Program. Any such disclosures shall be accompanied by an ownership chart showing all such entities for which such disclosure is made and their relation to the Applicant.

- (7) A statement as to whether applicant, or any one or more of its stockholders, partners, members or trust beneficiaries or any of the entities required to be disclosed pursuant to Subsection 6(E) above, have, or have had any proprietary interest in any other enterprise which is or was a beneficiary of any program under the Authority's purview.
- (8) A statement as to whether applicant is operating in the United States Virgin Islands on the date of application, and if so, the date the operation began.
- (9) A statement as to the nature of any labor problems of the applicant or any affiliated corporation or entity, during the two-year period prior to the date of application.
- (10) A letter from the United States Virgin Islands Bureau of Internal Revenue indicating the status of all United States Virgin Islands tax obligations of the applicant or a copy of a current U.S.V.I. business license and IRS Form 8821 authorizing the Authority to receive and discuss information related to the status of applicant's US. Virgin Islands tax obligations.
  - (A) In the case of applicants that are Subchapter S corporations or partnerships, a letter (or if necessary, separate letters) shall be provided not only for the applicant entity, but also for each individual stockholder



or partner who is a resident of the United States Virgin Islands, or who was a past resident of the United States Virgin Islands or in the absence of the letter, IRS Form 8821 authorizing the Authority to receive and discuss information related to the status of applicant's U.S. Virgin Islands tax obligations.

(B) This requirement is waived in the case of corporations which at the time of application, have been in existence less than one (1) year and have not yet begun operation.

(11) Profit and loss statement and balance sheet for the most recent tax year of the applicant, except that in the case of an applicant which has been in business for less than one (1) year, only a balance sheet shall be required.

(12) If the applicant, or any corporate stockholder is publicly traded, a copy of the most recent annual report of each such corporation.

(13) A Release Authorization.

(14) Any additional information or documents in support of the application which the applicant wishes to submit.

(15) Such other information as the Authority may require.

(16) The signature of the applicant or a responsible officer, partner or agent of the applicant attesting to the truth, accuracy, and completeness of the application and any documents submitted in support thereof.

(c) Each application shall be accompanied by a written guarantee that all contracts and subcontracts to be awarded in connection therewith shall contain appropriate provisions by which contractors and subcontractors or their assignees agree to comply with the preferred bidders' statute, 31 V.I. Code § 236a.

(d) A non-refundable filing fee of \_\_\_\_\_ (\$\_\_\_\_\_) shall be paid with the application, for the costs of processing the application, and other administrative costs. Any costs and expenses, as determined by the Authority, incurred for independent analysis and/or study shall be borne by the applicant. All application fees collected pursuant to the provisions of title 29 V.I. Code, chapter 22 shall be deposited into an account held by the EDA.

(e) Neither the Development Sponsor nor any Affiliate thereof may be listed on any of the lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury (OFAC), the Bureau of Industry and Security of the United States

Department of Commerce or their successors, or on any other list of persons or entities with which the Territory may not do business under any applicable law, rule, regulation, order, or judgment.

- (f) Neither the Development Sponsor nor any Affiliate thereof may be in violation or non-compliance with any program under the Authority's purview.
- (g) To the extent applicable, the Chairman of the respective island's Coastal Zone Management Committee, the Commissioner of the Department of Planning and Natural Resources, the Attorney General of the United States Virgin Islands, the Executive Director of the Virgin Islands Housing Finance Authority, the Chief Executive Officer of the Virgin Islands Water and Power Authority, the Tax Assessor, and any other relevant department or instrumentality of the Government of the Virgin Islands shall furnish the Authority any information and certificates as may be required by the Authority to confirm a Project's compliance with the requirements of this chapter and its regulations.
- (h) To the extent required by the Authority, either in connection with the submission of any application or in connection with the review of the application by the Authority, the Development Sponsor shall establish an escrow in an account held by the EDA with an initial deposit in an amount to be determined by the Authority for the purposes of funding any costs or fees incurred by the Authority in reviewing and analyzing such proposed Project including, without limitation, fees and costs relating to third party contractors retained by the Authority. Any such escrow shall include a provision requiring the Development Sponsor to deposit additional funds as needed if the funds in such escrow fall below a level established by the Authority.
- (i) Applications for tax incremental financing certification shall be filed with the CEO.
- (j) Upon filing, the CEO or designee shall stamp or otherwise record the date of filing on the cover sheet of the original application and each copy, as applicable.
  - (1) The CEO shall not accept an application for filing or deem it complete, unless it contains all items set forth in this subchapter.
  - (2) Upon accepting an application, the CEO or designee shall notify the applicant in writing that the application has been accepted, the date of such acceptance, and any items temporarily waived.

## **SUBCHAPTER 1206 CERTIFICATION AND PROCEDURES**

### **Section 1206-1. Certification**

Before a Project may be submitted to legislature for approval, the applicant must receive certification from the Authority that the project complies with the provisions of 29 V.I. Code, chapter 22 and these rules and regulations, and that approving the Project for the program is in the best interests of the Territory.

### **Section 1206-2. Procedures**

After the receipt of an application that meets the criteria set forth in § 1205-2 of these rules and regulations, the Authority shall certify or deny certification of the proposed project under the following procedures:

#### **(a) Meetings and Hearings**

- (1) **Applicability:** The rules of this section shall apply to all meetings and hearings on applications for certification and, unless otherwise specified, to any other Authority proceeding at which comment from the general public has been requested or is generally allowed.
- (2) **Quorum:** The quorum for meetings of the Authority under this chapter shall be five (5) members pursuant to 29 V.I. Code § 1102(c). The quorum for any public hearing shall be five (5) members; provided, however, that for good cause shown, the Chairman of the Authority may waive the required quorum from five (5) to no less than four (4) members. All action shall be taken by vote of the majority of the members present.

#### **(b) Sunshine Act**

- (1) All public hearings shall be held in accordance with the Government in the Sunshine Act, 1 V.I. Code Sections 251 *et seq.*
- (2) The CEO shall maintain a list of persons who request notification of all meetings and hearings open to the public or of particular meetings or hearings where certain specified action will be taken.
- (3) The CEO shall provide notice to such persons described in subsection (b)(2) above of such public hearings.

### **Section 1206-3. Public Hearing**

#### **(a) Scheduling**

- (1) The CEO shall schedule a public hearing on an application for certification for dates no later than 60 calendar days after the date such application has been accepted as complete and the independent financial assessment is completed.

Whenever possible and convenient, but taking into consideration the necessity for a full and complete report and recommendation, the CEO shall schedule such hearing at the earliest possible date.

- (2) The CEO shall schedule any public hearings for other purposes, as requested by the Authority or the Chairman.

(b) Notice

- (1) Notice of public hearings shall be served promptly upon the setting of the hearing date, but in no event later than nine (9) calendar days in advance of the hearing date.

- (2) Notice shall be served by mail or in person on:

- (A) Commission members,

- (B) Applicants whose applications will be heard at such hearing,

- (C) Any person whose name appears on the list required to be kept pursuant to section 1206-2(b)(2), as having requested to be served with notice of public hearings, and

- (D) Such persons as the CEO may deem appropriate.

- (3) Such notice shall also be published at least two (2) times in at least one (1) newspaper of general circulation in the District of St. Thomas/ St. John and at least two (2) times in at least one (1) newspaper of general circulation in the District of St Croix.

- (A) The first required publication shall be no later than nine (9) calendar days prior to the date of the hearing and no earlier than 14 calendar days prior to the date of the hearing.

- (B) The second required publication shall be no later than two (2) calendar days prior to the date of the hearing and no earlier than seven (7) calendar days prior to the date of the hearing.

- (4) Published and served notices shall include:

- (A) The time, date, place, and purpose of the hearing,

- (B) The name(s) of applicant(s) whose application will be heard.

- (C) A general description of the TIF area.
- (D) The general scope of the proposed Project.
- (E) A short description of any other proceedings which will be the subject of the hearing, and
- (F) An invitation that any person interested in the approval or disapproval of any application, or interested in making a statement with regard to such application or other proceeding which will be the subject of the hearing, may appear and be heard, provided such person gives the notice required.

(c) Place: Such hearings shall be held in the district in which the Project is to be located.

(d) Procedures

(1) At the public hearing, the applicant and its representatives shall have 15 minutes to make an oral presentation supporting its application. This time period may be lengthened at the discretion of the Chairman.

(2) Following the oral presentation, the members of the Authority and the staff of the Authority in the order recognized by the Chairman, shall be given an opportunity to question the applicant and its representatives.

(3) Members of the general public who have previously given notice shall be given five (5) minutes to make statements. This time period may be lengthened at the discretion of the Chairman.

(4) If time permits, the Chairman may also recognize other members of the general public who have not given the required notice. These individuals shall have such time as the Chairman, in his discretion, may allow, to make pertinent statements.

(e) Recording: The CEO shall arrange for all public hearings to be recorded by a stenographic process and for transcripts to be prepared within 30 calendar days.

(f) Appearance by Interested Persons: Any member of the general public who desires to be heard at a public hearing shall provide the CEO with written notice of the matter on which he would like to be heard and the approximate length of his remarks or statements at least 24 hours prior to the date of the public hearing.

(g) Data Requests:

- (1) At the public hearing on any application, the Authority may request the applicant to provide any data or information related to the application which was not previously provided. The applicant shall supply such data or information in a timely fashion.
- (2) Simultaneously with making the request, the Authority may set a reasonable date by which the applicant shall have to supply the requested data or information, and it may, if it so states at the time the date for response is set, consider the application withdrawn as of such date if, the requested data or information is not provided by such date. The time may be extended at the discretion of the Chairman.

#### **Section 1206-4. Decision Meeting**

(a) After public hearing on the proposed project and upon receiving the report and recommendation of the CEO as to the merit of the application, the Authority shall, at a decision meeting, carefully consider all relevant factors in executive session at a meeting closed to the public, and shall make its determination regarding whether said project should be certified for approval by the Governor.

(1) The Authority shall meet to make its determination regarding certification of an application for benefits within 30 calendar days of the latter of the following two (2) dates:

(A) The date of the public hearing on the application; or

(B) The date on which the application is accepted as complete and all additional data or information referred to in section 1206-2 above has been received by the Authority.

(2) After carefully considering all relevant factors regarding an application including the contents of the application, statements of the applicant and its representatives, statements of the general public, and the criteria set out in the V.I. Code and these Rules and Regulations, the Authority shall certify whether the Project should be granted or denied.

(3) The reason for such grant or denial shall be fully set forth on the record, and, in the case of a denial, the Authority may also specify changes in the application which may lead to more favorable consideration.

(4) If the Authority is unable to reach a determination, another meeting shall be scheduled within 30 calendar days to consider the application again.

(b) In determining certification of the Project, the Authority shall consider the materials and opinions provided with the application and the testimony of the public, together with the following criteria:

- (1) Whether the project is financially feasible;
  - (2) Whether the project will likely result in a net increase in the taxes payable to the Government of the Virgin Islands, taking into consideration income taxes, franchise taxes, real property taxes, without regard to the real property tax increment revenues to be applied to payment of the TIF bonds, without regard to the gross receipt tax increment revenues to be applied to payment of the TIF bonds, use taxes, and other taxes, if applicable, over the amount that would have been payable to the Government of the Virgin Islands in the absence of the project;
  - (3) Whether the project's total anticipated benefits to the Government of the Virgin Islands, including public benefits as well as financial benefits, exceed the total anticipated costs to the Government of the Virgin Islands; and
  - (4) Whether an allocation, dedication or contribution of increment revenues will compete with or supplant benefits from other sources or other means that are otherwise available for the project on reasonable terms and conditions.
- (c) If, upon consideration of the criteria set forth in subsection (b) and following the public hearing required pursuant to section 1205 of title 29, V.I. Code section, 22 and incorporation of any recommendations from the hearing, the Authority decides to certify the project for approval by the Legislature, the Authority shall enter into negotiations with the Development Sponsor to develop a Tax increment development plan containing the requirements described in section 1206-4(e) below. The Tax incremental development plan will not be valid unless approved by the Governor and ratified by the Legislature.
- (d) Upon approving the Project, the Authority shall determine the date to be set for the initial property tax assessment in the TIF area no later than      days from the date of approval. Thereafter, the Assessor shall, upon request of the Authority, promptly determine and certify the initial assessed value of each lot of taxable property within the TIF area.
- (e) The Tax Increment Development Plan shall contain the following:
- (1) A statement of the relative amounts and proportions of proposed public, semi-public, private or community facilities or utilities including but not limited to major arterial street systems, parks, recreational facilities, shoreline development, water and drainage systems and health and educational facilities;
  - (2) If the plan authorizes the issuance of bonds to be repaid in whole or in part from the allocation of property taxes increment revenues the plan shall establish a

limit on the amount of bonded indebtedness which can be outstanding at one time without an amendment of the plan;

(3) Such additional statements or documentation as the Authority may consider necessary or appropriate;

(4) A diagram and description in general terms of:

- (A) The approximate amount of open space to be provided and street layout.
- (B) Any limitations on type, size, height, number, and proposed use of buildings;
- (C) The approximate number of dwelling units; and
- (D) The property to be devoted to public purposes and the nature of such purposes.

(f) After preparation of the tax increment development plan, the Authority shall submit the plan to the Governor for approval by the Legislature, and, upon approval by the Legislature, shall file the resolution and the tax increment development plan as a public record in the Office of the Recorder of Deeds for the District in which the property is located.

(g) Upon approving the Project, to the extent not already paid pursuant to the requirements of the Authority hereunder, the Development Sponsor shall reimburse the Authority for all or part of the costs of any and all independent financial assessment conducted in reviewing the application for certification of a proposed Project and any other related costs incurred. The costs may be paid, in the discretion of the Authority, from the proceeds of bonds or evidences of indebtedness issued with respect to a Project under conditions prescribed in the regulations promulgated by the Authority.

(h) The Authority's approval of a Project and the Tax increment development plan are solely for the purposes of this chapter only and do not constitute the approval of any portion of the Project for any other purposes including, without limitation, environmental and building permits.

(i) The Authority shall submit an annual report to the Governor with respect to the operations, finances, and achievement of the economic development objectives of the Projects approved under this chapter. The Authority shall review and evaluate the progress of each eligible Project and devise and employ techniques for forecasting and measuring relevant indices of accomplishment of its goals of economic development, including, but not limited to:



- (1) The actual expenditures compared to original estimated costs;
  - (2) Whether there have been significant cost increases over the original estimates;
  - (3) The number of jobs created, or to be created, by or as a result of the eligible Project;
  - (4) The cost, or estimated cost, to the Government in the creation of those jobs;
  - (5) The amount of private capital investment in, or stimulated by the Project, in proportion to the public funds invested in such Project;
  - (6) The number of additional businesses created and associated jobs;
  - (7) Any impact on tourism.
- (k) The Authority shall obtain an annual independent financial status report on each Project approved under this chapter. The independent financial analysis must include, but not be limited to, determinations as to whether the increase in public revenue for the territory is equal to the estimates made at the time the eligible Project was approved, whether the Project employment statistics are equal to the projected estimates, and whether the eligible Project is economically viable. The Authority may require the Developer to reimburse the Authority, through escrowed monies as set forth in subsection (g) above, for the costs of the annual analysis. The Authority shall make the results of the analysis available to the public.
- (j) If upon consideration of the criteria set forth in subsection (b) of this section, the Authority decides that the Project does not comply with the requirements of this chapter and its regulations, the Authority shall so notify the Development Sponsor in writing specifying the areas in which the Project fails to meet the requisite criteria. The Authority shall allow the Development Sponsor up to 60 days to cure any defects. The Board may extend the 60-day period for good cause. The Development Sponsor shall file with the Authority a request for a waiver within the 60-day period. Upon Development Sponsor's resubmission within the 60-day period, or extended period, the Authority shall schedule the matter for reconsideration pursuant to section 1206-5 below.

If the Development Sponsor fails to cure the defect(s) within the 60-day period, or extended period, the Authority shall deny certification of the Project without prejudice, and any resubmittal of the Project under this chapter shall require a new application.

#### **Section 1206-5. Reconsideration**

- (a) Reconsideration on Initiative of the Authority

- (1) The Authority may on its own initiative, vote to reconsider any of the following actions within the appropriate time periods:
  - (A) A recommendation to certify a project may be reconsidered, in whole or in part, at any time before an agreement is issued;
  - (B) A vote to deny certification of a project may be reconsidered within 30 calendar days of a petition to reconsider or receipt of information to cure and comply with any defects;
- (2) The Authority, if it votes to reconsider, may also vote to rehear the matter if it determines that to do so is necessary or desirable.
- (3) The Authority must first make the findings required by Section 1206-5(c) below before voting to reconsider.

(b) Petition for Reconsideration

- (1) Development Sponsor may petition the Authority to vote to reconsider its action with respect to its' application or Agreement, by letter to the Chairman, with a copy to the CEO, within 30 calendar days, excluding Sundays and holidays, from the date a report is received by Development Sponsor.
- (2) The petitioner:
  - (A) Shall allege at least one of the factors set forth in section 1206-5(c) (Findings in Support of Reconsideration);
  - (B) Shall fully set forth which factors are applicable and the reasons;
  - (C) Shall include such comments as Development Sponsor wishes to put forward with regard to the findings, conclusions, or other matters; and
  - (D) May request a rehearing.
- (3) The CEO shall schedule a vote on the petition at the earliest practicable meeting of the Authority after the petition is received.
- (4) The Authority:
  - (A) May vote to grant or deny the petition.

(B) Shall set forth on the record, if it votes to grant the petition, all findings required by section 1206-5(c) (Findings in Support of Reconsideration) on which it based its determination.

(C) May vote to rehear the matter if it determines that to do so is necessary or desirable.

(c) Findings in Support of Reconsideration: The Authority shall reconsider an action only if it first finds that:

(1) There has been a change in material fact or in applicable law, which change occurred after the public hearing; or

(2) The Authority's action was based on a substantive error in material fact or in applicable law;

(3) The Authority's action was based on a finding, conclusion, or other matter upon which the petitioner has not previously had the opportunity to comment; or

(4) The Petitioner seeks to cure defects in accordance with Section 1206-4(d)

(d) Procedure on Reconsideration

(1) A vote to reconsider shall

(A) Stay further action by the Authority on its original action.

(B) Stay all applicable time limits in these Rules and Regulations. Except for the 30-day period, excluding Sundays and holidays, set forth in section 1206-5(b)(1) above, time limits for actions which must take place within a certain time following a public hearing or meeting at which a determination is made shall begin anew upon a final action on the reconsideration.

(2) If the Authority votes to rehear an application, such rehearing shall be scheduled.

(3) If the Authority does not vote to rehear, it may immediately after voting to reconsider, discuss the merits of the petition and make a determination, or it may elect to postpone consideration on the merits for no more than 30 calendar days, unless additional information is being requested of the

Petitioner, in which case such time limit shall be extended to the earliest practicable meeting date after the information is received.

### **Section 1206-6. Modification**

- (a) Subject to section 1206-6(b), the Authority may modify a TIF development plan at any time before legislative approval, but any modification after sale or lease of real property for development in the TIF area or following the public hearing required in section 1206-3, is subject to any rights a lessee or purchaser may have acquired by virtue of such lease or purchase. Any material modification to the tax increment development plan, whether before or after legislative approval (as set forth in section 1206-6(b) below) requires a new public hearing as provided in section 1206-6(b). No public hearing is required for any modification that is not a substantial modification under section 1206-6(b), but the Authority shall give notice as provided in section 1206-3 of any insubstantial modification.
- (b) Modifications that (A) alter the exterior boundaries of TIF area, (B) substantially affect the general land uses established pursuant to the TIF development plan, (C) substantially change the nature of the economic development project, (D) change the general description of any proposed developer, user, or tenant of any property to be located or improved within the TIF area, or (E) change the description of the type, class and number of employees to be employed in the operation of the facilities to be developed or improved within the TIF project area, may be made only after notice and hearing pursuant to the procedures set forth in section 1206-3 and, if the TIF development plan has been previously approved by the legislature, approval of such change by the legislature pursuant to Subchapter 1207 hereof.

## **SUBCHAPTER 1207 APPROVAL BY THE LEGISLATURE**

### **Section 1207-1. Approval by the Legislature**

- (a) Upon completion of negotiations with the development sponsor and holding of the required public hearing, the Authority shall submit the certified tax increment development plan to the Legislature of the Virgin Islands for its approval. The submission must include a description of the project, a listing of the public benefits to be derived from the project, the portion of real property tax increment or gross receipts tax increment to be allocated to the project, a summary of the terms of the TIF bonds to be issued with respect to the Project and a copy of the TIF development plan.
- (b) No TIF area or TIF project may be established or financed under this chapter unless the Legislature enacts legislation establishing the metes and bounds of the TIF area, approving the TIF project and establishing the maximum principal amount of the TIF

bonds, the maximum interest rate, the date of maturity of the bonds, maximum duration of the TIF area and the scope of the development.

## **SUBCHAPTER 1208 TAX INCREMENT TRUST FUND**

### **Section 1208-1. Tax Increment Trust Fund**

- (a) The Authority shall establish for each TIF area a tax increment trust fund. Funds allocated to and deposited into the fund must be made available to the Authority and the PFA, as security or otherwise, to finance or refinance any eligible project or TIF bond the Authority undertakes pursuant to the approved tax increment development plan.
- (b) Neither the Authority nor the PFA may expend, commit to expend, or pledge an interest in amounts held in the tax increment trust fund, or its respective right to receive any increment revenues pursuant to this section, unless:
  - (1) The Authority approves the tax increment development plan, as pursuant to Section 1206-4(e), which must specify the precise metes and bounds of the TIF area and the maximum principal amount of TIF bonds that the PFA may incur in connection with undertaking the project that is to be secured in whole or in part by increment revenues on deposit from time to time in the tax increment trust fund; and
  - (2) A projection of the amount of increment revenues that are reasonably expected to accrue from within the TIF area has been prepared by the Authority, showing that the increment revenues will be sufficient in amount to pay when due costs of or debt service on any TIF bonds issued by the PFA and to pay the development costs from the tax increment trust fund. The Authority shall engage an independent appraiser to certify that the appraisal practices constituting the basis for such projection comply with current prevailing appraisal standards and procedures. To the extent any TIF bonds are additionally secured by Designated Casino Taxes on Gross Revenue, Designated Hotel Room Occupancy Taxes or Economic Recovery Fees under the Hotel Development Act (title 29, V.I. Code, chapter 23) the projection may also include such additional revenues pledged to payment of the TIF bonds.
- (c) The dedication and contribution of increment revenues may not impair existing obligations of the Government of the Virgin Islands or the Authority and may not include tax revenues the contribution of which would violate the Revised Organic Act of the U.S. Virgin Islands.

- (d) Upon the adoption of the resolution by the Authority pursuant to subchapter 1206 above and following the enactment of law approving the TIF project as provided in section 1207-1 of this chapter and section 1210 of 29 V.I. Code, chapter 22, the Tax Assessor and the Director of the Internal Revenue Bureau, as applicable, shall, transfer to the PFA, for deposit in the tax increment trust fund, or directly to the trustee of the TIF bonds for deposit into the funds and accounts held by the Trustee for the benefit of the bond holders, all increment revenues to such TIF bonds until the certification by the PFA or the trustee that all development costs to be paid from the tax increment trust fund, including the payment of TIF bonds, have been paid or provided.
- (e) While any TIF bonds remain outstanding the millage may not be reduced, if the reduction would materially impair the ability of the PFA to pay any development costs to which increment revenues have been pledged or otherwise committed by the Authority, including the timely payment of debt service on TIF bonds. Any reduction in millage must be conclusively determined to be immaterial if, in the written opinion of a financial or econometric expert or firm of financial or econometric experts nationally recognized as having experts nationally recognized as having expertise in matters of real property taxation and finance, such reduction in millage will not result in the inability of the PFA to pay such development costs and timely debt service on TIF bonds then outstanding.
- (f) TIF bonds of every issue may, by their terms, be payable solely out of the increment revenues pledged to and received in connection with an approved Project and deposited to the tax increment trust fund. The lien created to secure the TIF bonds may not attach to any other assets of the PFA, the Authority, or the Government of the Virgin Islands and are special limited obligations of the PFA, payable solely from the pledged increment revenues, unless otherwise secured by the project sponsors. The lien may not attach to any moneys constituting increment revenues until such moneys are collected by the Director of IRB or the Tax Collector. The holders of TIF bonds have no right to require the imposition of any tax or the establishment of any rate of taxation in order to obtain the amounts necessary to pay and retire such TIF bonds.
- (g) TIF bonds issued by the PFA under this chapter may not be construed to constitute a debt, liability or obligation of the Government of the Virgin Islands or any instrumentality of the Government, and all such TIF bonds must contain on their face a statement to the effect that neither the full faith and credit nor the taxing power of the Government of the Virgin Islands or of any instrumentality of the Government, is pledged to the payment of the principal of, or the interest on or any premium on such bonds.
- (h) Moneys in the tax increment trust fund may be expended from time to time for the following purposes, when directly related to financing or refinancing of a Project pursuant to an approved tax increment development plan:

- (1) Administrative and overhead expenses necessary or incidental to the implementation of a tax increment development plan adopted by the Authority;
  - (2) Expenses of redevelopment planning, surveys, and financial analysis, including the reimbursement of the Authority for such expenses incurred before the tax increment plan was approved and adopted;
  - (3) The acquisition of real property in the TIF area;
  - (4) The clearance and preparation of the TIF area for redevelopment and relocation of site occupants;
  - (5) The payment of principal and interest and any premium on the TIF bonds; and
  - (6) All expenses incidental to or connected with the issuance, sale, redemption, retirement, or purchase of TIF Bonds, including funding of any reserve, redemption, or any other fund or account provided for in the PFA's resolution authorizing such TIF bonds.
- (i) On the last day of each fiscal year of the Government of the Virgin Islands, any money that remains in the tax increment revenue trust fund after payment of the expenses under subsection (h) must be to the extent permitted under the agreements with the holders of such TIF bonds,
- (1) applied to reduce the amount of any TIF bonds to which increment revenues are pledged or used to fund reserve accounts for such project or bonds; or
  - (2) except as otherwise provided in subsection (1) of this section, returned to the General Fund, but only if no TIF bonds remain outstanding and the PFA shall have certified that all development costs to be paid from the tax increment trust fund have been paid or provided for.
- (j) The trustee of each tax increment trust fund, or its collecting agent shall be a trust company having a place of business within the Virgin Islands.

**SUBCHAPTER 1209  
TIF BOND AUTHORIZATION**

**Section 1209-1. TIF bond authorization**

- (a) The real property tax increment revenues and the gross receipts tax increment revenues that are declared to be dedicated pursuant to this chapter to the payment of debt service on TIF bonds, the provision and maintenance of reserves, and the payment of

development costs constitute increment revenues as defined in section 1203-1 of this chapter.

- (b) The PFA may issue TIF bonds to finance development costs of eligible projects approved pursuant to this chapter. TIF bonds may be issued to refund other TIF bonds issued pursuant to this chapter. TIF bonds may not be issued in an amount exceeding the total costs of implementing the tax increment financing plan for which they were issued.
- (c) The PFA may execute such financing documents as may be necessary or appropriate for the issuance, security, and administration of TIF bonds, investment of proceeds and moneys in the accounts provided for in, or pursuant to this chapter, and the application of the proceeds of the TIF bonds and the moneys and investments in such accounts, and for the purposes set forth in Section 1206-4(b) of this chapter, including financing documents with development sponsors.
- (d)
  - (1) To secure the full timely payment of Hotel Development Notes issued under this chapter in accordance with their respective terms, all such TIF bonds for a project shall be secured upon issuance by a statutory lien on all Increment Revenues from such Project. The lien shall arise solely by force of this chapter, specifically upon the issuance of any TIF bonds issued after the effective date of this chapter and shall automatically attach without further action or authorization by the Government, the Authority or the PFA. The lien shall be valid and binding from the time the Increment Revenues are received and the lien shall immediately attach to the Increment Revenues and be effective, binding and enforceable against the Government, the Authority or the PFA, as applicable, their respective successors, transferees, or creditors, and all others asserting rights therein, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act. The statutory lien shall remain in effect so long as any TIF bonds remain outstanding.
  - (2) The Government, the Authority and the PFA shall covenant and agree for the benefit of the holders of the TIF bonds outstanding from time to time that for so long as any TIF Bonds remain unpaid, the Government, the Authority and the PFA shall defend, preserve and protect such statutory lien against all claims and demands of third parties, and not revoke, terminate or amend such statutory lien in any way that materially adversely affects the rights of any holder of Hotel Development Notes.
  - (3) In the event that a development sponsor is financing a Project that could be financed with the proceeds of TIF bonds and the proceeds of bonds



issued under the provisions of the Hotel Development Act (title 29, V.I. Code, chapter 23), the PFA is hereby authorized, as the issuer of TIF bonds under the TIF Act, to additionally secure its TIF bonds with the Designated Casino Tax on Gross Revenue, the Designated Hotel Room Occupancy Tax and the Economic Recovery Fee that are authorized to be pledged to the payment of Hotel Development Notes thereunder as if the PFA was an authorized issuer of Hotel Development Notes under the Hotel Development Act. Conversely, any authorized issuer of Hotel Development Notes under the Hotel Development Act is hereby authorized to additionally secure its Hotel Development Notes with with the real property tax increment revenues and the gross receipts tax increment revenues that are declared to be dedicated pursuant to this chapter to the payment of debt service on TIF bonds as if such issuer was the PFA hereunder.

## **SUBCHAPTER 1210 TIF BOND SECURITY**

### **Section 1210-TIF Bond Security**

A series of TIF bonds may be secured by a trust agreement or trust indenture between PFA and a corporate trustee having trust powers, or by a secured loan agreement or other instrument giving power to the corporate trustee by means of which PFA may do the following:

- (a) Make and enter into any and all agreements and covenants with the trustee or the holders of the TIF bonds that PFA may determine to be necessary or desirable including, without limitation, covenants and agreement as to:
  - (1) the application, investment, deposit, use and disposition of the proceeds of TIF bonds and the other monies, securities, and property;
  - (2) the assignment by PFA of its rights in any agreement;
  - (3) terms and conditions upon which additional TIF bonds of the Authority may be issued by the PFA; but the term of any TIF bonds may not exceed 30 years from the date of issuance;
  - (4) providing for the appointment of a trustee to act on behalf of bondholders to appoint a trustee; and
  - (5) vesting in a trustee, for the benefit of the holders of TIF bonds, or in the bondholders directly, such rights and remedies as PFA determines.

- (b) Pledge, mortgage or assign monies agreements, property or other assets of the Authority or the Government of the Virgin Islands, either presently in hand or to be received in the future, or both.
- (c) Provide for bond issuance and letters of credit, or otherwise enhance the credit of and security for the payment of its TIF bonds; and
- (d) Provide for any other matters of like or different character that in any way affects the security for or payment of the TIF bonds.
  - (1) Pursuant to authority granted in section 8(b) of the Revised Organic Act of the Virgin Islands the TIF bonds issued by the PFA under this chapter are exempt as to principal and interest from the taxation by the Government of the Virgin Islands.
  - (2)
    - (A) The Government of the Virgin Islands pledges to contract and agree with the holders of any TIF bonds issued pursuant to this chapter that, subject to the provisions of the financing documents, the Government of the Virgin Islands will not limit or alter the basis upon which available gross receipt taxes are received, allocated, applied and pledged pursuant to this chapter; will not impair the contractual obligations of the PFA to fulfill the terms of any agreement made with the holders of the TIF bonds, will not in any way impair the rights or remedies of the holders, and will not in any way alter the exemptions from taxation provided for in this chapter, until the TIF bonds and the interest on the TIF bonds, with interest on any unpaid installment of interest and all costs and expenses in connection with any suit, action or proceeding by or on behalf of the holders, are fully met and discharged.
    - (B) The PFA shall include this pledge and agreement of the Government of the Virgin Islands as part of the contract with the holders of any of its bonds. This chapter constitutes a contract between the Government of the Virgin Islands and the holders of the TIF bonds authorized by this chapter.
    - (C) To the extent that any acts or resolutions of the Authority may be in conflict with this chapter, this chapter is controlling.
- (e) Any pledge made by the PFA in respect of its TIF bonds is valid and binding from the time the pledge is made. The money or property so pledged and thereafter received is immediately subject to the lien of the pledge without physical delivery or further act, and the lien of the pledge is valid and binding as against all parties having any claim of any kind in tort, contract or otherwise against PFA irrespective of whether the parties

have notice. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created is required to be recorded or filed under the provisions of the Uniform Commercial Code to be valid, binding, and effective against the parties.

(f) Not later than July 1 of each year that TIF bonds are outstanding, the Authority shall submit a report to the Board of the Authority and the Legislature of the Virgin Islands with respect to the operations, finances and achievement of the economic development objectives of the projects approved under this chapter. The Authority shall review and evaluate the progress of each eligible project and devise and employ techniques for forecasting and measuring relevant indices of accomplishment of its goals of economic development, including, but not limited to:

- (1) the actual expenditures compared to original estimated costs;
- (2) whether there have been significant cost increases over the original estimates;
- (3) the number of jobs created, or to be created, by or as a result of the eligible project;
- (4) the cost or estimated cost, to the Authority, involved in the creation of those jobs;
- (5) the amount of private capital investment in, or stimulated by the project, in proportion to the public funds invested in such project;
- (6) the number of additional businesses created and associated jobs; and
- (7) any impact on tourism.

(g) Not later than July 1 of each year that TIF bonds are outstanding, the Authority shall obtain an independent financial status report on each Project approved under this chapter. The independent financial analysis must include, but not be limited to, determinations as to whether the incremental real property taxes and gross receipts taxes actually generated by the project are equal to the estimates made at the time the eligible Project was approved, whether the Project employment statistics are equal to the projected estimates, whether the eligible project is economically viable and whether the TIF bonds issued are self-sustaining with the real property tax increment revenues actually collected and other financing sources dedicated to repayment of the TIF bonds. The Authority may require the development sponsor to reimburse the Authority for the costs of the annual analyses. The Authority shall make the results of the analyses available to the Legislature.

## **SUBCHAPTER 1211 DEFAULT**

### **Section 1211-1. Default**

- (a) If there is a default in the payment of the principal of or interest on any TIF bonds of a series after the principal or interest becomes due and payable, whether at maturity or upon call for redemption, or if the PFA or the Government of the Virgin Islands fails or refuses to carry out and perform the terms of any agreement with the holders of any of the TIF bonds; then the holders of the TIF bonds, or the trustee appointed to act on behalf of the holders, may, subject to the provisions of the financing documents, do the following:
- (1) By action, writ, or other proceeding enforce all rights of the holders of the TIF bonds, including the right to require the PFA to carry out and perform the terms of any agreement with the holders of the TIF bonds or its duties under this chapter;
  - (2) By action, petition to enjoin any acts or things that may be unlawful or in violation of the rights of the holders of the TIF bonds; and
  - (3) Declare all TIF bonds due and payable, whether or not in advance of maturity and, if all the defaults be made good, annul the declaration and its consequences.
- (b) A default with respect to one TIF Bond shall not constitute a default with respect to any other TIF Bond unless the TIF Bonds by their specific terms provide for such a cross-default to occur.

## SUBCHAPTER 1212 DEVELOPMENT AGREEMENT

### **Section 1212. Negotiation of Development Agreement.**

In order to implement a TIF Plan approved by the Legislature hereunder, the Authority may negotiate and enter into one or more development agreements with the Development Sponsor.

- (a) Any such development agreement shall be in furtherance of the TIF development plan and may include provisions:
- (1) Describing the project and the goals thereof.
  - (2) Setting forth the obligations of the Development Sponsor and timelines for achieving such obligations;
  - (3) Providing for regular reporting by the Development Sponsor of progress and the financial condition of the Project.

- (4) Providing procedures for the payment of any real property tax increment revenues and the gross receipts tax increment revenues to be paid hereunder.
  - (5) Establishing remedies for the Development Sponsor's failure to meet its obligations under the Development Agreement including, without limitation, the recapture of funds previously paid to or for the benefit of the Development Sponsor.
  - (6) Such other provisions or requirements as the Authority may desire.
- (b) For any Project which is also planned to be financed pursuant to Title 29 V.I. Code, Chapter 23 (the Hotel Development Act), the terms and provisions of a development agreement may also include, or be included within, any agreement entered into under the Hotel Development Act.
- (c) Any such development agreement shall be presented to and approved by the Authority pursuant to the procedures set forth in Section 1206 hereof and, upon approval thereof, submitted to the Governor for approval.

### **SUBCHAPTER 1213 LIMITATION OF LIABILITY**

#### **Section 1213-1. Limitation of Liability**

All agreements with the Government, PFA or the Authority under this chapter shall include the following language, or similar language which clearly conveys the provisions below:

- (a) Neither the Directors of PFA nor any persons executing TIF bonds issued pursuant to this chapter are liable personally on the TIF bonds by reason of the issuance of the TIF bonds.
- (b) Notwithstanding any other provision of this chapter, TIF bonds issued pursuant to this chapter are not general obligations of PFA or the Government of the Virgin Islands and are not in any way a debt or liability of the Government of the Virgin Islands within the meaning of any debt or other limit prescribed by law. Neither the full faith and credit nor the taxing power of the Government of the Virgin Islands, other than increment revenues, may be pledged to secure the payment of any TIF bonds issued pursuant to this chapter.