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Model Creating Entity Policy Document

This model policy document was created by Gilmore & Bell, P.C. and is not intended to address all of the needs and concerns of each municipality or county (“Creating Entity”) considering the creation of a public infrastructure district (“PID”). The policies and goals of each Creating Entity are likely to be unique to that entity. As such, Creating Entities are strongly encouraged to consult with us or other experienced counsel to ensure that their policies and objectives are met. The creation of a PID will also require legal expertise familiar with PIDs, local district law, and public finance law to ensure that the Creating Entity will retain separate entity status from the PID in order to retain its liability defense and ensure that PID debts are not a balance sheet item for the Creating Entity. In addition, this expertise is necessary to ensure that the PID’s bonds are eligible for tax exemption.

The attorneys at Gilmore & Bell, P.C. have over 135 years of experience in assisting local governments across Utah and were deeply involved in drafting the Public Infrastructure District Act and working with the Utah League of Cities and Towns, Utah Association of Counties, and the Utah Association of Special Districts to ensure the legislation met their policy objectives. We would welcome the opportunity to discuss PIDs with your entity and to establish a model policy addressing your specific circumstances and needs.

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[Creating Entity]
[Department Name]

POLICY STATEMENT: ESTABLISHING PUBLIC INFRASTRUCTURE DISTRICTS

The magnitude of local and regional infrastructure needed in the Creating Entity's new development areas and in redevelopment areas requires that a broad range of financing tools be available to finance that infrastructure. This policy statement addresses the criteria under which the Creating Entity will consider applications for proposed Public Infrastructure Districts (the "District"). Compliance with these criteria shall not obligate the Creating Entity to approve formation of the District. The Governing Document will be subject to approval by the Creating Entity in both form and substance. The criteria are intended to serve as guidelines for the review of letters of intent and Governing Documents.

The policy statement has three sections:

- 1. Process for applying including fees charged**
 - 2. The Creating Entity's decision-making criteria**
 - 3. Governing Document requirements**
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I. Process and Fees

Any proposed Public Infrastructure District will be considered in relation to the best interests of the Creating Entity. Such interests include using the most appropriate financing mechanism for the type and magnitude of the improvements to be financed and appropriate governance mechanism. If through the review process, a Public Infrastructure District is determined to be the most appropriate mechanism, the process, the criteria, and requirements provided herein will apply, unless otherwise waived by the Creating Entity.

A. Letter of intent to form a Public Infrastructure District

The applicant shall submit a letter of intent containing the following information in summary form. This letter will be used by staff to make a preliminary determination about the appropriateness of a District and must be submitted prior to submittal of a draft Governing Document. A positive staff response to the Letter of Intent does not assure approval of the Governing Document.

Letter of Intent contents:

1. Description of District area including size, location, area context (significant natural and man-made features, major public improvements, adjacent development), development history, and proposed development;
2. Summary of needed infrastructure, services and facilities:
 - a. Currently expected development scenario;
 - b. Required local and regional infrastructure and facilities for such development;

- c. Regional and local infrastructure the proposed District is to provide;
 - d. Estimated construction costs for the proposed District improvements;
 - e. General description of phasing of construction based on development projections; and
 - f. A sample plan of finance depicting the possible sources and uses of funds for the District.
3. Proposed timeline for District creation.
 4. Acknowledgement that a consent must be signed prior to the hearing date for the governing document by all property owners and registered voters, if any, within the proposed District boundaries approving of the creation of the proposed District and consenting to the issuance of debt in an amount sufficient for the proposed plan of financing.
 5. Disclosure of any conflicts of interest between the applicant and the officers and employees of the Creating Entity.
 6. Copies of signed engagement letters between the applicant and applicable consultants and legal counsel retained by the Creating Entity and/or the proposed District whereby applicant agrees to pay fees related to the review of the application and governing document.

B. Review Process

1. The District Advisory Committee (“DAC”) is a Creating Entity committee that advises the Mayor, Creating Entity Council and other policy-makers about district issues. The DAC includes representatives of the departments of [Community Planning and Development, Law, Revenue, Public Works and Budget and Management,] as well as other agencies as needed.

The DAC will review the letter of intent utilizing these criteria to determine whether or not to direct the applicant to proceed with preparation of a draft Governing Document for submittal. Conceptual approval does not assure approval of the governing document.

C. Governing Document

1. If the concept for the District as contained in the letter of intent is approved, the applicant shall submit a draft Governing Document to the Creating Entity’s Management Office.
2. The draft Governing Document will be reviewed by the DAC for compliance with the criteria and requirements contained herein. The DAC will discuss with appropriate policy-makers issues that arise during this drafting period to have such issues resolved.
3. The final Governing Document will be forwarded to Creating Entity Council for action through the standard Creating Entity and statutory processes.

D. Fees

No request to create a Public Infrastructure District shall proceed until the fees set forth herein are provided for. All checks are to be made payable to _____ and sent to the _____ Office.

1. Letter of Intent: A Letter of Intent is to be submitted to the Creating Entity Managers Office and a \$_____ fee shall be paid at the time of submittal of the Letter to cover the cost of staff review.
2. If the applicant proceeds to the submittal of a Governing Document an application fee of \$_____ shall be submitted concurrent with the draft Governing Document
3. Other Expenses: In the event the costs of review exceed the application fee, the applicant for a District shall pay all reasonable consultant, legal, and other fees and expenses incurred by the Creating Entity in the process of reviewing the draft Governing Document prior to adoption, documents related to a bond issue and other such fees and expenses as may be necessary to interface with such District. All such fees and expenses shall be paid within 30 days of receipt of an invoice for these additional fees and expenses.

II. Criteria for Evaluating Proposed Public Infrastructure Districts

A. Public Benefit

Formation of a District bestows certain benefits on the District’s proponents and is expected to provide public benefit consistent with the Creating Entities policy goals. Components of public benefit to be considered may include:

1. Resulting development that is in conformance with the Municipality’s Comprehensive Plan and all applicable supplements;
2. Provision of and/or contribution to needed regional and sub-regional infrastructure;
3. Sustainable design including multimodal transportation, water conserving landscape design, thoughtful development phasing, green building design, and formation of and participation in transportation management programs;
4. Mixed-use development that includes a variety of housing types and prices, a range of employment opportunities, retail and consumer services, and civic amenities; and
5. High quality site and building design, including street connectivity, multimodal street design, durable construction materials, and pedestrian-friendly building design.

B. Evaluation Criteria

These criteria provide thresholds for consideration. Compliance with some or all of these criteria is desired; however, alternative approaches may be considered.

1. Districts should not include land that is already included within the boundaries of another public infrastructure district without express provision in an adopted Governing Document.

In such cases, the relationship with the existing districts must be addressed in the Governing Document.

2. A District planning to levy more than ___ mills of tax in the District for repayment of limited tax bonds will not be considered without sufficient justification as to why additional mills are necessary and reasonable for the development.
3. There must be a demonstrated public benefit directly resulting from the creation of the District and its undertakings as described in the Governing Document.

C. Evaluation of Applicant

The following criteria relating to the applicant and the development will be considered:

1. Historical performance of the applicant (within and outside of the Creating Entity);
2. The current proposed plan of finance of the District;
3. The current development plans relationship to the master plans of the Creating Entity; and
4. The regional or overall benefits to the Creating Entity from the proposed plan of finance.

III. Governing Document Requirements

In addition to statutory requirements, a Governing Document memorializes the understandings between the District and the Creating Entity, as well as the considerations that compelled the Creating Entity to authorize the formation of the District. The Governing Document for the proposed District shall not contain and will be reviewed for compliance with the following policies and requirements.

A. District Description

1. Description of District area including size, location, area context (significant natural and man-made features, major public improvements, adjacent development), development history, and proposed development scenario (land uses by type and intensity and general urban design character);
2. Description of the public benefit resulting from the creation of the District and its undertakings;
3. Description of proposed development within the boundaries of the proposed District including general distribution of land uses and densities and phasing of development;
4. If the District boundaries overlap with another district, an explanation of the relationship between the districts;
5. Itemization and description of all needed infrastructure (both regional and local) and facilities in the District's area;

6. Estimated construction costs of such infrastructure;
7. General description of phasing of construction based on development projections and phasing;
8. Provide the following financial plan information:
 - a. Proforma financial overview of total costs and total revenues from all revenue sources;
 - b. An example plan of finance showing a proposal of how the proposed financing might take place, recognizing that the actual financing terms and structure will be approved by the board of trustees of the District (the “Board”) within the parameters of this Governing Document;
 - c. Anticipated maximum or fixed maximum mill levy required to meet debt service of the District;
 - d. Analysis of proposed mill levies in light of outstanding debt and mill levies of other taxing entities affecting the area;
 - e. Comparison of the mill levies of similar taxing entities in the area;
 - f. Proposed operating budgets for the District’s first three years of existence; and
 - g. Any other forms of public financing and assistance being sought, including assessment areas.
9. Description of the ultimate ownership and provision for the ongoing operating and maintenance costs for infrastructure.
10. Description of any proposed divisions and an inclusion/exclusion process as appropriate.
11. Proposed governance plan, including Board structure and to transition from appointed Board to elected Board.

B. Requirements and Expectations

1. The planned ownership of the Improvements, including any relationship with an existing statutory district must be addressed in the Governing Document.
2. All debt issued by the District for which a tax is pledged to pay the debt service shall meet the requirements of all applicable statutes.
3. Land, easements or improvements to be conveyed or dedicated to the Creating Entity and any other local government entity shall be conveyed in accordance with the related standards at no cost to the Creating Entity.

4. All public infrastructure within the District which will be connected to and owned by another public entity shall be subject to all design and inspection requirements and other standards of such public entity.
5. The District shall not pledge as security any land, assets or funds to be transferred to the Creating Entity.
6. The District shall be subject to Creating Entity zoning, subdivision, building codes, and all other applicable Creating Entity ordinances and regulations. Approval of the Governing Document shall not bind the Creating Entity to approve other matters which the District or developer may request.
7. The District shall pay all fees and expenses as provided in the Governing Document.
8. The District may not double tax, whether by mill levy, assessment, impact fees, or any combination thereof; any end user for the costs of improvements.

C. Disclosure and Reporting Requirements

Disclosure of the existence of the District to property owners and potential property owners within the District is important and the following actions to be taken by each District shall be included in the Governing Document.

1. Within 30 days after the formation of the District, the Board shall record a notice with the county recorder:
 - a. Containing a description of the boundaries of the District;
 - b. Stating that a copy of the Governing Document is on file at the office of the Creating Entity;
 - c. Stating that the District may finance and repay infrastructure and other improvements through the levy of a property tax;
 - d. Stating the maximum rate that the District may levy; and
 - e. If applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion.
2. At least annually following the formation of the District, the District shall notify (by mail, e-mail, or posting to the District's website) property owners in the District of the existence of the District and of the next scheduled meeting of the Board of the District. Such meeting shall occur at least 30 days and not more than 60 days following the date of the notice. Such notification shall include names and addresses of the Board of Directors and officers, the address, telephone and fax numbers, and e-mail address of the District, and shall include reference to the existence of a District file maintained by the Creating Entity as described below.

3. The District shall provide the following information to the Creating Entity Manager’s Office on an annual basis, and the District shall create and maintain a file for public review of the following information.
 - a. Annual District budget;
 - b. Annual audited financial statements of the District;
 - c. Total debt authorized and total debt issued and presently planned debt issuances;
 - d. Names and terms of Board members and officers and progress towards milestones required for transition to elected Board;
 - e. Rules and regulations of the District regarding bidding, conflict of interest, contracting, and other governance matters, if changed;
 - f. List of current interlocal agreements, if changed (to be delivered to the Creating Entity upon request);
 - g. List of all current contracts for services or construction (to be delivered to the Creating Entity upon request);
 - h. Official statements of current outstanding bonded indebtedness, if not previously received by the Creating Entity;
 - i. Current approved Governing Document, if changed; and
 - j. District Office contact information.
4. The following shall be considered significant changes to the Governing Document, thereby requiring approval by the Creating Entity:
 - a. Exclusion or inclusion of property without Governing Document and Statute required approvals;
 - b. Change in the maximum mill levy;
 - c. [Consolidation with any other district;] and
 - d. Change in the dissolution date.

Submittal Instructions

Annual Financial Information: Submit one copy of each of the annual financial information, as described in ____ to:

[Enter Creating Entity Manager Address]

All other documents: Submit letters of intent, draft Governing Documents, and all other documents (with the required number of copies) to:

[Enter Creating Entity Manager Address]

Further Information: For additional information please contact the Creating Entity's Manager's Office at the address or telephone number shown below.

[Enter Creating Entity Manager Contact Information]