

**CITY OF ELKO NEW MARKET, MINNESOTA  
BUSINESS ASSISTANCE POLICY**

**Adopted July 26, 2012**

**I. PURPOSE**

The purpose of this policy is to provide guidance for the City of Elko New Market (the City) in its provision of assistance for commercial and housing development and redevelopment projects. As a matter of adopted policy, the City will consider using public assistance to assist private development only in those circumstances in which the proposed private project shows a demonstrated financing gap, meets one of more of the goals presented in the City's Economic Development Strategy and Action Plan: 2012 - 2014, and is consistent with the City's Comprehensive Plan.

This policy shall be used as a guide in processing and reviewing applications requesting public financing assistance. The City shall have the option of amending or waiving sections of this policy when determined necessary or appropriate. This City policy is also substantially identical to the business assistance policy adopted by the City's Economic Development Authority (EDA) Board on July 26, 2012. Although the EDA is expected to be the primary venue for the review and implementation of public financing proposals, it is advisable for both the City and EDA to adopt individual policies guiding the provision of public financing assistance.

**II. STATUTORY LIMITATIONS**

All forms of business assistance provided by the City must comply with applicable state law and regulation, including *Minnesota Statutes* 116J.993 through 116J.995. *Minnesota Statutes* 116J.993, Subd. 3 defines a Business Subsidy as "a state or local government agency grant, contribution of personal property, real property, infrastructure, the principal amount of a loan at rates below those commercially available to the recipient, any reduction or deferral of any tax or any fee, any guarantee of any payment under any loan, lease, or other obligation, or any preferential use of government facilities given to a business." Appendix A lists forms of financial assistance that state law does not consider business subsidies.

A business subsidy may not be granted until the grantor has adopted criteria after a public hearing for awarding business subsidies. A grantor may deviate from its criteria by documenting the reason for the deviation and attaching a copy of the document to its next annual report to the Department of Employment and Economic Development (DEED). A copy of the criteria must be submitted to DEED along with the first annual report following the enactment of the Policy or with the first annual report after it has adopted criteria, whichever is earlier. Notwithstanding *Minnesota Statutes* 116J.993, subdivision 3, clauses (1) and (21), "business subsidies" as defined under section 116J.993 includes the following forms of financial assistance: (1) a business subsidy of \$25,000 or more; and (2) business loans and guarantees of \$75,000 or more.

**III. GOALS**

As a matter of adopted policy, the City will consider using a business assistance tool to assist private development only in those circumstances in which the proposed private project shows a demonstrated financing gap, meets one of more of the goals presented in the City's Economic Development Strategy and Action Plan: 2012 - 2014, and is consistent with the City's

Comprehensive Plan. The City’s primary development priority is to encourage high-value commercial development, including but not limited to manufacturing, warehousing, distribution, office and retail uses. Senior residential and other multi-family housing proposals may be considered for assistance on a case-by-case basis. In all instances, the terms and conditions of any business assistance are to be decided at the discretion of the City Council.

#### IV. PUBLIC ASSISTANCE TOOLS

##### 1. Tax Increment Financing

Tax increment may be spent only for specified purposes permitted in the underlying development statutes. The Minnesota Tax Increment Act is codified as *Minnesota Statutes* 469.174 through 469.1811. In addition, the Tax Increment Act specifies the qualifying conditions and/or development purposes for several types of TIF districts, and the required process for establishing and reporting on a TIF district.

##### 2. Tax Abatement

Tax abatement may be spent only for specified purposes permitted in the underlying development statutes. The Minnesota Tax Abatement Act is codified as *Minnesota Statutes* 469.1812 through 469.1815.

##### 3. City Fees

The City may consider deferring or assessing City fees for purposes permitted in the development statutes and City Code. Whether a particular fee is eligible to be deferred or assessed over time may depend on the City Fund’s ability to support the deferment.

#### V. BUT FOR TEST

With tax increment financing, the City is statutorily required to find that the increased market value of the site that could reasonably be expected to occur without the use of TIF would be less than the increase in the market value of the proposed development after subtracting the present value of the projected tax increments for the maximum duration of the district permitted by the TIF Plan according to *Minnesota Statutes*, Section 469.175, subd. 3(d).

This market value-based “but for” analysis is required only for TIF projects. However, the City will use this test, as well as a pro forma –based analysis of whether the proposed private project could reasonably be expected to occur without public assistance, for all assistance proposals. To allow for this evaluation, the developer must provide a complete development budget and operating pro forma, and an accompanying statement explaining the need for assistance.

#### VI. TYPES OF FINANCING

The City will consider “pay as you go” financing arrangement with the developer. With pay as you go financing, the developer pays for various costs initially, and the authority promises to reimburse the developer from tax increment, tax abatement, or other identified economic development and redevelopment tools over time as it is generated. This arrangement may be

structured as a revenue note or bond issued to the developer, with an interest component to compensate the developer for costs of financing the improvements up front.

Bonds secured by tax increments or tax abatements may be issued only when there is an extraordinary capital requirement that cannot be met through conventional private debt and/or equity, and to benefit a project of high priority and interest to the City. The bonds may be general obligation bonds backed by the full faith and credit of the City.

## VII. TERM OF ASSISTANCE

The City retains the ability to provide a shorter term for the tax increment or tax abatement than the Minnesota Tax Increment Act and Minnesota Tax Abatement Act, respectively.

## VIII. BUSINESS ASSISTANCE PROJECT APPROVAL CRITERIA

All new projects approved by the City must meet the following mandatory minimum approval criteria. However, it should not be presumed that the business assistance request of a project meeting these criteria will automatically be approved. Meeting these criteria creates no contractual rights on the part of any potential developer.

1. The assistance shall be provided within applicable statutory restrictions, State Auditor interpretation, debt limit guidelines, and other appropriate requirements and policies.
2. The project should meet one or more of the goals referenced in the City's Economic Development Strategy and Action Plan: 2012 – 2014.
3. The project must be in accord with the City's Comprehensive Plan and Zoning Ordinances, or required changes to the Comprehensive Plan and Zoning Ordinances must be under active consideration by the City at the time of approval.
4. The assistance will not be provided to projects that have the financial feasibility to proceed without the benefit of the assistance. Assistance will not be provided solely to broaden a developer's profit margins on a project. Prior to consideration of a business assistance request, the City may undertake an independent underwriting of the project to help ensure that the request for assistance is valid.
5. Prior to approval of business assistance, the developer shall provide any required market and financial feasibility studies, appraisals, soil boring, information provided to private lenders for the project, and other information or data that the City or its financial consultants may require in order to proceed with an independent underwriting.
6. Any developer requesting business assistance should be able to demonstrate past successful general development capability as well as specific capability in the type and size of development proposed.
7. The developer must retain ownership of the project at least long enough to complete it, to stabilize its occupancy, to establish the project management, and to initiate repayment of the business assistance.

8. The level of business assistance funding should be reduced to the lowest possible level and least amount of time by maximizing the use of private debt and equity financing first, and then using other funding sources or income producing vehicles that can be structured into the project financing, prior to using additional business assistance funding.

## IX. BUSINESS ASSISTANCE PROJECT EVALUTATION CRITERIA

If a business meets the criteria in Section 4 and is eligible for assistance, the following criteria will be used to determine the amount of assistance and type of assistance that may be provided. All projects will be evaluated by the Elko New Market City Council on the following criteria for comparison with other proposed business assistance projects reviewed by the City, and for comparison with other subsidy standards (where appropriate). It is realized that changes in local markets, costs of construction, and interest rates may cause changes in the amounts of business assistance subsidies that a given project may require at any given time. In applying the criteria to a specific project, the following will apply:

The City may consider the requirements of any other business subsidy received, or to be received, from a grantor other than the City.

1. If the business subsidy is a guaranty, the amount of the business subsidy may be valued at the principal amount of the guaranteed payment obligation.
2. If the business subsidy is real or personal property, the amount of the subsidy will be the fair market value of the property as determined by the City.
3. If the business subsidy is received over time, the City may value the subsidy as it determines is fair and reasonable under the circumstances.
4. As used herein, "Benefit Date," means the date the business subsidy is received. If the business subsidy involves the purchase, lease, or donation of physical equipment, then the benefit date occurs when the recipient puts the equipment into service. If the business subsidy is for improvements to property, then the Benefit Date refers to the earliest date of either when the improvements are finished for the entire project or when a business occupies the property.
5. All business assistance projects will need to meet a "Reasonable Rate of Return." Assistance will not be used unless the need for the City's economic participation is sufficient that, without that assistance the project could not proceed in the manner as proposed. The Reasonable Rate of Return will be based on market standards at the time of the application for assistance.
6. Business assistance will not be used when the developer's credentials, in the sole judgment of the City, are inadequate due to past track record relating to: completion of projects, general reputation and/or bankruptcy, or other problems or issues considered relevant by the City.
7. Business assistance funding should not be provided to those projects that fail to meet good public policy criteria as determined by the Council, including: poor project quality; projects that are not in accord with the City's comprehensive plan, zoning, redevelopment plans, and policies; projects that provide no significant improvement to surrounding land

uses, the neighborhood, and/or the City; projects that do not meet one or more of the goals referenced in the City's Economic Development Strategy and Action Plan: 2012 - 2014; projects that do not meet financial feasibility criteria established by the City; and projects that do not provide the highest and best desired use for the property.

8. All projects receiving business assistance under the criteria listed in *Minnesota Statutes* 116J.993, Subd. 3 must meet the job and wage goals described below. *Minnesota Statutes* 116J.994, Subd. 2 allows the City to deviate from its criteria by documenting in writing the reason for the deviation and attaching a copy of the document to its next annual report to the Department of Employment and Economic Development.  
Projects receiving business assistance must create a minimum of 5 full time jobs paying an average wage of 150% of Federal minimum wage, including benefits.
9. The amount of assistance available to a project will be limited by the amount of proceeds that TIF or other financing tools may support.
10. Job creation or retention is not required for businesses subsidies as long as the grantor identifies an alternate public purpose in addition to tax base increase. If after Council consideration of the alternate public purpose(s) proposed, the creation or retention of jobs is determined not to be a goal, the wage and job goals may be set at zero.
11. In lieu of job creation or retention, other measurable, specific, and tangible goals shall be established. Examples of tangible goals may include tax base diversification, property redevelopment, and/or other goals identified in the City's Economic Development Strategy and Action Plan: 2012 - 2014.
12. Business assistance will normally be used for projects that address the following land use issues: (1) high value development consistent with the City's Comprehensive Plan; (2) location on property which needs but is not likely to be developed or redeveloped because of blight or other adverse conditions of the property; and possibly (3) the inclusion of design and/or amenity features not otherwise required by law.
13. Business assistance will be evaluated on the project's impact on existing and future public investment: (1) whether and to what extent the project will utilize existent public infrastructure capacity and the extent it requires additional publicly funded infrastructure investments; (2) arrangements for the City to receive a direct monetary return on its investment in the project.
14. Business assistance will normally be used for projects that demonstrate to the satisfaction of the City adequate financing for the project is available and that the project will be completed in a timely fashion.
15. Business assistance from the City must satisfy all requirements of *Minnesota Statutes* 116J.993 through 116J.995.

#### X. LOOK BACK PROVISION

The City reserves the ability to include a Look Back Provision in the Development Agreement for a project. Under the Look Back Provision, the City has the ability to review the development proforma and grant assistance based on the estimates for the project. After completion of the

project, the City has the ability to compare the actual project costs and performance with the estimates and adjust the assistance provided so a "Reasonable Rate of Return" is achieved. This adjustment will be made only in circumstances when the business subsidy can be reduced to achieve a "Reasonable Rate of Return." The adjustment will not be made to increase the amount of the business subsidy.

At the time the Development Agreement is being negotiated, the City will consider if and how any assistance above the "Reasonable Rate of Return" may be shared.

Some criteria, by their very nature, must remain subjective. However, wherever possible "benchmark" criteria have been established for review purposes. The fact that a given proposal meets one or more "benchmark" criteria does not mean that it is entitled to funding under this policy, but rather that the City is in a position to proceed with evaluations of (and comparisons between) various business assistance proposals, using uniform standards whenever possible.

## XI. ESCROW DEPOSIT AND CITY REVIEW PROCESS

The City requires a deposit to be placed in escrow at the time an Application for Business Assistance Financing is received. The deposit amount is identified in the Application. These funds will be used to pay expenses incurred for the City's preliminary review and evaluation of the request. Following this review, the City will provide the developer with feedback on the proposed project and assistance request, and a recommendation on whether proceeding to official City consideration of the proposed assistance mechanism (i.e. TIF, tax abatement) is appropriate.

For projects that proceed to City establishment of assistance mechanisms and negotiate of assistance terms, the developer will be required to deposit additional funds to cover City costs associated with additional review and the establishment of the business assistance. The applicant will be responsible for paying all reasonable and documented expenses which the City incurs. The City reserves the option to stop the review process if the escrow is drawn down and not replenished within one week of the City's notification of the developer.

---

Mayor

## APPENDIX A

The Business Subsidies Statutes specifically exclude 22 items from the definition. The following are NOT business subsidies:

- A business subsidy of less than \$150,000;
- Assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, location, or similar general criteria;
- Public improvements to buildings or lands owned by the state or local government that serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made;
- Redevelopment property polluted by contaminants as defined in *M.S. Section 116J.552, Subd. 3*;
- Assistance provided for the sole purpose of renovating old or decaying building stock or bringing it up to code and assistance provided for designated historic preservation districts, provided that the assistance is equal to or less than 50% of the total cost;
- Assistance to provide job readiness and training services if the sole purpose of the assistance is to provide those services;
- Assistance for housing;
- Assistance for pollution control or abatement, including assistance for a tax increment financing hazardous substance sub-district as defined under *M.S. Section 469.174, Subd. 23*;
- Assistance for energy conservation;
- Tax reductions resulting from conformity with federal tax law;
- Workers' compensation and unemployment compensation;
- Benefits derived from regulation;
- Indirect benefits derived from assistance to educational institutions;
- Funds from bonds allocated under chapter 474A, bonds issued to refund outstanding bonds, and bonds issued for the benefit of an organization described in section 501 (c) (3) of the Internal Revenue Code of 1986, as amended through December 31, 1999;
- Assistance for a collaboration between a Minnesota higher education institution and a business;
- Assistance for a tax increment financing soils condition district as defined under *M.S. Section 469.174, Subd. 19*;
- Redevelopment when the recipient's investment in the purchase of the site and in site preparation is 70 percent or more of the assessor's current year's estimated market value;
- General changes in tax increment financing law and other general tax law changes of a principally technical nature;
- Federal assistance until the assistance has been repaid to, and reinvested by, the state or local government agency;
- Funds from dock and wharf bonds issued by a seaway port authority;
- Business loans and loan guarantees of \$150,000 or less; and
- Federal loan funds provided through the United States Department of Commerce, Economic Development Administration.

APPENDIX B

CITY OF ELKO NEW MARKET  
BUSINESS ASSISTANCE FINANCING APPLICATION

Legal name of applicant:

---

Address:

---

Telephone number:

---

Name of contact person:

---

REQUESTED INFORMATION

Addendum shall be attached hereto addressing in detail the following:

1. A map showing the exact boundaries of proposed development.
2. Give a general description of the project including size and location of building(s); business type or use; traffic information including parking, projected vehicle counts and traffic flow; timing of the project; estimated market value following completion.
3. The existing Comprehensive Guide Plan Land Use designation and zoning of the property. Include a statement as to how the proposed development will conform to the land use designation and how the property will be zoned.
4. A statement identifying how the assistance will be used and why it is necessary to undertake the project.
5. A statement identifying the public benefits of the proposal including estimated increase in property valuation, new jobs to be created, hourly wages and other community assets.
6. A written description of the developer's business, principals, history and past projects

I understand that the application fee will be used for City staff and consultant costs and may be partially refundable if the request for assistance is withdrawn. Refunds will be made at the discretion of the City Council and be based on the costs incurred by the City prior to the withdrawal of the request for assistance. If the initial application fee is insufficient, I will be responsible for additional deposits.

SIGNATURE

Applicant's signature:

---

Date:

---

CITY OF ELKO NEW MARKET

Application for Business Assistance Financing

GENERAL INFORMATION:

Business Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

Type (Partnership, etc.): \_\_\_\_\_

Authorized Representative: \_\_\_\_\_ Phone: \_\_\_\_\_

Description of Business: \_\_\_\_\_

Legal Counsel: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

FINANCIAL BACKGROUND:

1. Have you ever filed for bankruptcy? \_\_\_\_\_

2. Have you ever defaulted on any loan commitment? \_\_\_\_\_

3. Have you applied for conventional financing for the project? \_\_\_\_\_

4. List financial references:

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

5. Have you ever used Business Assistance Financing before? \_\_\_\_\_  
If yes, what, where and when? \_\_\_\_\_

PROJECT INFORMATION:

- 1. Location of Proposed Project: \_\_\_\_\_  
\_\_\_\_\_
- 2. Amount of Business Assistance requested? \_\_\_\_\_
- 3. Need for Business Assistance: \_\_\_\_\_
- 4. Present ownership of site: \_\_\_\_\_
- 5. Number of permanent jobs created as a result of project? \_\_\_\_\_
- 6. Estimated annual sales: Present: \_\_\_\_\_ Future: \_\_\_\_\_
- 7. Market value of project following completion: \_\_\_\_\_
- 8. Anticipated start date: \_\_\_\_\_ Completion Date: \_\_\_\_\_

FINANCIAL INFORMATION:

- 1. Estimated project related costs:
  - a. land acquisition \$ \_\_\_\_\_
  - b. site development \_\_\_\_\_
  - c. building cost \_\_\_\_\_
  - d. equipment \_\_\_\_\_
  - e. architectural/engineering fee \_\_\_\_\_
  - f. legal fees \_\_\_\_\_
  - g. off-site development costs \_\_\_\_\_
- Total: \_\_\_\_\_

2. Source of financing:
- a. private financing institution \$ \_\_\_\_\_
  - b. requested public assistance funds \_\_\_\_\_
  - c. other public funds \_\_\_\_\_
  - d. developer equity \_\_\_\_\_
- Total: \_\_\_\_\_

**PLEASE INCLUDE:**

- 1. Preliminary financial commitment from bank
- 2. Plans and drawing of project
- 3. Background material of company
- 4. Development budget (sources and uses of funds)
- 5. Operating pro forma analysis (minimum of 10 years)
- 6. Personal and/or corporate financial statements, as applicable
- 7. Statement of property ownership or control
- 8. Escrow payment of \$2,500 for business assistance requests of \$150,000 or less; or a payment of \$5,000 for requests over \$150,000
- 9. Escrow Agreement