



Travis County Commissioners Court Agenda Request

Meeting Date: 01/17/2012, 9:00 AM, Voting Session

Prepared By/Phone Number: Katie Petersen Gipson, Planning and Budget Office, 854-9346

Elected/Appointed Official/Dept. Head: Leroy Nellis, Acting County Executive
Planning and Budget

Commissioners Court Sponsor: Judge Samuel Biscoe

A handwritten signature in black ink, appearing to read "Leroy Nellis", is written over the text of the "Elected/Appointed Official/Dept. Head" line.

AGENDA LANGUAGE:

Discuss and take appropriate action on draft economic development policy for Travis County

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

Travis County's economic development policy expired in September 2011. With no current policy Travis County is not able to enter into economic development agreements that involve tax abatements (however, tax rebate agreements are possible with no policy). Attached is a draft economic development policy that was presented to the PBO economic development subcommittee. We are also submitting a copy of the expired policy.

STAFF RECOMMENDATIONS:

PBO is requesting comments and direction for Commissioners Court regarding the policy. PBO expects there will be revisions to the draft which will be presented at a later date for final approval.

ISSUES AND OPPORTUNITIES:

Please see attached memo

FISCAL IMPACT AND SOURCE OF FUNDING:

N/A

REQUIRED AUTHORIZATIONS:

Planning and Budget Office
County Judge's Office

Leroy Nellis
Cheryl Aker



**PLANNING AND BUDGET OFFICE
TRAVIS COUNTY, TEXAS**

700 Lavaca, Ste 1560
P.O. Box 1748
Austin, Texas 78767

MEMORANDUM

TO: Commissioners Court
FROM: Katie Petersen Gipson, Sr. Planning and Budget Analyst
DATE: January 10, 2012
RE: Draft Economic Development Policy

A handwritten signature in blue ink, appearing to read "Katie Petersen", is written over the "FROM:" line of the memorandum.

Travis County's Economic Development Policy expired in September of 2011. In order for the County to enter into tax abatement agreements, and to lay out the County's goals for economic development, PBO recommends a new policy. Attached is a draft policy that was presented to the Economic Development subcommittee in December.

Highlights of the new policy include:

- Creating an application process for new projects that seek incentives,
- Defining desired eligible facilities,
- Clearly outlining required and preferred criteria for these projects,
- Creating a tiered system whereby a project would add on to its percentage of tax relief if the project would go beyond minimum criteria for property value, jobs, green building and hiring/training of economically disadvantaged individuals, and
- A more defined process for consideration and approval of economic development agreements.

At this time PBO is requesting comments and suggestions on the new policy. PBO may make changes to the draft at the Court's direction and present a revised draft for Court approval at a later date.

cc: Mary Etta Gerhardt, County Attorney's Office
Leroy Nellis, PBO

DRAFT POLICY

CHAPTER 28
TRAVIS COUNTY ECONOMIC DEVELOPMENT INCENTIVES POLICY
GUIDELINES AND CRITERIA

INTRODUCTION:

Authorization.

(a) **General Authorization.** The Travis County Commissioners Court ("Commissioners Court") is authorized to develop and administer a program to stimulate business and commercial activity in Travis County pursuant to LOCAL GOVERNMENT CODE, Chapter 381 [specifically, Sections 381.004(b) and 381.004(g)], and other applicable statutes.

(b) **Tax Abatement Resolution.** Travis County has adopted a Resolution stating that Travis County elects to become eligible to participate in tax abatement under LOCAL GOVERNMENT CODE, Section 381.004(g), and applicable portions of TAX CODE, Chapter 312. Travis County also has adopted a resolution stating that Travis County elects to become eligible to participate in tax abatement under TEXAS TAX CODE, Chapter 312. Tax Abatement Agreements which are entered into under LOCAL TEXAS GOVERNMENT CODE, Section 381.004(g) ["381 Tax Abatement Agreement"] shall be subject to the requirements of that statute (which includes limited provision of TEXAS TAX CODE, Chapter 312) and tax abatement agreements which are entered into under TEXAS TAX CODE, Chapter 312 ["312 Tax Abatement Agreement"] shall be subject to the requirements of that statute.

28.001 Definitions

(a) "Abatement" means partial exemption from ad valorem taxes of eligible property in a reinvestment zone designated for economic development purposes pursuant to Chapter 312 of the Texas Tax Code, Chapter 381, Texas Local Government Code, and Travis County Code, Chapter 28, "Travis County Economic Development Incentives Policy Guidelines and Criteria and other applicable laws, rules, regulations and policies.

(b) "Agreement" means a contractual agreement between a property owner and/or lessee and an eligible jurisdiction granting or pertaining to an Incentive under this Policy.

(c) "Applicant" means an authorized representative of a legal business entity who requests in writing the consideration of a proposal for Incentives under this Policy.

(d) "Base Year Value" means the taxable value of Eligible Property as certified by the Travis County Appraisal District on January 1 preceding the effective date of the tax Incentive agreement.

(e) "Competitively-Sited Project" means a project where the applicant has completed a written evaluation for assistance by a governmental entity in another location in which

expansion, relocation, or new operations (the project being proposed for Travis County Incentives) are actively being considered by the applicant.

(f) "Comprehensive Plan" means a plan adopted by the Commissioners Court for the long-range development of the unincorporated area of the county used to coordinate and guide the establishment of development policies and regulations and to guide capital improvement programs.

(g) "Convergence Technologies" means the companies engaged in research and development activities, computer and other electronic systems and hardware design or testing, software development, testing, or publishing, wireless telecommunications, or related product manufacturing.

(h) "Corporate/professional headquarters" means the main office from which a regional, national, or international organization is managed. Typical functions that occur in these types of offices include executive decision-making and strategy, sales and marketing, human resources, financial operations, advanced information technology operations, consulting, and training. The chief executive officer for the region for which this location serves as a headquarters must be based at the location.

(i) "Creative Media" means the creation, development, production, and distribution of musical works, motion pictures, television, and other forms of video programming and content, video games, advertising and informational content.

(j) "Economically Disadvantaged" means a Travis County resident with verified income of 200% or less of the current Federal Poverty Guidelines.

(k) "Eligible Property" means all property (real and business personal) subject to assessment by Travis Central Appraisal District ("TCAD") for the determination of ad valorem taxes which is the subject of any Agreement under this Policy. Eligible Property will be limited to: real property on which the facility is located (entire approved site as set forth in the Agreement); the new construction improvements on the site; and new business personal property placed within a facility within the same year the new facility is counted as new construction by TCAD or as agreed to in a specific phasing provision in the Agreement. In no event shall the Incentive granted in any one year exceed the total ad valorem tax revenue received/due Travis County from the company's new construction as certified by TCAD. .

(l) "Employee" means a person:

- whose employment is permanent, full-time (or full-time equivalent - "FTE") and non-seasonal, and
- who is employed by the applicant for Incentive for a minimum of 1,750 hours per year and

- whose employment is reflected in the applicant's report filed with the Texas Workforce Commission ("TWC") December 31 of each year, or other acceptable company generated and certified payroll report or other documentation of employment deemed adequate by County.

It is understood that, in order to receive Incentive based on employment numbers, company must provide documentation that required insurance benefits [see Section 28.003(b)(iii)] are provided.

(m) "FTE" means a full-time equivalent Employee which can be achieved by the combination of no more than three (3) part-time Employees to meet the hourly requirement set forth in Section 28.001(j) for one full-time Employee. Each Employee considered must also meet all other stated requirements (non-seasonal, permanent, provided benefits).

(n) "Green Industries" means companies engaged in clean energy and resource conservation. "Clean energy" includes research and development, headquarters, or manufacturing projects that involve any type of energy efficiency, energy storage, energy resource conservation, renewable energy, or alternative fuel technology. "Resource Conservation" includes companies involved in the research, development, and manufacturing of products focused on improved efficiency and availability of natural resources including clean air and water.

(o) "Healthcare and Life Sciences" means companies in the fields of healthcare, biotechnology, pharmaceuticals, biomedical technologies, life systems technologies, environmental, biomedical devices, and organizations and institutions that devote the majority of their efforts in the various stages of research, development, testing, technology transfer, commercialization or manufacturing.

(p) "Incentive" means the benefit granted under an Agreement entered into pursuant to this Policy and applicable statutes, including tax abatement and tax rebate.

(q) "Manufacturing Facility" means buildings and structures, including fixed-in-place machinery and equipment, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.

(r) "Median Family Income" means the income of Travis County residents as determined by the American Community Survey of the United States Census Bureau for the most recent year available at the time of the applicant's request.

(s) "Rebate" means the reimbursement of ad valorem taxes paid on certain Eligible Property pursuant to an Agreement entered into under this Policy as authorized by Chapter 381, Texas Local Government Code and other applicable laws, rules, regulations and policies.

(t) "Regional Live Entertainment or Fine Arts Facility" means building and structures, including fixed machinery and equipment, used as a venue for live entertainment or

the display of fine arts through the admission of the general public where a substantial percentage of users reside at least 100 miles from any part of the County.

(u) "Research & Development Facility" means buildings and structures, including fixed machinery and equipment, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials, the production processes thereto, or current technology in biomedicine, electronics or pre-commercial emerging industries.

(v) "Taxable Value of Eligible Property" means the certified appraised value of eligible property, as finally determined by the Travis County Appraisal District ("TCAD").

28.002 Types of Incentives Authorized

(a) General Process. An Applicant will make application according to Section 28.005 of this Policy. Travis County Planning and Budget ("PBO") will review the application and make recommendation to the Commissioners Court. The Commissioners Court will, at its sole discretion, determine whether to grant the Incentive, the level of Incentive to be granted, and the terms of the Incentive Agreement.

(b) Authorized Facility. In considering an application for Incentives under this Policy, preference will be given to a company if it seeks to locate any of the following within Travis County:

- (i) Convergence Technologies Facility;
- (ii) Creative Media Facility;
- (iii) Green Industries;
- (iv) Corporate/Professional Headquarters;
- (v) Healthcare and Life Sciences Facility;
- (vi) Regional Live Entertainment or Fine Arts Facility; or
- (vii) Research and Development Facility.
- (viii) A business that will provide substantial opportunities for employment for Economically Disadvantaged Individuals.
- (ix) A business located in a Reinvestment Zone (required for tax abatement)

If an Applicant meets any of the requirements in (i) - (ix) above, Applicant may request and be considered for an additional ten percent (10%) above the base Incentive provided for under Section 28.003(c).

(c) Retail Developments. Developments which are primarily for retail may be reviewed on a case-by-case basis to determine eligibility for Incentive, but will not be considered as preferred development proposals.

(d) County Indebtedness. No Incentive shall be approved if the applicant is indebted to the County for past due ad valorem taxes or other obligations.

(e) Exemption. Applicants not meeting the criteria (with the exception of any requirements that are imposed by applicable statutes) but presenting extraordinary circumstances and/or opportunities may make application to the County Judge, with a copy to PBO, which includes a request for an exemption or waiver of Policy requirements. Any application accepted for assessment or any Agreement granted under an exemption or waiver must be approved by a super majority of the full Commissioners Court (4 votes).

(f) Incentive on New Value. Incentives may only be granted for the increase in taxable value of eligible property on or after the effective date of the agreement granting the Incentive if the eligible property is listed by kind or type in an agreement between the County and the applicant, subject to such limitations as Commissioners Court and the Texas Tax Code may require.

(g) Leased Facility. Existing leased facilities will not be eligible for Incentives under this Policy as only new construction will qualify as Eligible Property. If leased property will be utilized for new construction which is granted a tax Incentive, the agreement shall be executed with both the lessor (owner) and the lessee of the land on which the facility is located unless exempted from this requirement by a super majority of the full Commissioners Court (4 votes).

(h) Duration of Incentive. An Incentive agreement between Travis County and an applicant (and, if applicable, the applicant's lessor or lessee) shall remain in effect for up to but not more than ten (10) years for a tax abatement agreement, and up to but not more than twenty (20) years for a tax rebate agreement.

28.003 Qualifications for Consideration of a Base Incentive .

(a) Minimum Required Criteria. To be eligible for consideration for a base Incentive, a project must:

(i) include an investment in new construction and Eligible Property which will result in the increase in the appraised value of the Eligible property by at least \$25,000,000 (as shown by the company's annual tax rendition, a copy of which will be provided to County) by January 1 of the tax year that will commence immediately following the year in which the construction period defined in the agreement is completed or the year in which the Incentive begins; and

(ii) not solely or primarily have the effect of transferring employment from one part of the County to another.

A proposal which meets the above minimum criteria will be considered an "Eligible Project." This establishes initial eligibility but does not ensure the granting of Incentives by Travis County.

(b) Preferred Criteria. Preference for Incentive and increased percentages of Incentive will be given to proposal which include one or more of the following:

- (i) increase full-time (or FTE) non-seasonal employment for at least 50 Employees within the time period or periods set forth in the agreement;
- (ii) Be competitively-sited;
- (iii) Have a human resources benefits policy:
 - (A) meeting all applicable federal requirements
 - (B) with the company contributing to health benefits for all "Employees" and Employee family members and
 - (C) meeting or exceeding the standard set by Chapter 1508 of the Texas Insurance Code ["Healthy Texas"].
- (iv) fill at last 50% of its positions for the project with Travis County residents.

(c) Base Incentive. An eligible project may receive a base Incentive (rebate or abatement) of up to 50% of ad valorem taxes on new value of Eligible Property if the Applicant shows an investment which has the result of increasing the taxable value of Eligible Property by at least Twenty-Five Million Dollars (\$25,000,000.00) with the percentage determined as follows:

Base Incentive			
Up to 25%	\$25 million - \$100 million		
Up to 37.5%	\$100 million - \$200 million		
Up to 50%	\$200 million <		

(d) Failure to Meet Requirements. No Incentive shall be given for any year in which the Eligible Project fails to meet the contractually-defined minimum new value requirements set forth in the agreement.

28.004 Additional Incentive Above Base. No Incentive will be granted that exceeds eighty percent (80%), *regardless of the total "above base" requirements that an applicant may fulfill.* Additional Incentives above the base may be considered as follows:

(a) Jobs. An additional Incentive of up to ten percent (10%) may be granted based on Employee jobs created as follows:

50 - 100 jobs	3%
100 - 200 jobs	6%
more than 200 jobs	10%

(b) LEED Certification. An additional Incentive of up to five percent (5%) may be given for Leadership in Energy and Environmental Design (LEED®) certification as follows:

(i) Level of Certification. If the owner or lessee of a new commercial facility or an existing facility to be adapted or renovated has registered with the U.S. Green Building Council ("USGBC") seeking LEED Certification, then the County's Planning and Budget Office ("PBO") may recommend approval of an additional Incentive based upon the level of certification obtained after completion of construction:

Additional Incentive	LEED Certification Level
Up to 2%	Basic "Certified" Level
Up to 3%	Silver Level
Up to 4%	Gold Level
Up to 5%	Platinum Level

(ii) Registration. Applicant must be registered with USGBC seeking LEED Certification, prior to submitting its application for additional LEED Incentive to the County. The additional Incentive for LEED shall not commence until construction of the project is completed and LEED Certification is obtained by the applicant and acceptable documentation provided to County of that certification..

(c) Location - Additional Incentive for Locating an Eligible Project in a Travis County Regional Activity Center or Conservation Development. If an Eligible Project is located in a Regional Activity Center identified in the County's Comprehensive Plan or in a Conservation Development that conforms to the provisions of the County's Conservation Development Ordinance (Travis County Code Chapter 82, Subchapter A), an additional Incentive of up to five percent (5%) may be granted. A specific Regional Activity Center or Conservation Development must be identified in the Agreement approved by the Commissioners Court and cannot be added at a later date.

(d) Economically Disadvantaged Hiring/Training. Additional Incentive for Training and Hiring of Economically Disadvantaged Residents may be granted as follows:

(i) If an applicant pursues the training and/or hiring of economically disadvantaged Travis County residents through either:

(A) providing needs-based scholarships covering at least 50% of the full tuition cost of a degree or certification (with "tuition" being defined to include all required fees, books and actual tuition costs) to Economically Disadvantaged individuals. (Option A), or

(B) providing full time employment to participants Employees in any needs-based scholarship program or workforce training program approved by Travis County (Option B),

an additional Incentive of up to ten percent (10%) may be granted. Applicant must provide scholarships or employment to a number of Economically Disadvantaged individuals equal to at least ten percent (10%) of the Eligible Project's total employment. For example, if Applicant will have 200 full-time Employees, Applicant would have to either fund 20 scholarships (Option A) or hire 20 Economically Disadvantaged employees (Option B) to qualify for the additional 10% Incentive.

(ii) Option A. If an applicant pursues Option A above, the administration of the needs-based scholarship must be provided through an institute of higher education, an independent school district, or a workforce training program approved by Travis County. Verification of the funding for and the distribution of the needs-based scholarship shall be provided by the educational or workforce training program administering the program.

(iii) Option B. If an applicant pursues Option B above, verification of the employment of economically disadvantaged Travis County residents shall be met through documentation by the applicant that:

(A) the full time Employees have been recipients of any qualifying needs-based scholarship within the last four years or

(B) the full time Employees have completed a workforce training program approved by Travis County within the last four years.

(iv) Amendment to Agreement. At the request of the applicant and at the discretion of the Commissioners Court a "Training and Hiring Incentive" provision may be added as an amendment to a prior Incentive Agreement approved by Commissioners Court. Additional Incentive will only be granted effective as of the date of the fully executed amendment.

28.005 Application.

(a) Application Process. Any current or potential owner or lessee of taxable property in the County may request an Incentive by filing a completed application with the County Judge, with a copy to PBO, prior to any public expression of a site selection decision. The County Judge's office will notify the Commissioners Court of receipt of an application for Incentive and PBO will begin the assessment pursuant to this Policy. PBO may request additional information and clarification from the Applicant as necessary to complete the application. PBO, in consultation with the County Judge, will create an assessment of the proposal and make a best effort to respond to a completed application within 30 days of receiving the completed application. The response will include notification by PBO which either:

(i) Notifies the applicant in writing that the Travis County Commissioners Court will not take up the application for consideration; or

(ii) Notifies the applicant in writing that consideration of the application will be set for consideration by the Travis County Commissioners Court.

(b) Application Package. Components of a complete Application Package establishing minimum qualifications for a base Incentive. shall consist of:

(i) A completed Travis County Application form (Exhibit 1 of this Policy);

(ii) A non-refundable check in the amount of \$1,000 payable to Travis County;

(iii) A completed narrative prepared in accordance with the template provided in the County Application including but not limited to:

(A) An "Investment Budget" detailing components and costs of the real property improvements and fixed-in-place improvements (Eligible Property) for which Incentive is requested, including type, number, economic life, and eligibility for a tax exemption granted by the Texas Commission on Environmental Quality ("TCEQ"), if known;

(B) A map and legal description of the property/properties, if a location or alternate locations have been identified;

(C) A time schedule for undertaking and completing the proposed improvements;

(D) A ten-year environmental and worker safety compliance history for all facilities located within the State of Texas and owned in whole or in part by applicants, as defined in "Environmental and Worker Safety Qualification;"

(E) If Applicant is applying as a "competitively-sited project, Applicant will provide an affidavit affirming that the application is a competitively-sited project and acknowledging that documentation confirming the competitive process will be provided to County if an Incentive is granted by Travis County;

(F) Information pertaining to the reasons that the requested tax Incentive is necessary to ensure that the proposed project is built in the County (i.e., documentation supporting assertion that "but for" an Incentive, the stated project could not be constructed in the County):

(G) Copies of the report filed with the TWC for December 31 of each year, documenting the current number of full-time (or FTE) non-seasonal

employees, and full-time Contractor Employees (or any other company-generated and certified payroll report or other documentation of employment for the previous year deemed adequate by County), if any, at the time the application is submitted;

(H) Financial and other information as the County deems appropriate for evaluating the financial capacity and other factors of the applicant; and

(I) Certification prepared by County Tax Assessor-Collector stating that all tax accounts within the County are paid on a current basis.

Additional information required for Incentive above base may be included if the Applicant desires those proposals to be considered or will be requested on a case by case basis.

(c) Additional Information Required for a Leased Facility. The applicant shall provide with the application the name and address of the lessor and lessee and a draft copy of the proposed lease, or option contract. In the event a lease or option contract has already been executed with the owner of site, the document should include a provisions whereby Incentive applicant may terminate such contract or lease in the event that the County does not grant a Incentive. Leased property will only be considered for Incentives as to the Eligible Property being proposed.

(d) County Assessment of Application. A "complete application" will be an application which includes all information deemed necessary by County to make a full assessment of the proposal. Upon receipt of a completed application, PBO shall determine whether a project meets the minimum threshold for consideration by the Travis County Commissioners Court for a base Incentive and any additional Incentive under these guidelines and criteria. If PBO determines that the threshold has been met, the department shall offer the application for consideration by the Travis County Commissioners Court at a regularly scheduled voting session. County will make every effort to offer the application for consideration by the Commissioners Court within 30 days of receiving the completed application. If after deliberation the Court wishes to move forward with consideration of the application, the Court shall make its best effort to schedule a public hearing within 60 days of receiving the application. If the request is for an Incentive in the form of tax abatement, at the next regularly scheduled voting session of the Court following the public hearing (or the earliest date possible), the Court shall consider creation of a reinvestment zone and negotiation of a tax abatement agreement with the applicant in accordance with the Tax Code.

(e) Previous Construction or Improvements. The County shall not establish a reinvestment zone or enter into an Incentive agreement if it finds that an application was received after a project commenced construction or installation of improvements.

28.006 Public Hearing & Approval

(a) Resolution Designating Reinvestment Zone. The Commissioners Court may not adopt a resolution designating a reinvestment zone for the purposes of considering approval of a tax abatement agreement until it has held a public hearing at which interested persons are entitled to speak and present evidence for or against the proposed action. Notice of the hearing shall be clearly identified on the Commissioners Court agenda at least 13 days prior to the public hearing and the public hearing shall be held in accordance with applicable law.

(b) Variance. Any variance from these guidelines must be approved by a vote of a super-majority of the full Commissioners Court (4 votes).

(c) Conformance. In entering into an Incentive agreement, the Court must find that the terms of the proposed agreement conform to these Guidelines and Criteria and that:

(i) there will be no substantial adverse effect on the provision of the jurisdiction's services or tax base; and

(ii) the planned use of the property will not constitute a hazard to public safety, health or morals.

(iii) the terms meet the requirements of all applicable federal, state and local laws, rules, regulations and policies.

(d) The Commissioners Court will consider the proposed application for any Incentive in a regularly scheduled voting session with opportunity for public comment.

28.007 Agreement

(a) Agreement Terms. After approval of the proposal, the County may negotiate and execute an agreement with the owner of the facility (or lessee, where applicable) as required by this Policy and applicable law which shall include:

(i) A requirement that the applicant annually submit to PBO:

(A) a January employee count for the Eligible Project which is the subject of the Agreement which corresponds to employee counts reported in the facility Employer's Quarterly Report to the TWC (or other acceptable company-generated and certified payroll report or other documentation of employment deemed adequate by County) for the quarter most recently ended at calendar year-end, and

(B) a separate notarized letter certifying the number of jobs created as a direct result of the improvements which are the subject of the Incentive Agreement, the number of employees in other facilities located within Travis County, and the compliance with the environmental and worker safety

requirements in the Agreement for the preceding calendar year, as of January 1.
(C) a copy of the tax bill for the year for which Incentives are claimed (for tax rebate only) and proof of payment.

(D) other reporting data and documentation necessary to confirm compliance with all terms and conditions of the Agreement.

Submission of all required reporting information shall be used to determine Incentive eligibility and shall be subject to audit if requested by the governing body. Failure to submit will result in the ineligibility to receive an Incentive; and

(ii) A requirement that the owner or lessee will (a) obtain and maintain all required permits and other authorizations from the United States Environmental Protection Agency and the TCEQ for the construction and operation of its facility and for the storage, transport and disposal of solid waster; and (B) seek a permit from the TCEQ for all grandfathered units on the site of the facility by filing with the TCEQ, within three years of receiving the Incentive, a technically complete application for such a permit.

(iii) A requirement that the applicant provide to PBO within one month of executing the Agreement documentation confirming the Eligible project was in fact part of a competitively-sited process where applicable. Documentation may include, but shall not be limited to: (a) documentation (correspondence or financial information)presented to the applicant by other taxing jurisdictions; and (b) results of a competitive site survey conducted by applicant (or consultant for the applicant). Failure to provide this documentation confirming a competitively-sited process will make any Incentive agreement null and void or subject to a reduction in Incentive , as determined by the Commissioners Court.

(b) Timing of Agreement. Travis County will make all reasonable efforts to execute an Agreement within ninety (90) days of the Court's approval to commence negotiations.

(c) Other Terms. The Agreement must include all terms and conditions required by applicable law.

28.008 Assignment

An Incentive Agreement may be assigned to a new owner or lessee of a facility with the written consent of the Commissioners Court, which consent shall not be unreasonably withheld. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in the Agreement. Any assignment shall be to an owner that continues the same improvements or repairs to the property (except to the extent such improvements or repairs have been completed), and continues the same use of the facility as stated in the original Agreement with the initial applicant. No assignment shall be approved if the assignor or the assignee is indebted to the County for past due ad valorem taxes or other obligations.

28.009 Non-Compete Agreements

An Incentive shall not be granted for projects whose competitive siting consists only of taxing jurisdictions that have agreed with the County to forego the use of tax incentives in competing with the County for such projects.

28.010 Exceptions and Amendments

Exceptions made to eligibility requirements for specific applicants or amendments affecting all applicants may be made to this policy by a super-majority of the Court.

28.011 Sunset Provision

These Guidelines and Criteria are effective _____, 2011 , and will remain in force until _____, 201____, at which time all Incentive contracts created pursuant to these provisions will be reviewed by the County to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria will be modified, renewed, or eliminated.

EXPIRED
POLICY AS OF
09/11

CHAPTER 28
TRAVIS COUNTY ECONOMIC DEVELOPMENT PROGRAM POLICY
GUIDELINES AND CRITERIA FOR
TAX REBATE AND TAX ABATEMENT AND OTHER INCENTIVES

TABLE OF CONTENTS

- 28.001 Authorization
 - (a) General Authorization
 - (b) Tax Abatement Resolution
- 28.002 Purpose and Method
 - (a) General Purpose
 - (b) Method
 - (c) Waiver and Modification of Requirements
 - (d) Limitations
- 28.003 Definitions
- 28.004 Guidelines and Criteria
 - (a) Required Elements
 - (i) Commissioners Court Finding
 - (ii) Maximum Incentive Amount
 - (iii) Improvements
 - (iv) Description of Improvement Terms
 - (v) Access
 - (vi) Usage
 - (vii) Recapture
 - (viii) Terms
 - (ix) Annual Certification
 - (x) Failure to Comply
 - (xi) Legal Compliance
 - (xii) Environment
 - (xiii) Notice - 312 Tax Abatement Agreements
 - (b) Requirements With Discretionary Elements
 - (i) Minimum Capital Investment
 - (ii) Employment
 - A. Minimum
 - B. Increased Incentive Levels
 - (iii) Current Developments
 - (c) Additional Criteria for Consideration in Granting Approval and Determining Maximum Incentive Amounts
 - (i) Minority Participation/HUB Participation
 - (ii) Housing
 - (iii) Public Transportation
 - (iv) Open space for gathering, public seating, etc.
 - (v) Environmental attractiveness
 - (vi) Commitment to clean air initiatives
 - (vii) Parking
 - (viii) Number of acres involved in the development
 - (ix) Amount of square footage to be included in the completed development
 - (x) Other public benefits
 - (xi) Innovative design
 - (xii) Best practice design
 - (xiii) Location
 - (xiv) Additional community improvement

- (d) Waiver of Requirements and Limitations
 - (i) Waiver
 - (ii) Limitations
- (e) Commissioners Court Determination
- (f) Incentive Amount
 - (i) Rebate
 - (ii) Abatement
 - (iii) Rebate/Abatement Base
 - (iv) Amount
- (g) Term
- (h) Compliance With Law
- (i) Completion/Termination
 - (i) Completion
 - (ii) Early Termination
 - (iii) Default/Cure
 - (iv) Recapture
- (j) Taxation
- (k) Reports
- (l) Reinvestment Zone - Abatement Agreements
 - (i) 381 Tax Abatement Agreements
 - (ii) 312 Tax Abatement Agreements
- 28.005 Application/Request for Incentives
 - (a) Applicant
 - (b) Application
 - (c) Additional Information
 - (d) Confidentiality of Proprietary Information
- 28.006 Process
 - (a) Review of Application/Request for Incentives
 - (b) Agreement Approval
- 28.007 Agreement Terms and Provisions
- 28.008 Termination
 - (a) Event(s) of Termination
 - (b) Refund/Recapture
- 28.009 Administration
 - (a) PBO
 - (b) TCAD
 - (c) Information
- 28.010 General Provisions
 - (a) Assignment
 - (b) Agreement Amendment
- 28.011 Sunset Provision
 - (a) Duration
 - (b) Policy Changes

CHAPTER 28
TRAVIS COUNTY ECONOMIC DEVELOPMENT PROGRAM POLICY
GUIDELINES AND CRITERIA
FOR TAX REBATE AND TAX ABATEMENT AND OTHER INCENTIVES

Adopted by Order of the Commissioners Court: _____, 2009.

28.001 Authorization.

(a) **General Authorization.** The Travis County Commissioners Court ("Commissioners Court") is authorized to develop and administer a program to stimulate business and commercial activity in Travis County pursuant to LOCAL GOVERNMENT CODE, Chapter 381 [specifically, Sections 381.004(b) and 381.004(g)], and other applicable statutes.

(b) **Tax Abatement Resolution.** Travis County has adopted a Resolution stating that Travis County elects to become eligible to participate in tax abatement under LOCAL GOVERNMENT CODE, Section 381.004(g), and applicable portions of TAX CODE, Chapter 312. Travis County also has adopted a resolution stating that Travis County elects to become eligible to participate in tax abatement under TEXAS TAX CODE, Chapter 312. Tax Abatement Agreements which are entered into under LOCAL TEXAS GOVERNMENT CODE, Section 381.004(g) ["381 Tax Abatement Agreement"] shall be subject to the requirements of that statute (which includes limited provision of TEXAS TAX CODE, Chapter 312) and tax abatement agreements which are entered into under TEXAS TAX CODE, Chapter 312 ["312 Tax Abatement Agreement"] shall be subject to the requirements of that statute.

28.002 Purpose and Method.

(a) **General Purpose.** The purpose of this Policy is to establish the guidelines and criteria under which Travis County can develop and administer a program to stimulate and encourage business activity in Travis County in order to create more job opportunities, build the sales and property tax base and promote a partnership relationship with the private sector businesses that will bring capital intensive projects to Travis County.

(b) **Method.** The purpose of this Policy is also to establish guidelines and criteria for economic development utilizing both a rebate and abatement approach to tax incentives. This Policy establishes guidelines and criteria under which the County may enter into tax rebate and tax abatement agreements as a part of the County's Economic Development Program established under this Policy in order to further the economic development of Travis County.

(c) **Waiver and/or Modification of Requirements.** The Commissioners Court retains the right to waive or modify any of the requirements of this Policy, with the exception of Section 28.004(a)(xii), which cannot be waived, by approving terms in an agreement entered into under this Policy that differ from the Policy when the Court determines that the waiver and/or modification is:

- necessary in order to serve the public interest,
- will allow an agreement which will continue to meet the intent of this Policy, and
- will not violate any applicable statutory requirements.

The above subsection 28.002(c) notwithstanding, NO waiver or modification of a requirement to a 312 Tax Abatement Agreement can be made by the Commissioners Court if such waiver or modification is not allowed by TEXAS TAX CODE, Chapter 312 in relation to that agreement.

(d) **Limitation.** The adoption of these guidelines and criteria for a 312 Tax Abatement Agreement does not:

- limit the discretion of the Commissioners Court to decide whether to enter into a specific tax abatement agreement;
- limit the discretion of the Commissioners Court to delegate to its employees the authority to determine whether or not the Commissioners Court should consider a particular application or request for tax abatement; or
- create any property, contract or other legal right in any person to have the Commissioners Court consider or grant a specific application or request for tax abatement.

28.003 Definitions. Under the Travis County Economic Development Program Policy ("Policy"), these words have the following meaning:

- (a) **"Abatement"** means the full or partial release from payment of ad valorem taxes on certain real and tangible personal property under this Policy.
- (b) **"Abatement/Payment Term"** means that time period beginning on the Completion Date and ending on the Termination Date of the Agreement. If the Commissioners Court approves completion of a Project in phases, then the Abatement/Payment Term will begin with the Completion Date of the first phase.
- (c) **"Abatement/Payment Year Value"** means the value assessed by the Travis County Appraisal District ("TCAD") for the purpose of the payment of Travis County Ad Valorem Taxes on the Property for any tax year included in the Abatement/Payment Term of the Agreement.
- (d) **"Ad Valorem Taxes"** means those property taxes assessed by the by TCAD on eligible property within Travis County.
- (e) **"Agreement"** means a contract entered into under this Policy between the County and Company.
- (f) **"Agreement Funds"** means all money paid to or abated for a Company pursuant to the terms of the Agreement entered into under this Policy; also, the amount by which Ad Valorem taxes which would have been paid by Company is abated or rebated pursuant to the terms of the Agreement.
- (g) **"Agreement Term"** means that time period commencing on the date the Agreement is signed by all parties (also "Effective Date") and continuing until the Termination Date (as defined herein and/or in the Agreement).
- (h) **"Company"** means the authorized individual or business entering into an Agreement with County under this Policy.
- (i) **"Completion Date"** means the date of issuance of the Certificate of Occupancy for the Project. If the County approves completion of the Project in phases, there may be a different Completion Date for each approved phase; however, the Abatement/Payment Term will begin running as of the Completion Date of the first phase.
- (j) **"Economically Disadvantaged Individual"** means an individual who:
 - (i) for at least three months before employment with a qualified business was unemployed; or
 - (ii) receives public assistance benefits, such as welfare payments, food stamp payments and local approved medical assistance, based on need and intended to alleviate poverty; or
 - (iii) is economically disadvantaged as defined by the Job Training Partnership Act, Sec. 4(8) [129 USC, Sec. 1503(8)]; or

(iv) is an individual with a disability, as defined by 29 USC, Sec. 706(8); or

(v) is an inmate as defined by TEXAS GOVERNMENT CODE, Section 498.001; or

(vi) is entering the workplace after being confined in a facility operated by the institutional division of the Texas Department of Criminal Justice or under contract with the Texas Department of Criminal Justice, or such facility operated by Travis County; or

(vii) has been released by the Texas Youth Commission and is on parole, if state law provides for such a person to be on parole; or

(viii) meets the current low income or moderate income limits developed under the U. S. Housing Act of 1937, Sec. 8 (42 USC sec. 1437f, et seq.).

(k) **"Effective Date"** means the date that all parties to an Agreement entered into pursuant to this Policy have fully executed the Agreement.

(l) **"Effective Year Value"** means the value assessed by TCAD for the purpose of the payment of Travis County Ad Valorem taxes on the Property for the tax year including the Effective Date of the Agreement.

(m) **"PBO"** means the Travis County Planning and Budget Office.

(n) **"Project"** means the proposed development as specifically described by the Company in the application/request for incentives and the Agreement.

(o) **"Property"** means the land (real property) on which the Project will be developed.

(p) **"TCAD"** means the Travis Central Appraisal District.

(q) **"Termination Date"** means the end of the time period specified under the Agreement.

28.004 Guidelines and Criteria The Commissioners Court will use the following criteria as specified herein as a baseline for evaluation of applications and other requests for economic incentives which may be provided under this Policy:

(a) **Required Elements.** The following elements are considered to be of vital importance in implementing the County policy related to economic development and, as such, should be included in any Agreement entered into under this Policy, with terms in the Agreement stating that compliance with these requirements is mandatory. However, upon findings by the Court in compliance with Section 28.002(c) of this Policy as amended above, the Court may waive and/or modify requirements as listed in this Section 28.004(a) as deemed necessary, except for the requirement under Section 28.004(a)(xii), which cannot be waived. With that limitation, the following requirements are recommended for every agreement entered into pursuant to this Policy:

It is understood that any provision of the Policy that is based on statutory requirement, then provision may be waived or modified only to the extent allowed by applicable law.

(i) **Commissioners Court Finding.** An agreement cannot be entered into unless the Commissioners Court finds: that the terms of the agreement and the Property subject to the agreement meet the applicable guidelines and criteria set forth in this Policy; and that the development of the Project will result in substantial immediate and long-term financial benefit to Travis County and significant financial benefit to other taxing entities within Travis County.

(ii) **Maximum Incentive Amount.** In no event will the percentage of the tax abatement or rebate exceed 80%.

(ii) **Ownership.** The Company must own or plan to own the Property in order to enter into an Agreement under this Policy. Incentives will not be granted relative to leased property. Property that is owned or leased by a person who is a member of the Commissioners Court is excluded from abatement/rebate under this Policy, and Company will warrant that none of the Property subject to the agreement is owned or leased by a member of the Commissioners Court.

(iii) **Improvements.** Incentives provided under this Policy shall be granted for new facilities and structures and for the expansion or modernization of existing facilities and structures. New development at an existing site may be considered for benefits under this Policy. In order for expansion or modernization to qualify for incentives, such expansion or modernization must be accomplished to such an extent that substantial value is added to the ad valorem tax base, and cannot be cosmetic only in nature.

(iv) **Description of Improvement Terms.** The agreement must list the kind, number and location of all proposed improvements of the Property.

(v) **Access.** The agreement must provide for access and authority for County employees to enter the Property and inspect to ensure that the improvements or repairs are made according to the terms of the Agreement, and that the Company is in compliance with all other terms and conditions of the Agreement. Representatives of Company shall be permitted to attend the inspections. The inspections shall be preceded by twenty-four (24) hours notice, shall be conducted so as not to interfere with the business operations of the Company, and shall comply with the Company's reasonable safety standards. County may make ongoing inspections/ monitoring visits under these same conditions throughout the Agreement Term to ensure ongoing compliance.

(vi) **Usage.** The agreement must limit the uses of the Property consistent with the general purpose of encouraging development or redevelopment of the Property during the Agreement Term.

(vii) **Recapture.** The agreement must provide for recapture of property tax revenue lost as a result of the Agreement if: the Company fails to make the improvements or repairs as provided by the Agreement; the agreement is terminated, with recapture pursuant to Section 28.004(i); and under other applicable provisions of this Policy.

(viii) **Terms.** The agreement must contain each term of the Agreement.

(ix) **Annual Certification.** The Agreement must require the Company to certify annually to the Commissioners Court that the Company is in compliance with the applicable terms of the Agreement.

(x) **Failure to Comply.** The agreement must provide that the Commissioners Court may cancel or modify the agreement if the Company fails to comply with the Agreement.

(xi) **Legal Compliance.** The agreement must include provisions requiring that all applicable County and City codes and ordinances must be met and inspection take place in a timely manner; that the Company will make all hiring decisions in compliance with the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990; and that the Company will not discriminate against any employee or applicant for employment on the basis of race, religion, color, national origin, age or handicapping condition.

(xii) **Environment.** The agreement must require that all Projects shall be completed and maintained in a manner which preserves and respects the natural environment by maintaining green space as set forth in a plan approved by the governmental entity having jurisdiction, as

evidenced by written documentation from that entity. Company shall not violate any federal, state or local legislation and/or regulations which prohibit or regulate deleterious effects on the environment within the Project. The Property may NOT be located over an environmentally sensitive aquifer or contributing zone.

(xiii) Notice - 312 Tax Abatement Agreement. The Commissioners Court shall deliver to the presiding officer of the governing body (or designated officer or employee) of each other taxing unit in which the property subject to the 312 Tax Abatement Agreement is located a written notice that the County intends to enter into the agreement not later than the seventh (7th) day before the date on which the County will enter into the agreement. Such notice must include a copy of the proposed agreement.

The above requirements [Section 28.004(a)(i) - (xiii)] will NOT be subject to waiver or change in a 312 Tax Abatement Agreement where those provisions are required by law.

(b) **Requirements With Discretionary Elements.** While the following elements will be required in each agreement under this Policy, the Commissioners Court may, at its sole discretion, limit or waive the extent to which each is applied.

(i) **Minimum Capital Investment.** Subject to the discretionary ability of the Commissioners Court as set forth in this Policy, the Company's new capital investment (value of property subject to Travis County Ad Valorem taxation) must be no less than One Hundred Million Dollars (\$100,000,000.00). The purchase price of Property will not be included in this total capital investment amount. There MUST be substantial capital investment made by any company in order to participate in the Economic Development Program established under this Policy; however, the minimum amount may be waived to an extent determined by the Court under certain circumstances as approved by the Court as determined on a case by case basis.

(ii) **Employment**

(A) **Minimum.** Subject to the discretionary ability of the Commissioners Court as set forth in this Policy, within twelve (12) months of the Completion Date, the Project must create at least 500 new, permanent, full-time equivalent jobs. The Project must result in the creation of a substantial number of new, full-time jobs in the County within a specified time period; however, the minimum number may be waived and the time period changed to an extent determined by the Court under certain circumstances as approved by the Court on a case by case basis.

(B) **Increased Incentive Levels.** Consideration for maximum abatement/rebate amounts may be given to Projects which will create new, permanent full-time equivalent jobs which will be filled by individuals which meet the criteria to be deemed an Economically Disadvantaged Individual or which meet criteria for certain salary and/or educational/training requirements ("Career Development Employees") as defined in this Policy and under the terms of the Agreement. Terms of the Agreement will define the specific requirements related to these employment requirements in a manner which will encourage the hiring of individuals at a level which will bring persons out of poverty and into a career path with potential for upward mobility leading to self-sufficiency.

(iii) **Current Developments.** Consideration of proposals for incentives under this Policy shall be granted only for Projects where no specific development-related action, as determined by the Commissioners Court, has taken place prior to such consideration. The intent of the Policy is to attract new investment and development to Travis County, not to grant benefits to development already underway. The existence of an approved Master Plan will NOT be considered to be "specific development-related action" so as to exclude an applicant under this Policy.

(c) **Additional Criteria for Consideration in Granting Approval and Determining Maximum Incentive Amounts.** The application or other submission for consideration under this Policy must include evidence of the Company's ability to comply with all applicable terms of this Policy. In reviewing the Company's application/request for economic development incentives under this Policy, the Commissioners Court will give weight (both as to approval and amount of incentive) to proposals which include elements for additional community development, including the following:

(i) **Minority Participation/HUB Participation.** Company shall use good faith efforts (and shall encourage its agents and contractors to use good faith efforts) to take reasonable steps to ensure HUBs ("Historically Underutilized Businesses," as defined under the applicable County policy) the maximum opportunity to be subcontractors for the Project.

(ii) **Housing - availability of affordable housing, as defined by County.**

(iii) **Public Transportation - availability, access and accompanying amenities.** As applicable, Company shall coordinate and cooperate with relevant transportation entities to maximize availability within the Project of public transportation opportunities and amenities, such as sidewalks.

(iv) **Open space for gathering, public seating, etc.**

(v) **Environmental attractiveness**

(vi) **Commitment to clean air initiatives**

(vii) **Parking**

(viii) **Number of acres involved in the development**

(ix) **Amount of square footage to be included in the completed development**

(x) **Other public benefits to be derived from the development of the Project**

(xi) **Use of innovative design practices, including esthetic consideration, landscaping, architecture, etc.**

(xii) **Best Practice Design.** Plans to complete the project utilizing best practices in urban design as established by professionals in that area in the community, and shall include adequate parking.

(xiii) **Location.** The proposed development will take place within a geographic location of Travis County that has been determined to be a historically economically disadvantaged area, as determined by the Commissioners Court, and that the development will result in business development, job creation and retention, community improvement, cultural and educational advancement, and enhancement of quality of life.

(xiv) **Additional Community Improvement.** Company will be considered for the maximum incentive amount authorized under this Policy based upon Company's proposal and compliance with the base agreement requirements for amount of investment, improvements, employment, etc., and requirements for performance in other areas as agreed to, including the following:

- provision of a high level of benefits to all employees, including: medical, dental, employee assistance, life insurance, short and long-term disability, dependent care, tuition reimbursement, stock participation, sabbatical leave, vacation, sick leave, flexible spending, 401K savings plans, etc.

- creation of a significant number of jobs which require educational levels and provide salary that would effectively encourage the hiring of low-income workers into jobs which will create or lead to self-sufficiency.
- provision of services to encourage/ensure upward mobility of low-income workers once hired.
- provision of effective training and educational opportunities for employees and potential employees.
- willingness to recruit and hire locally and to promote the local company workforce from within.
- commitment to work with local workforce development entities.
- commitment to work with local educational institutions (K-12, community colleges, universities, etc.) to assist in development of curriculum which will enhance training for real jobs existing within the industry.
- commitment to reimburse employees for educational and training costs related to upward mobility.
- commitment to community participation in the forms of: volunteer work, including school mentoring; contributions to local educational institutions, particularly to fund purchase of equipment related to job training and contribution of such equipment; provision of speakers, written materials and other assistance related to job training, etc.,
- creation of summer jobs for interns and local education professionals.
- provision of services to low-income and at-risk youth.
- provision of other services or contributions to the community related to economic development as agreed to by the parties.

(d) **Waiver of Requirements and Limitations.**

(i) **Waiver.** The Commissioners Court retains the option of considering proposed projects for receipt of incentives under this Policy which do not meet certain requirements of this Policy as deemed necessary by the Commissioners Court, so long as the Commissioners Court finds that the Project as proposed will encourage, develop and stimulate economic development, producing additional tax revenue, job opportunities, affordable housing and/or small business opportunities for Travis County and so long as the proposal meets those requirements set forth in Section 28.004(a).

(ii) **Limitations.** The adoption of this Policy does not:

- limit the discretion of the Commissioners Court to decide whether to enter into a specific agreement;

- limit the discretion of the Commissioners Court to delegate to its employees the authority to determine whether or not the governing body should consider a particular application or request for an agreement under this Policy; or

- create any property, contract or other legal right in any person to have the Commissioners Court consider or grant a specific application or request for an agreement under this Policy.

- prevent the continued negotiation and completion of agreements approved by the Commissioners Court in principal under the previous Economic Development Policy.

(e) **Commissioners Court Determination.** This Policy sets forth the minimum guidelines and criteria to be considered in any application/request for receipt of benefits under this Policy. However, nothing in this Policy confers any right to receive benefits under this Policy, nor does this Policy in any way limit the authority of the Commissioners Court to grant or refuse to grant any application/request submitted under this Policy. Each application/request will be considered on a case-by-case basis, and the decision by the Commissioners Court will be final.

(f) **Incentive Amount.**

(i) **Rebate.** The Commissioners Court may grant Company a payment equal to up to 80% (as described herein) of the difference between the-Ad Valorem taxes paid by the Company on the Effective Year Value and the Ad Valorem Taxes assessed and/or paid on the Abatement/ Payment Year Value reflecting the improvements made by the Company pursuant to the agreement and this Policy. The percentage amount will be determined based upon the amount of public economic benefit determined by the Commissioners Court to be derived from the Project as presented by the Company in its application/request and other criteria as set forth under this Policy. The formula for the County's annual payment shall be:

$$\text{(Abatement/Payment Year A.V. Taxes - Effective Year A.V. Taxes) X \% of Incentive = County Annual Payment/Abatement}$$

A Company MUST acknowledge and agree in the agreement that, should that the payment/ rebate/abatement method of the agreement be found to be invalid by a court of competent jurisdiction: (1) the agreement will be terminated; (2) all amounts paid/rebated/abated to Company will be paid back to County pursuant to this Policy and the agreement; and (3) County will be released and from any and all liability of any kind related to the agreement.

(ii) **Abatement.** The Commissioners Court may grant Company exemption from taxation on a portion of the value of the real property or of tangible personal real property located on the real property, or both, on the condition that the Company make specific improvements or repairs to the Property and meet other requirements pursuant to this Policy and the agreement terms.

(iii) **Rebate/Abatement - Base.** The rebate/abatement of real property shall be based upon the extent that the value for the year of rebate/abatement exceeds the value of the year in which the agreement is executed. The rebate/abatement of tangible personal property located on the real property in each year is limited to tangible personal property OTHER THAN that tangible personal real property that was located on the real property at any time before the agreement term, and OTHER THAN inventory or supplies.

(iv) **Amount.** Company may be granted a rebate on or abatement of ad valorem taxation in an amount equal to the following, based upon the amount of the Company's investment:

Investment	% Rebate/Abatement
100 million	up to 50%
101-500 million	up to 75%
over 500 million	up to 80%

In no event will any economic incentive be granted in a percentage exceeding 80%.

(g) **Term.** The Agreement Term shall be as set forth in the specific agreement entered into under this Policy. The Payment Term under an agreement for rebate shall not exceed a period of twenty (20) years; The Abatement Term under an agreement for tax abatement *(both 381 and 312)* shall not exceed a period of ten (10) years. The Abatement portion of the agreement for tax abatement may take effect on January 1 of the net tax year after the date the improvements or repairs are substantially completed.

(h) **Compliance With Law.** The development of any Project under this Policy must be done in a manner which meets all applicable Federal, State, County and City laws, codes, ordinances, rules and regulations and permit requirements.

(i) **Completion/Termination.**

(i) Completion. An Agreement under this Policy will be considered completed and will terminate at the end of the term specified in the Agreement or when any cause for termination has occurred pursuant to this Policy and/or the terms of the Agreement.

(ii) Early Termination. In the event of termination of any Agreement entered into under this Policy prior to the completion of all terms of any Agreement, pursuant to this Policy and/or the Agreement, County shall notify Company of termination and all future obligations of County under the Agreement shall cease. Upon notice of termination, Company shall refund to County any and all Agreement Funds paid to Company or exempted from payment by Company up to the time of termination pursuant to the terms of the Agreement.

(iii) Default/Cure. If Company is determined by County to be in default, County shall notify Company in writing, and if such default is not cured within thirty (30) days of notice, then the agreement may be terminated. County and Company may agree in writing to extend the time period for cure. In the event that the cure is not completed in a manner that is satisfactory to County and the agreement is terminated by County, County shall have the right to recapture all of the money paid to Company under a rebate agreement or exempted from payment by Company under an abatement agreement.

(iv) Recapture. In the event that the Company either (1) allows its ad valorem taxes owed to the City, County, Austin Community College and/or any school district or other local taxing entity to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest; or (2) is in default according to the terms and conditions of the agreement and fails to cure within the time period allowed; or, (3) if the payment/ rebate/ abatement portion of the agreement is ruled invalid by a court of competent jurisdiction, the agreement then may be terminated and all taxes previously abated or rebated by virtue of the agreement will become due and payable no later than sixty (60) days after termination. County shall give Company written notice of recapture under this provision and refund shall be paid no later than thirty (30) days after such notice is given or sixty (60) days after termination, whichever comes last. County shall have all remedies for the collection of the recaptured tax revenue as provided generally in the Tax Code for collection of delinquent property taxes. County, at its sole discretion, has the option to provide a payback schedule.

(j) **Taxation.** Throughout the Agreement Term, the Company shall be subject to all applicable taxation.

(k) **Reports.** Company shall provide such report(s) as determined necessary by County to document and ensure compliance with the terms of the Agreement. Such reports shall be submitted to the Travis County Planning and Budget Office ("PBO") Executive Manager in the format provided by County. County will have the right to monitor and audit findings in all reports as necessary to confirm compliance with the terms of this Policy and the Agreement. Company will certify the authenticity and accuracy of each report submitted under the Agreement.

(l) **Reinvestment Zone - Abatement Agreements.**

(i) 381 Tax Abatement Agreements. Under Section 381.004(g), TEXAS LOCAL GOVERNMENT CODE, The Commissioners Court is authorized to develop and administer an economic development program utilizing tax abatement agreements with certain terms which are to be governed, to the extent practicable, by Sections 312.204, 312.205 and 312.211 of the TEXAS TAX CODE; also, in administering tax abatement the Commissioners Court is authorized to act as if it were a governing body of a municipality. Pursuant to that provision, the Commissioners Court will, when practicable and allowed by law, designate a Reinvestment Zone pursuant to Section 312.201, TEXAS TAX CODE, or will utilize a Reinvestment Zone created by another authorized taxing entity. Where designation of a Reinvestment Zone is determined not to be practicable, the Commissioners Court will review and evaluate the Property being proposed for development utilizing the criteria set forth for establishing a Reinvestment Zone under Chapter 312, TAX CODE, to determine that the Property does substantially meet the guidelines and criteria for establishing said Reinvestment Zone.

(ii) 312 Tax Abatement Agreements. A Reinvestment Zone must be designated in order to enter into a 312 Tax Abatement Agreement. The Commissioners Court may designate as a reinvestment zone an area of the county that does not include area in the taxing jurisdiction of a municipality. If an area does not include area in the taxing jurisdiction of a municipality, the Commissioners Court may proceed to designate a Reinvestment Zone pursuant to TEXAS TAX CODE, Section 312.401, and other applicable provisions, if:

- the Commissioners Court provides notice of a public hearing which is published in a newspaper having general circulation in the County; and which is delivered in writing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed reinvestment zone;
- the Commissioners Court holds a public hearing where interested persons are allowed to speak and present evidence for or against the designation;
- the Commissioners Court finds that the designation would contribute to the retention or expansion of primary employment or would attract major investment in the zone that would be a benefit to the property and would contribute to the economic development of the County.

The designation of the reinvestment zone expires five years after the date of the designation and may be renewed for periods not to exceed five years; expiration will not affect existing agreements.

(m) 312 Tax Abatement Agreements. 312 Tax Abatement Agreements will be subject to all applicable provisions of TAX CODE, Chapter 312. It is understood that there may be additional requirements for 312 Tax Abatement Agreements which do not apply to 381 Tax Abatement Agreements.

28.005 Application/Request for Incentives.

(a) **Applicant.** Any present or potential owner of taxable real property in Travis County may make application/request for incentives under this Policy by filing an application with PBO or through other means as acceptable to the County.

(b) **Application.** Company should provide a completed application to County, in a form acceptable to County, at the earliest possible date, either initially, or prior to negotiation of the agreement. That application shall consist of a written request which includes:

- (i) A statement of the expected total capital investment to be made.

- (ii) A statement setting forth proposals relevant to the applicable requirements of this Policy.
- (iii) A general description of the new improvements to be undertaken, with a description list of the improvements and property for which incentives are requested.
- (iv) A legal description of the Property to be included, total acreage involved and a map showing the Property and intended improvements.
- (v) A time schedule for undertaking and completing the proposed improvements. This schedule shall include the expected date of commencement of construction and the expected date of completion of construction. Completion of any Project in phases will only be allowed when specifically authorized by the Commissioners Court. If the Commissioners Court approves completion of the Project in phases, the above dates will be specified as to each phase. The Agreement will contain limitations on the time periods in which the Company must commence and complete the Project.
- (vi) Description of other benefits to Travis County as a result of the proposed development.

(c) **Additional Information.** Travis County may request additional information as a part of the application process as deemed necessary in order to fully evaluate the application/request and may waive certain requirements where deemed unnecessary to properly evaluate the request.

(d) **Confidentiality of Proprietary Information.** Information that is provided in the application or request for a 312 Tax Abatement Agreement that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the Property is confidential and not subject to public disclosure until the 312 Tax Abatement Agreement is executed. That information in the custody of the County after the agreement is executed is not confidential under TEXAS TAX CODE, Section 312.003.

28.006 Process.

(a) **Review of Application/Request for Incentives.** The application/request for incentives will be reviewed by County, and may be placed on the Commissioners Court agenda for public discussion of the application/request and related matters.

(b) **Agreement Approval.** An agreement proposed under this Policy will be placed on the agenda of the Commissioners Court and may be approved by an affirmative vote of the majority of the members at a regularly scheduled meeting of the Commissioners Court.

28.007 Agreement Terms and Provisions. Any Agreement entered into under this Policy shall include statements indicating the requirement of full compliance with the provisions of this Policy, and such other terms and conditions as deemed necessary by the Commissioners Court and agreed to by the Company.

28.008 Termination. Subject to Section 28.004(i), agreements entered into under this Policy are subject to termination as follows:

(a) **Event(s) of Termination.** An Agreement under this Policy may terminate or be terminated for the following reasons:

- (i) Company and County successfully complete all terms and conditions of the Agreement.
- (ii) Company fails to comply with required terms of the Agreement.

(iii) The payment/rebate/abatement method of the agreement is found invalid by a court of competent jurisdiction.

(b) **Refund/Recapture.** If the Agreement is terminated under the terms of this Policy and/or the Agreement, Company shall refund to County all Agreement Funds that have been paid to Company or abated from payment by Company pursuant to the terms of this Policy and/or the Agreement.

28.009 Administration.

(a) **PBO.** Agreements entered into pursuant to this Policy shall be administered by PBO.

(b) **TCAD.** Valuation of Property shall be determined by TCAD annually.

(c) **Information.** Company shall provide County through PBO with all information required for County to determine and ensure compliance with every term of the Agreement.

28.010 General Provisions

(a) **Assignment.** Agreement may be assigned to a new Company only with prior written approval of County. Company may assign to a subsidiary corporation or other affiliate entity without approval of County, so long as Company shall remain responsible and obligated to County for the performance of its obligations under the Agreement. Written notice of such assignment shall be provided to County prior to the assignment. No assignment shall be approved if the assignor or assignee are indebted to County for Ad Valorem taxes or other obligations.

(b) **Agreement Amendment.** Amendment of any Agreement under this Policy can only be made by written instrument signed by all parties, and only so long as the terms and provisions of the amendment reflect provisions which could have been included in the original Agreement under this Policy. Requests for amendments shall be submitted to PBO. A 312 Tax Abatement Agreement may not be amended to extend beyond ten (10) years from the date of the original agreement.

28.011 Sunset Provision.

(a) **Duration.** This Policy is effective upon the date of approval by the Commissioners Court and will remain in force for two years. At the end of two years, the Court may modify, renew or eliminate this Policy. If the Commissioners Court does not take action to renew or modify this Policy, the Policy will be terminated at the end of the two year period. Action taken (or not taken, resulting in the Policy's termination) under this provision will not impact any agreements or obligations already in effect under this Policy. Such agreements and/or obligations will continue in full force and effect until completed or terminated.

(b) **Policy Changes.** During the two year period of effect of this Policy under 28.011(a), this Policy may be amended or repealed only by a four-fifths vote of the Commissioners Court.