



Travis County Commissioners Court Agenda Request

Meeting Date: 06/26/2012, 9:00 AM, Voting Session

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

Elected/Appointed Official/Dept. Head: Leslie Browder, County Executive, *JB*
Planning and Budget

Commissioners Court Sponsor: Judge Samuel T. Biscoe

AGENDA LANGUAGE:

Receive public comments on the draft Travis County Economic Development Incentives Policy.

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

On June 12, 2012, the Planning and Budget Office (PBO) presented an updated draft Economic Development Incentives Policy to the Commissioners Court. County Attorney's staff has since completed an editorial review of the draft policy, and has made several minor revisions to help improve readability without affecting the content of the most recent draft provided to the Commissioners Court.

Attached is the redlined draft policy that highlights several potential revisions discussed by the Court during its May work session, which are listed below.

- a.) Whether to require a supermajority of the Commissioners Court to approve any waiver (including leased facilities) to the policy;
- b.) Whether to require a \$1,000 application fee for each new request for incentives;
- c.) Whether to require an applicant to achieve LEED certification on new construction as part of the base incentive, or whether to offer up to an additional 5% incentive above the base incentive if LEED certification is achieved;
- d.) Whether to require a company to fill at least 50% of its new jobs with Travis County residents;
- e.) Whether to require a company to pay their employees (including contract employees) a living wage;
- f.) Whether to require a company to contribute to healthcare coverage, or whether to make such coverage accessible to their workforce;
- g.) Whether to include other provisions that may be identified during further Court discussions.

In addition, a presentation previously provided to the Commissioners Court is attached. The presentation summarizes the major elements of the draft policy and includes a list of potential revisions for further consideration.

STAFF RECOMMENDATIONS:

PBO seeks public comment and direction from the Commissioners Court regarding preferred policy provisions in the draft economic development incentives policy.

ISSUES AND OPPORTUNITIES:

N/A

FISCAL IMPACT AND SOURCE OF FUNDING:

N/A

REQUIRED AUTHORIZATIONS:

Planning and Budget Office
County Judge's Office

Jessica Rio
Cheryl Aker

TODAY'S DISCUSSION – ECONOMIC DEVELOPMENT INCENTIVE POLICY

- Review major policy elements
- Provide direction on key policy areas
 - Discussed at work session on
5/17/2012
- Staff to incorporate changes in draft policy prior to public hearing planned on **6/26/2012**

REQUIREMENTS FOR INCENTIVES

- Does not transfer employment from one part of the County to another
- Increase employment by a minimum of 50 employees
- Be competitively-sited
- Have a human resources benefit policy
 - Applies to same sex/domestic partners
- 50% of new positions should be filled with Travis County Residents
- Provide Equal Employment Opportunity Policy

COMPONENTS OF INCENTIVES

- 1. Investment**
- 2. Jobs**
- 3. LEED Certification**
- 4. Location**
- 5. Economically Disadvantaged Hiring/Training**

Total incentive (rebate or abatement) not to exceed 80% of taxes on new eligible property value

SUGGESTED DISCUSSION AREAS

- Whether to require a supermajority of the Commissioners Court to approve any waiver (including leased facilities) to the policy
- Whether to require a \$1,000 application fee for each new request for incentives
- Whether to require an applicant to achieve LEED certification on new construction as part of the base incentive...
 - or whether to offer up to an additional 5% incentive above the base incentive if LEED certification is achieved

SUGGESTED DISCUSSION AREAS

- Whether to require a company to fill at least 50% of its new jobs with Travis County residents
- Whether to require a company to pay their employees (including contract employees) a living wage
- Whether to require a company to contribute to healthcare coverage, or whether to make such coverage accessible to their workforce
- Whether to include or revise other provisions identified during the Court's discussion

DISCUSSION/ FEEDBACK

CHAPTER 28
TRAVIS COUNTY ECONOMIC DEVELOPMENT INCENTIVES POLICY
GUIDELINES AND CRITERIA

INTRODUCTION:

Authorization.

(a) **General Authorization.** The Travis County 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) 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 shall be subject to the requirements of that statute whether or not specifically set forth in this Policy.

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" or "**Incentive 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, **including any contract entered into under this Policy (rebate or abatement).**

(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) "Commissioners Court" means the Travis County Commissioners Court.

(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) "Economically Disadvantaged" means a Travis County resident who meets one of the following requirements:

(i) Has a verified income of 200% or less of the current Federal Poverty Guidelines; or

(ii) Meets two or more of the criteria under the definition of "economically disadvantaged" under Texas Government Code, Section 2303.402(2) (c) (1) – (9) (with documented evidence of such eligibility).

(g) "Eligible Project" means a proposed development which qualifies for Incentives under this Policy by meeting the requirements set forth in Section 28.003(a).

(h) "Eligible Property" means all property (real and business personal) subject to assessment by Travis Central Appraisal District 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 cumulative new construction as certified by TCAD. To be eligible, property, both real and business personal, must also be owned by the Applicant seeking the tax incentive over the entire term of the agreement; and taxes on that property must be paid by the Applicant seeking the tax incentive in order to be subject to rebate or abatement.

(i) "Employee" means a person:

- Whose employment is permanent, full-time 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 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, Applicant must also provide documentation that required health insurance benefits [see Section 28.003(b) (iii)] are provided.

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

(k) "Investment" means the capital investment made by the Applicant in new construction and new taxable business personal property as indicated in documentation rendered to TCAD annually. Rendition to TCAD is required by County in order to receive Incentives under this Policy. Applicant will provide a copy of that rendition to County with its reporting information. The Investment total will not include payroll, cost of goods sold, etc.

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

(m) "Rebate" means the grant funds paid by County as a result of performance of obligations under an Agreement, the amount of which is based on a percentage of specified ad valorem taxes paid on certain Eligible Property pursuant to that Agreement entered into under this Policy as authorized by Chapter 381, Texas Local Government Code and other applicable laws, rules, regulations and policies.

(n) "Supermajority" means a vote of 4 out of 5 members of the Commissioners Court.

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

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

(q) "TCEQ" means the Texas Commission on Environmental Quality.

(r) "TWC" means the Texas Workforce Commission.

28.002 Types of Incentives Authorized

(a) General Process. An Applicant will make application according to Section 28.005 of this Policy. PBO will review the application and make a 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. Nothing in this Policy is meant to or will be construed to limit the discretion of the Commissioners Court to decide whether to enter into a specific agreement; or 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 Incentives; 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 Incentives.

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

(i) Convergence Technologies Facility (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);

(ii) Creative Media Facility (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);

(iii) Green Industries (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);

(iv) Corporate/Professional Headquarters (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);

(v) Healthcare and Life Sciences Facility (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);

(vi) Regional Live Entertainment or Fine Arts Facility (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); or

(vii) Research and Development Facility (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).

(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)

(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 or allowed if the applicant is indebted to the County for past due ad valorem taxes or other obligations.

(e) Amendments and Waivers.

(i) Agreement Changes. Amendment of any Agreement entered into under this Policy can only be made by written instrument signed by all parties, and only so long as the terms and conditions of the amendment reflect provisions which could have been included in the original Agreement under this Policy and which meets with applicable statutory requirements. Submissions for amendments to Agreement will be made in writing submitted to PBO.

(ii) Waivers of Policy Requirements. The Commissioners Court reserves the right to waive any provision of this Policy that is not required by law upon determination that the waiver requested does not violate the purpose of the Policy and is in the best interests of the County. Granting of any such waiver will require a Super Majority vote of the Commissioners Court.

(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 only be eligible for Incentives under this Policy if:

(i) A waiver is granted under Section _____ to allow the use of leased facilities;

(ii) The minimum investment requirement (Section _____) is met for new construction by the renovation or building of facilities or addition of business personal property which are certified by TCAD as new construction.

(iii) The Company shows proof of payment of the rebated/abated property taxes related to such new construction.

(iv) The amount of the Incentive is based only on business personal property or real property improvements certified as new construction by TCAD.

unless this subsection (g) is specifically waived by ~~a super majority of~~ the Commissioners Court. If that waiver is granted and 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)~~. The Commissioners Court must be provided a copy of the lease showing that the lease agreement is for a term that is at least as long as the proposed agreement term.

(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.

(i) Tax Abatement. An application for incentives in the form of tax abatement must be accompanied by a statement by the Applicant of financial need or other explanation as to why the tax abatement agreement is requested rather than a tax rebate agreement. The Commissioners Court will make the final determination as to which type of agreement will be used, with the initial preference given to rebate agreements.

28.003 Qualifications for Consideration of a Base Incentive.

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

(i) include additions of investment in new construction of Eligible Property, as certified by TCAD, which totals at least twenty-five million (as shown by the Applicant'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.

(iii) Provide additional full-time non-seasonal for at least 50 Employees within the time period or periods set forth in the agreement, with additional incentive available for more than 50 new jobs [see Section 28.004(a)];

(iv) Be competitively-sited;

(v) Have a human resources benefits policy:

(A) Meeting all applicable federal requirements

(B) Including the Applicant's contributing to health benefits for all "Employees" and Employee family members ("all "Employees" and Employee family members defined to include same sex/domestic partners). Company will be considered to have met this requirement if Company's corporate policy allows

exclusion of Employee's spouse if that spouse is eligible for similar benefits from the spouse's employer.

~~(C) — Meeting or exceeding the standard set by Chapter 1508 of the Texas Insurance Code ["Healthy Texas"].~~

(vi) Fill at least 50% of its new positions for the project with Travis County residents. Documentation may be required to indicate the portion of Travis County residents who have been in Travis County at least one (1) year prior to employment as evidence that Applicant is hiring individuals already living in Travis County, thus not increasing the need for additional infrastructure.

(vii) Provide County with a copy of the Applicant's equal employment opportunity policy. If the Applicant does not have a written equal employment opportunity policy at the time of application, Applicant can provide County with a written plan for adoption of such policy, to be completed and provided to the County prior to any agreement being executed. NO Agreement will be entered into until the copy of the policy is provided to County.

(viii) Have been evaluated using an economic development software program (currently, WebLOCI, but subject to change at County's discretion) which calculates the benefits to the County from incentive deal as well as the costs, including the payments and the cost of County services, with such evaluation having a cash-positive result.

(ix) Provide salaries to all employees, including contract employees, at an hourly wage that equals or exceeds the County's established minimum wage.

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) Base Incentive. An Eligible Project may receive a base Incentive (rebate or abatement) of up to 45% of ad valorem taxes on new value of Eligible Property if the Applicant shows a minimum investment as set forth in Section 28.003(a)(i), with the percentage determined as follows:

Base Incentive	Investment Amount
Up to 25%	\$25 million - \$100 million
Up to 33.5%	\$100 million - \$200 million
Up to 45%	More than \$200 million

(c) 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 (15%) may be granted based on Employee jobs created as follows:

Number of Jobs	Additional Incentive
51 - 100 jobs	6%
101 - 200 jobs	10%
More than 200 jobs	15%

Applicant will advertise jobs, and provide documentation of such, on public job boards (i.e., Workforce Solutions) as identified by County.

(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 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, Conservation Development, Desired Development Zone or other targeted area specifically identified by Travis County for economic development preference at the time this Policy is approved or at any time this Policy is in effect. If an Eligible Project is located in a Regional Activity Center identified in the County's Comprehensive Plan (a plan adopted (or to be 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) or in a Conservation Development that conforms to the provisions of the County's Conservation Development Ordinance (Travis County Code Chapter 82, Subchapter A), or in another targeted area specifically identified by Travis County, 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), provided the amount invested in scholarships meets or exceeds the incentive amount to be received by the company; 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), or

(C) provide a specified monetary donation (the amount to be included in the Agreement) to a workforce training program approved by Travis County or to an established Travis County workforce training fund, provided the amount invested in scholarships meets or exceeds the incentive amount to be received by the company; (Option C).

An additional Incentive of up to ten percent (10%) may be granted if the Applicant fulfills one of the above. 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. Travis County, through Travis County Health, Human Services and Veterans Services, must pre-approve any proposal by the Applicant under this subsection (d) as to the educational institution, program or needs-based scholarship program.

(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 (as approved by County) 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) Option C. If an applicant pursues Option C above, verification of the donation to the workforce training program must be provided by that program; verification of the donation to a Travis County fund will be provided by County.

(iv) Amendment to Agreement. At the request of the applicant and at the discretion of the Commissioners Court, a training and hiring Incentive provision [as set out in this subsection (d)] 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 (an application which includes all information set forth in this Policy and deemed necessary by County to make a full assessment of the proposal) 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 in a timely manner upon receiving the completed application and completing the financial analysis. 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; and
- (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 Eligible Property for which Incentive is requested, including type, number, economic life, and eligibility for a tax exemption granted by TCEQ, if known;
 - (B) A map and legal description of the property/properties, if a location or alternate locations have been identified, with the understanding that this information will be provided prior to the execution of the Agreement;
 - (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 prior to the execution of the final agreement; failure to provide the acceptable documentation of being a competitively-sited project will result in the termination of agreement negotiations;
 - (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 the last complete year prior to the filing of the Application, documenting the current number of full-time 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 (with a final copy of the lease to be provided to County prior to execution of the Agreement). In the event a lease or option contract has already been executed with the owner of site, the document should include a provision whereby Incentive applicant may terminate such contract or lease in the event that the County does not grant an Incentive. Leased property will only be considered for Incentives as to the Eligible Property being proposed.

(d) **County Assessment of Application.** Upon receipt of a complete application and completion of the necessary financial analysis, 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, PBO 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 in a timely manner following receipt of the complete application and completion of the financial analysis. 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 in a timely manner after receipt of the complete application and completion of the financial analysis. 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 or waiver of any provision of these guidelines must be approved by a vote of a Super Majority of the full Commissioners Court.~~

~~(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.~~

~~(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.~~

(c) 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 general concept of the initial proposal, the County may negotiate and execute an agreement with the owner of the facility (or lessee and lessor, where applicable) as required by this Policy and applicable law which shall include:

(i) A requirement that the Applicant annually submits (or provides acceptable access for monitoring purposes) notarized written certification to PBO of the following:

(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) Description of employment including: 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, as required by the Agreement.

(C) A copy of the tax bill for the year for which Incentives are claimed (for tax rebate only) and proof of payment.

(D) A provision requiring the Applicant to allow the County or other authorized representatives (including third-party consultant/auditor) to have access and the ability to review and evaluate all Applicant information and data related to the performance of the agreement on-site or as provided to County to confirm compliance and to perform other evaluation of long-term results of the agreement.

(E) Other reporting data and documentation necessary to confirm compliance with all terms and conditions of the Agreement and to evaluate long-term effects of the performance of the Agreement terms.

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 waste; 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.

(iv) A requirement for recapture of the incentives received by Applicant for the last five (5) years of the agreement if the Applicant fails by the termination date to fulfill the requirement for the total Investment amount and the total number of new jobs to be created.

(b) Timing of Agreement. Travis County will make all reasonable efforts to execute an Agreement in a timely manner upon 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 prior 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 Application of Policy.

Application of this Policy shall be implemented as of the effective date set forth in Section 28.012; however, the Commissioners Court may consider the terms of this Policy as guidelines in evaluating proposals for incentives submitted prior to the adoption of this Policy as desired by the Commissioners Court.

28.012 Sunset Provision

These Guidelines and Criteria are effective _____, 2012, and will remain in force for a two year period beginning _____, 2012 and continuing 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.