Travis County Commissioners Court Agenda Request

Meeting Date: 1/14/2014, 9:00 AM, Voting Session
Prepared By/Phone Number: Planning and Budget Office, 854-9106
Elected/Appointed Official/Dept. Head: Leslie Browder, County Executive, Planning and Budget
Commissioners Court Sponsor: Judge Samuel T. Biscoe

AGENDA LANGUAGE:

Consider and take appropriate action regarding amendments to the Travis County Economic Development Incentives Policy, Guidelines and Criteria.

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

On August 6, 2013, the Commissioners Court approved the following unanimous recommendations from a citizen task force regarding construction to be undertaken by applicants for economic incentive agreements with Travis County, if not already being done.

- Require OSHA safety training and inspections.
- Provide an additional tax incentive of ten percent above the base incentive if fifteen percent of construction workers are deemed economically disadvantaged or are veterans.
- Require companies applying for tax incentives to comply with the County HUB policy.
- Allow construction workers to take wage complaints to the County and retain the right to audit contractor payroll documents, construction contracts and interview workers.

On August 13, 2013, the Commissioners Court made the following decisions related to recommendations that a majority of the task force supported, but did not support unanimously.

- Require tax incentive applicants to obtain workers compensation insurance for construction workers who are hired by contractors to construct their proposed project.
- Rather than change the County's economic development incentives policy to restrict incentive projects to economically disadvantaged or underdeveloped areas, the Commissioners voted to retain the current project location requirements.
- The Commissioners Court elected not to implement the task force recommendation to raise the overall incentive percentage from 80% to 85%.

On November 19, 2013, the Commissioners Court took action to provide an additional tax incentive of five percent above the base incentive if construction workers hired to construct the facilities subject to the incentive agreement receive an hourly wage equal

to or greater than the applicable prevailing wage adopted or determined by Travis County. The Commissioners Court also reiterated during the meeting that the total incentive possible under the amended policy is not to exceed the maximum allowable incentive in the current policy, which is 80%. Accordingly, staff has drafted revised policy language in section 28.005(f) that incorporates provisions for additional incentives related to the hiring of construction workers and their wages. An applicant may pursue:

- 10 % additional incentive if 15% of the hours completed on construction of the eligible project are completed by employees who qualify as economically disadvantaged, or
- 10% additional incentive if 10% of the hours completed on construction of the eligible project are completed by employees who are veterans; or
- 5% additional incentive if each employee hired to construct the facilities subject to the incentive agreement receive an hourly wage equal to or greater than the prevailing wage adopted or determined by Travis County.
- An applicant may select only one of the above for a maximum additional Incentive under this subsection of 10%.

Attached is a "redlined" copy of the policy that includes all changes approved by the Commissioners Court to date.

STAFF RECOMMENDATIONS:

Staff recommends approval of the revised Economic Development Incentives Policy.

ISSUES AND OPPORTUNITIES:

N/A

FISCAL IMPACT AND SOURCE OF FUNDING:

N/A

REQUIRED AUTHORIZATIONS:

N/A

CHAPTER 28
TRAVIS COUNTY ECONOMIC DEVELOPMENT INCENTIVES POLICY, GUIDELINES AND CRITERIA

28.001 AUTHORIZATION

(a) **General.** 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) **Purpose**. The purpose of this Policy includes the following:

(i) to encourage economic stimulation and prosperity by attracting new businesses to the County;

(ii) to enhance the County tax base by attracting new businesses that will make significant investments in new construction;

(iii) to assist with workforce development in the County by attracting companies that offer significant numbers of new jobs and/or training to current residents who are unemployed or under-employed;

(iv) to encourage diversity of the County's economy by attracting businesses that will contribute to the economy by broadening the scope of business and industry within the County; and

(v) to attract significant new businesses that also help promote the growth of other new businesses needed to provide supporting services or supplies, particularly small companies.

28.002 DEFINITIONS

(a) "Agreement," or "Incentive Agreement" means a contractual agreement between a property owner and/or lessee (and lessor) and an eligible jurisdiction granting or pertaining to an Incentive under this Policy, including any contract entered into under this Policy.

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

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

(d) "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.

(e) "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).

(f) "Eligible Project" means a proposed development which qualifies for Incentives under this Policy by meeting the requirements set forth in Section 28.004(a).

(g) "Eligible Property" means all property (real and business personal) subject to assessment by the Travis Central Appraisal District (TCAD) for the determination of ad valorem taxes that is the subject of any Agreement under this Policy. Eligible Property will be limited to:

(i) real property on which the facility is located (entire approved site as set forth in the Agreement);

(ii) the new construction improvements on the site; and

(iii) 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 and subject to receive Grant Incentives, 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 the case of a project that includes a leasehold interest in real estate that has been approved by the Commissioners Court pursuant to this Policy, the company may retain eligibility for incentives as long as the ~~the~~ County is provided a copy of the lease agreement that indicates the obligation of the company to pay all ad valorem taxes (either directly or indirectly) and the company agrees to provide the County with a copy of the cancelled check indicating payment of those ad valorem taxes each year in which incentives are requested.

(h) "Employee" means a person:

(i) whose employment is permanent, full-time and non-seasonal; and

(ii) who is employed by the Applicant for Incentive for a minimum of 1,750 hours per year; and

(iii) whose employment is reflected in the Applicant's report filed with the TWC on December 31 of each year, or reflected in 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 Incentives based on employment numbers, Applicant must also provide documentation that required health insurance benefits [see Section 28.004(a)(v)] are provided.

(i) "Grant Incentives" 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 TEXAS LOCAL GOVERNMENT CODE, Chapter 381, and other applicable laws, rules, regulations and policies.

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

(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, or any other investment not directly related to Eligible Property, as determined by County.

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

(m) "Prevailing Wages" means the wage rates identified by the Travis County Purchasing Office at the time of construction of the Facility as meeting applicable federal and state law (including Texas Government Code, Chapter 2258) establishing those rates for public works projects.

(~~m~~ n) "Taxable Value of Eligible Property" means the certified appraised value of Eligible Property, as finally determined by TCAD.

(~~n~~ o) "TCAD" means Travis Central Appraisal District.

(~~o~~ p) "TCEQ" means the Texas Commission on Environmental Quality.

(~~p~~ q) "TWC" means the Texas Workforce Commission.

(r) "Veteran" means any person who has served honorably in the armed forces of the United States.

28.003 AUTHORIZED FACILITIES

(a) **Preferred Facilities**. 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 Technology Facility, defined as a company 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, defined as a company engaged in 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, defined as 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, defined as 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, defined as 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, defined as buildings 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.

(vii) Research and Development Facility, defined as 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 of such, or current technology in biomedicine, electronics or pre-commercial emerging industries.

(viii) Economically Disadvantaged Job Provision. A business that will provide substantial opportunities for employment for Economically Disadvantaged individuals.

(ix) Other. Other businesses approved by the Commissioners Court that will provide substantial opportunities to enhance or diversify the County's economy.

(b) **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.

(c) **Leased Facilities**. Existing leased facilities will only be eligible for Incentives under this Policy if:

(i) the minimum investment requirement [Section 28.004(a)(i)] 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; and

(ii) the company shows proof of: obligation of company in the leasehold agreement to pay all ad valorem taxes (either directly or indirectly); payment by the company of the ad valorem property taxes related to such new construction and/or eligible business personal property; and

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

If the above conditions are met and leased property will be utilized for new construction that is granted a tax Incentive, the Agreement will be executed with both the lessor (owner) and lessee of the land on which the facility is located provided that the term of the lease is equal to or exceeds the term of the Agreement.

(d) Findings. 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.

(e) Commissioners Court Ownership. Property that is owned or leased by a person who is a member of the Commissioners Court (or staff of such member) is excluded from receiving Incentives under this Policy.

28.004 BASE INCENTIVE

(a) **Eligible Project.** To be eligible for consideration for the base Incentive a project must meet the following criteria:

(i) Investment. Include additions of investment in new construction of Eligible Property, as certified by TCAD, which totals at least twenty-five million dollars (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;

(ii) Job Transfer. Not solely or primarily have the effect of transferring employment from one part of the County to another;

(iii) New Job Creation. Provide additional full-time, non-seasonal jobs for at least 100 Employees within the time period or periods set forth in the Agreement, with additional Incentive available for more than 100 new jobs [(see Section 28.004(a)(iii)];

(iv) Competitively ~~Siting~~ Sited Project. Be a competitively sited project meeting all applicable provisions of this Policy;

(v) Benefits. Have a human resources benefits policy:

(A) meeting all applicable state and federal requirements, including provision of health benefits at a level which, as determined by the Commissioners Court, meet or exceed the requirements of the Patient Protection and Affordable Care Act in effect as of the date of the adoption of this Policy; and

(B) including the Applicant's offering group coverage or contribution to health benefits in a dollar amount that provides meaningful opportunity for all workers to purchase coverage for all Employees and Employee family members ("all" Employees and Employee family members defined to include same sex/domestic partners).

(vi) Location. An Eligible Project must be located in a Travis County Regional Activity Center located in an area:

- identified in a 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 which is used to coordinate and guide County programs);
- a Conservation Development that conforms to the provisions of the County Conservation Development Order (Travis County Code, Chapter 82, Subchapter A);
- areas consistent with the City of Austin Growth Concept Map; or
- in another 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.

A specific Regional Activity Center, Conservation Development, or other area described above must be identified in the Agreement approved by the Commissioners Court and cannot be added to the Agreement at a later date.

(vii) Equal Employment Opportunity Policy. Provide County with a copy of the Applicant's equal employment opportunity policy. If the Applicant does not have a written equal employment policy at the time of application, Applicant may 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) Cash-Positive Evaluation. Have been evaluated using an economic development software program (currently, webLOCI, but subject to change at County's discretion) which calculates the benefits and costs to the County from Incentive deals, including the payments and the cost of County services, with such evaluation having a cash-positive result; and

(ix) Salary/Benefits Requirements.

(A) Salaries – Construction Workers and Company Employees. Provide salaries to all Employees, including contract Employees and employees hired by contractors for construction of the Company's facilities related to the incentive Agreement, at an hourly wage that equals or exceeds the County's established minimum wage.

(B) Construction Workers Requirements.

(1) Workers' Compensation Insurance. All construction workers must be covered by workers' compensation insurance.

(2) Complaints. Company will provide adequate signage at all construction sites for the facilities advising construction workers of the above requirements and of the workers' right to deliver complaints related to non-compliance to Travis County through the Travis County PBO.

~~(x)~~ (3) Other Construction Requirements. Meet specified County requirements related to wages (see Section 28.004(a)(ix) above) and safety conditions for employees hired by contractors for construction of the Company's

facilities related to the incentive Agreement. Safety requirements include provision of OSHA safety training for all construction workers and the provision of an OSHA certified inspector on all construction sites.

(4) Documentation. Company will be responsible for ensuring that the General Contractor provides Company adequate documentation of compliance with subsection (ix)(B) above and allows monitoring/audit by County of construction contracts and payroll and construction sites, where determined by County to be necessary to determine compliance.

(xi) Minority Business Requirements. Meet the requirements of the County's current HUB (Historically Underutilized Business) program policy (available from the Travis County Purchasing Office), if Company seeks incentives only from County. If Company seeks incentives from the City of Austin and Travis County, Company must comply with the City of Austin's MBE/WBE Ordinance, and such compliance will be deemed to be sufficient to meet the County's requirements regarding minority business participation.

A proposal which meets the above 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 Amount**. An Eligible Project may receive a base Incentive 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 28.004(a)(i), with the percentage determined as follows:

Investment Amount	Base Incentive Percentage
$25 Million to $100 Million	up to 25%
$101 Million to $200 Million	up to 33.5%
More than $200 Million	up to 45%

28.005 ABOVE BASE INCENTIVE.

(a) **Maximum Incentive**. 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 set forth in this Section 28.005.

(b) **Jobs**.

(i) Additional Incentive. An additional Incentive of up to fifteen percent (15%) may be granted based on Employee jobs created as follows:

Number of Jobs	Additional Incentive Percentage
100 – 150	up to 6%
151 – 200	up to 10%
201 +	up to 15%

(ii) Advertising. To qualify for additional Incentive for jobs created, Applicant must advertise jobs and provide documentation of such on public job boards (i.e., Workforce Solutions) and other resources as identified by County.

(c) **Residency**. An additional Incentive of 5% may be granted of the Company fills at least 50% of its new positions for the project with Travis County residents. For purposes of this requirement, "residency" will be defined as having a permanent address within Travis County and not having worked for the Company prior to the Effective Date of the Agreement.

(d) **Leadership in Energy and Environmental Design (LEED) Certification**.

(i) Additional Incentive. An additional Incentive of up to five percent (5%) may be given for Leadership in Energy and Environmental Design (LEED) certification.

(ii) 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 as follows:

LEED Certification Level	Additional Incentive Percentage
Basic	up to 2%
Silver	up to 3
Gold	up to 4%
Platinum	up to 5%

(iii) 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.

(e) **Economically Disadvantaged Hiring/Training**. An additional Incentive of up to ten percent (10%) for training and/or hiring of Economically Disadvantaged residents may be granted as follows:

(i) Option A – Needs Based Scholarships.

(A) Scholarship. Applicant may pursue additional Incentive under this subsection 28.005(e) by 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.

(B) Number. Scholarships under this subsection must be provided to a number of Economically Disadvantaged individuals equal to at least ten percent (10%) of the Eligible Project's total employment annually. For example, if Applicant will have 200 full time Employees, Applicant would have to fund 20 scholarships.

(C) Administration. 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.

(ii) Option B – Full Time Employment – Company Employees.

(A) Employment. Applicant may pursue additional Incentive under this subsection 28.005(e) by providing full time employment to Employees who have been participants in any needs based scholarship program or workforce training program approved by Travis County.

(B) Number. Employment under this subsection must be provided to a number of Economically Disadvantaged individuals equal to at least ten percent (10%) of the Eligible Project's total employment annually. For example, if Applicant will have 200 full time Employees, Applicant would have to hire and retain 20 Economically Disadvantaged individuals to qualify for the additional incentive.

(C) Administration. Verification of the employment of Economically Disadvantaged Travis County residents shall be met through documentation by the Applicant that:

(1) the full time Employee has been a recipient of any qualifying based scholarship (as approved by County) within the last four years; or

(2) the full time Employee has completed a workforce training program approved by Travis County within the last four years.

(iii) Option C – Monetary Donations.

(A) Donation. Applicant may pursue additional Incentive under this subsection 28.005(e) by providing 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, if such a fund is established.

(B) Administration. 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) Option D – Other Participation. Applicant may pursue additional Incentive under this subsection 28.005(e) by participating to the level negotiated in the Agreement in an approved Travis County program designed to enhance workforce training/hiring of Economically Disadvantaged. For example, Applicant could agree to participate by providing a specified number of internships under the County summer youth employment program.

(v) Other Requirements. If Applicant pursues additional Incentive under Option A or Option B above:

(A) Pre-Approval. Travis County, through Travis County Health, Human Services and Veterans Services, must pre-approve any proposal by the Applicant under this subsection 28.005(e) as to the educational institution, program or needs based scholarship program.

(B) Addition 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 28.005(e)] may be added as an amendment to a prior Incentive

Agreement approved by Commissioners Court. Additional Incentive for such added provision will only be granted effective as of the date of the fully executed amendment.

(f) Construction Workers – Hiring and Wages Incentives.

(i) Additional Incentives. Applicant may pursue additional incentives under this subsection 28.005(f) as follows:

(A) 10 % additional incentive if 15% of the hours completed on construction of the Eligible Project are completed by employees who qualify as Economically Disadvantaged;

OR

(B) 10% additional incentive if 10% of the hours completed on construction of the Eligible Project are completed by employees who are Veterans.

OR:

(C) 5% additional incentive if all employees hired to construct the facilities subject to the incentive agreement receive an hourly wage equal to or greater than the Travis County Prevailing Wages, as defined in Section 28.002(m) of this Policy.

Applicant may select only one of the above [28.005(f) (A), (B), or (C)] for a maximum additional Incentive under this subsection 28.005(f) of 10%.

(ii) Administration. Verification of the Economically Disadvantaged status, Veteran status or receipt of Prevailing Wages of employees hired by contractors for construction of the Eligible Project must be provided to the County by the Applicant, as well as documentation of the actual worker hours completed on the Eligible Project (total hours of construction and hours completed by workers qualified as Economically Disadvantaged or Veterans).

(g) Above Base Incentive Limitation. Notwithstanding the description of potential above-base incentives described in this subsection 28.005, a company **CANNOT** receive a total Incentive amount under this Policy of more than 80%.

28.006 PROCESS

(a) **General**.

(i) Initial Proposal. A company will make written application for Incentives pursuant to the applicable provisions of this Policy. PBO will review the initial application and make recommendation to the Commissioners Court regarding the proposal. The Commissioners Court will, at its sole discretion, determine whether to grant the Incentive, the level of the Incentive to be granted and the terms of the Agreement.

(ii) No Limitation. 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 the Commissioners Court should consider a particular application or request

for Incentive; 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) **Application Package.** Components of a complete application package establishing minimum qualifications for a base Incentive will include:

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

(ii) a non-refundable check in the amount of $1,000.00 payable to Travis County to reimburse the County the reasonable cost of proposal evaluation; 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 if not available at the time of application;

(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 the Applicant, as defined in "Environmental and Worker Safety Qualification;

(E) an affidavit by the Applicant 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 Incentive is necessary to ensure that the proposed project is built in the County (i.e., documentation supporting the 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 contract Employees , if any, at the time the application is submitted. Applicant may substitute another company-generated and certified payroll report or other documentation of employment for the previous year deemed adequate by County to provide the above information;

(H) financial and other information as the County deems appropriate for evaluating the financial capacity and other factors of the Applicant's proposal; and

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

Additional information required for Incentives, particularly above base Incentives, may be included if the Applicant desires those proposal to be considered or may be requested on a case by case basis.

(c) **Additional Information – Leased Facility**. The Applicant will provide County, as a part of the application package, the name and address of the lessor and a copy of the proposed lease agreement, or option contract (with a final copy of the executed 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 the 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. The lease term must extend for at least as long as the requested Incentive Agreement term and the Lease agreement must include the requirement that the Company pay the Ad Valorem taxes (either directly or indirectly) throughout the term of the Agreement.

(d) **Initial County Review by PBO.** 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.

(e) **County Assessment of Application.** Upon receipt of a completed 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 this Policy. If PBO determines that the threshold has been met, or that the proposal warrants consideration with the possibility of waivers, 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 after receipt of the completed application and completion of the financial analysis.

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

28.007 LIMITATIONS

(a) **County Indebtedness.** No Incentive shall be approved or allowed if the Applicant is indebted to the County or any other local taxing jurisdiction for past due ad valorem taxes or other obligations.

(b) **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 the Agreement between the County and Applicant, subject to such limitations as the Commissioners Court and the TEXAS TAX CODE (and other applicable statutes) may require.

(c) **Duration**. 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.

(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 investment requirements and job requirements as set forth in the Agreement, and any other requirements as specified in the Agreement.

(e) **Prior Construction or Improvements**. The County will not enter into an Incentive Agreement if it finds that an application was received after a project commenced construction or installation of improvements which are proposed to be considered for Incentive.

(f) **Non-Compete Agreements.** An Incentive will not be granted for projects whose competitive siting consists only of consideration of taxing jurisdictions that have agreed with County to forego the use of tax incentives in competing with the County for such projects.

28.008 AGREEMENT TERMS

(a) **Negotiation.** After the approval of the general concept of the initial proposal by the Commissioners Court, the County may negotiate and execute an Agreement with the owner of the facility (and/or lessee/lessor, where applicable) as required by this Policy and applicable law. Travis County will make all reasonable efforts to execute an Agreement in a timely manner upon the Court's approval to commence negotiations.

(b) **Terms**. The terms of the Agreement will include:

(i) Annual Certification. A requirement that the Applicant annually submit (or provide acceptable access for monitoring purposes) notarized written certification to PBO of compliance with the Agreement terms, including 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 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;

(B) A 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 and proof of payment; and

(D) 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 Commissioners Court. Failure to submit will result in the ineligibility to receive an Incentive. Company is ultimately responsible for providing County with all necessary documentation of compliance, regardless of whether that documentation is created and maintained by the Company or by a contractor or other third party.

(ii) Monitoring. 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.

(iii) Permits. A requirement that the owner or lessee will:

(A) obtain and maintain all required permits and other authorization 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.

(iv) Competitively Sited Documentation. 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 will 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.

(v) Recapture. A requirement for recapture of the Incentive 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.

(vi) Hiring. A statement certifying that the Applicant does not and will not knowingly employ an undocumented worker; and, if after receiving Incentives under the Agreement, the company is convicted of a violation under 8 U.S.C., Section 1324a(f), the company will repay the amount of Incentive, with interest at the rate and according to the other terms of the Agreement not later than the 120th day after the date the company is notified by County of the violation.

(vii) Commissioners Court Ownership Statement. A statement whereby the Applicant warrants that none of the Property subject to the Agreement is owned or leased by any member of the Commissioners Court (or staff of such member).

(viii) Other Terms. Other terms and conditions as required by applicable law or determined by the Commissioners Court to be necessary.

28.009 OTHER PROVISIONS

(a) **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 will not be unreasonably withheld. Any assignment shall provide that the assignee will irrevocably and unconditionally assume al the duties and obligations of the assignor upon the same terms and conditions as set out in the Agreement. Any assignment will 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 will be approved if the assignor or the assignee is indebted to the County for past due ad valorem taxes or other obligations.

(b) **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 meet all applicable statutory requirements. Submissions for amendments to an Agreement will be made in writing 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 interest of the County.

(c) **Application of Policy.** Application of this Policy will be implemented as of the effective date set forth in Section 28.010; 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.

28.010 SUNSET PROVISION. The guidelines and criteria set forth in this Policy are effective November 27, 2012, and will remain in place unless earlier terminated by the Commissioners Court.