

**RESOLUTION ADOPTING COUNTY OF HIDALGO  
ECONOMIC DEVELOPMENT INCENTIVES PROGRAM  
GUIDELINES & CRITERIA UNDER CHAPTER 381 OF  
THE TEXAS LOCAL GOVERNMENT CODE**

**WHEREAS**, the Commissioners Court of Hidalgo County, Texas, previously adopted Guidelines & Criteria for an Economic Development Incentives Program under Chapter 381 of the Texas Local Government Code, which have now lapsed.

**WHEREAS**, the Commissioners Court of Hidalgo County, Texas, has reviewed the incentives and related agreements created pursuant to the previous guidelines and criteria to determine whether the goals have been achieved, and now following that review desires to re-establish an economic development program to unify public and private entities within and outside of Hidalgo County for the purpose of communicating, collaborating and coordinating efforts that promote a sustainable and healthy economic future for Hidalgo County.

**WHEREAS**, Hidalgo County has the authority to develop and administer a program to stimulate business and commercial activity in the county under Texas Local Government Code, Section 381.004, and other statutes.

**WHEREAS**, Hidalgo County may use county employees or funds for the program and accept contributions, gifts, or other resources to develop and administer the program pursuant to Texas Local Government Code, Section 381.004(c).

**WHEREAS**, pursuant to Section 381.004(e) of the Texas Local Government Code, additional funding may be available to Hidalgo County from unclaimed money the comptroller receives under Chapter 74, Property Code.

**WHEREAS**, the intent of this program is to stimulate business and commercial activity in Hidalgo County in order to enhance the ability of Hidalgo County to compete in a global economy.

**NOW, THEREFORE BE IT ORDERED** that, in accordance with Texas Local Government Code, Section 381.004, Hidalgo County authorizes the County Judge to develop and administer an economic development program:

- (1) for state or local economic development;
- (2) for small or disadvantaged business development;
- (3) to stimulate, encourage, and develop business location and commercial activity in Hidalgo County;
- (4) to promote or advertise Hidalgo County and its vicinity or conduct a solicitation program to attract conventions, visitors, and businesses;

(5) to improve the extent to which women and minority businesses are awarded Hidalgo County contracts;

(6) to support comprehensive literacy programs for the benefit of Hidalgo County residents; or

(7) for the encouragement, promotion, improvement, and application of the arts;

These programs may include:

(x) entering into tax abatement agreements with owners or lessees of property interests subject to ad valorem taxation; and/or

(y) making loans and grants of public money and providing personnel and services of the county.

Programs shall be developed and administered to achieve the following strategic objectives of Hidalgo County:

(1) cooperate with cities to improve quality of life of their residents;

(2) plan for and promote the future development of the county, including communities, rural areas, and the Rio Grande Valley region; and

(3) eliminate duplication and promote efficiency in the coordinated economic development of Hidalgo County.

The economic development director is hereby directed to assist the County Judge with developing and administering such projects as may be approved by Commissioner's Court.

**NOW, THEREFORE BE IT FURTHER ORDERED** that the Commissioners Court of Hidalgo County, Texas, hereby adopts the Economic Development Incentives Program Guidelines & Criteria attached as Exhibit A.

**PASSED, APPROVED, ADOPTED AND ORDERED**, this the \_\_\_ day of May, 2014 by the Commissioners Court of Hidalgo County, Texas.

\_\_\_\_\_  
Ramon Garcia  
County Judge

\_\_\_\_\_  
Hector "Tito" Palacios  
Commissioner, Pct. 2

\_\_\_\_\_  
A.C. Cuellar, Jr.

\_\_\_\_\_  
Joseph Palacios

Commissioner, Pct. 1

Commissioner, Pct. 4

\_\_\_\_\_  
Joe M. Flores  
Commissioner, Pct. 3

ATTEST:

APPROVED AS TO FORM:  
ATLAS, HALL & RODRIGUEZ, LLP

\_\_\_\_\_  
Arturo Guajardo, Jr.  
County Clerk

By: \_\_\_\_\_  
Stephen Crain

## **EXHIBIT A**

### **ECONOMIC DEVELOPMENT INCENTIVES PROGRAM**

#### **GUIDELINES & CRITERIA FOR PARTICIPATION IN PROJECTS UNDER CHAPTER 381 OF THE TEXAS LOCAL GOVERNMENT CODE**

##### **SECTION I. GENERAL PURPOSE**

It is the policy of the County of Hidalgo (the “County”) to provide incentives for certain private and/or public developers and businesses that make or will make a measurable difference in achieving economic growth and development, expanding and diversifying the tax base and creating new employment opportunities within the County, pursuant to Chapter 381, Texas Local Government Code.

The purpose of this policy is to define the financial incentives and to establish standards by which they will be implemented. New businesses or expansion of existing businesses, and new developments or re-developments may be considered for financial incentives. The County will only consider granting such incentives to help alleviate underdeveloped, unproductive and/or blighted areas in the County that, without such incentives, would not normally be developed or redeveloped.

It is the policy of the County that said consideration will be provided in accordance with the guidelines and criteria outlined in this document (the “Guidelines and Criteria”). The County is not obligated to grant any incentives to any applicant and nothing herein will imply or suggest that the County is under any obligation to provide such incentives to any applicant. All applicants will be considered on a case-by-case basis, and the decision to approve or deny any incentives to any particular applicant will be at the discretion of the Commissioners Court of the County. Adoption of these Guidelines and Criteria does not (1) limit the discretion of the Commissioners Court to decide whether to grant a specific incentive or enter into any related agreement, (2) 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 for incentives or (3) create any property, contract or other legal right in any person to have the County consider or grant a specific application or request for incentives.

##### **SECTION II. MINIMUM REQUIREMENTS**

Except as otherwise set forth in this policy, in order to be considered for incentives, a project must meet the following minimum requirements, and must explain in the project plan (submitted as part of the application) how the requirements are met:

- A. The County pursues a stable, year-round economy with unemployment rates at least as favorable as the rest of Texas. The project must create at least 50 new jobs. A “job” is defined as a permanent, full-time employment position, hired directly or contracted through another entity, that will result in employment of at least 1,820 hours in the position in a year.
- B. The County seeks to attract projects that will include substantial economic development for the County. The project must invest at least \$5 million in real and personal property in the County.
- C. The project, including all businesses and entities related to it, must comply with all applicable environmental and governmental regulations during the term of incentive agreement.
- D. In the event the project is located in whole or in part in any municipality, the municipality must (i) fund at least 50% of the total costs of the proposed public improvements or associated project costs for which incentives are provided by the County and (ii) assume responsibility for any future maintenance costs associated with such public improvements (if applicable).

Requirements:

- Application includes a statement of compliance with all applicable rules and regulations.
- Application includes a copy of city ordinance and related agreement that demonstrates funding and maintenance commitments toward the project.
- Such other documentation as required by the County.

Projects specified in Section III.G. below are exempt from these requirements. Projects specified in Section III.F. below are deemed to have met the minimum requirements. In addition, until such time, if any, as a hospital district is approved for the new University of Texas Rio Grande Valley Medical School (“UT-RGV Medical School”), the County finds that assisting the development of UT-RGV Medical School will enhance economic development in the County and meets the minimum requirements.

While the County is not obligated to grant incentives to any applicant, an applicant must meet the minimum criteria set forth about in this section and qualify under section III in order to be eligible for consideration for any incentives under these Guidelines and Criteria. A project meeting all of these criteria does not entitle the applicant to incentives for the project, and nothing contained herein limits the discretion of the Commissioners Court with respect to denying incentives.

This process is intended to ensure that projects the County invests in are of a certain quality, that the projects match the region’s needs and result in viable opportunities for the local workforce.

### **SECTION III. GENERAL CRITERIA**

Projects meeting the minimum requirements set forth in Section II above or within an exception below, will be evaluated on the following criteria and scored accordingly.

#### **A. Overall Economic and Fiscal Impact**

The project must demonstrate public purpose and economic benefit through advancement of the County's economic goals, including expanding the tax base, creating jobs, increasing private capital investment in the community, spurring development in targeted County locations; or encouraging development of targeted businesses or clusters desirable to enhance the County's economy.

Requirements:

- Economic impact analysis (jobs, economic activity)
- Net fiscal impact analysis
- Other project-specific items

#### **B. Linkages to Local Economy**

1. The County supports the development of underdeveloped areas, blighted areas, and targeted infill areas within the County. Specifically, the County desires to support projects that benefit rural areas within the County and those areas with high unemployment.

2. The County supports the retention and expansion of existing businesses within the County, and the maintenance and attraction of headquarters operations to the County.

3. The County seeks to attract businesses within the industry clusters identified by Workforce Solutions in the Industry Cluster Analyses for the Rio Grande Valley: manufacturing, transportation, logistics and warehousing, business and professional services, retail, tourism, recreation and entertainment, and health services and medical technologies. In particular, the County seeks to encourage development of new industry clusters, such as telecommunications and technology. The firm must be in a growing industry and demonstrate financial stability and capacity to complete the project.

4. The County of Hidalgo supports the attraction and retention of companies that have strong regional, national, or international markets for their products or services.

5. The County supports projects that create contracting opportunities for local firms, especially small and disadvantaged business.

Requirements:

- Application must include a detailed project plan, which covers the above criteria, including establishing goals for diversity in vendor contracting.
- Analysis of materials provided with application and information gleaned from secondary sources.

### **C. Infrastructure Impact**

1. The County supports projects that positively impact the County and communities in the County, and that have a regional benefit beyond the proposed project.

Requirement:

- Application includes a detailed description of any public improvements that will be undertaken, how they will be funded, and a statement about how these improvements benefit the County, or an area and/or region of the County.
2. A project should generate revenues to the County which outweigh costs associated with incentives. The County will not consider projects that make a disproportionate demand on County's infrastructure.

Requirement:

- Net fiscal impact analysis, economic impact analysis, and other information included in application and obtained from other sources.
3. The County supports projects that provide new public facilities (e.g., park and other public open space, libraries, hike and bike trails) and/or meet U.S. Green Building Council Leadership in Energy and Environmental Design Program (LEED) Standards/Certification.

Requirement:

- Documentation of public facilities, programs or services included in application.
- U.S. Green Building Council LEED Standards/Certification

### **D. Character of Jobs/Labor Force Practices**

The County seeks to attract projects that create substantial employment opportunities, with an emphasis on the following:

1. The County will consider average wage paid and how wages compare to the local or national industry average. The County will also consider the median wage paid and how job categories and wages are distributed with the overall structure of the business. Specifically, the County is interested in jobs that pay a wage or salary equal to or greater than the then current Hidalgo County Median Wage as computed annually by the Texas Workforce Commission. (For example, 2006 Median wage was \$19,582/year or \$9.41/hour.) *Jobs that are transferred from one part of the County to another are not qualifying jobs.*
2. The County seeks to attract projects in which the majority of the new hires are already residents of the County.
3. The County is interested in projects that provide education, training or other opportunities for advancement.

Requirements:

- Total of number of jobs created.
- Average and median wages compared to national/regional averages.
- Estimate of percentage of hiring from local labor force.
- Employee training plan or other information in application about available opportunities for advancement.

#### **E. Extraordinary Impact**

For a project to be eligible for additional consideration for incentives pursuant to these Guidelines and Criteria, the business or commercial development project, in the opinion of the Hidalgo County Commissioners Court, must meet all of the following additional criteria:

- A. The project creates 250 or more jobs (as defined in Section II.A. above).
- B. The project invests \$25 million or more in real and personal property within the County.
- C. The project makes health benefits available to its employees, including paying at least 50% of the insurance premium.

Requirements:

- Economic impact analysis (jobs, economic activity).
- Net fiscal impact analysis.
- Documentation of health benefits.

#### **F. Qualification By Means of Other Economic Development Programs**

In lieu of meeting the requirements set forth in Section III A through E above, a project may be eligible for incentives hereunder if it meets the following criteria:

- A. The applicant previously applied for economic development incentives from the County through a different program.
- B. Commissioners Court previously approved economic development assistance through other Hidalgo County programs (such as tax abatement).
- C. The applicant did not receive economic development assistance from Hidalgo County for the project.
- D. The project has created or will create at least 25 jobs (as defined in Section II.A. above).
- E. The project invests or has invested \$2.5 million or more in real and personal property within the County.
- F. The project makes health benefits available to its employees, including paying at least 50% of the insurance premium.

Requirements:

- Update original application, including economic impact analysis (jobs, economic activity), and explanation of how the project meets the goals of this program.
- Net fiscal impact analysis.
- Documentation of jobs, investment and health benefits.
- Release Hidalgo County from any and all obligations under original economic development incentive program and/or agreement.

#### **G. Qualification For Arts and Literacy Projects**

The County's economic development office is instructed to develop requirements for arts and literacy projects that may be supported through this program. Projects must demonstrate either support for economic development or increased attractiveness of the County for economic development.

### **SECTION IV. EVALUATION PROCESS**

The County will review the project plan and other materials submitted by the applicant. The economic development office may make a recommendation to Commissioners Court as to the suitability of a project.

## **SECTION V. ECONOMIC DEVELOPMENT INCENTIVE**

The decision to provide any economic development incentives will be considered on a project-by-project basis, in accordance with the criteria set forth in this policy, and at the discretion of the Hidalgo County Commissioners Court who, with respect to:

- (i) applicants who submitted a written request for incentives through other economic development programs prior to January 1, 2014;
- (ii) applicants concerning projects within any existing or proposed County transportation reinvestment zone in accordance with Section 222.107 of the Texas Transportation Code; and
- (iii) applicants concerning projects of Extraordinary Impact that meet the following criteria:
  - a. the project creates 500 or more jobs (as defined in Section II.A. above); and/or
  - b. the project invests \$25 million or more in real and personal property within the County.

may waive some or all of the requirements, criteria and application award process set forth in this policy if reasonable proof is shown of why the waiver is needed and of the benefit to the County of granting both the waiver and the economic development incentive.

### **A. Tax Increment, Tax Abatement and Similar Incentives**

With respect to projects qualifying pursuant to Sections IIIA-F above, the incentives will be funded from property tax from the related property. The County may require a master development agreement as part of the application process when other public entities are participating in the Project. As a matter of general policy, more than one type of incentive (i.e., tax abatement, tax reinvestment zones, and Chapter 381 agreements entered into as a result of this policy) will not be used simultaneously unless the revenue stream from which the incentives granted in the Chapter 381 agreement are funded is derived from sources other than property tax.

The manner for calculating the tax increment will be included in the agreement, and will usually track the Tax Increment Financing Act calculation. Generally, the development must commence within one year of applying for the incentive and construction must be completed within two years of execution of the agreement unless the agreement allows for construction in phases. The year the agreement is executed will be the base for determining the tax increment, and no incentive payment will be made until the calendar year following completion of the project and compliance with the employment requirements set forth in the agreement. In determining the amount of a tax increment from which an incentive may be calculated, any tax revenue resulting from a tax roll-back will not be considered as part of the award incentive. Any other artificial increases in tax revenue will also be excluded. Any project qualifying pursuant to Section IIIF

above will be capped at the maximum incentive that would have been applicable pursuant to the original economic development agreement or program.

Award of incentives requires the applicant to meet eligibility criteria and enter into an agreement with the County, which is approved by the Commissioners Court. The application process and incentive award is administered by the County Judge's Office.

#### B. Other Incentives

Incentives include the following:

- Reimbursement based on property tax increment payments\*
- Assistance in pursuing grant/loan funding from other public agencies
- Other forms of requested assistance as may be approved by the County
- Making loans or grants of public money
- Providing personnel and services of the County

\* While frequently referred to as rebates, the incentives are actually reimbursements of amounts paid by the applicant on improvements related to the project, which payments are made from the tax increment paid by the business, and not rebates in fact.

The Commissioners Court shall consider the percentage of the tax increment that the County will award as an economic incentive on a case-by-case basis through proper and reasonable negotiations with an applicant and other participating public entities. As a matter of general policy, the County will exclude any amount required for debt service when determining a participation or award amount.

Projects qualifying pursuant to Section IIIIG above, shall be funded solely unclaimed money the comptroller receives under Chapter 74, Property Code, and provided to the County pursuant to Section 381.004(e) of the Local Government Code ("Comptroller Funds"). Provision of funds to such projects by this program is subject to the County's receipt of sufficient Comptroller Funds during the year. The County may also use Comptroller Funds for other purposes hereunder.

Incentives approved by the Commissioners Court are subject to the applicant (and any other parties required by the County) entering into a written agreement on terms acceptable to the County and the incentives will not be provided to the applicant absent such written agreement.

### **SECTION VI. APPLICATION FOR INCENTIVES**

The County will consider participating in projects on a case-by-case basis when a fully completed application in a form provided by the County is received by the Office of the County Judge, which may be forwarded to such office by the Precinct, and when the application is accompanied by all of the required information and any subsequent

information requested by such office, which will be used by Commissioners Court to evaluate the County's participation in awarding incentives under a Chapter 381 agreement.

The information requested on the application will allow the County to assess the project's eligibility, perform a cost/benefit analysis of the proposed project, and evaluate the proposed project based on the County's incentive award amount criteria.

Applications should be received by the County Judge's Office no later than October 1, in order to have an agreement considered and executed in the same year that the application is submitted to the County; it being understood that certain applications may require additional time for review and that the County may decline to grant requested incentives.

All information provided by the applicant that is labeled confidential shall be treated as confidential to the extent permitted by State law, including without limitation Section 312.003 of Texas Tax Code and Section 552 of the Texas Government Code. When an economic incentive is awarded by the Commissioner's Court, the core business data required to demonstrate eligibility will be included in the public report to the Commissioner's Court. The incentive agreement will also be available to the public.

Applicants must submit with the application, proof of having paid to the County a non-refundable application fee of \$1,000 (which may include proof of having previously paid such fee to the County in the case of a project qualifying pursuant to Section III.F.). Such fee is to partially offset the County's expenses in reviewing the application and shall not be refunded in the event the application is withdrawn by applicant or denied by the County. By paying the fee or submitting an application, the applicant agrees to these Guidelines and Criteria, including without limitation that the fee is non-refundable.

The application and award process is as follows:

1. The application is submitted to the County Judge's Office with a copy of the receipt issued by the Hidalgo County Treasurer evidencing payment of the application fee.
2. A determination of eligibility based on the minimum requirements is made by the Economic Development Director, and if the determination is that such requirements are not met, the applicant is so notified and the application process ends.
3. The application, if deemed to meet the minimum requirements, is referred to the auditor's office, budget office, tax office, planning department, and appropriate County precinct office for comments.
4. A representative from the Budget Office, Tax Office, Planning Department and each of the four County Precincts may submit recommendations to the Economic

Development Director as to how such representatives rate the project based upon the evaluation criteria.

5. The Economic Development Director may then recommend what percent of the maximum potential amount of the incentives, if any, the applicant should receive and length of incentive, based on the results of the evaluation criteria rating. If the Economic Development Director does not recommend an incentive, the Economic Development Director shall so notify the applicant and the application process ends.
6. If an incentive is recommended, the project is referred to legal counsel for review and preparation of an agreement.
7. The Economic Development Director recommends an economic incentive award amount, duration and type to the Commissioner's Court for their review and action.
8. The Commissioner's Court reviews the Economic Development Director's recommendation and may deny the application or take such other action as it deems appropriate, which may include approving the recommended incentive.
9. If an incentive is authorized by the Commissioner's Court, an appropriate agreement is entered into with the applicant, defining the terms and conditions of the award.
10. Except with respect to the projects qualifying pursuant to Section III F (which may commence construction after submission of the original application), Project construction may only commence after the appropriate agreement is entered with the applicant. Commencement of construction is considered to have taken place when any one of the following has occurred:
  - a) A building permit has been issued for construction not associated with mitigating an environmental hazard;
  - b) The project's site has been cleared and prepared for development;
  - c) Construction (including renovations or tenant finish-out) has begun;
  - d) Site specific infrastructure has begun to be installed; or
  - e) Equipment, inventory, or employees have been relocated to the new site.

If at any stage the application is found to be missing required elements, or additional information is deemed to be needed, the application will be on hold until such time as the

elements or information is provided. Any application on hold for 30 days will be deemed voluntarily withdrawn by the applicant. Receipt of the elements or information may cause the application to need to repeat steps in the process. An appeal of any action hereunder must be submitted to the Office of the County Judge, for review by the Commissioners Court, within thirty days of such action.

## **SECTION VII. COMPLIANCE**

All economic development incentives will be formalized in a written agreement between the County, the applicant, and, if applicable, one or more cities. The recipient of the incentive will be required to meet the following performance criteria:

- Compliance with all applicable requirements under this policy.
- Compliance with all applicable governmental laws, rules and regulations.
- Jobs created as required in the agreement.
- Capital investment in real and personal property as required in the agreement.
- Compliance with wage requirements.
- Compliance with any other conditions imposed by the Economic Development Incentives Agreement.

The County reserves the right to audit the recipient to assure compliance with the Economic Development Incentives Agreement. The recipient will be required to certify compliance with any conditions imposed by the agreement prior to obtaining any reimbursement from the County. Non-compliance with any provisions, including failure to provide sufficient documentation of compliance on a timely result, will result in waiver of the incentives for the calendar year. In addition, the Commissioner's Court may discontinue or reduce any on-going incentives if the performance criteria are not met, including timely provision of such documentation.

## **SECTION VIII. ADMINISTRATION**

- A. Access to Facility. Each agreement will stipulate that employees and/or designated representatives of the County will have access to the project and related facilities during the term of the incentive or any applicable agreement to inspect the facility and/or improvements to determine if the terms and conditions of the granting of the incentive or of the agreement are being met. The County may execute a contract with any other jurisdiction(s) to conduct such inspections. All inspections will be conducted in a manner as to not unreasonably interfere with the construction and/or operation of the facility; provided however, the County may conduct "spot" inspections requiring no advance notification to application. All inspections will be made with one or more representatives of the owner, lessor or lessee, and in accordance with such party's safety standards.

B. Reports, Audits and Inspections: Owners of facilities and lessees, if any, of eligible property for which incentives are granted will annually certify to the County that they are in compliance with the terms of the incentives and of any applicable agreement. In addition, owners and lessees will provide reports and records reasonably necessary to support each year of the agreement. Such reports and records will include information supporting job creation and retention requirements, information on property purchases, and status reports on the project's progress. Reports supporting job creation and retention shall include Texas Workforce Commission Reports (all Social Security numbers must be redacted prior to submitting such reports to the County) submitted to the State Comptroller on a quarterly basis and a breakdown of all jobs with total annual hours per job. Upon completion of a project, property owners will provide the County with a final report (i) describing all property for which tax incentive is granted, (ii) providing documentation of the final investment costs and (iii) certifying the number of jobs created. If the incentives are granted to a lessor and lessee, the lessee will provide and certify the portion of the final report concerning the number of jobs created. This final report will be accompanied by the opinion of an independent certified public accountant as to its accuracy and completeness. The County will periodically evaluate each facility receiving an incentive to ensure compliance with the agreement and report possible violations of the agreement. The County will have the right to audit the books and records related to the eligible property and supporting the eligible property reports.

## **SECTION IX. SEVERABILITY**

If any provision, section, subsection, sentence, clause, or phrase of these Guidelines and Criteria, or the amendments duly adopted hereto, or the application of the same to any person, entity, or set of circumstances, is for any reason held to be unconstitutional, void, voidable, invalid, or contrary to any existing or prospectively enacted law or statute, the validity and enforceability of the remaining part of these Guidelines and Criteria and amendments thereto will not be affected thereby.

## **SECTION X. SUNSET**

These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two years unless amended by vote of the Commissioners Court, at which time all incentives and related agreements created pursuant to these provisions will be reviewed to determine whether the goals have been achieved. Based on that review, the Commissioners Court may modify or renew these Guidelines and Criteria or enact new guidelines and criteria. The County reserves the right to allow these Guidelines and Criteria to lapse and to not thereafter adopt new guidelines and criteria.