

ORDER NO. _____

AN ORDER OF THE COMMISSIONERS COURT OF DIMMIT COUNTY, TEXAS: (1) ADOPTING AND APPROVING THE DIMMIT COUNTY, TEXAS GUIDELINES AND CRITERIA FOR TAX ABATEMENT AND OTHER ECONOMIC DEVELOPMENT; (2) APPROVING COUNTY ELIGIBILITY TO PARTICIPATE IN TAX ABATEMENT AND OTHER ECONOMIC DEVELOPMENT; AND (3) ESTABLISHING AN EFFECTIVE DATE AND COMPLIANCE WITH THE TEXAS OPEN MEETING ACT.

WHEREAS, Dimmit County, Texas ("County") is a county of the State of Texas, having been duly created and organized under the constitution and laws of Texas, and further, the Dimmit County Commissioners Court ("Commissioners Court") is the governing body of the County; and

WHEREAS, pursuant to Article V, Section 18 of the Texas Constitution, Chapter 381 of the Texas Local Government Code ("Chapter 381"), and Chapter 312 of the Texas Tax Code ("Chapter 312"), and other authority, the County may participate in tax abatement agreements and other authorized economic development activities as part of an economic development program designed to stimulate economic development and business and commercial activity in Dimmit County, Texas; and

WHEREAS, pursuant to Chapters 381 and 312, and the exercise of its lawful authority, discretion, and best business judgment, the Commissioners Court desires by this order to (1) approve, adopt, and implement the **Dimmit County, Texas Guidelines and Criteria for Tax Abatement and Other Economic Development** ("Guidelines"), in the form and scope attached as **Exhibit 1**, in order to stimulate economic development and business and commercial activity in Dimmit County, Texas, and (2) approve County eligibility to participate in tax abatement and other economic development as allowed by law; and

WHEREAS, the Commissioners Court declares that the successful enactment and implementation of the Guidelines, as described in **Exhibit 1**, shall achieve or substantially accomplish all public purposes described in the Guidelines and this order.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Commissioners Court of Dimmit County, Texas, for and on behalf of said County and in the public interest, as follows:

- (1) Unless otherwise designated, the past, present, or future tense shall each include the other, the masculine, feminine, or neuter gender shall each include the other, and the singular and plural number shall each include the other where necessary for a correct meaning.

- (2) All statements made in the caption, preamble, and preliminary recitals of this instrument, and all attached documents, are incorporated by reference.
- (3) The Commissioners Court hereby approves and adopts, and shall implement, the **Dimmit County, Texas Guidelines and Criteria for Tax Abatement and Other Economic Development** in the form and scope attached as **Exhibit 1**, in order to stimulate economic development and business and commercial activity in Dimmit County, Texas.
- (4) All prior enacted County guidelines and criteria for tax abatement and other economic development are rescinded, superseded, and replaced by the Guidelines attached as **Exhibit 1**.
- (5) Pursuant to the authority described in this order, the Commissioners Court: (a) elects for Dimmit County to become eligible to participate in tax abatement and other economic development; and (b) declares County intent to participate in tax abatement agreements and other economic development agreements, from time to time, through the exercise of the lawful authority, discretion, and best business judgment of the Commissioners Court in order to stimulate economic development and business and commercial activity in Dimmit County, Texas.
- (6) All conditions precedent for the lawful approval and adoption of the Guidelines have been accomplished as required by law, including the: (a) performance of all required public notice; and (b) the holding of a required public hearing.
- (7) This order shall take effect immediately from and after its passage.
- (8) This matter was ordered, approved, and adopted at a meeting held in compliance with Chapter 551 of the Texas Government Code, the Texas Open Meetings Act.

ORDERED, APPROVED, AND ADOPTED on the ____ day of _____, 2020.

**THE COMMISSIONERS COURT OF
DIMMIT COUNTY, TEXAS**

County Judge
Dimmit County, Texas

County Commissioner, Precinct 1
Dimmit County, Texas

County Commissioner, Precinct 2
Dimmit County, Texas

County Commissioner, Precincts 3, 6
Dimmit County, Texas

County Commissioner, Precincts 4, 5, 7
Dimmit County, Texas

ATTEST:

County Clerk
Dimmit County, Texas

EXHIBIT 1
**(Dimmit County, Texas Guidelines and Criteria for Tax Abatement
and Other Economic Development)**

DIMMIT COUNTY, TEXAS GUIDELINES
AND CRITERIA FOR TAX ABATEMENT
AND OTHER ECONOMIC DEVELOPMENT

Effective Date: _____, 2020

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ARTICLE 1 -- ADMINISTRATIVE PROVISIONS

§ 1.1 Enactment

- (A) **County and Governing Body.** Dimmit County, Texas is a duly organized and operating county of the State of Texas, and the Dimmit County Commissioners Court is the governing body of the County.
- (B) **Lawful Enactment.** The County, acting by and through its Commissioners Court, hereby declares this instrument, the **Dimmit County, Texas Guidelines and Criteria for Tax Abatement and Other Economic Development**, to be lawfully enacted, approved, and adopted, and furthermore, these Guidelines shall be implemented, pursuant to and in compliance with the legal authority described in this instrument.
- (C) **Application.** These Guidelines shall constitute a County economic development program which is authorized by law (including without limitation § 381.004 of the Texas Local Government Code), and the Guidelines shall be implemented regarding proposed Projects, Applications, and Agreements submitted by eligible Applicants to the County requesting a grant of: (1) economic development incentives authorized for Texas counties by Chapter 381 of the Texas Local Government Code, including tax abatement; (2) tax abatement authorized for Texas counties by Chapter 381 of the Local Government Code and Chapter 312 of the Texas Tax Code; and (3) economic development incentives and/or tax abatement authorized for Texas counties pursuant to any other applicable authority.
- (D) **Authorized Economic Development Incentives.** Using its lawful authority, discretion, and best business judgment, the Commissioners Court may consider the following economic development incentives requested by an eligible Applicant regarding a proposed Project, Application, or Agreement submitted to the County for review, unless otherwise expressly stated in these Guidelines: (1) all such incentives authorized for Texas counties by Chapter 381 of the Texas Local Government Code, including tax abatement; (2) all tax abatement authorized for Texas counties by Chapter 381 of the Local Government Code and Chapter 312 of the Texas Tax Code; and (3) all such incentives and/or tax abatement authorized for Texas counties pursuant to any other applicable authority.

§ 1.2 Public Purpose, Term and Revision, and County Discretion

- (A) **Identification of Public Purpose.** By enacting and implementing these Guidelines, the Commissioners Court is committed to promoting the economic growth and development of Dimmit County, Texas, and improving the quality of life for the public. These Guidelines are enacted and shall be implemented using the lawful authority, discretion, and best business judgment of the Commissioners Court to accomplish the following worthwhile and declared public purposes:
 - (1) to stimulate, encourage, and develop business location and commercial activity in Dimmit County, Texas;

- (2) to promote and advertise said county and its vicinity to attract businesses, visitors, tourism, and conventions;
- (3) to establish a uniform policy of economic development for said county, and in so doing, provide long term, significant, and positive economic growth for said county and the public;
- (4) to directly engage and assist in the effort to stimulate and improve business and commercial activity in said county through the successful enactment and implementation of worthwhile economic development programs;
- (5) to encourage the acquisition, placement, location, construction, maintenance, and operation of substantial, successful business and commercial projects in said county, which, due to their size and scope, will result over time in increased economic opportunity for said county and the public, with said projects having a positive effect regarding local and regional economic issues, including but not limited to (a) increased local tax bases, (b) increased employment, salaries, and wages, (c) increased wholesale and retail sales, and (d) a decrease in the number of families living in poverty;
- (6) to promote and retain quality development in said county for the continuous improvement of the quality of life for the public;
- (7) to encourage and enhance quality business, commercial, and manufacturing development in said county in order to attract and retain high quality development and jobs;
- (8) to develop and expand the local economy by promoting and encouraging the (a) development, modernization, and redevelopment that enhances the local economic base and quality of life for the public, (b) diversification and expansion of jobs, and (c) creation of revenue for said county; and
- (9) to protect and enhance the fiscal ability of said county to provide high quality public services, programs, facilities, and infrastructure for the health, safety, and welfare of the public.

- (B) **Accomplishment of Public Purpose.** The enactment and implementation of these Guidelines shall achieve or substantially accomplish all public purposes described in this instrument.
- (C) **Term and Revision.** These Guidelines shall be effective and operable on the Effective Date and shall remain in force for two (2) years from the Effective Date, unless amended

or revised by the Commissioners Court pursuant to § 381.004 of the Texas Local Government Code, § 312.002 of the Texas Tax Code, or other applicable authority. These Guidelines shall be reviewed in a timely manner, kept current pursuant to the requirements of the law, and may be amended or revised in accordance with the County's economic development needs and pursuant to the lawful authority, discretion, and best business judgment of the Commissioners Court. Should the Commissioners Court consider the amendment or revision of these Guidelines, all existing Zones and Agreements shall be reviewed to determine whether the County's public policy goals have been substantially obtained. Based on that review, and notwithstanding anything to the contrary herein stated, these Guidelines may be modified, renewed, eliminated, or discontinued, as allowed by law, provided that such actions shall not affect existing contracts.

(D) **County Discretion.**

- (1) Pursuant to its lawful authority, discretion, and best business judgment, the Commissioners Court will negotiate a proposed tax abatement or other economic development Agreement or Project on a case by case basis, in order to compete favorably for positive economic growth in Dimmit County, Texas and the surrounding region.
- (2) The Commissioners Court may grant a tax abatement or other economic development Agreement on the same or similar terms as other taxing entities having jurisdiction regarding a proposed business property or Project; however, notwithstanding anything to the contrary herein stated, these Guidelines shall not limit the lawful authority, discretion, and best business judgment of the Commissioners Court to consider or not consider, approve or disapprove (in whole or in part), or deny any proposed or requested economic development incentive, Application, Agreement, grant, or Project submitted to the County for review.
- (3) These Guidelines and any Application, Project, or Agreement submitted to the County for consideration, shall not create any property right, contract, or other legal right in any Applicant, person, or business entity for the County to consider, approve, or grant any economic development incentive described in this instrument.

§ 1.3 **Conditions Precedent and Notice/Posting**

- (A) **Conditions Precedent.** All conditions precedent (including a public hearing) and notice for the lawful enactment of these Guidelines have been accomplished.
- (B) **Notice/Posting.** Unless otherwise designated in this instrument, a notice or document submission to the County required by these Guidelines shall be in writing and delivered by the United States Postal Service by certified mail, or by courier, or by hand-delivery, with proof of delivery established by a delivery receipt or other document. The County's contact

official regarding notice or a document submission required by these Guidelines is designated as follows: County Judge, Dimmit County, Texas, Dimmit County Courthouse Annex, 212 North 4th Street, Carrizo Springs, Texas 78834 (office location); 830-876-9904 (office telephone). Copies of the Guidelines may be obtained from the official minutes of the Commissioners Court filed with and maintained by the County Clerk of Dimmit County, Texas, and from the internet website maintained by Dimmit County, Texas at www.dimmitcounty.org.

- § 1.4 **Effective Date.** The Effective Date of these Guidelines is _____, 2020.
- § 1.5 **Partial Invalidity.** Should any part of this instrument be determined invalid by a court, other tribunal, administrative agency, or government office, the remainder of the instrument shall remain fully effective and operable.
- § 1.6 **Headings.** The separate headings contained in this instrument are for reference and convenience only and shall not limit or otherwise affect in any way the meaning of any part of this instrument.
- § 1.7 **Adopted Authority.** The following legal authority, as now in effect or hereafter amended, including the express and implied regulatory powers and authority therein granted to the County, are approved and adopted by the County to support the enactment, interpretation, implementation, and enforcement of these Guidelines: Article V, Section 18 and Article III Section 52-a of the Texas Constitution; Chapters 81 and 381 of the Texas Local Government Code; Chapter 312 of the Texas Tax Code; and all other authority described in this instrument.

ARTICLE 2 – DEFINITIONS AND INTERPRETATION

§ 2.1 Word Usage and Special Definitions

- (A) **Common Usage.** Unless specially defined, words and phrases used in this instrument shall be interpreted according to their common usage or meaning in order to result in the most reasonable application and interpretation.
- (B) **Special Definitions.** Unless otherwise designated in this instrument, the following special definitions shall apply:
- (1) **“Abatement”** shall mean the full or partial abatement from ad valorem taxation (based on an agreed diminution of appraised value) of certain designated Eligible Property located in a tax abatement reinvestment zone or enterprise zone for authorized economic development purposes pursuant to these Guidelines.
 - (2) **“Affected Jurisdiction”** shall mean Dimmit County, Texas or any municipality, school district, or other taxing entity located in said county

that levies ad valorem taxes upon or provides services to property located within a proposed or existing Project development site, tax abatement reinvestment zone, or enterprise zone.

- (3) **“Agreement”** shall mean an economic development agreement between the County and Applicant (proposed or existing, and with or without tax abatement), in which an economic development incentive authorized by Chapters 381 or 312, other applicable authority, or this instrument is granted or described for a Project pursuant to an approved Application.
- (4) **“Applicant”** shall mean the person or business entity seeking through a Project Application: (a) the creation of a tax abatement reinvestment zone or enterprise zone; or (b) a grant from the County by an Agreement of a tax abatement or other economic development incentive authorized by Chapters 381 or 312, other applicable authority, or this instrument for a Project. The Applicant shall be the person or business entity which is the actual owner, lessor, or lessee of the proposed Project property and improvements.
- (5) **“Application”** shall mean the fully executed and complete application (including all supporting documents) submitted to the County in accordance with these Guidelines by an Applicant seeking: (a) the creation of a tax abatement reinvestment zone or enterprise zone; or (b) a grant from the County by an Agreement of a tax abatement or other economic development incentive authorized by Chapters 381 or 312, other applicable authority, or this instrument for a Project.
- (6) **“Chapter 312”** shall mean Chapter 312 of the Texas Tax Code, as amended.
- (7) **“Chapter 381”** shall mean Chapter 381 of the Texas Local Government Code, as amended.
- (8) **“Commencement of construction”** shall mean the initiation of construction of Project improvements after the Effective Date at a Project site, or in a tax abatement reinvestment zone or enterprise zone; however, (a) the storage of building materials shall not constitute commencement of construction; and (b) design, engineering, site preparation, and similar preliminary activities shall not constitute commencement of construction.
- (9) **“Commissioners Court”** shall mean means the Commissioners Court of Dimmit County, Texas.
- (10) **“County”** shall mean Dimmit County, Texas, including its elected officials, appointed officials, employees, agents, and representatives.

- (11) **“County Judge”** shall mean the County Judge of Dimmit County, Texas.
- (12) **“Development”** shall mean any actual or proposed man-made change to improved or unimproved real property, or to a river, watercourse, lake, or other body of water, including but not limited to (a) activity related to buildings or other structures, (b) mining, dredging, filling, grading, paving, excavation or drilling operations, or (c) the storage of equipment or materials.
- (13) **“District”** shall mean the Dimmit Central Appraisal District, including its directors, Chief Appraiser (“Chief Appraiser”) and other officers, employees, agents, and representatives, with its current business office located at 203 Houston Street, Carrizo Springs, Texas 78834-3216 (telephone 830-876-3420).
- (14) **“Economic development incentive”** shall include without limitation the following matters authorized for Texas counties: (a) pursuant to § 381.004 of the Texas Local Government Code (i) using county employees or funds for an economic development program, (ii) accepting contributions, gifts, donations, or other resources to develop and administer an economic development program, (iii) entering into tax abatement agreements as authorized by Chapters 312 and 381, and (iv) making loans or grants of public money and providing personnel and services of a county; (b) pursuant to Chapters 312 and 381, entering into tax abatement agreements; and (c) any other economic development incentive authorized by law for Texas counties.
- (15) **“Effective date”** shall mean _____, 2020, the date these Guidelines were approved by the Commissioners Court.
- (16) **“Eligible property”** shall mean Project property designated as eligible for tax abatement pursuant to these Guidelines, as described in § 4.8.
- (17) **“Facility”** shall mean Project improvements (including structures) completed or in the process of construction on the development site, which together comprise an integral whole.
- (18) **“Guidelines”** shall mean this instrument and all attached documents.
- (19) **“Ineligible property”** shall mean Project property designated as ineligible for tax abatement pursuant to these Guidelines, as described in § 4.9.
- (20) **“TLMCID”** shall mean the Texas Labor Market & Career Information Department of the Texas Workforce Commission.

- (21) **“Modernization”** shall mean the expansion, upgrading, or replacement of existing facilities for a Project which increases productive input or output, updates technology, or substantially lowers unit cost of the Project’s operation. Modernization may result from Project construction, alteration, or installation of buildings, structures, or fixed machinery or equipment; however, modernization shall not include the reconditioning, refurbishing or repairing of Project real or personal property.
- (22) **“PILOT”** shall mean payment in lieu of taxes.
- (23) **“Project”** shall mean a proposed business development project (including modernization, and all real property, personal property, facilities, and jobs related thereto) located, constructed, operated, and maintained in Dimmit County, Texas and: (a) made the subject of an Application submitted by an Applicant; or (b) made the subject of an Application request by an Applicant for a grant of a tax abatement or other economic development incentive authorized by these Guidelines.
- (24) **“Recipient”** shall mean the person or business entity receiving the grant of a tax abatement or other economic development incentive from the County.
- (25) **“State”** shall mean the State of Texas and its administrative agencies.
- (26) **“Temporary jobs”** shall mean newly created Project employment positions on a full-time or part-time but non-permanent basis, including construction, installation, maintenance, repair, or office jobs.
- (27) **“Texas Open Meetings Act”** shall mean Chapter 551 of the Texas Government Code, as amended.
- (28) **“Zone”** shall mean a tax abatement reinvestment zone or enterprise zone comprised of a contiguous land area located in Dimmit County, Texas and authorized by Chapters 312 or 381, Chapter 2303 of the Texas Government Code, or other applicable authority.

§ 2.2 Interpretation

- (A) **Tense, Gender, and Number.** Unless otherwise designated, the past, present, or future tense shall each include the other, the masculine, feminine, or neuter gender shall each include the other, and the singular and plural number shall each include the other, where necessary for a correct meaning in this instrument.
- (B) **Incorporation by Reference.** All statements made in the preliminary recitals of this instrument and all attached Appendix documents are incorporated by reference.

- (C) **Minimum Requirements.** These Guidelines shall be considered as requiring minimum requirements or standards for Projects, Applications, and Agreements seeking the grant of economic development incentives from the County. These minimum requirements shall be liberally construed in favor of the County.
- (D) **Repeal of Prior Guidelines.** All guidelines and criteria for tax abatement and other economic development enacted by the County prior to the Effective Date are hereby rescinded, repealed, and replaced by these Guidelines.

ARTICLE 3 – ECONOMIC DEVELOPMENT AGREEMENTS
(WITHOUT TAX ABATEMENT)

§ 3.1 **Application.** These Article 3 provisions shall apply to an Application, Project, or Agreement submitted to the County which describes the grant of an economic development incentive authorized by Chapter 381, but not involving tax abatement. An Application, Project, or Agreement submitted to the County which describes the grant of a tax abatement shall be governed by the provisions of Article 4. Furthermore, the provisions and requirements of Articles 1, 2, and 5 are incorporated by reference for application in this Article 3.

§ 3.2 **Taxable Value.** In order for real or personal Project property located in Dimmit County, Texas to be considered for the grant of an economic development incentive from the County (but not tax abatement), the Project must add at least \$10,000,000.00 in taxable property value (in aggregate) to the County tax roll.

§ 3.3 **Economic Development Factors.** The Project for economic development shall be considered by the County pursuant to the following issues for analysis:

(A) **Jobs.** All jobs proposed for the Project (including new, permanent, and temporary jobs) must be fully described in the Application, including the:

- (1) number and type of existing jobs to be retained as a result of the Project;
- (2) number and type of new jobs (whether temporary or permanent) to be created by the Project;
- (3) average amount of local payroll to be created as a result of the Project;
- (4) salaries/wages of the Project jobs, including (a) whether the annual salary or wage amount for each job shall exceed the Dimmit County, Texas average salary/wage rate, as determined by the TLMCID pursuant to its data released for the most recent year with four full quarters of data determined, (b) a description of all health care,

pension, or other benefits associated with each job, and (c) whether all or part of the employee health care, pension, or other benefits will be paid by the employer; and

- (5) number and type of jobs performed or to be performed by Dimmit County, Texas residents for the Project.

(B) Fiscal and Economic Impact. The fiscal and overall economic impact of the Project must be fully described in the Application, including:

- (1) the kind, number, and location (including type, value, and productive life) of the existing and proposed Project property and improvements, including a descriptions of the Project (a) construction completion schedule, commencement of operations, and estimated length of time the Project will be operating in Dimmit County, Texas, and (b) uses to be applied to said property and improvements;
- (2) the amount of real and personal taxable property value to be added to the local tax rolls as a result of the Project;
- (3) the amount of wholesale or retail sales of goods or services to be produced in said county by the Project;
- (4) the Project payments to be made by Applicant to the County (or to any Affected Jurisdiction, government entity, person, or individual) regarding any proposed deferral year compensation, payments in lieu of taxes, or economic development grants or donations associated with the Project;
- (5) the type, value, and productive life of all proposed public improvements resulting from or needed for the Project, including all proposed County-funded transportation, drainage, or other public infrastructure or improvements;
- (6) the amount by which property tax valuations may be increased by the Project, before, during, and after the proposed economic incentive grant period requested by Applicant;
- (7) an estimate of the County's costs and expenses to be incurred (including attorney and/or other consultant fees) due to the County's review, consideration, negotiation, implementation, and administration of the Project – and whether those costs and expenses will be reimbursed, in whole or in part, to the County by Applicant;

- (8) a financial analysis of the (a) economic development incentives sought to be received by Applicant for the Project from any source (including any Affected Jurisdiction, governmental entity, business entity, or individual), (b) provisions identifying the source of funding for, and method for calculating, an economic development incentive sought for a Project Agreement, and (c) taxes estimated to be paid to the County and the other Affected Jurisdictions (segregated by taxing entity for each year of the estimated life of the Project), including therein Applicant's (i) proposed depreciation schedules for Project improvements, (ii) Project improvement values -- and in the case of a modernization Project, a statement of the assessed value of the existing improvements, which shall be separately stated for real and personal property for the tax year immediately preceding the Application date, (iii) economic incentive values being sought from all Affected Jurisdictions, and (iv) value of the project improvements after the conclusion of the Project economic incentive grant period;
- (9) the identification and description of a tangible method and means for measuring whether Applicant and any other responsible parties have met their obligations pursuant to a Project Agreement;
- (10) the population growth estimated for Dimmit County, Texas for the life of the Project, as a direct result of the Project;
- (11) whether Applicant promptly will repair the damage, or provide payment to the County for the damage, caused by the Project to the public infrastructure of the County, including the County's public road and bridge system;
- (12) whether Applicant will: (a) annually and timely furnish the District's Chief Appraiser the information described in Chapter 22 of the Texas Tax Code or other authority, as may be necessary or advisable for the proper administration of any Agreement executed with the County for the Project, (b) render its Project improvements, eligible property, and ineligible property located in Dimmit County, Texas for ad valorem taxation in Dimmit County, Texas, and (c) designate Dimmit County, Texas as the situs for the appraisal, assessment, levy, and collection of taxes on said Project property by the County, and as the situs for the payment of said taxes by Applicant regarding said Project property, for the purposes of and pursuant to an Agreement executed with the County for the Project;
- (13) regarding a Project or Agreement, a description of the proposed term, termination, default, remedy, indemnity, governmental

immunity, assignment, and other potential administration and litigation issues, including without limitation (a) default definitions and the application of default-cure or force majeure extension provisions, and whether said provisions will not be applicable to excuse timely performance of the Agreement in certain situations, (b) the extent to which the County may pursue all litigation remedies allowed by law or equity due to an Applicant default, including (i) the recapture of the economic development incentives granted to Applicant by the Agreement (and all penalties and interest allowed by law), and (ii) the recovery of all damages, attorney's fees, reimbursement and other costs or expenses, interest, offsets, and credits incurred by or otherwise due the County, (c) whether Texas law will be designated as the choice of law between the parties to control Agreement interpretation and performance, (d) whether mandatory venue provisions designating a court of competent jurisdiction in Dimmit County, Texas, or the proper federal court for said county, will be agreed as the situs for litigation, (e) County indemnity rights for liability issues and events occurring as a result of Project construction, operation, maintenance, or repair; and (f) the extent to which the County may terminate, cancel, or modify an Agreement with or without cause;

- (14) the estimated financial impact (whether positive or negative) on existing businesses in Dimmit County, Texas as a result of the Project;
- (15) the potential for new business activity to be attracted in said county as a result of the Project;
- (16) based on the size and scope of the Project, whether (a) market conditions and the growth potential are favorable or unfavorable for Project success given economic and market conditions, (b) Applicant has the financial strength and capability to successfully undertake, complete, operate, and maintain the Project for its estimated life in Dimmit County, Texas, (c) Applicant has been involved in any business failures, bankruptcy, or litigation for the collection of delinquent financial obligations, including taxes, or for other contract performance violations, and (d) whether an Applicant delinquency for the payment of ad valorem taxes currently exists, or has existed in the past, regarding (i) the real or personal property located in Dimmit County, Texas owned or leased by Applicant and made the subject of the Project, or (ii) any other real or personal property owned or leased by Applicant in any jurisdiction;
- (17) regarding the maximization of Applicant's use of labor, goods, and

services supplied by Dimmit County, Texas residents and businesses for the Project, whether Applicant will agree to spend a designated minimum amount annually for the life of the Project in said county (i.e., a local spend commitment), said minimum local spend amount to include all salaries/wages paid by Applicant for Project jobs in said county, but said amount not to include any amounts spent by Applicant for Project improvements or payments to the County as economic development grants or donations;

- (18) whether Applicant will (a) allow the County and District access to Applicant's business records and Project site for the purposes of inspection, review, and/or copying (at County or District expense) to ensure that (i) Project improvements are in compliance with a Project Agreement, and (ii) Applicant compliance has occurred with all terms and provisions of a Project Agreement, and (b) certify annually to the governing body of each Affected Jurisdiction that Applicant is in compliance with the Project Agreement; and
- (19) the identity of Applicant's (a) affiliate business entities, whether they are senior or subordinate, or partially or wholly owned, held, or operated, and (b) directors, partners, officers, members, managers, and senior management staff, and those of an Applicant affiliate.

(C) **Community Impact.** The community impact of the Project must be fully described in the Application, including:

- (1) the opportunities for Dimmit County, Texas business entities and persons to supply goods, services, and/or labor for the Project;
- (2) the revitalization of any economically depressed area in said county as a result of the Project;
- (3) the impact on other taxing entities in said county as a result of the project;
- (4) the employment opportunities associated with the Project; and
- (5) whether the Project will (a) contribute to the retention or expansion of primary employment in said county, and/or (b) attract major investment that would be a benefit to the Project property and surrounding property, and that would contribute to the economic development of said county.

§ 3.4 Submission of Application.

- (A) **Submission.** The Application shall be fully executed, completed, and submitted to the County using the application form attached as **Appendix/Exhibit A**. The Application shall include all facts and documents necessary or desired to support the Application. The Application shall be executed by Applicant and submitted to the County as follows: the original Application (and two complete copies) shall be delivered to the County, in care of the County Judge, at his address described in § 1.3.
- (B) **Content of Application and Agreement.** The fully executed and completed Application, and any resulting Agreement, shall at minimum contain the following matters:
- (1) regarding an Application, the submission to the County of a fully executed and complete Application form, with all necessary or desired facts and supporting documents attached, in compliance with **Appendix/Exhibit A**;
 - (2) regarding an Application, documents and/or provisions sufficient to show that: (a) all application fees, if any are required, have been paid to the County unless the Applicant is a unit of government and the fees are waived by a variance grant; and (b) a delinquent ad valorem tax liability owed to any Dimmit County, Texas taxing entity does not exist for Applicant's owned or leased real or personal property (i) made the subject of the Project, Application, or Agreement, or (ii) located in said county but not made the subject of the Project, Application, or Agreement;
 - (3) regarding an Application and Agreement, a description of all economic incentives requested by Applicant to be granted by the County for the Project -- and if available at the time of Application, a proposed draft Agreement for the Project;
 - (4) regarding an Application, a description of all issues and the attachment of all documents described in §§ 3.1-3.3 -- and regarding an Agreement, a description of said issues, and the attachment of said documents, in the form and scope as negotiated by the parties for the Agreement.
 - (5) regarding an Application and Agreement, a map or plat, and site plan, for the Project property (including a metes and bounds description) which sufficiently describe all Project real property;
 - (6) regarding an Application for a modernization Project, a description of the assessed value of existing Project improvements, which shall be separately stated for real and personal property for the tax year immediately preceding the Application date;

- (7) regarding an Application and pursuant to the issues discussed in § 3.3, a description of the positive economic growth projected to occur in Dimmit County, Texas as a result of the construction, completion, and operation of the Project;
- (8) regarding and Application and Agreement, a description of the economic incentive grant period (described by beginning and ending dates) requested by Applicant, including (a) any period requested to defer the beginning of said period, and (b) all facts and documents to support the deferral period request;
- (9) regarding an Application, a description of any monetary amounts, property, services, or economic development incentives, grants, or donations, to be granted by Applicant to the County, an Affected Jurisdiction, governmental entity, business entity, or individual for the Project, including taxes, PILOT, deferral year payments, economic development grants or donations (including road/bridge damage repair and/or maintenance obligations), and reimbursement of costs (including attorney and other consultant fees) incurred by said parties regarding the Project -- and regarding an Agreement, a description of said issues which involve the County, in the form and scope as negotiated by the parties for the Agreement;
- (10) regarding an Application, the relevant financial data and business records of Applicant describing Applicant's financial strength and capability to successfully undertake, complete, operate, and maintain the Project for its estimated life in Dimmit County, Texas;
- (11) regarding an Application, the relevant economic data and documents describing whether the market conditions and growth potential for the Project are favorable or unfavorable for Project success given then conditions existing at the time of submission;
- (12) regarding an Application and Agreement, provisions showing compliance with all other applicable federal, state, or local authority or regulations, including without limitation Chapters 2252, 2264, and 2271 of the Texas Government Code, Chapters 171 and 176 of the Texas Local Government Code, and Form 1295/Texas Ethics Commission Certificate of Interested Parties procedure;
- (13) regarding an Application, a description of any requested variance, complete with all supporting facts and attached documents; and
- (14) all other necessary or desired information or documents to support the Application, Project, or Agreement pursuant to the requirements

of this instrument.

(C) **County Consent and Conditions for Assignment.**

- (1) An Agreement shall not be assigned, in whole or in part, without the written consent and approval of the County. The County's decision to approve or not approve, an assignment of the Agreement shall be based upon: (a) the exercise of the lawful authority, discretion, and best business judgment of the Commissioners Court; (b) the financial capacity of the proposed assignee; (c) a determination of whether Applicant or the proposed assignee allowed taxes owed to any taxing entity in Dimmit County, Texas to become delinquent, and failed to timely and properly follow the lawful procedures for a tax protest; and (d) the interests of the public.
- (2) A permitted and approved assignment of an Agreement shall: (a) require that all rights, duties, obligations and liabilities of the Agreement are assigned from the assignor to the assignee; (b) require the assignee to irrevocably and unconditionally assume all duties and obligations of the assignor upon the same terms and conditions provided in the Agreement; (c) require the assignment to be subject to and subordinate to the Agreement and the applicable requirements of Chapter 381; (d) not exceed the termination date of the initial Agreement; (e) not violate the provisions of the Agreement or any applicable statute or local regulation; and (f) be in a form and scope acceptable to the County.

§ 3.5 **Applicant Eligibility.** An Applicant shall be eligible to apply to the County for the grant of an economic development incentive for a Project if the: Applicant is the actual owner, lessor, or lessee of the Project property; issuance of a building permit or commencement of construction for the Project has not occurred; and Project and Application meet the applicable requirements of this instrument.

§ 3.6 **Creation of New and Commensurate Value.** Economic development incentives may be granted by the County based on the applicable issues of analysis described in these Guidelines. Furthermore, the County may provide economic development incentives pursuant to this instrument, but only to the extent the Project revenue and/or other benefits realized by the County exceed a minimum amount established by a Project Agreement, and those public benefits must be commensurate with the value of any economic incentives granted by the County.

§ 3.7 **Fully Taxable Property.** All of Applicant's taxable property located at the Project site and described in an Application, Agreement, and Project pursuant to this Article 3 shall be assessed and taxed by the County according to the full appraised value of said property, without tax abatement.

§ 3.8 Application Review.

- (A) **County Discretion.** The Commissioners Court may grant an economic development Agreement with authorized economic development incentives pursuant to the County's discretion described in Chapter 381 and §§ 1.1 and 1.2 of these Guidelines. Furthermore, these Guidelines and any Application, Project, or Agreement submitted to the County for consideration shall not create any property, contract, or other legal right in any Applicant, person, or business entity for the County and its Commissioners Court to consider, approve, or grant any economic development incentive.
- (B) **Submission Procedure.** Upon submission of an Application, Agreement, or Project to the County, the following review and action procedures are authorized:
- (1) Through a recorded vote at a public meeting conducted pursuant to the Texas Open Meetings Act, and exercising its lawful authority, discretion, and best business judgment, the Commissioners Court may approve (in whole or in part) an Application, Agreement, or Project; however, nothing in these Guidelines shall limit the power and discretion of the Commissioners Court to consider or not consider, approve or disapprove (in whole or in part), or deny an Application, Agreement, or Project submitted to the County for review, as stated in §§ 1.1 and 1.2 of these Guidelines.
 - (2) Should the Commissioners Court approve (in whole or in part) the Application, the proposed Agreement shall be drafted and considered for approval by the Commissioners Court at a public meeting of said court conducted pursuant to the Texas Open Meetings Act. The approved Agreement shall be drafted in a form and scope acceptable to the County and consistent with the approved Application.

ARTICLE 4 – TAX ABATEMENT AGREEMENTS

§ 4.1 Guidelines and Criteria for Tax Abatement. These Article 4 provisions are enacted and shall be implemented as the County's guidelines and criteria for tax abatement pursuant to § 312.002 Texas Tax Code and other authority.

§ 4.2 Declaration of County Intent. Pursuant to Chapters 312 and 381, the Commissioners Court: elects for Dimmit County, Texas to become eligible to participate in tax abatement; and declares the County's intent to participate in tax abatement agreements, from time to time, through the exercise of the lawful authority, discretion, and best business judgment of the Commissioners Court to stimulate economic development and business and commercial activity in Dimmit County, Texas as described in this instrument.

§ 4.3 Application. These Article 4 provisions shall apply to an Application, Project, or

Agreement submitted to the County which describes the grant of a tax abatement. An Application, Project, or Agreement submitted to the County which describes the grant of an economic development incentive authorized by Chapter 381, but not describing tax abatement, shall be governed by the provisions of Article 3. Furthermore, the provisions and requirements of Articles 1, 2, and 5 are incorporated by reference for application in this Article 4.

- § 4.4 **Taxable Value.** In order for Eligible Property located in Dimmit County, Texas to be considered for a grant of tax abatement from the County, the Project must add at least \$10,000,000.00 in taxable property value (in aggregate) to the County tax roll.
- § 4.5 **Economic Development Factors.** In considering a request for creation of a tax abatement reinvestment zone and/or tax abatement Agreement, the following economic development issues shall be considered by the County regarding a proposed Application, Project, or Agreement: as described in §§ 3.3 and 3.4(B) and this Article 4.
- § 4.6 **Applicant Eligibility.** An Applicant shall be eligible to apply to the County for the grant of a tax abatement for a Project if: (A) a Zone already has been established regarding a Project, or a Zone is requested in the Application for a Project; (B) Applicant is the actual owner, lessor, or lessee of the Project property; (C) the issuance of a building permit or commencement of construction for the Project has not occurred; and (D) the Project and Application meet the applicable requirements of this instrument.
- § 4.7 **Creation of New and Commensurate Value.** Tax abatement may be granted by the County based on the applicable economic development issues described in these Guidelines. Furthermore, the County may grant tax abatement pursuant to this instrument, but only to the extent the Project revenue and/or other benefits realized by the County exceed a minimum amount established by a Project Agreement, and those public benefits must be commensurate with the value of any economic incentives granted by the County.
- § 4.8 **Eligible Property.** Unless designated as Ineligible Property by these Guidelines, all taxable property identified by Chapter 312 as being eligible for county tax abatement may be considered for abatement by the County; however, nothing in these Guidelines shall limit the power and discretion of the Commissioners Court to consider or not consider, approve or disapprove (in whole or in part), or deny an Application, Agreement, or Project submitted to the County for review regarding a requested tax abatement as stated in §§ 1.1 and 1.2 of these Guidelines.
- § 4.9 **Ineligible Property.** The following property is Ineligible Property for tax abatement pursuant to these Guidelines, and Ineligible Property shall be fully taxable at all times: (A) land; (B) inventories; (C) supplies; (D) tools; (E) animals; (F) furnishings; (G) vehicles and vessels; (H) private aircraft; (I) deferred maintenance investments; (J) property in a Zone owned by a non-Applicant lessor of the land in the Zone; (K) property not located in a Zone; (L) property located in a Zone before the signing of an Agreement; (M) property located in a Zone after the termination or expiration of an Agreement; (N) property located

in a Zone and used by Applicant for an activity not for or related to the approved Project; (O) property located in a Zone and used by Applicant in violation of an Agreement; and (P) property designated by Chapter 312 of the Texas Tax Code or these Guidelines as ineligible for tax abatement.

§ 4.10 Fully Taxable Property. Applicant's Eligible Property and Ineligible Property in the Zone shall be assessed and taxed by the County according to its full appraised value without tax abatement for the periods occurring: (A) after the execution date of the Agreement, but prior to commencement of the abatement period specified in the Agreement; (B) after the expiration of the abatement period specified in an Agreement; and (C) after the termination of the Agreement. Applicant's Ineligible Property in the Zone shall be assessed and taxed at all times according to its full appraised value without tax abatement.

§ 4.11 Application Procedure and Review.

- (A) **Application and Related Fee Required.** Applicant may request the creation of a tax abatement reinvestment zone, enterprise zone, and/or tax abatement Agreement by submitting a written Application to the County. A non-refundable Application fee in the amount of \$1,000.00 (submitted in the form of a cashier's check or money order made payable to the order of Dimmit County, Texas) shall be paid by Applicant when the Application is submitted to the County. The Application shall be executed by Applicant and submitted to the County as follows: the original Application (and two complete copies) shall be delivered to the County, in care of the County Judge, at his address described in § 1.3.
- (B) **Applicant Signature.** A tax abatement Agreement is not authorized to be executed by the County with any person or entity that is not the actual owner, lessor, or lessee of the Eligible Property in the proposed Zone and Agreement, and furthermore, the Application shall contain sufficient documentation to verify and confirm those facts to the County.
- (C) **Zone or Agreement Application.** An Application for the creation of a tax abatement reinvestment zone, enterprise zone, and/or tax abatement Agreement at minimum shall contain the following matters:
- (1) regarding an Application, a fully executed and complete Application form, with all necessary or desired facts and supporting documents attached, in compliance with **Appendix/Exhibit A**;
 - (2) regarding an Application, documents or provisions sufficient to show that: (a) all application fees, if any are required, have been paid to the County unless the Applicant is a unit of government and the fees are waived by a variance grant; and (b) a delinquent ad valorem tax liability owed to any Dimmit County, Texas taxing entity does not exist for Applicant's owned or leased real or personal property (i) made the subject of the Project, Application, or

Agreement, or (ii) located in said county but not made the subject of the Project, Application, or Agreement;

- (3) regarding an Application and Agreement, a description of all tax abatement and other economic incentives requested by Applicant to be granted by the County for the Project, and if available at the time of Application, a proposed draft Agreement for the Project;
- (4) regarding an Application and Agreement, a description of all issues, and the attachment of all documents, described in §§ 3.3 and 3.4(B), and this Article 4;
- (5) regarding an Application and Agreement, all documents sufficient to describe in detail the Project in the proposed Zone;
- (6) regarding an Application and Agreement, a map or plat, property description, and site plan which adequately describe the boundaries of the contiguous land area of the Zone and Project, and show that the proposed Zone is (a) entirely within Dimmit County, Texas, and (b) within, not within, or partially within the city limit boundaries of an incorporated municipality located in said county;
- (7) regarding an Application and Agreement, documents and facts sufficient to establish the eligibility of the Zone for residential tax abatement and/or commercial-industrial tax abatement;
- (8) regarding an Application, a description of the proposed increase in economic development to occur in Dimmit County, Texas through successful completion and implementation of the Project in the Zone, including but not limited to increased capital improvements and tax base, modernization of existing improvements, creation of new jobs, retention of existing jobs, employment opportunities for residents of said county, and participation opportunities for local suppliers and contractors;
- (9) regarding an Application and Agreement, a description of all tangible personal property improvements for which a tax abatement will be requested;
- (10) regarding an Application and Agreement, a proposed time-line and construction schedule for completing and implementing Applicant's Project in the Zone;

- (11) regarding an Application, financial and Project information sufficient for the County to evaluate Applicant's financial capacity to successfully complete and implement the Project in the Zone;
- (12) regarding an Application for the creation of (a) an enterprise zone, all information required by Chapter 312 of the Texas Tax Code and Chapter 2303 of the Texas Government Code, and (b) a tax abatement reinvestment zone, all information required by §§ 312.202 and 312.402 of the Texas Tax Code;
- (13) regarding an Agreement for a proposed tax abatement, all information required by §§ 312.204-.205 and 312.211 of the Texas Tax Code;
- (14) regarding an Application and Agreement, a map or plat, site plan, and detailed property description which sufficiently describe all real property to be made the subject of the Agreement, and a description of Eligible Property for which a tax abatement is requested;
- (15) regarding an Application and Agreement for a modernization Project, a statement of the assessed value of existing improvements, which shall be separately stated for real and personal property for the tax year immediately preceding the Application date;
- (16) regarding an Application and Agreement, a description of the requested tax abatement period (described by beginning and ending dates), including any period requested to defer the beginning of the tax abatement period, and all facts and documents to support the deferral period request;
- (17) regarding an Application and Agreement, a description of the level or degree of tax abatement requested, and a description of all Eligible Property to be the subject of the requested abatement;
- (18) regarding an Application, a description of any monetary amounts, property, or services to be delivered and/or paid to the County by Applicant as consideration, an economic development grant or donation, or reimbursement for the Agreement, including taxes, PILOT, deferral year payments, road/bridge damage repair and/or maintenance obligations, and reimbursement to the County for its costs (including attorney or other consultant fees) incurred regarding creation of the Zone or the review, negotiation, approval, implementation, and maintenance of the Agreement -- and regarding an Agreement, a description of said issues in the form and scope as negotiated by the parties for the Agreement;

- (19) a description of any requested variance, complete with all supporting facts and attached documents; and
 - (20) all other necessary or desired information, material, or documents to support the Application, Project, or Agreement pursuant to the requirements of this instrument.
- (D) **County Discretion.** The Commissioners Court may grant a Zone Application and/or tax abatement Agreement pursuant to the County's discretion described in these Guidelines; however, nothing in these Guidelines shall limit the power and discretion of the Commissioners Court to consider or not consider, approve or disapprove (in whole or in part), or deny an Application, Agreement, or Project submitted to the County for the creation of a Zone or grant of a tax abatement, as stated in §§ 1.1 and 1.2 of these Guidelines. Furthermore and pursuant to § 312.002 of the Texas Tax Code, the enactment of these Guidelines by the Commissioners Court does not: (1) limit the discretion of said court to decide whether to enter into a specific tax abatement agreement; (2) limit the discretion of said court to delegate to its employees the authority to determine whether or not said court should consider a particular Application or request for tax abatement; or (3) create any property, contract, or other legal right in any person to have said court consider or grant a specific Application or request for tax abatement.
- (E) **Application Submission.** The Application for creation of a Zone and/or a tax abatement Agreement shall be fully executed, completed, and submitted to the County using the application form attached as **Appendix/Exhibit A**. The Application shall include all facts and documents necessary or desired to support the Application. The Application shall be executed by Applicant and submitted to the County as follows: the original Application (and two complete copies) shall be delivered to the County, in care of the County Judge, at his address described in § 1.3.
- (F) **Review/Action of Application.** Upon submission of a Zone and/or or tax abatement Agreement Application for a Project, the following review and action procedures are authorized:
- (1) The creation of an enterprise zone and approval of any related tax abatement Agreement shall be governed by the applicable provisions of these Guidelines, Chapters 551 and 2303 of the Texas Government Code, Chapter 312 of the Texas Tax Code, and Chapter 381 of the Texas Local Government Code. Regarding creation of a tax abatement reinvestment zone and County approval of any related tax abatement Agreement, however, the review and action procedures hereafter described in this subparagraph (F) shall apply.
 - (2) Should Applicant request to locate the Project in an area of Dimmit County, Texas already designated as an existing Zone, the Commissioners Court may proceed to consider for approval a

proposed tax abatement Agreement submitted by Applicant pursuant to the public notice and other applicable procedural requirements of these Guidelines, Chapters 312 and 381, and the Texas Open Meetings Act.

- (3) The Commissioners Court may consider whether the Zone Application should proceed to the public hearing required by law, including §§ 312.201 and 312.401 of the Texas Tax Code. Should the Commissioners Court determine to proceed to public hearing on the Zone Application, said hearing shall be noticed and conducted as required by law. Upon completion of the public hearing on the Zone Application, and should the proposed Zone be approved for creation by the Commissioners Court through its recorded vote at a public meeting conducted pursuant to the Texas Open Meetings Act, the approval order and documents creating the Zone shall be filed in the official minutes of the Commissioners Court.
- (4) Upon approval and creation of the Zone as herein described, and should the Commissioners Court desire to consider approval of a submitted Application and request for a tax abatement Agreement for a Project in the Zone, the proposed Agreement shall be drafted and considered for approval by the Commissioners Court pursuant to all notice and public meeting procedures required by law. The final consideration and action by the Commissioners Court regarding approval of the Application and requested tax abatement Agreement shall occur through a recorded vote at a regular public meeting of said court. Should the Application and tax abatement Agreement be approved by the Commissioners Court, the approval order and documents constituting the Agreement shall be filed in the official minutes of said court.

(G) **Approval, Execution, and Content of Tax Abatement Agreements.** Once a tax abatement Agreement is approved by the Commissioners Court in the manner required by law and these Guidelines, it shall be executed by the Applicant and the County (by and through the County Judge on behalf the Commissioners Court). The Agreement at minimum shall contain and/or address the following matters negotiated by the parties:

- (1) the issues described in §§ 312.204-.205, 312.207, 312.402, and 312.404 of the Texas Tax Code, and §§ 3.3, 3.4(B) and 4.11(C) of these Guidelines;
- (2) a specific description of the abatement period, which shall be no longer than 10 years in duration, as required by law;

- (3) the total value of Eligible Property to be abated, and the percent or degree of value to be abated each year;
- (4) the proposed use of the Eligible Property for the Project (in compliance with these Guidelines), nature and type of its construction, a time schedule for completing Project construction, sufficient mapping, a property description for the Project, and a list of all proposed Project facilities and improvements;
- (5) reasonable access to and inspection of Project land, property, improvements, facilities, and the business records of Applicant, by the County and District to ensure compliance with the Agreement and controlling legal authority;
- (6) the kind, number, and location of all proposed Project improvements and facilities to be located in the Zone;
- (7) the limitation regarding the uses of the Applicant's Project property in the Zone, consistent with the Project description approved by the County for the Zone and the County's general purpose of encouraging modernization, development, and redevelopment of the Zone during the Agreement;
- (8) a description of each specially defined term agreed by the parties to the Agreement;
- (9) maps showing: (a) existing uses and conditions of real property in the Zone; and (b) proposed improvements and uses in the Zone;
- (10) provisions describing default events, and the County's remedies in the event of an Applicant default, including the rights of the County to recapture and recover: (a) lost or abated taxes and associated penalties, interest, costs, and attorney's fees; (b) all monetary amounts due the County under the Agreement; (c) accrued attorney's fees, expert expenses, or other litigation or enforcement costs, and interest; and (d) all other remedies allowed by law or equity;
- (11) provisions describing mandatory venue for any suit regarding the Agreement to be in a court of competent jurisdiction located in Dimmit County, Texas, or in the federal court designated for said county;
- (12) facts and provisions showing compliance with all other applicable federal, state, or local authority or regulations, including without limitation (a) Chapters 2264 (relating to restrictions on use of certain

public subsidies) and 2271 (relating to prohibitions on contracts with companies boycotting Israel) of the Texas Government Code, (b) Chapters 171 and 176 (relating to conflicts of interests) of the Texas Local Government Code, and (c) Form 1295/Texas Ethics Commission Certificate of Interested Parties (pursuant to § 2252.908 of the Texas Government Code) procedure; and

- (13) a description of any monetary amounts, property, or services to be paid or delivered to the County by Applicant, constituting consideration, an economic development grant or donation, or reimbursement for the Agreement, including tax payments, PILOT, deferral year payments, road/bridge damage repair and/or maintenance obligations, and reimbursement of costs to the County (including attorney or other consultant fees) incurred regarding creation of the Zone or the review, negotiation, approval, implementation, and maintenance of the Agreement; and
- (14) all other matters required by Chapter 312 or these Guidelines for inclusion in the Agreement.

(H) **Administration of Agreements.** The District, by and through its Chief Appraiser, annually shall determine a certified appraised value assessment, and tax abatement assessment, of all real and personal property in and regarding the approved Zone and tax abatement Agreement, pursuant to the following requirements and procedures:

- (1) On May 1st of each year of an Agreement, the tax abatement Recipient in the Agreement shall certify to the following entities that it is in compliance with the Agreement: (a) the County; (b) the District; and (c) each Affected Jurisdiction with jurisdictional land area located in the Zone.
- (2) The County and the District shall annually evaluate the Project and facility in the Zone receiving a County tax abatement under the Agreement to verify compliance by the Recipient with the Agreement. A formal report shall be made annually to the Commissioners Court by the County and District regarding the evaluation.
- (3) Each year of the Agreement, the Recipient shall furnish the District with such information as may be necessary or advisable for the certified appraised value and abatement evaluation. Once those evaluations have been established, the Chief Appraiser shall notify the Commissioners Court and Recipient of those evaluations.
- (4) The Zone, Recipient/Applicant Eligible Property, and Recipient/Applicant Ineligible Property will be appraised by the

District at full market value for the purposes of property tax assessment for each year of the Agreement. This value may change during the term of the Agreement. The calculation of tax abatement and other components of the Agreement will make use of this appraised value determination, as determined for each tax year of the Agreement.

- (5) The District annually shall determine on January 1st of each tax year of the Agreement the certified appraised value (excluding labor costs) of the: (a) land area of the Zone (with existing improvements, if any) at full value without tax abatement; (b) tangible personal property in said Zone at full value without tax abatement; (c) Recipient/Applicant Eligible Property in said Zone at full value without tax abatement; and (d) Recipient/Applicant Ineligible Property in said Zone at full value without tax abatement; and (e) taxable value of the immediately preceding items (a) through (d) pursuant to the terms of tax abatement described in the Agreement.
 - (6) The District will record its determination of the aforesaid certified appraised value, and abated taxable value (pursuant to the abatement described in the Agreement) in the District records. The Recipient/Applicant may apply for all applicable tax exemptions authorized by law. The certified appraised value listed in the District records shall be used to compute the amount of abated taxes required to be recaptured and paid in the event of a termination or default of the Agreement.
- (I) **Property Render and Situs Obligations** -- During each year of the Agreement, the Recipient/Applicant shall timely: (1) furnish the District with the information described in Chapter 22 of the Texas Tax Code, or other authority, as may be necessary or advisable for the proper administration the Agreement; and (2) render its Project improvements, Eligible Property, and Ineligible Property located in Dimmit County, Texas for ad valorem taxation in Dimmit County, Texas, said county to be designated in the Agreement as the situs for the (a) appraisal, assessment, levy, and collection of taxes on said property by the County, and (b) payment of said taxes by the Recipient/Applicant regarding said property, for the purposes of and pursuant to the Agreement.
- (J) **Confidential Information.** All proprietary information acquired by the County from the Recipient/Applicant for purpose of review regarding a Zone Application, Agreement Application, or the monitoring of Agreement compliance, shall be considered confidential unless otherwise required by law, including the exceptions to confidentiality described in Chapters 312 and 552 of the Texas Government Code.
- (K) **County Consent and Conditions for Agreement Assignment.**

- (1) An Agreement shall not be assigned, in whole or in part, without the written consent and approval of the County. The County's decision to approve or not approve an assignment of the Agreement shall be based upon: (a) the exercise of the lawful authority, discretion, and best business judgment of the Commissioners Court; (b) the financial capacity of the proposed assignee; (c) a determination of whether Applicant or the proposed assignee allowed taxes owed to any taxing entity in Dimmit County, Texas to become delinquent, and failed to timely and properly follow the lawful procedures for a tax protest; and (d) the interests of the public.
- (2) A permitted assignment of an Agreement shall: (a) require that all rights, duties, obligations and liabilities of the Agreement are assigned from the assignor to the assignee; (b) require the assignee to irrevocably and unconditionally assume all duties and obligations of the assignor upon the same terms and conditions provided in the Agreement; (c) require that the assignment will be subject to and subordinate to the Agreement and the applicable requirements of Chapters 381 and 312; (d) not exceed the termination date of the initial Agreement; (e) not violate the provisions of the Agreement or any applicable statute or local regulation; and (f) be in a form and scope acceptable to the County.

ARTICLE 5 – VARIANCE REQUESTS AND REVIEW

§ 5.1 **Application.** These Article 5 provisions regarding variance procedure are enacted and shall be implemented pursuant to variance requests, review, and Commissioners Court action regarding all proposed Applications, Agreements, and Projects, whether or not tax abatement is therein described.

§ 5.2 **Variance Procedure.**

- (A) **Form and Submission.** A variance request regarding a Zone Application or Agreement Application for a Project shall be made in writing by Applicant, submitted with the Application, and thereafter reviewed by the County as described in this instrument.
- (B) **Review and Action.** A variance only may be granted to an Application, Project or Agreement if the variance: (1) is granted pursuant to a recorded public vote of the Commissioners Court conducted at a public meeting in compliance with the Texas Open Meetings Act; (2) is granted pursuant to the lawful authority, discretion, and best business judgment of the Commissioners Court and in compliance with this § 5.2; and (3) does not violate any applicable provision of Chapters 381, 312, or other law or local regulation.
- (C) **Prohibited Variance.** The Commissioners Court may not grant a variance which violates this § 5.2, including the standards hereafter described. Furthermore, and notwithstanding anything to the contrary stated in this instrument, the total duration of an abatement period

in a tax abatement Agreement may not exceed 10 years pursuant to § 312.007(b) of the Texas Tax Code and other authority; therefore, no variance can be granted regarding that mandatory statutory issue.

(D) **Variance Standards** -- A variance to a requirement of these Guidelines may be granted by the Commissioners Court, within its lawful authority, discretion, and best business judgment, only when the evidence and the attendant circumstances establish that:

- (1) a special circumstance exists which, if the Guidelines are strictly enforced, will deprive Applicant of a privilege or use enjoyed by other developers with projects of similar timing and scope of development.
- (2) the variance will be a minimum departure from these Guidelines, and not be violation of federal, state, or other local law;
- (3) the variance will not create a special privilege or use for Applicant not enjoyed by similarly situated property or developers;
- (4) the variance must be based on the general intent of these Guidelines and in the public interest, and must not prevent or impair the safe, healthy, or orderly development of other land in the County; and
- (5) the evidence must show that: (a) all application fees, if any are required, have been paid to the County -- unless the Applicant is a unit of government and the fees are waived by a variance grant, with pecuniary hardship, standing alone, not deemed to constitute an undue hardship or special circumstance to support a fee variance; and (b) a delinquent ad valorem tax liability is not owed by Applicant to any Affected Jurisdiction or other Dimmit County taxing entity.

[End of Guidelines]

CERTIFICATION OF ADOPTION REGARDING:

**DIMMIT COUNTY, TEXAS GUIDELINES AND CRITERIA FOR TAX
ABATEMENT AND OTHER ECONOMIC DEVELOPMENT**

APPROVED AND ADOPTED BY: Commissioners Court of Dimmit County, Texas
Effective Date: _____, 2020

I, Francisco G. Ponce, the undersigned, being the County Judge of Dimmit County, Texas and the Presiding Officer of the Commissioners Court of Dimmit County, Texas ("Commissioners Court"), do hereby certify that: (1) the above and foregoing instrument is the **Dimmit County, Texas Guidelines and Criteria for Tax Abatement and Other Economic Development** ("Guidelines"); (2) the Guidelines were duly considered, approved, and adopted by the Commissioners Court at a public meeting duly convened and conducted on this date; and (3) copies of the Guidelines may be obtained from the official minutes of the Commissioners Court filed with and maintained by the County Clerk of Dimmit County, Texas, and from the internet website maintained by Dimmit County, Texas at www.dimmitcounty.org.

SIGNED on this ____ the day of _____, 2020.

Francisco G. Ponce, County Judge
Dimmit County, Texas

ATTEST:

Mario Z. Garcia, County Clerk
Dimmit County, Texas

or

Deputy County Clerk
Dimmit County, Texas

APPENDIX

EXHIBIT A

**(Dimmit County, Texas: Application for Economic Development
Agreement or Tax Abatement Agreement)**

DIMMIT COUNTY, TEXAS:
APPLICATION FOR ECONOMIC DEVELOPMENT
AGREEMENT OR TAX ABATEMENT AGREEMENT

TYPE OF PROPOSED AGREEMENT:

_____ **Economic Development Agreement without Tax Abatement** (with Project proposed for \$ _____ of taxable property value, _____ permanent jobs, and _____ temporary jobs); and/or

_____ **Tax Abatement Agreement** (with Project proposed for \$ _____ of taxable property value, _____ permanent jobs, and _____ temporary jobs)

APPLICANT INFORMATION:

APPLICANT: _____
Contact Representative: _____
Address: _____
Telephone: _____
E-mail: _____

ATTORNEY: _____
Contact Representative: _____
Address: _____
Telephone: _____
E-mail: _____

ENGINEER: _____
Contact Representative: _____
Address: _____
Telephone: _____
E-mail: _____

SURVEYOR: _____
Contact Representative: _____
Address: _____
Telephone: _____
E-mail: _____

DEVELOPMENT PROJECT NAME: _____

AFFECTED COUNTY COMMISSIONER PRECINCT: _____

PROJECT TRACT SIZE AND LOCATION: _____

PROJECT TYPE AND USE: _____

AFFECTED TAXING ENTITIES: _____

TOTAL PROJECT LOTS, PARTS, OR DIVISIONS: _____

NAMES OF NEAREST PUBLIC ROADS: _____

UTILITY SERVICE PROVIDERS: _____

INSTRUCTIONS AND REQUIRED INFORMATION

(1) This is an Application for Economic Development Agreement or Tax Abatement Agreement (“Application”) submitted to Dimmit County, Texas (“County”) by Applicant. This Application must be completed, executed, and delivered by Applicant to the County in compliance with the active **Dimmit County, Texas Guidelines and Criteria for Tax Abatement and Other Economic Development** (“Guidelines”) approved by the Commissioners Court of Dimmit County, Texas (“Commissioners Court”). The contents of the Guidelines are incorporated by reference, including all special definitions.

(2) Unless otherwise designated, the past, present, or future tense shall each include the other, the masculine, feminine, or neuter gender shall each include the other, and the singular and plural number shall each include the other, where necessary for a correct meaning.

(3) Copies of the Guidelines may be obtained from the: office of the County Judge, Dimmit County, Texas, Dimmit County Courthouse Annex, 212 North 4th Street, Carrizo Springs, Texas 78834 (830-876-9904 office telephone); or the County’s internet website maintained at www.dimmitcounty.org.

(4) This Application and the following documents are required to be submitted for review to the County regarding a proposed Agreement: the Application documents described in the Guidelines. Please attach all required documents to this Application and add additional sheets if necessary. At the time of Application delivery, Applicant must deliver payment to the County of all Application fees, if any are required, to the following County representative: County Judge, Dimmit County, Texas, at the address listed in above item (3).

(5) Pursuant to the Guidelines, is Applicant an eligible Applicant for the proposed Agreement, including being the current owner, lessor, or lessee of the Project property? ANSWER: ___YES; ___NO. If YES, please attach documents which identify and describe Applicant’s active ownership, lessor, or lessee status regarding said property. If NO, please attach documents describing when that status regarding said property will be established.

(6) Is any part of the Project located within (a) another county, or (b) the city limits or extraterritorial jurisdiction of an incorporated municipality? ANSWER: ___YES; ___NO. If YES, identify said county and/or municipality: _____.

(7) Is Applicant requesting that a variance to the Guidelines be granted for the Project, proposed Agreement, or this Application? ANSWER: ___YES; ___NO. If YES, identify with attached documents all issues and arguments for the requested variance, including a description of all potential witnesses who may testify or otherwise provide information in support of the requested variance.

(8) Will any land, improvements, roads, streets, utility or transportation infrastructure, or facilities be dedicated to public use for the Project? ANSWER: ___YES; ___NO. If YES, identify with attached documents said matters, including all reports, plans, drawings, and specifications related to the dedicated land, improvements, infrastructure, or facilities.

(9) Will the Project be served by public electricity, gas, water, or sewer utilities? ANSWER: ___YES; ___NO. If YES, identify with attached documents the public utility providers, including all reports, plans, drawings, and specifications related to those proposed utility facilities for the Project.

(10) Will the Project be served by a private water wells or septic/OSSF systems? ANSWER: ___YES; ___NO. If YES, identify with attached documents those wells and systems, including all reports, plans, drawings, and specifications related to those proposed facilities for the Project.

(11) Will the Project development require a permit or other approval by another government or private entity? ANSWER: ___YES; ___NO. If YES, identify with attached documents the permit issuing entities, including copies of any active permits obtained from those entities for the Project.

(12) Is the Project development site located in a floodplain as defined by law? ANSWER: ___YES; ___NO. If YES, identify with attached documents all floodplain areas in which all or part of the Project development site is located.

(13) Has Applicant paid all application fees, if any are required, by the County or other government or private entity, for Project development? ANSWER: ___YES; ___NO. If NO, please attach documents identifying the entity requiring the application fee, any submitted application, and an explanation regarding the absence of fee payment. If YES, please attach documents showing the submitted application and payment of the application fee.

(14) Does a delinquent tax liability or tax lien exist on any real or personal property made the subject of the proposed Project development? ANSWER: ___YES; ___NO. If YES, please attach documents identifying said liability or lien. If NO, please attach documents (in the form of a tax certificate or other government document) showing that no such liability or lien exists.

(15) Has construction commenced regarding the Project? ANSWER: ____ YES; ____ NO.
If Yes, please attached documents describing when, where, and what Project construction activities commenced.

(16) Regarding a requested **Economic Development Agreement without Tax Abatement** for the Project, please attach documents which identify and describe all facts, Project or Agreement matters, and other information (including a proposed draft Agreement if available) necessary or desired to be submitted in support of this Application in compliance with Articles 1, 2, 3, and 5 of the Guidelines.

(17) Regarding a requested **Tax Abatement Agreement** for the Project, please attach documents which identify and describe all facts, Project or Agreement matters, and other information (including a proposed draft Agreement if available) necessary or desired to be submitted in support of this Application in compliance with Articles 1, 2, 4, and 5 of the Guidelines.

EXECUTION AND RECEIPT OF APPLICATION

THE APPLICANT NAMED BELOW HEREBY CERTIFIES AND STATES THE FOLLOWING:

I have read the active **Dimmit County, Texas Guidelines and Criteria for Tax Abatement and Other Economic Development** approved by the Commissioners Court of Dimmit County, Texas. All documents required by the Guidelines for this Application have been prepared by me or on my behalf and are attached, including full payment to the County for all application fees, if any are required.

Applicant: _____
Applicant Representative: _____
Printed Name: _____
Title: _____
Date: _____, 20____

RECEIPT BY DIMMIT COUNTY:

Received By: _____
Printed Name: _____
Title: _____
Dimmit County, Texas
Date: _____, 20____