

PUBLIC HEARING DRAFT PROPOSED

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

Effective Date: March 28, 2022

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ARTICLE 1 -- ADMINISTRATIVE PROVISIONS

§ 1.1 Enactment

- (A) **County and Governing Body.** DeWitt County, Texas is a duly organized and operating county pursuant to the constitution and laws of the State of Texas, and the DeWitt 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 document to be the **DeWitt County, Texas Guidelines and Criteria for Tax Abatement and Other Economic Development** (“Guidelines”), which document has been lawfully considered, approved and adopted, and furthermore shall be implemented, pursuant to and in compliance with the legal authority herein described.
- (C) **Application.** These Guidelines constitute an economic development program for DeWitt County, Texas, which program is authorized by law and shall be applied and implemented regarding proposed Projects, Applications, and Agreements submitted by eligible Applicants to the County requesting: (1) economic development incentives authorized to be granted by Texas counties pursuant to Chapter 381 of the Texas Local Government Code, including tax abatement; (2) tax abatement authorized to be granted by Texas counties pursuant to Chapter 381 of the Texas Local Government Code and Chapter 312 of the Texas Tax Code; and (3) economic development incentives and/or or tax abatement authorized to be granted by Texas counties pursuant to 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 -- unless otherwise expressly stated in the Guidelines: (1) all such incentives authorized for Texas counties by Chapter 381 of the Texas Local Government Code, including tax abatement; and (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 other applicable authority.

§ 1.2 Public Purpose and County Discretion

- (A) **Identification of Public Purpose.** By enacting and implementing the Guidelines, the Commissioners Court is committed to improving the economic growth and development of DeWitt County, Texas and the quality of life for the public. The 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 public purposes:
 - (1) to stimulate, encourage, and develop business location and commercial activity in DeWitt County, Texas;

- (2) to promote and advertise said county and its vicinity to attract businesses, visitors, and tourism;
- (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 its people;
- (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, and 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 ongoing and continuous improvements of the quality of life for the public;
- (7) to encourage and enhance quality business, commercial, and manufacturing development in said county to attract and retain high quality development and jobs;
- (8) to develop and expand the local economy by promoting and encouraging development, modernization, and redevelopment that enhances the local economic base, quality of life for the public, diversification and expansion of jobs, and the creation of revenue for said county;
- (9) to protect and enhance the fiscal ability of said county to provide high quality public services for the safety, convenience, comfort, and enjoyment of the public; and
- (10) all other public purposes described in the Guidelines.

(B) **Accomplishment of Public Purpose.** The enactment and implementation of the Guidelines shall achieve or substantially accomplish all public purposes herein described.

- (C) **Periodic Review.** The Guidelines shall be reviewed in a timely manner and 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.
- (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 to compete favorably for positive economic growth in DeWitt 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, or approve or not approve (in whole or in part) a proposed or requested economic development incentive, Application, Agreement, grant, or Project submitted to the County.
 - (3) 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 authorized by the legal authority herein described.

§ 1.3 Conditions Precedent and Notice

- (A) **Conditions Precedent.** All conditions precedent and notice for the lawful enactment of the Guidelines have been accomplished.
- (B) **Notice.** Unless otherwise designated, a notice or document submission to the County required by the Guidelines shall be in writing and delivered to the County Judge at his office address hereafter described, by United States Postal Service certified mail, or by courier or hand-delivery, with proof of proper delivery to the County established by a delivery receipt or other document. The County Judge’s business office address and telephone contact information are as follows:

County Judge
DeWitt County, Texas
DeWitt County Courthouse
307 North Gonzales Street

- § 1.4 **Effective Date.** The Effective Date of the Guidelines is March 28, 2022.
- § 1.5 **Partial Invalidity.** Should any part of this Guidelines instrument, or its application, implementation, or enforcement be determined invalid by a court, tribunal, administrative agency, or government office, the remainder of the Guidelines shall remain fully effective and operable.
- § 1.6 **Headings.** Separate headings contained in the Guidelines are for reference and convenience only and shall not limit or otherwise affect in any way the meaning of the provisions in the Guidelines.
- § 1.7 **Adopted Authority.** The following legal authority, as amended, including the express and implied regulatory powers and authority therein granted to the County, are adopted and approved by the County to support the approval, adoption, interpretation, implementation, and enforcement of the Guidelines: Article V, § 18 and Article III, § 52-a of the Texas Constitution; Chapters 81 and 381 of the Texas Local Government Code; Chapter 312 of the Texas Tax Code; and other authority described in the Guidelines.

ARTICLE 2 – DEFINITIONS AND INTERPRETATION

§ 2.1 Word Usage and Special Definitions

- (A) **Common Usage.** Unless specially defined, words and phrases used in the Guidelines shall be interpreted according to their common usage or meaning to result in the most reasonable application and interpretation.
- (B) **Special Definitions.** Unless otherwise designated, 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 property located in a tax abatement reinvestment zone or enterprise zone for authorized economic development purposes pursuant to the Guidelines.
 - (2) **“Affected Jurisdiction”** shall mean DeWitt 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 (either proposed or existing, and with or without tax

abatement), in which an economic development incentive authorized by Chapters 381 or 312 (or other applicable authority) is granted or described for a Project pursuant to an 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 in an Agreement of a tax abatement or other economic development incentive authorized by Chapters 381 or 312 (or other applicable authority) 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, as hereafter described.
- (5) **“Application”** shall mean the fully executed and complete application (including all supporting documents) submitted to the County in accordance with the Guidelines by an Applicant seeking: (a) the creation of a tax abatement reinvestment zone; or (b) a grant from the County in an Agreement of a tax abatement or other economic development incentive authorized by Chapters 381 or 312 (or other applicable authority) 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 placement or initial 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”** or **“Court”** shall mean means the Commissioners Court of DeWitt County, Texas.
- (10) **“County”** shall mean DeWitt County, Texas, including its elected officials, appointed officials, employees, agents, and representatives.
- (11) **“County Judge”** shall mean the County Judge of DeWitt County, Texas.
- (12) **“Development”** shall mean a man-made change to improved or unimproved real property, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or the storage of equipment or materials.

- (13) **“District”** shall mean the DeWitt County Appraisal District, including its directors, Chief Appraiser (**“Chief Appraiser”**) and other officers, employees, agents, and representatives, with its current business office located at 103 East Bailey Street, Cuero, Texas 77954 (telephone 361-275-5753).
- (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, or other resources to develop and administer an economic development program, (iii) entering into tax abatement agreements as authorized by Chapters 312, and (iv) making loans or grants of public money and providing personnel and services of a county; (b) pursuant to Chapter 312, entering into tax abatement agreements; and (c) any other economic development incentive authorized for Texas counties by other law.
- (15) **“Effective date”** shall mean March 28, 2022, the date these Guidelines were approved by the Commissioners Court.
- (16) **“Eligible property”** shall mean Project property eligible for tax abatement pursuant to the Guidelines, as described in § 4.8 of this instrument.
- (17) **“Facility”** shall mean Project improvements (including structures) completed or in the process of construction on the Project development site, which together comprise an integral whole.
- (18) **“Guidelines”** shall mean this instrument, the **DeWitt County Guidelines and Criteria for Tax Abatement and Other Economic Development**.
- (19) **“Ineligible property”** shall mean Project property ineligible for tax abatement pursuant to the Guidelines, as described in § 4.9 of this instrument.
- (20) **“TLMCID”** shall mean the Texas Labor Market & Career Information Department of the Texas Workforce Commission, an administrative agency of the State of Texas.
- (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 the unit cost of the Project’s operation. Modernization may result from the 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) **“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 DeWitt County, Texas and made the subject of an Application or request by Applicant for a grant of a tax abatement or other economic development incentive authorized by the Guidelines.
- (23) **“Recipient”** shall mean the person or business entity receiving the grant of a tax abatement or other economic development incentive from the County.
- (24) **“State”** shall mean the State of Texas and its administrative agencies.
- (25) **“Temporary jobs”** shall mean newly created Project employment positions on a full-time, part-time, but non-permanent basis, including construction, installation, maintenance, repair, or office jobs.
- (26) **“Texas Open Meetings Act”** shall mean Chapter 551 of the Texas Government Code, as amended.
- (27) **“Zone”** shall mean a tax abatement reinvestment zone or enterprise zone comprised of a contiguous land area located in DeWitt County, Texas and authorized by Chapters 312 or 381, Chapter 2303 of the Texas Government Code, or other 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.
- (B) **Incorporation by Reference.** All statements made in the preliminary recitals of the Guidelines, and all documents attached as the Appendix, are incorporated by reference.
- (C) **Minimum Requirements.** These Guidelines shall be considered as requiring minimum standards or requirements for Projects, Applications, and Agreements seeking the grant of economic development incentives from the County. These minimum standards and requirements shall be liberally construed in favor of the County.
- (D) **Repeal of Prior Guidelines.** All prior guidelines and criteria for tax abatement or other economic development enacted by the County before 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 involves or describes the grant of an economic development incentive authorized by Chapter 381, but not involving the grant of a tax abatement authorized by any legal authority, including Chapters 381 and 312. An Application, Project, or Agreement submitted to the County which involves or describes the grant of a tax abatement authorized by any legal authority, including Chapters 381 and 312, shall be governed by the provisions of Article 4 of the Guidelines. Furthermore, the provisions and requirements of Articles 1, 2, and 5 of the Guidelines are incorporated by reference for application in this Article 3.
- § 3.2 **Taxable Value.** In order for real or personal Project property located in DeWitt County, Texas to be considered for the grant of an economic development incentive from the County (exclusive of tax abatement pursuant to Article 4 of these Guidelines, as hereafter described), the Project must add at least \$5,000,000.00 in taxable property value (in aggregate) to the County tax roll.
- § 3.3 **Economic Development Factors.** In considering an Application or Agreement, the Project shall be considered by the County pursuant to the following economic development factors for analysis:
- (A) **Jobs.** All jobs proposed for the Project (including new, permanent, and temporary jobs) must be described fully in the Application, including the following issues:
- (1) the number and type of existing jobs to be retained because of the Project;
 - (2) the number and type of new jobs (whether temporary or permanent) to be created by the Project;
 - (3) the average amount of local payroll to be created because of the Project;
 - (4) the salaries/wages of the Project jobs, including (a) whether the annual salary or wage amount for each job shall exceed the DeWitt County, Texas average salary/wage rate, as determined by the Texas Labor Market & Career Information Department of the Texas Workforce Commission, pursuant to the TLMCID 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 benefits or other benefits will be paid by the employer; and

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

(B) **Fiscal Impact.** The fiscal impact of the Project must be described fully in the Application, including the following issues:

- (1) the kind, number, and location (including type, value, and productive life) of the existing and proposed Project property and improvements, including a description of the (a) Project completion timetable, and estimated length of time the Project will be in operation in said county, and (b) Project 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 because 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) the costs and expenses estimated to be incurred by the County (including without limitation attorney's fees and consultant fees), because of the County's review, consideration, negotiation, implementation, and administration of the Project, which costs, and expenses will be reimbursed to the County by Applicant;
- (8) a financial analysis of the (a) economic development incentives sought or to be received by Applicant for the Project from any source (including any governmental entity, business entity, or individual), (b) provisions identifying the source of funding for, and method for calculating, any economic development incentive sought

by Applicant for a Project Agreement, and (c) the 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 types and values 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 DeWitt 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 County's public infrastructure, 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 DeWitt County, Texas for ad valorem taxation in DeWitt County, Texas, and (c) designate DeWitt County, Texas as the situs for the appraisal, assessment, levy, and collection of taxes on said property by the County, and as the situs for the payment of said taxes by Applicant regarding said property, for the purposes of and pursuant to an Agreement executed with the County for the Project;
- (13) regarding potential litigation issues regarding a Project or Agreement, the description of the term, termination, default, remedy, indemnity, governmental immunity, and other potential litigation issues proposed by Applicant, including (a) default definitions and the application or restriction of default-cure or force majeure extension provisions, (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 County's 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 the County, (c) whether Texas law will be designated as the choice of law between the parties to control Agreement interpretation, (d) whether mandatory venue provisions designating a court of competent jurisdiction in DeWitt 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, or repair; (f) an acknowledgement of the County's protections afforded by the Texas doctrine of governmental immunity; and (g) the extent to which the County may terminate, cancel, or modify an Agreement due to a default;

- (14) whether Applicant proposes that an Agreement may be assigned by Applicant with or without County consent;
- (15) the estimated financial impact (whether positive or negative) on existing businesses in DeWitt County, Texas as a result of the Project;
- (16) the potential for new business activity to be attracted to DeWitt County, Texas because of the Project;
- (17) based on the size and scope of the Project, whether: (a) market conditions and the growth potential for the Project 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 DeWitt County, Texas; (c) Applicant has been involved in any business failures, bankruptcy, or litigation for the collection of delinquent financial obligations, including taxes; 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 DeWitt 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; and (e) a tax or other type of lien exists against the real or personal property of Applicant located in any jurisdiction.
- (18) regarding the maximization of Applicant's use of labor, goods, and

services supplied by DeWitt County 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 minimum amount not to include any amounts spent by Applicant for Project improvements, tax payments, or payments to the County or other Affected Jurisdiction as economic development grants or donations;

- (19) 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 expense) to ensure that (i) Project improvements acquired, placed, located, constructed, maintained, repaired, and operated by Applicant 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
- (20) the identity of Applicant’s: (a) affiliate business entities (whether subordinate or senior, 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 described fully in the Application, including the following issues:

- (1) the opportunities for DeWitt 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 because of the Project;
- (3) the impact on other taxing entities in said county because 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 DeWitt County, Texas, 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 thereof) shall be delivered to the County, in care of the County Judge at the business office address described in § 1.3.
- (B) **Content of Application and Agreement.** The fully executed and completed Application, and any Agreement, shall at minimum contain or address the following matters:
- (1) the submission 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) documents, and provisions in a proposed Agreement, 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 DeWitt County, Texas taxing entity does not exist regarding Applicant's owned or leased real or personal property located in said county;
 - (3) 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) a description of all issues, and the attachment of all documents, described in §§ 3.1-3.3 of this instrument;
 - (5) a map or plat, site plan, and detailed Project property metes and bounds description which sufficiently describe all land and other property to be made the subject of the Project and Agreement;
 - (6) in the case of a modernization Project, a description of the assessed value of the existing Project improvements, which shall be separately stated for real and personal property for the tax year immediately preceding the application date;
 - (7) pursuant to the economic development factors discussed in § 3.3 of this instrument, a description of the positive economic growth projected to occur in DeWitt County, Texas because of the construction, completion, and operation of the Project;

- (8) 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) a description of any monetary amounts, property, services, or economic development incentives granted or to be granted to the County, an Affected Jurisdiction, governmental entity, business entity, or individual by Applicant as consideration or reimbursement for the Agreement, or for the Project, including: (a) taxes and tax abatement; (b) payment in lieu of taxes; (c) deferral year payments; (d) economic development grants or donations, including road/bridge damage repair and/or maintenance obligations; and (e) reimbursement of costs (including attorney's fees) incurred regarding the Project;
- (10) relevant and applicable 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 DeWitt County, Texas;
- (11) relevant and applicable economic data and documents describing whether the market conditions and growth potential for the Project are favorable or unfavorable for Project success given economic and market conditions existing at the time of Application;
- (12) facts and document 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 documents and procedure;
- (13) a description of any requested variance, complete with all supporting facts and attached explanatory documents; and
- (14) all other necessary or desired information, material, or documents to support the Application, Project, or Agreement pursuant to the requirements of this instrument.

(C) 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 DeWitt 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 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: (A) Applicant is the actual owner, lessor, or lessee of the Project property; (B) the issuance of a building permit or commencement of construction for the Project has not occurred; and (C) the Project and Application meet the applicable requirements of the Guidelines.

§ 3.6 Creation of New and Commensurate Value. Economic development incentives may be granted by the County based on the applicable factors of analysis described in the Guidelines. Furthermore, the County may provide economic development incentives pursuant to the Guidelines, 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 reasonably commensurate with the value of any economic incentives granted by the County pursuant the Guidelines and said agreement.

§ 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 its full appraised value without tax abatement.

§ 3.8 Application Review/Action.

- (A) **County Discretion.** The Commissioners Court may grant an economic development agreement with authorized economic development incentives pursuant to Chapter 381 and this Article 3 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: (1) these Guidelines do not limit the lawful authority, discretion, and best business judgment of the Commissioners Court to consider or not consider, or

approve or disapprove (in whole or in part), any proposed or requested economic development incentive, Application, Agreement, grant, or Project submitted to the County; and (2) these Guidelines and any Application, Project, or Agreement submitted to the County for consideration, do 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 or not consider, or approve or disapprove (in whole or in part), any economic development incentive authorized by the legal authority herein described.

(B) **Submission Procedure.** Upon submission of an Application, Agreement, or Project to the County, the following review and action procedures are authorized by the Guidelines using the lawful authority, discretion, and best business judgment of the Commissioners Court:

- (1) Through a recorded vote at a public meeting conducted pursuant to the Texas Open Meetings Act, the Commissioners Court may consider or not consider, or approve or disapprove (in whole or in part) the Application.
- (2) Should the Commissioners Court approve (in whole or in part) the Application, the proposed Agreement between the parties for the Project shall be drafted and considered for approval by the Commissioners Court at a public meeting conducted pursuant to the Texas Open Meetings Act.
- (3) The final consideration and action of the Commissioners Court regarding approval of the proposed Agreement shall occur through a recorded vote at public meeting of the Court conducted pursuant to the Texas Open Meetings Act. Should the proposed Agreement be approved by the Commissioners Court, the Court's approval order and the approved and executed Agreement (or certified copies thereof) shall be filed in the official minutes of the Court and recorded in the Official Public Records (real property records) of DeWitt County, Texas on file in the office of the DeWitt County Clerk.
- (4) Regarding an approved and executed Agreement, the County will comply with the reporting requirements of § 381.005 of the Texas Local Government Code and § 403.0246(c) of the Texas Government Code, or other applicable statute.

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 ("Guidelines") pursuant to § 312.002 of the Texas Tax Code, and further, shall be posted on the County's internet website pursuant to the requirements of that statute.

- § 4.2 **Declaration of County Intent.** Pursuant to Chapters 312 and 381, the Commissioners Court: (A) elects for DeWitt County, Texas to become eligible to participate in tax abatement; and (B) 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, in order to stimulate economic development and business and commercial activity in DeWitt County, Texas, as described in this instrument.
- § 4.3 **Application.** These Article provisions shall apply to an Application, Project, or Agreement submitted to the County which involves or describes the grant of a tax abatement authorized by any legal authority, including Chapters 381 and 312. An Application, Project, or Agreement submitted to the County which involves or describes the grant of an economic development incentive authorized by Chapter 381, but not involving or describing a tax abatement, shall be governed by the provisions of Article 3 in this instrument. Furthermore, the provisions and requirements of Articles 1, 2, and 5 of this instrument are incorporated by reference for application in this Article 4.
- § 4.4 **Taxable Value.** In order for real or personal Project property located in DeWitt County, Texas to be considered for a grant of tax abatement from the County, the Project must add at least \$5,000,000.00 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 factors shall be considered by the County regarding a proposed Application, Project, or Agreement: the factors for analysis described in §§ 3.3-3.6 of this instrument are incorporated by reference; and these Article 4 provisions.
- § 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 being requested in the Application; (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 these Guidelines.
- § 4.7 **Creation of New and Commensurate Value.** Tax abatement may be granted by the County based on the applicable economic development factors of analysis described in these Guidelines. Furthermore, the County may grant tax abatement pursuant to this these Guidelines, 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 reasonably commensurate with the value of any economic incentives granted by the County pursuant to the Guidelines and said Agreement.
- § 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 by the County; however, nothing in these Guidelines shall limit the lawful authority, discretion, and best business judgment of the Commissioners Court to consider

or not consider or approve or disapprove (in whole or in part), any request for tax abatement.

§ 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) assets 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 Project or the County's Guidelines; (O) property located in a Zone and used by Applicant in violation of an Agreement or the County's Guidelines; 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; and (B) after the expiration of the abatement period specified in an Agreement; and/or (C) after the termination of the Agreement. Applicant's Ineligible Property in the Zone shall be assessed and taxed according to its full appraised value without tax abatement at all times.

§ 4.11 Application Procedure and Review.

- (A) **Application and Related Fee Required.** Applicant, as defined in these Guidelines, may request the creation of a tax abatement reinvestment zone, and/or tax abatement Agreement by submitting a written Application to the County Judge at the business office address noted in § 1.3. **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 DeWitt 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 Judge at the business office address noted 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/or Agreement, and furthermore, the Application shall contain sufficient documentation to verify and confirm those facts to the County.
- (C) **Zone or Agreement Application Contents.** An Application for the creation of a tax abatement reinvestment zone, and/or tax abatement Agreement at minimum shall contain the following matters and be fully executed by the Applicant as required by these Guidelines:

- (1) a fully executed and complete Application form, with all necessary or desired facts and supporting documents attached, as described in and in compliance with **Appendix/Exhibit A**;
- (2) the submission of attached Application documents, and provisions in a proposed Agreement, 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 DeWitt County, Texas taxing entity does not exist for Applicant's owned or leased real or personal property located in said county.
- (3) 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) a description of all issues, and the attachment of all documents, described in §§ 3.1-3.6 of this instrument;
- (5) all documents sufficient to describe in detail the Project in the proposed Zone;
- (6) 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 that show the proposed Zone is (a) entirely within DeWitt County, Texas, and (b) within, not within, or partially within the city limit boundaries of an incorporated municipality.
- (7) documents and facts sufficient to establish the eligibility of the Zone for residential tax abatement and/or commercial-industrial tax abatement;
- (8) a description of the proposed increase in economic development to occur in DeWitt 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) a description of all tangible personal property improvements for which a tax abatement will be requested;

- (10) a proposed timeline and construction schedule for completing and implementing Applicant's Project in the Zone;
- (11) 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 the proposed 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 a proposed tax abatement Agreement -- all information required by §§ 312.204-.205, and 312.211 of the Texas Tax Code;
- (14) a map or plat, site plan, and detailed property description which sufficiently describe all land and other property to be made the subject of the Agreement, including a description of Eligible Property for which a tax abatement is requested;
- (15) 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;
- (16) pursuant to an analysis of the designated economic development factors discussed in § 3.3 of this instrument, a description of the positive economic growth projected to occur in DeWitt County, Texas because of the completion and implementation of the Project;
- (17) 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;
- (18) 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;
- (19) a description of any monetary amounts, property, or services to be paid and/or delivered to the County by Applicant as consideration or reimbursement for the Agreement, including taxes, payment in lieu of taxes, deferral year payments, economic development grants or donations (including road/bridge damage repair and/or

maintenance obligations), and reimbursement of costs (including attorney's fees) incurred by the County regarding creation of the Zone or the review, negotiation, approval, implementation, and maintenance of the Agreement;

- (20) a description of any requested variance, complete with all supporting facts and attached documents; and
- (21) 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 Negotiation Discretion.** The Commissioners Court may grant a Zone Application and/or tax abatement Agreement pursuant to Chapters 381, 312, this Article 4, or other applicable authority, 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, or approve or not approve (in whole or in part) a proposed or requested tax abatement or other economic development incentive, Application, Agreement, grant, or Project submitted to the County.

(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 thereof) shall be delivered to the County, in care of the County Judge, at the business office described in §§ 1.3 and 4.11(A).

(F) **Application Review/Action.** Upon submission of a Zone and/or or tax abatement Agreement Application for a Project, the following review and action procedures are authorized by these Guidelines to be exercised pursuant to the lawful authority, discretion, and best business judgment, the Commissioners Court:

- (1) The creation of an enterprise zone and approval of any related tax abatement Agreement pertaining to property located in said zone, shall be governed by the applicable provisions of: these Guidelines; Chapters 551 (the Texas Open Meetings Act) and 2303 (regarding Enterprise Zones) of the Texas Government Code; and Chapters 312 and Chapter 381.
- (2) Regarding creation of a tax abatement reinvestment zone pursuant to Chapter 312, and approval of any related tax abatement Agreement pertaining to property located in said zone, the review

and action procedures hereafter described in this subparagraph (F) shall apply.

- (3) Should Applicant request to locate the Project in an area of DeWitt 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 these Guidelines, and the notice and other requirements of Chapters 312 and 381.
- (4) Through a recorded vote at a public meeting conducted pursuant to the Texas Open Meetings Act, the Commissioners Court may approve or not approve whether the Zone Application should be advanced procedurally to the public hearing required by law, including §§ 312.201 and 312.401 of the Texas Tax Code. Should the Commissioners Court determine that the Zone Application should advance procedurally to the required public hearing, said hearing shall be noticed and conducted as required by law, including the required newspaper publication notice, written notice to certain taxing entities, Texas Open Meetings Act agenda notice, and public hearing requirements described in Chapter 312. Upon completion of the public hearing, and should the proposed Zone be approved for creation by the Commissioners Court through a 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 said court.
- (5) Upon creation of the Zone as herein described, and should the Commissioners Court desire to consider approval of a proposed tax abatement Agreement for the Project in the Zone, the proposed Agreement between the parties shall be drafted and considered for approval by the Commissioners Court, pursuant to all notice required by law including: pursuant to Chapter 312, special 30-day posted written notice for the public, and special 7-day written notice delivered to certain taxing entities; and Texas Open Meetings Act agenda notice. The final consideration and action of the Commissioners Court regarding approval of the proposed tax abatement Agreement shall occur through a recorded vote at a regular public meeting of the Court conducted pursuant to the notice requirements of Chapter 312 and the Texas Open Meetings Act. Should the proposed tax abatement Agreement be approved by the Commissioners Court, the Court's approval order and the approved and executed Agreement (or certified copies thereof) shall be filed in the official minutes of the Court and recorded in the Official Public Records (real property records) of DeWitt County, Texas on

file in the office of the DeWitt County Clerk.

- (6) Notwithstanding anything to the contrary stated in the Guidelines, the Commissioners Court, using its lawful authority, discretion, and best business judgment, may consider or not consider, approve or disapprove (in whole or in part) a Zone Application, tax abatement Agreement Application, tax Abatement Agreement, or Project.

(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 designative representative of the Applicant, and by the County Judge on behalf of the County and its Commissioners Court. The Agreement at minimum shall contain and/or address the following matters:

- (1) the applicable 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 this instrument;
- (2) 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/type of construction, a time schedule for completing Project construction, sufficient mapping and property description for the Project, and list of all proposed Project facilities and improvements;
- (5) the term of Agreement, abatement period, deferral period (if any), termination, contractual obligations and remedies of the parties (financial or otherwise) in the event of default (including recapture of delinquent taxes, interest, and costs, payment of monetary amounts owed to the County, and/or reimbursement of County expenses including attorney's fees), rules for assignment, and the requirements for implementation and administration of the Agreement;
- (6) reasonable access to and inspection of Project land, property, improvements, facilities, and the business records of Applicant, by the County and the District to ensure compliance with the Agreement and controlling authority;

- (7) the kind, number, and location of all proposed Project improvements and facilities to be located in the Zone;
- (8) the limitation regarding the uses of the Applicant's Project property in the Zone, consistent with the County's Guidelines for the Zone and the County's general purpose of encouraging modernization, development, and redevelopment of the Zone during the Agreement;
- (9) a description of each term agreed by the parties to the Agreement;
- (10) maps showing: (a) existing uses and conditions of real property in the Zone; and (b) proposed improvements and uses in the Zone;
- (11) provisions describing default of the Agreement, and the County's remedies in the event of an Applicant default, including the rights of the County to recapture or 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;
- (12) provisions describing mandatory venue for any suit regarding the Agreement to be in a court of competent jurisdiction located in DeWitt County, Texas, or in the federal court designated for said county;
- (13) 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) documents and procedure.
- (14) a description of any monetary amounts, property, or services to be paid or delivered to the County by Applicant as consideration or reimbursement for the Agreement, including: (a) taxes; (b) payment in lieu of taxes; (c) deferral year payments; (d) economic development grants or donations (including road/bridge damage repair and/or maintenance obligations); and (e) reimbursement of costs (including attorney's fees) incurred by the County regarding

creation of the Zone or the review, negotiation, approval, implementation, and maintenance of the Agreement; and

- (15) all other matters required by Chapter 312 or these Guidelines for inclusion in the Agreement.

(H) **Administration of Agreements.** Regarding an approved and executed tax abatement Agreement, the County will comply with the reporting requirements of § 381.005 of the Texas Local Government Code and § 403.0246(c) of the Texas Government Code, or other applicable statute. 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 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 (iii) 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 Eligible Property, and Recipient 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 Eligible Property in said Zone at full value without tax abatement; and (d) Recipient 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 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 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 the Zone for ad valorem taxation in DeWitt County, Texas, said county to be designated in the Agreement as the situs for the appraisal, assessment, levy, and collection of taxes on said property by the County, and the payment of said taxes by the Recipient regarding said property, for the purposes of and pursuant to the Agreement.

(J) **Confidential Information.** All proprietary information acquired by the County from the Applicant or Recipient 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 Chapter 312 or Chapter 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 DeWitt 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.

- (L) **Term and Revision of Guidelines.** These Guidelines shall be effective and operable on the Effective Date. They shall remain in force for two years from the Effective Date unless amended or revised by the Commissioners Court pursuant to § 312.002 of the Texas Tax Code. 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, these Guidelines may be modified, renewed, eliminated, or discontinued, as allowed by law, provided that such actions shall not affect existing contracts.
- (M) **County Statutory Discretion.** Pursuant to § 312.002 of the Texas Tax Code, the adoption of these Guidelines by the Commissioners Court does not: (1) limit the discretion of the Court to decide whether to enter into a specific tax abatement agreement; (2) limit the discretion of the Court to delegate to its officers or employees the authority to determine whether or not the 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 the Court consider or grant a specific application or request for tax abatement.

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 proposed Applications, Agreements, and Projects.

§ 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 as described in this instrument.

(B) **Review and Action.** A variance may only be granted from these Guidelines if the variance:

- (1) is granted pursuant to: (a) a recorded public vote of the Commissioners Court conducted at a public meeting in compliance with the Texas Open Meetings Act; (b) the lawful authority, discretion, and best business judgment of the Commissioners Court;

- (2) is granted in full compliance with this § 5.2; and

- (3) does not violate any applicable provision of Chapters 381, 312, or other state law or local regulation.
- (C) **Prohibited Variance.** The Commissioners Court may not grant a variance regarding the following matters: (1) a variance which violates this § 5.2, including the standards hereafter described; and (2) the payment of any required fees, unless the variance Applicant is a unit of government, and the fees are waived by a variance grant. Pecuniary hardship, standing alone, shall not be deemed to constitute an undue hardship or special circumstance to support a variance. Furthermore, the total duration of an abatement period in a tax abatement Agreement may not exceed 10 years, as required by § 312.007(b) of the Texas Tax Code; therefore, no variance can be granted regarding that mandatory statutory issue.
- (D) **Variance Standards --** A variance to these Guidelines may be granted by the Commissioners Court, within its lawful authority, discretion, and best business judgment, only when the submitted evidence and the attendant circumstances establish the following:
- (1) a special circumstance must exist which, if these Guidelines are strictly enforced, will deprive Applicant of a privilege or use enjoyed by similarly situated developers with similarly timed development of the same nature and scope;
 - (2) the variance will be a minimum departure from these Guidelines, and will not be violation of federal, state, or other local laws;
 - (3) the variance will not create a special privilege or use for Applicant that is not enjoyed by similarly situated property or developers with similarly timed development of the same nature or scope;
 - (4) the variance must be based on the general intent of these Guidelines, be in the public interest, and must not prevent or impair the safe, healthy, or orderly development of other land in the County in accordance with these Guidelines; and
 - (5) the facts 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; and (b) a delinquent ad valorem tax liability owed to any DeWitt County taxing entity does not exist for Applicant's owned or leased real or personal property located in said county.

[End of Guidelines]

CERTIFICATION OF ADOPTION

APPROVED BY: The Commissioners Court of DeWitt County, Texas

ADOPTION DATE: March 28, 2022

I, Daryl L. Fowler, the undersigned, being the County Judge of DeWitt County, Texas and the Presiding Officer of the Commissioners Court of DeWitt County, Texas (“Commissioners Court”), do hereby certify that the above and foregoing document constitutes the DeWitt County, Texas Guidelines and Criteria for Tax Abatement and Other Economic Development (“Guidelines”) which was duly considered, approved, and adopted by the Commissioners Court at a public meeting duly convened and conducted on this date. Copies of the Guidelines may be obtained from the official minutes of the Commissioners Court filed with and maintained by the County Clerk of DeWitt County, Texas, and from the internet website maintained by the county at www.co.dewitt.tx.us.

SIGNED this the 28th day of March, 2022.

Hon. Daryl L. Fowler, County Judge
DeWitt County, Texas

ATTEST:

County Clerk or Deputy County Clerk
DeWitt County, Texas

Attorneys for DeWitt County, Texas:
Bickerstaff Heath Delgado Acosta LLP
By: Charles R. Kimbrough
3711 South Mopac Expressway
Building One, Suite 300
Austin, Texas 78746
Telephone: (512) 472-8021

APPENDIX

EXHIBIT A

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

DE WITT 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 DeWitt County, Texas (“County”) by Applicant. This Application must be completed, executed, and delivered by Applicant to the County in compliance with the active **DeWitt County, Texas Guidelines and Criteria for Tax Abatement and Other Economic Development** (“Guidelines”) approved by the Commissioners Court of DeWitt 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) This fully completed and executed Application shall be delivered to the County Judge, DeWitt County, Texas, DeWitt County Courthouse, 307 North Gonzales Street, Cuero, Texas 77954 (telephone 361-275-0916). Copies of the Guidelines may be obtained from the official minutes of the Commissioners Court filed with and maintained by the County Clerk of DeWitt County, Texas, and from the internet website maintained by said county at www.co.dewitt.tx.us.

(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 County Judge of DeWitt County, Texas at the business office address noted in 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 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, drainage, 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 pertaining to the dedicated land, improvements, infrastructure, or facilities.

(9) Will the Project be served by public utility service for 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 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, or on any real or personal property of the Applicant located in DeWitt County, Texas? ANSWER: ___ YES; ___ NO. If YES, please attach

documents identifying said liability or lien. If NO, please attach documents (i.e., 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 have 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

THE APPLICANT NAMED BELOW HEREBY CERTIFIES AND STATES THE FOLLOWING:

I have read the active **DeWitt County, Texas Guidelines and Criteria for Tax Abatement and Other Economic Development** approved by the Commissioners Court of DeWitt 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 COUNTY:

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