

ORDER NO. \_\_\_\_\_

**AN ORDER OF THE COMMISSIONERS COURT OF STERLING COUNTY, TEXAS: (1) APPROVING THE TAX ABATEMENT GUIDELINES AND CRITERIA FOR STERLING COUNTY, TEXAS; (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**, Sterling 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 Sterling 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 Sterling 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 **Tax Abatement Guidelines and Criteria for Sterling County, Texas** ("Guidelines"), on this the effective date of the Guidelines, in the form and scope described in the attached **Exhibit 1**, in order to stimulate economic development and business and commercial activity in Sterling 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 Sterling 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 and preliminary recitals of this order, and all attached documents, are incorporated by reference.
- (3) The Commissioners Court hereby approves, adopts, and shall implement the **Tax Abatement Guidelines and Criteria for Sterling County, Texas**, in the form and scope described in the attached **Exhibit 1**, in order to stimulate economic development and business and commercial activity in Sterling County, Texas.
- (4) All prior enacted County guidelines and criteria for tax abatement are rescinded, superseded, and replaced by the enactment of the attached Guidelines.
- (5) Pursuant to the authority herein described, the Commissioners Court: (a) elects for Sterling 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 Sterling 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, adopted, and approved at a meeting held in compliance with Chapter 551 of the Texas Government Code, the Texas Open Meetings Act.

**ORDERED, ADOPTED, AND APPROVED** on the 14<sup>th</sup> day of September, 2020.

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

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County Judge  
Sterling County, Texas

\_\_\_\_\_  
County Commissioner, Precinct 1  
Sterling County, Texas

\_\_\_\_\_  
County Commissioner, Precinct 2  
Sterling County, Texas

\_\_\_\_\_  
County Commissioner, Precinct 3  
Sterling County, Texas

\_\_\_\_\_  
County Commissioner, Precinct 4  
Sterling County, Texas

**ATTEST:**

\_\_\_\_\_  
County Clerk  
Sterling County, Texas

or

\_\_\_\_\_  
Deputy County Clerk  
Sterling County, Texas

**EXHIBIT 1**

**(Tax Abatement Guidelines and Criteria for Sterling County, Texas;  
Effective Date: September 14, 2020)**

**TAX ABATEMENT GUIDELINES AND CRITERIA**  
**FOR STERLING COUNTY, TEXAS**  
**(Effective Date: September 14, 2020)**

**I. Preliminary Matters**

1.1. **County and Governing Body.** Sterling County, Texas is a duly organized and operating county of the State of Texas, and the Sterling County Commissioners Court is the governing body of the County.

1.2. **Enactment.** The County, acting by and through its Commissioners Court, hereby declares this instrument, the **Sterling County, Texas Guidelines and Criteria for Tax Abatement**, to be lawfully enacted, adopted, and approved. These Guidelines are enacted and shall be implemented pursuant to and in compliance with the legal authority described in this instrument, including Chapter 381 of the Texas Local Government Code, Chapter 312 of the Texas Tax Code, and other applicable authority, to establish a uniform policy of tax abatement designed to provide long term, significant, and positive economic growth for said county in the public interest.

1.3. **Website Posting.** These Guidelines shall be posted on the County's internet website as required by Chapter 312 of the Texas Tax Code.

1.4. **Application.** These Guidelines shall constitute a County economic development program which is authorized by law, and the Guidelines shall be implemented regarding proposed Projects, Applications, and Agreements submitted by eligible Applicants to the County requesting a grant of tax abatement, as authorized by Chapter 381 of the Texas Local Government Code, Chapter 312 of the Texas Tax Code, and any other applicable authority.

1.5. **Authorized Economic Development Incentives.** Using its lawful authority, discretion, and best business judgment, the Commissioners Court may consider the following tax abatement and/or other 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: as authorized by Chapter 381 of the Texas Local Government Code, Chapter 312 of the Texas Tax Code, and any other applicable authority.

1.6. **Identification of Public Purpose.** By enacting and implementing these Guidelines, the Commissioners Court is committed to promoting the economic growth and development of Sterling 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 non-exclusive, worthwhile, and declared public purposes:

- (a) to stimulate, encourage, and develop business location and commercial activity in Sterling County, Texas;

- (b) to promote and advertise said county and its vicinity to attract businesses, visitors, and tourism;
- (c) 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;
- (d) 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;
- (e) 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 (i) increased local tax bases, (ii) increased employment, salaries, and wages, (iii) increased wholesale and retail sales, and (iv) a decrease in the number of families living in poverty;
- (f) to encourage and enhance quality business, commercial, and manufacturing development in said county in order to attract and retain high quality development and jobs;
- (g) to develop and expand the local economy by promoting and encouraging the (i) development, modernization, and redevelopment that enhances the local economic base and quality of life for the public, (ii) diversification and expansion of jobs, and (iii) creation of revenue for said county; and
- (h) 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.

1.7. **Accomplishment of Public Purpose.** The enactment and implementation of these Guidelines shall achieve or substantially accomplish the public purposes herein described.

1.8. **Term, Periodic Review, 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. 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, 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.

**1.9. County Discretion.**

- (a) Pursuant to its lawful authority, discretion, and best business judgment, the Commissioners Court may negotiate a proposed tax abatement or other authorized economic development incentive on a case by case basis, in order to compete favorably for positive economic growth.
- (b) The Commissioners Court may grant a tax abatement or other economic development incentive on the same or similar terms as other taxing entities having jurisdiction regarding a proposed business property or Project -- but the County is not required to do so. 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, not consider, approve, disapprove, modify, or decline any proposed tax abatement or other authorized economic development incentive.
- (c) These Guidelines shall not create any property, contract, or other legal right in any Applicant, person, or business entity for the County to consider, approve, or grant (in whole or in part) any tax abatement or other authorized economic development incentive.

**1.10. Effective Date.** The Effective Date of these Guidelines is September 14, 2020.

**1.11. Conditions Precedent.** All conditions precedent and notice for the lawful enactment of these Guidelines have been accomplished.

**1.12. Notice.** 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, Sterling County, Texas, Sterling County Courthouse at 609 4<sup>th</sup> Street,



Sterling City, Texas 76951 (office location), or P.O. Box 819, Sterling City, Texas 76951 (mailing address), and 325-378-3481 (office telephone).

1.13. **Partial Invalidity.** Should any part of this instrument be determined invalid by a court, other tribunal, administrative agency, or government office, the remainder shall remain fully effective and operable.

1.14. **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.

1.15. **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 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.

1.16. **Declaration of County Intent.** Pursuant to Chapters 312 and 381, the Commissioners Court hereby: (a) elects for Sterling County, Texas to become eligible to participate in tax abatement and other economic development; and (b) declares the County's 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 Sterling County, Texas as described in this instrument.

## **II. Definitions and Interpretation**

2.1. **Common Word 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.

2.2. **Special Definitions.** Unless otherwise designated in this instrument, the following special definitions shall apply:

- (a) **"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.
- (b) **"Affected Jurisdiction"** shall mean Sterling 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.

- (c) **“Agreement”** shall mean an economic development agreement between the County and Applicant in which an economic development incentive, including tax abatement, authorized by this instrument is granted or described for a Project pursuant to an approved Application.
- (d) **“Applicant”** shall mean the person or business entity seeking through a Project Application: (i) the creation of a tax abatement reinvestment zone or enterprise zone; or (ii) a grant from the County by an Agreement of a tax abatement or other economic development incentive authorized by 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. As used herein, Applicant also shall include the Applicant’s directors, members, managers, officers, employees, agents, permitted assigns. and successors.
- (e) **“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: (i) the creation of a tax abatement reinvestment zone or enterprise zone; or (ii) a grant from the County by an Agreement of a tax abatement or other economic development incentive authorized by this instrument.
- (f) **“Chapter 312”** shall mean Chapter 312 of the Texas Tax Code.
- (g) **“Chapter 381”** shall mean Chapter 381 of the Texas Local Government Code.
- (h) **“Chapter 551”** shall mean Chapter 551 of the Texas Government Code, the Texas Open Meetings Act.
- (i) **“Chapter 2303”** shall mean Chapter 2303 of the Texas Government Code relating to an enterprise zone.
- (j) **“Commencement of construction”** shall mean the placement or initial construction of Project improvements after the Effective Date at a Project site in a tax abatement reinvestment zone or enterprise zone; however: (i) the storage of building materials shall not constitute commencement of construction; and (ii) design,

engineering, site preparation, and similar preliminary activities shall not constitute commencement of construction.

- (k) **“Commissioners Court”** shall mean means the Commissioners Court of Sterling County, Texas.
- (l) **“County”** shall mean Sterling County, Texas, including its elected officials, appointed officials, employees, and agents.
- (m) **“County Judge”** shall mean the County Judge of Sterling County, Texas.
- (n) **“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 (i) activity related to buildings or other structures, (ii) mining, dredging, filling, grading, paving, excavation or drilling operations, or (iii) the storage of equipment or materials.
- (o) **“District”** shall mean the Sterling County Appraisal District, including its directors, chief appraiser (“Chief Appraiser”), other officers, employees, agents, and representatives, with its current business office located at 616 4<sup>th</sup> Street, Sterling City, Texas 76951 (voice telephone 325-378-7711).
- (p) **“Economic development incentive”** shall include the following authorized for Texas counties: (i) pursuant to § 381.004 of the Texas Local Government Code (1) using county employees or funds for an economic development program, (2) accepting contributions, gifts, donations, or other resources to develop and administer an economic development program, (3) tax abatement Agreements as authorized by Chapters 312 and 381, and (4) making loans and grants of public money and providing personnel and services of a county; (ii) pursuant to Chapters 312 and 381, tax abatement Agreements; and (iii) any other economic development incentive authorized by law for Texas counties.
- (q) **“Effective Date”** shall mean September 14, 2020, the date these Guidelines were approved by the Commissioners Court.
- (r) **“Eligible Property”** shall mean Project property designated as eligible for tax abatement pursuant to these Guidelines.
- (s) **“Facility”** shall mean Project improvements (including structures)

completed or in the process of construction on the development site, which together comprise an integral whole.

- (t) **“Guidelines”** shall mean this instrument.
- (u) **“Ineligible Property”** shall mean Project property designated as ineligible for tax abatement pursuant to these Guidelines.
- (v) **“TLMCID”** shall mean the Texas Labor Market & Career Information Department of the Texas Workforce Commission.
- (w) **“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.
- (x) **“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 Sterling County, Texas and: (i) made the subject of an Application submitted by an Applicant; or (ii) made the subject of an Application request by an Applicant for a grant of a tax abatement or other economic development incentive authorized by this instrument.
- (y) **“State”** shall mean the State of Texas and its administrative agencies.
- (z) **“Temporary jobs”** shall mean newly created Project employment positions on a full-time, part-time, but non-permanent, basis, including construction, installation, maintenance, or office jobs.
- (aa) **“Zone”** shall mean a tax abatement reinvestment zone or enterprise zone comprised of a contiguous land area located in Sterling County, Texas and authorized by Chapters 312 or 381, Chapter 2303 of the Texas Government Code, or other applicable authority.

2.3. **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.

2.4. **Incorporation by Reference.** All statements made in the preliminary recitals of this instrument are incorporated by reference.

2.5. **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.

2.6. **Repeal of Prior Guidelines.** All guidelines and criteria for tax abatement enacted by the County prior to the Effective Date are hereby rescinded, repealed, and replaced by these Guidelines.

### **III. Minimum Standards**

3.1 **Taxable Value.** In order for Eligible Property located in Sterling County, Texas for a Project to be considered for a grant by the County of a tax abatement or other economic development incentive authorized by this instrument, the Project must add at least \$2,000,000.00 in taxable property value (in aggregate) to the County tax roll.

3.2 **Applicant Eligibility.** An Applicant shall be eligible to apply to the County for the grant of a tax abatement or other economic development incentive authorized by this instrument for a Project if: (a) a Zone already has been established regarding a Project, or a Zone is 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 this instrument.

3.3 **Creation of New and Commensurate Value.** The County may grant tax abatement for a Project only for the new or additional value of Eligible Property accrued subsequent to the filing of an Application and specified in the Agreement executed between the County and Applicant pursuant to these Guidelines, however: (a) a tax abatement or other economic development incentive grant by the County for a Project may occur only to the extent the revenue and/or other benefits realized by the County for the Project exceed a minimum amount established by the Project Agreement; and (b) those public benefits must be commensurate with the value of any tax abatement or economic development incentives granted by the County.

3.4 **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 lawful authority, discretion, and best business judgment of the Commissioners Court to consider,

adopt, grant, modify, or decline any request for tax abatement or the grant an authorized economic development incentive, as herein described.

**3.5 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.

**3.6 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.

**3.7 Economic Development Factors.** The County may grant a tax abatement or other economic development incentive authorized by this instrument for a Project based on a review and analysis of the following economic development factors and issues identified and described in an Application:

- (a) **Jobs.** All jobs proposed for the Project (including new, permanent, and temporary jobs), will be considered, including:
  - (i) the number and type of existing jobs to be retained as a result of the Project, the number and type of new jobs (whether temporary or permanent) to be created by the Project, and the average amount of local payroll to be created as a result of the Project;
  - (ii) salaries/wages of the Project jobs, including (1) whether the annual salary or wage amount for each job shall exceed the Sterling 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, (2) a description of all health care, pension, or other benefits associated with each job, and (3) whether

all or part of the employee health care benefits or other benefits will be paid by the employer; and

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

(b) **Fiscal and Economic Impact.** The fiscal and overall economic impact of the Project will be considered, including the:

- (i) kind, number, and location (including type, value, and productive life) of the existing and proposed Project property and improvement;
- (ii) Project construction schedule, commencement of operations, and estimated length of time the Project will be operating in Sterling County, Texas;
- (iii) uses to be applied to said property and improvements;
- (iv) amount of real and personal taxable property value to be added to the local tax rolls as a result of the Project;
- (v) amount of wholesale or retail sales of goods or services to be produced in said county by the Project;
- (vi) 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;
- (vii) 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;
- (viii) 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;

- (ix) whether the County's costs and expenses incurred (including attorney and/or other consultant fees) for the County's review, consideration, negotiation, implementation, and administration of the Project will be reimbursed by Applicant;
- (x) a financial analysis of the (1) 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), (2) provisions identifying the source of funding and method for calculating a tax abatement or other an economic development incentive sought for the Project, and (3) 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), for the Project, including therein (a) Applicant's proposed depreciation schedules and values for Project improvements (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), (b) economic incentive values being sought from all Affected Jurisdictions, and (c) value of the Project improvements after the conclusion of the Project economic incentive grant period;
- (xi) the description of the method and means for measuring whether Applicant and any other responsible parties have met their obligations pursuant to a Project Agreement;
- (xii) the population growth estimated for Sterling County, Texas for the life of the Project, as a direct result of the Project;
- (xiii) 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 its public road and bridge system;

- (xiv) whether Applicant will: (1) 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; (2) render its Project improvements, eligible property, and ineligible property located in Sterling County, Texas for ad valorem taxation in Sterling County, Texas; and (3) designate Sterling 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;
- (xv) regarding a Project Agreement, a description of the proposed term, termination, default, remedy, indemnity, governmental immunity, assignment, and other potential administration and litigation issues, including without limitation: (1) 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, (2) the extent to which the County may pursue all litigation remedies allowed by law or equity due to an Applicant default, including (a) the recapture of the tax abatement and/or economic development incentives granted to Applicant by the Agreement (and all penalties and interest allowed by law), and (b) 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; (3) whether Texas law will be designated as the choice of law between the parties to control Agreement interpretation and performance; (4) whether mandatory venue provisions designating a court of competent

jurisdiction in Sterling County, Texas, or the proper federal court for said county, will be agreed as the situs for litigation; (5) a description of County indemnity rights for liability issues and events occurring as a result of Project construction, operation, maintenance, or repair; and (6) the extent to which the County may terminate, cancel, or modify an Agreement with or without cause;

- (xvi) the estimated financial impact (whether positive or negative) on existing businesses in Sterling County, Texas as a result of the Project;
- (xvii) the potential for new business activity to be attracted in said county as a result of the Project;
- (xviii) based on the size and scope of the Project, whether:
  - (1) market conditions and the growth potential are favorable or unfavorable for Project success given economic and market conditions; (2) Applicant has the financial strength and capability to successfully undertake, complete, operate, and maintain the Project for its estimated life in Sterling County, Texas; (3) 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 (4) whether an Applicant delinquency for the payment of ad valorem taxes currently exists, or has existed in the past, regarding the real or personal property located in Sterling County, Texas owned or leased by Applicant and made the subject of the Project, or any other real or personal property owned or leased by Applicant in any jurisdiction;
- (xix) whether Applicant will agree to spend a designated minimum amount annually for the life of the Project in Sterling County, Texas (i.e., a local spend commitment), said minimum 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 or other

Affected Jurisdiction as economic development grants or donations;

- (xx) whether Applicant will: (1) 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 (a) Project improvements are in compliance with a Project Agreement, and (b) Applicant compliance has occurred with all terms and provisions of a Project Agreement; and (2) certify annually to the governing body of each Affected Jurisdiction that Applicant is in compliance with the Project Agreement; and
  - (xxi) the identity of Applicant's (1) affiliate business entities (whether senior or subordinate affiliates, or partially or wholly owned, held, or operated), and (2) directors, partners, officers, members, managers, and senior management staff, and those of an Applicant affiliate.
- (c) **Community Impact.** The community impact of the Project will be considered, including the:
- (i) opportunities for Sterling County, Texas business entities and persons to supply goods, services, and/or labor for the Project;
  - (ii) revitalization of any economically depressed area in said county as a result of the Project;
  - (iii) the impact on other taxing entities in said county as a result of the Project;
  - (iv) the employment opportunities associated with the Project; and
  - (v) whether the Project will (1) contribute to the retention or expansion of primary employment in said county, and/or (2) 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.

#### **IV. Procedure**

4.1 **Application Required.** The Applicant may request the creation of a Zone and/or Agreement by submitting a written application in full compliance with these Guidelines to the County Judge at the address and contact information described in paragraph 1.12 of this instrument. A non-refundable filing fee shall be paid by Applicant to the County when an Application is submitted to the County Judge. Said filing fee shall be in the amount of \$1,000.00 and paid by Applicant in the form of a cashier's check or money order made payable to the order of Sterling County, Texas.

4.2 **Applicant Signature.** An Application or Agreement is not authorized to be executed by the County with any person or entity that is not the actual owner or lessor/lessee of the property for the Project.

4.3 **Application for Zone and/or Agreement.** An Application for the creation of a Zone and/or Agreement at minimum shall contain the following:

- (a) documents sufficient to describe in detail the Project and the Zone;
- (b) a map or plat, property description, and site plan which adequately identify and describe: (i) all land of the Project site and Zone; (ii) whether the Zone is wholly located in Sterling County, Texas; and (iii) whether the Zone contains any land within the boundary of an incorporated municipality;
- (c) a description of: (i) all economic development factors and issues for analysis regarding the proposed Zone and Project, as described in paragraphs 3.1 and 3.7; and (ii) the issues stated in Sections 312.202 and 312.402 of the Texas Tax Code to support creation of a Zone;
- (d) a description of all land and improvements for which a tax abatement or other economic development incentive will be requested;
- (e) a proposed construction schedule for completing and implementing the Project;
- (f) financial and project information sufficient for the County to evaluate Applicant's financial capacity to successfully complete and implement the Project;
- (g) regarding a request for creation of an enterprise zone, all information required by Chapters 312 and 2303 for said Zone; and

- (h) should a variance from these Guidelines be requested, a description of all facts and the submission of all documents deemed necessary by Applicant to support the variance request.

**4.4 Commissioners Court Action.** In accordance with the requirements of these Guidelines: (a) the Application may be granted in full, denied in full, or granted or denied in part, by the Commissioners Court to the extent deemed appropriate to the public interest; and (b) the County shall give all public notice required by law regarding the proposed creation of a requested Zone or Agreement.

**4.5 Zone Approval/Creation.** The creation of an enterprise zone and approval of any related tax abatement Agreement shall be governed by the applicable provisions of these Guidelines and Chapters 2303. Regarding a tax abatement reinvestment zone and approval of any related tax abatement Agreement, the following procedures shall apply:

- (a) Should Applicant request to locate the Project in an area of Sterling County not then designated as an existing tax abatement reinvestment zone, the Commissioners Court, using its lawful authority, discretion, and best business judgment may proceed to consider Applicant's Zone request and may set the matter for a public hearing as required by law. If the Zone is approved after the public hearing and created by the Commissioners Court, a submitted Applicant tax abatement Agreement request for Project land in the Zone then may be considered for approval by the Commissioners Court, again using its lawful authority, discretion, and best business judgment, and pursuant to the procedure required by Chapters 312, 381, and 551, and this instrument.
- (b) Should Applicant request to locate the Project in an area of Sterling County, Texas designated as an existing, active Zone, a submitted Applicant tax abatement Agreement request for Project land in the Zone then may be considered for approval by the Commissioners Court, again using its lawful authority, discretion, and best business judgment, and pursuant to the procedure required by Chapters 312, 381, and 551, and this instrument.

**4.6 Agreement Approval.** 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:

- (a) the issues described in §§ 312.204-.205, 312.207, 312.402, and 312.404 of the Texas Tax Code, and paragraphs 3.1 and 3.7 of these Guidelines.
- (b) a specific description of the abatement period, which shall be no longer than 10 years in duration, as required by law;
- (c) the total value of Eligible Property to be abated, and the percent or degree of value to be abated each year;
- (d) 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;
- (e) 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;
- (f) the kind, number, and location of all proposed Project improvements and facilities to be located in the Zone;
- (g) 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;
- (h) a description of each specially defined term agreed by the parties to the Agreement;
- (i) 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: (i) lost or abated taxes and associated penalties, interest, costs, and attorney's fees; (ii) all monetary amounts due the County under the Agreement; (iii) accrued attorney's fees, expert expenses, or other litigation or enforcement costs, and interest; and (iv) all other remedies allowed by law or equity;
- (j) provisions describing mandatory venue for any suit regarding the Agreement to be in a court of competent jurisdiction located in

Sterling County, Texas, or in the federal court designated for said county;

- (k) provisions showing compliance with all other applicable federal, state, or local authority or regulations, including: (i) 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; (ii) Chapters 171 and 176 (relating to conflicts of interests) of the Texas Local Government Code; and (iii) Form 1295/Texas Ethics Commission Certificate of Interested Parties (pursuant to § 2252.908 of the Texas Government Code) procedure; and
- (l) a description of any monetary amounts, property, or services to be paid or delivered to the County by Applicant, as negotiated by the parties in the Agreement, constituting consideration, an economic development grant or donation, or reimbursement for the Agreement, including tax payments, payments in lieu of taxes (or 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
- (m) all other matters required by Chapter 312 or these Guidelines for inclusion in the Agreement.

#### **4.7 Variance.**

- (a) A variance request regarding a Zone and/or Agreement Application shall be made in writing by Applicant, submitted with the Application, and thereafter reviewed by the Commissioners Court as herein described.
- (b) The Commissioners Court may not grant a variance which violates this paragraph 4.7, including the variance standards hereafter described.
- (c) 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) A variance from these Guidelines only may be granted if the variance is granted:
  - (i) pursuant to a recorded public vote of the Commissioners Court conducted at a public meeting in compliance with the Texas Open Meetings Act;
  - (ii) pursuant to the lawful authority, discretion, and best business judgment of the Commissioners Court; and
  - (iii) in compliance with these Guidelines.
- (e) The following variance standards are approved and adopted regarding these Guidelines. 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:
  - (i) a special circumstance exists 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;
  - (ii) the variance will be a minimum departure from these Guidelines, and will not be violation of federal, state, or other local law;
  - (iii) 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;
  - (iv) the variance must be based on the general intent of these Guidelines and in the public interest;
  - (v) the variance must not prevent or impair the safe, healthy, or orderly development of other land in the County in accordance with these Guidelines; and
  - (vi) the evidence must show that: (1) all application fees have been paid to the County (unless the Applicant is a unit of government and the fees are waived by a variance grant); and (2) a delinquent ad

valorem tax liability or unpaid claim of money or other funds is not owed by Applicant to any Affected Jurisdiction.

## **V. Administration**

5.1 The District's Chief Appraiser annually shall determine an assessment of the real and personal property comprising a Zone. Each year the taxpayer receiving a tax abatement shall furnish the Appraiser with such information as may be necessary or desired for administration of the Zone or Agreement. Once value has been established, the Chief Appraiser shall notify the Commissioners Court of the amount of the assessment.

5.2 Upon completion of Project construction, a designated representative of the County and the District shall annually evaluate each Project and facility receiving a County tax abatement to verify compliance with an Agreement. A formal report shall be made annually to the Commissioners Court by said representation regarding the evaluation.

5.3 All periodic reporting required to be performed by Applicant regarding the Zone and the performance of the Agreement for the Project shall be completed by Applicant in a timely manner and made to the County, District, and other Affected Jurisdictions as required by the terms and provisions of the Agreement.

5.4 All proprietary information acquired by the County or the District for purposes of monitoring compliance with the terms and conditions of an Agreement shall be considered confidential unless otherwise required by law.

## **VI. Assignment**

6.1 A County Agreement may be transferred and assigned by the holder to a new owner or lessor/lessee of the same facility, but only upon the written consent and approval of the County, subject to the: (a) exercise of the sole authority, discretion, and best business judgment of the Commissioners Court; (b) financial capacity of the proposed assignee; and (c) interests of the public.

6.2 Any permitted assignment shall: (a) provide that the assignee shall irrevocably and unconditionally assume all duties and obligations of the assignor upon the same terms and conditions provided in the Agreement; and (b) be to an entity or individual that shall construct the same Project improvements or repairs to the Project, facilities, and property, except to the extent such improvements or repairs have been completed.

6.3 An assigned Agreement with the new owner or lessee shall not: (a) exceed the termination date of the Agreement with the Project Applicant; or (b) violate the provisions of Chapters 312, 381, other applicable law, or these Guidelines. No such assignment or transfer shall be approved if a party to the existing Agreement, or the proposed new Applicant, are liable

to any Affected Jurisdiction for delinquent ad valorem taxes or an unpaid claim of money or funds due said Affected Jurisdiction.

**[End of Guidelines]**

**CERTIFICATION OF ADOPTION REGARDING:  
TAX ABATEMENT GUIDELINES AND CRITERIA  
FOR STERLING COUNTY, TEXAS**

**APPROVED AND ADOPTED BY:** Commissioners Court of Sterling County, Texas  
Effective Date: September 14, 2020

I, Deborah Horwood, the undersigned, being the County Judge of Sterling County, Texas and the Presiding Officer of the Commissioners Court of Sterling County, Texas ("Commissioners Court"), do hereby certify that: (1) the above and foregoing instrument is the **Tax Abatement Guidelines and Criteria for Sterling County, Texas** ("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 Sterling County, Texas, and from the internet website maintained by Sterling County, Texas at [www.co.sterling.tx.us](http://www.co.sterling.tx.us).

**SIGNED** on this \_\_\_\_ the day of September, 2020.

\_\_\_\_\_  
Deborah Horwood, County Judge  
Sterling County, Texas

**ATTEST:**

\_\_\_\_\_  
County Clerk, Sterling County, Texas

or

\_\_\_\_\_  
Deputy County Clerk, Sterling County, Texas