ECONOMIC DEVELOPMENT INCENTIVE POLICY (EDIP)

JANUARY 23, 2018

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ECONOMIC DEVELOPMENT INCENTIVE POLICY

SECTION 1. INTRODUCTION

San Joaquin County desires to stimulate economic activity and the creation of jobs, thereby broadening its collective tax base (property, sales, and transient occupancy) and improving the quality of life for its citizens. The use of public funds to stimulate business growth may be necessary or desirable in certain situations. Should the inducements available through this policy be recommended, an in-depth economic impact analysis shall be performed and bear out that the financial benefits to the County represent a sufficient return on its investment (ROI) plus generate other direct and indirect benefits for the community. Any and all incentives described or contemplated herein are entirely discretionary and the San Joaquin Board of Supervisors is not obligated or mandated in any way to offer or provide incentives to any application. Furthermore, before granting any incentive the County shall determine that there is a valid public purpose for said investment and that but for the incentive, the applicant would not locate or expand within the County's jurisdictional boundaries. The County may, but shall not be obligated to, offer incentives to applicants located within the territorial boundaries of its incorporated cities.

San Joaquin County reserves the right to amend, modify, or rescind this policy at any time, in its sole and absolute discretion. The Board of Supervisors reserves the right to deviate from this policy when, in the opinion of the Board, it is in the best interest of the County to do so, particularly when time and fiscal constraints warrant such action. No applicant has a vested right to any assistance or incentive under this Policy.

All proposed incentives may be subject to a public hearing and certain reporting requirements, plus be in compliance with all local, state, and federal laws and regulations that may apply, as they may be amended from time to time.

Incentives will not be considered if an applicant, whether a new or existing business, has been issued a building permit for new construction, has executed a binding purchase contract on an existing building or site, or executed a lease of land or building unless there are enforceable written contingencies in purchase and lease contracts that make closing and/or occupancy subject to the award of County incentives. The County, in its sole and absolute discretion may offer incentives set forth in this Policy to any applicant in compliance with this Policy and applicable laws including those that may be considering relocating from San Joaquin County.

The County Administrative Officer (CAO), or his/her designee, shall be responsible for the implementation of this Policy, and only the CAO or his/her designee shall be authorized to speak for, or conduct preliminary negotiations with prospective applicants seeking financial incentives.

This Policy statement is intended to provide a general overview but is not intended to be exhaustive or all-inclusive and does not contain exacting specificity on compliance, eligibility, and other critical elements. Applicants are encouraged to contact the CAO's Office for more information pertaining to the implementation of this Policy.

SECTION 2. PURPOSE & RATIONALE

The purpose of this Policy is to grant, and vest authority to offer incentives, when appropriate, to eligible applicants or projects, that will enhance the County's competitiveness in attracting new capital investment that supports the County's economic development goals of:

- Growth of private sector employment,
- Increasing tax revenues,
- Diversifying the economic base,
- Enhancing global competitiveness, and
- Public infrastructure development.

San Joaquin County offers new and existing companies a variety of locational and operational advantages which contribute to its viability for new corporate investment. However, it is becoming increasingly common for companies that are not entirely market driven to evaluate locations in communities and countries around the globe. San Joaquin County is part of the global marketplace and needs to ensure that it can compete with other states/communities that aggressively offer incentives to achieve their economic development goals. Long standing debates revolve around the appropriateness of corporate incentives and although they may not be the most important initial site location factor, they do become much more important when the "short list" of locations has been identified and the differences between them are subtle. Site location consultants and a company's C-Suite perceive a community's incentive pledge as a public-private partnership and a testament of support. Some liken incentives to "tie-breakers" in the final decision process. Finally, whether large or small, companies are conscious of the bottom line and incentives can reduce up-front costs, including the need for borrowing, reduce the financial burden of on and off-site infrastructure improvements, and in some cases ensure early year profitability which ultimately leads to stability and job creation.

In summary, the Government Finance Officers Association of the United States and Canada (GFOA) recommends that jurisdictions create a policy on the appropriate parameters for use of economic development incentives that is specific enough to establish clear boundaries, but not overly restrictive to allow for flexibility and discretion to ensure the best interests of the community are served. This Policy was developed to be consistent with the GFOA's Best Practice Guidance on the subject of incentives.

SECTION 3. OBJECTIVES

The financial incentives are intended to advance the achievement of the following core objectives which support the County's economic development goals:

- Fiscal - Promote and encourage private sector capital investment that generates long-term, stable revenue streams to support the County's services and infrastructure
- Employment – Stimulate the creation and retention of permanent living wage jobs that reduce unemployment and underemployment rates
- Economic Diversification – Encourage and foster the development of targeted industry sectors and clusters
- Workforce Development – Close the "Capabilities Gap" by supporting new and existing business and industry that adopt new technology and processes
- Business Retention & Expansion – Support existing business and industry and provide services and programs that facilitate expansion and long-term stability
- Targeted Investment Areas – Facilitate development of key commerce and industrial centers including the Stockton Metropolitan Airport, AirPark 599, Port of Stockton, and business/industrial parks that will result in incremental infrastructure development

The Policy advances the "The San Joaquin County Economic Development Vision and Implementation Plan" which sets forth the following updated Key Recommendations:

- Continue and expand the County's current business attraction and retention efforts including specific recruitment initiatives targeting existing Greater Bay Area businesses seeking expansion opportunities,
- Identify and market all entitled shovel-ready major industrial and commercial properties,
- Support the growth of targeted industries by investing in or improving physical infrastructure assets, such as the seaport, the airport, and other strategic development sites throughout the County,
- Foster a culture of innovation and technology that will encourage entrepreneurship,
- Recognize and expand tourism as an economic driver for San Joaquin County, and
- Create and implement programs focused on preparing the workforce for San Joaquin County's target industries (incorporating the individual cities' strategies).

SECTION 4. ELIGIBILITY

Not all existing, expanding, or new businesses will be eligible for the financial incentives set forth in this Policy. Besides traditional qualification requirements, the County has determined that financial incentives will **ONLY** be offered to business enterprises engaged primarily in one or more of the following industry categories:

- ✓ Manufacturing
- ✓ Warehousing & Distribution
- ✓ Health & Wellness
- ✓ Transportation, Telecommunications & Technology
- ✓ Infrastructure
- ✓ Agriculture
- ✓ Tourism/Hospitality
- ✓ Retail/Wholesale

The County will utilize the North American Industry Classification System (NAICS) to verify that an applicant falls within the listed categories. For brevity purposes, each of the aforementioned industry categories are intentionally broad and contain many sub-categories that may satisfy eligibility. Potential applicants are encouraged to contact the County to ensure eligibility. The County may, in its sole discretion, consider incentives to support Large Scale Speculative Industrial Development in the Targeted Investment Areas and will lead to additional job creation and development opportunities.

SECTION 5. STANDARDS & REQUIREMENTS

The County will evaluate the following general criteria to determine if its financial participation is warranted. Due to the uniqueness of each request, the County may employ other evaluative factors to arrive at its final determination.

A. Public Benefit: Incentive agreements shall provide a quantifiable direct public benefit to San Joaquin County and its residents which may include, but are not limited to: workforce development and skills enhancement, housing affordability, public safety, infrastructure development, educational opportunities, etc.
B. Economic Benefit: The proposed project must provide a quantifiable direct economic benefit that enhances San Joaquin County's economy. This may be satisfied through direct capital investment, job creation or retention, construction or rehabilitation of industrial/commercial/retail buildings that substantially increase the assessed valuation of the property/site, increased infrastructure capacity, or other positive economic indicators deemed beneficial by the County.

C. Fiscal Benefit: The applicant shall document how the proposed project will generate new tax revenues (property, sales, transient occupancy tax) for the County. The County will conduct an Economic Impact Analysis (EIA), which will evaluate the reasonableness of the information provided by the applicant. The County will only consider incentives based upon actual direct benefits and the EIA will frame the parameters of any incentive offer. Any costs associated with conducting the EIA incurred by the County will be the responsibility of the applicant.
D. Performance-Based: All incentives under this Policy are performance-based and payments will be made by in arrears once actual tax revenues are received and verified by the County.
E. Necessary and Appropriate: The need for the requested incentives must be deemed necessary and appropriate by the County and advance a valid public purpose. Each application for incentive shall demonstrate that the incentive will make such a difference in determining the decision of the business to locate, expand or remain in the County that the business would not otherwise be established, expanded or retained but for the incentive(s).
F. Wages: The creation and retention of living wage positions shall be a key determinant in any incentive request. The applicant or project should demonstrate that the compensation (excluding benefits) for the new positions will exceed the median wages for similar positions in the Stockton-Lodi MSA. Should like positions not be represented in the County, the aggregate average wage of the Stockton-Lodi MSA will be utilized.
G. Employment – Basic Industry Job Creation: Applicant or project should document that the new jobs produce goods and/or services that are primarily sold or exported outside of the County resulting in the infusion of new dollars that will ultimately recirculate and create multiplier jobs and investment.
H. New & Emerging Technology: Applicants or projects that promote technological advances or advance knowledge-based industries are encouraged.

SECTION 6. DEFINITIONS

"*County*" shall mean San Joaquin County, California.

"Economic Development Purposes" shall mean the establishment of a new business or the expansion of an existing business that meets the eligibility thresholds and intent of this Policy and:

A. is or will be primarily engaged in any one or more of the basic or target industries of San Joaquin County, as they may change from time to time; or
B. is or will be primarily engaged in the development, movement or production of goods or the provision of services for out-of-county sale; or
C. is or will be primarily engaged in the production of raw materials, ingredients or components for other enterprises which export the majority of their products; or
D. is a national or regional enterprise which is primarily engaged in interstate commerce; or
E. is the corporate or regional headquarters of an enterprise.

"Eligible Applicant" – shall mean applicant who meets the eligibility requirements of this Policy and the specific incentives contained herein that are being requested.

"Eligible Project" – shall mean project that meets the eligibility requirements of this Policy and the specific incentives contained herein that are being requested.

"Existing Business" – shall have operated facilities in the County for a period of not less than one year prior to the request for incentives. Home-based businesses are not eligible for incentives.

"Large-Scale, Speculative Industrial Development" – shall mean the development of green-field sites which cause the extension of wet and dry utilities and other infrastructure to foster new industrial and

business parks on parcels of 50 acres or more and the construction of not less than 500,000 square feet of speculative building space. Office Parks and Corporate Headquarter facilities with Gross Leasable Area (GLA) or Gross Floor Area (GFA) greater than 200,000 square feet on parcels in excess of 20 acres that extend utilities shall also be eligible for incentive consideration.

"Living Wage" – shall mean wages that are at a level to enable an individual or family to afford basic life needs including shelter, food, and other necessities with the overall goal of providing for a satisfactory quality of life.

"Net Tax Revenues" – shall mean the actual gross tax revenues received by the County from the applicant or project less any adjustments that may result due to assessed valuation appeals, sales tax recaptures, or other reductions that negatively impact the County. The adjustments may originate at the County or State-level. In addition, the County will reduce the gross tax revenues by costs incurred to provide basic and/or specialized services (public safety, general county services, administration, etc.) to the applicant and/or project that are not contemplated in the EIA. The County will use its best efforts to ensure these costs are reasonable and applicable.

"New Business" – shall mean a business that has no current business operations in the County. A business that formerly operated in the County may be eligible so long as there is a period of two years between the time of its closure or disinvestment and the request for incentives. Former businesses must have been in good standing with the County upon the cessation of their former operations.

"*San Joaquin County Basic Industry*" shall mean:

- Agriculture;
- Mining;
- Manufacturing;
- Logistics and supply chain management including regional distribution centers in excess of 250,000 square feet;
- Construction;
- Wholesale trade;
- Financial services which are primarily engaged in providing such services for interstate or international transactions;
- Business services which are primarily engaged in providing such services to out-of-town markets;
- Research and development of new products, processes or technologies; and
- Tourism activities, which are primarily engaged in attracting out-of-state tourists.

As used in these subsections, "primarily engaged" means engagement in an activity by an enterprise to the extent that not less than 51% of the gross income of the enterprise is derived from such engagement. This Policy is not intended to limit the inclusion of emerging industries that have heretofore not been considered the economic base of San Joaquin County. To that end, incentives may be considered for industry clusters that are a subset of a major NAICS Sector – for example "Manufacturing" NAICS 31-33.

"*Targeted Investment Areas"* – shall mean those areas including Stockton Metropolitan Airport, AirPark 599, Port of Stockton, Mountain House, and within the boundaries of the former San Joaquin County Enterprise Zone within the County's jurisdictional control. The County reserves the right to amend the Targeted Investment Areas as it deems appropriate.

SECTION 7. APPLICATION FOR INCENTIVE CONSIDERATION

To be considered for incentives set forth in this Policy, an applicant or project shall submit a written application to San Joaquin County on the appropriate forms. The information submitted should be comprehensive and in sufficient detail to allow the County to determine the costs and benefits associated with the request. At a minimum, the following information shall be submitted to the County:

- Comprehensive description of the applicant listing of all officers, directors, members and key personnel that control 20% or more of the shares or other controlling interest; products and services of the applicant and/or project,
- Business Plan with comprehensive financial projections for not less than three successive years,
- Three years of corporate tax returns and financial statements,
- Detailed and well-articulated request of desired incentives including the amount requested and duration,
- A statement describing all direct and indirect benefits to the County for providing incentives which shall include, but not be limited to: estimated taxes paid (all), purchases from local vendors, utilizing local contractors, hiring from the County workforce, congruity with the goals of this Policy, skills and technology advancement, expanded infrastructure capacity, etc.,
- Precise location of the site to be developed accompanied by legal description, Assessor's Parcel Number, and a Preliminary Title Report with all easements plotted,
- Copy of the Grant Deed or similar document showing ownership vested in the applicant or business requesting assistance. If leased, a copy of the fully-executed lease along with any specific rules, use or occupancy restrictions,
- A preliminary site plan in sufficient detail to evaluate appropriateness with County land use standards and zoning,
- Conceptual building plans with elevations (front, side, and rear),
- For speculative industrial development projects, a preliminary master plan in sufficient detail to conduct an Economic Impact Analysis (EIA) and determine marketability, absorption period, and viability of proposed financing structure,
- Infrastructure needs/requirement estimate or value of improvements to be made by project that represent excess capacity that will support future development,
- Total project costs – must include all on-site and off-site plus soft costs including architectural & engineering fees (A&E), machinery & equipment, land cost (or annual lease expense), and any other costs that will support a thorough EIA,
- Construction schedule, and if phased, a phasing plan,
- Estimated annual revenues,
- Current assessed valuation of the property and any improvements,
- Estimated post-development value of the property, equipment, and all other improvements,
- Estimated annual sales, composition (taxable v. non-taxable) and whether goods and services primarily serve local or out-of-county/state consumers and businesses,
- Estimated number of jobs created or retained by development, average wage per job, specific job classifications and minimum qualifications,
- Listing of incentives provided by other agencies, or jurisdictions, regardless of whether they are tax or financial and whether they are committed and any security instruments or covenants that could impact County's incentive evaluation, and
- Any other information deemed necessary by County to substantiate the incentive request.

The County will not consider the granting of any incentive unless the applicant submits a full and complete application, and provides additional information as may be requested by the County. The accuracy of the information provided in the application shall be verifiable by the County or its designees which may include third-party consultants or entities with expertise in the field of economic development. So long as it does not impede the evaluation of the incentive application the County may, in its sole discretion waive the submittal of certain information listed in this Section 7. Any misstatement of or error in fact may render the application null and void and may be cause for the recession and cancellation of any Performance Agreement approved in reliance on said information.

SECTION 8. APPLICATION EVALUATION BY COUNTY

Upon receipt of an incentive application, the County will review it for completeness and accuracy. If additional clarification is necessary or the application is lacking the required content it will be returned to the applicant. Applications determined to contain all of the requirement information and be in compliance with the Policy shall be catalogued by the County and a formal underwriting analysis will commence. In addition to the mandatory EIA, the application will be evaluated in the context of the Standards and Requirements listed in Section 5 of this Policy.

Most incentive applications can be evaluated, and if recommended for approval, presented to the Board of Supervisors for final consideration within ninety (90) calendar days. The County shall not be bound to any specific processing timeline, but will use its best efforts to conduct its analysis and provide a final determination within a reasonable time. The County will typically evaluate applications on a first-come, first-served basis, but may, in its sole discretion consider time-sensitive requests that require immediate attention, particularly those projects that create in excess of 250 new jobs and a capital investment in excess of $50,000,000.

Applications submitted to the County are considered public records and may be subject to public disclosure. Applicants shall be required to sign certain acknowledgements, representations, and waivers, plus indemnify the County from any and all liability that would arise from the consideration and/or granting of any incentive.

SECTION 9. INDUSTRIAL ECONOMIC DEVELOPMENT

In furtherance of Section 4 of this Policy, the County intends to be selective to the kinds of industrial businesses (i.e., businesses that are not retail businesses) that are recruited and assisted. In general, the primary objective of the County's overall economic development efforts is to target new and expanding businesses that create value-added jobs (goods and services are sold or delivered outside San Joaquin County), offer occupational opportunities with above average wages and employee benefits, make significant capital investment in the physical plant, equipment and technology that diversifies the County's economic base and provides appreciable incremental tax revenues, and further the human and physical infrastructure of the County through skills enrichment for the local workforce or building excess capacity in utilities, roadways or other improvements that will facilitate subsequent development.

SECTION 10. RETAIL DEVELOPMENT

The County desires to encourage the development of retail opportunities within its jurisdiction that will enable it to provide services to its diverse and growing constituency and the visiting public. The County will consider incentives for retail businesses and developers that precipitate the expansion of the sales tax base, generate appreciable sales and use tax revenues, further the effort to develop San Joaquin County as a regional hub for retail goods and services in the greater San Joaquin Valley, and expand the property tax base.

SECTION 11. HOSPITALITY & TOURISM

To support its emergence as a key industrial and commercial hub in the greater San Joaquin Valley, and its broad palette of recreational and tourism attractions, the County will consider incentives to applicants and businesses that broaden hospitality offerings. The County especially desires to induce the development of hotels, conference facilities, and other large scale venues that will encourage the attraction of special events that will lead to increased tourism spending. Incentives will be gauged by the amount of new transient occupancy tax or sales tax revenues generated by applicants or businesses in this category. The County has special interest in furthering its prominence as an agri-tourism destination particularly as it relates to its world-renowned wine appellation.

SECTION 12. BUSINESS/JOB RETENTION

To retain an existing business that is contemplating relocating to another city, county, or state the County may consider offering financial incentives that would help offset cost differentials making the non-County location viable. To be eligible under this premise, the applicant or business must provide a declaration that states it is actively pursuing relocation and absent County incentives would carry out its intent. Furthermore, the applicant or business must make a minimum incremental capital investment of $1,000,000, which can be for plant modernization, new equipment, technology, or other long-lived depreciable assets that increase the assessed valuation. The metrics set forth in Section 14 would be applied to determine an appropriate incentive offering.

SECTION 13. INCENTIVES

Regardless of the category (Sections 8-11 of this Policy) that applies to the applicant, the County shall **offer a single incentive – Job Creation Dividend (JCD).** The County has established the following priority for the type of job created that will be eligible for a JCD stipend.

- Full Time, Permanent – Top
- Contract Job – Mid
- Contract Job & Part-Time Jobs combined to create a Full-Time Equivalent – Low

The incentive payment per job created will be based upon the Net Tax Revenues received by the County from the business operations and investment as determined by the Methodology For Determining Incentive Awards (Section 14 of this Policy). The Performance Agreement will stipulate the requirements for reporting of hiring practices and a census of jobs and classifications. If an applicant is a lessee, the lease must incorporate the Performance Agreement and acknowledge that the benefits of said agreement inures to the benefit of the lessee and the lease must be equal to or longer than the duration of the Performance Agreement. The County shall not be obligated in any way to the lessor should the lessee breach its lease or take other actions that result in the termination of the Performance Agreement.

SECTION 14. METHODOLOGY FOR DETERMINING INCENTIVE AWARDS

To appropriately direct the County's incentive resources, each applicant will be scored on each of the following key metrics. The final numerical score will dictate the maximum amount and term of the incentive that an applicant would be eligible for based upon the Net Tax Revenues generated from the prospective project. Besides the quantitative factors below, the County may, in its sole and absolute discretion, award five (5) bonus points to an application or project that offers certain extraordinary qualitative benefits that are otherwise not contemplated below. Although an applicant's total score may result in Tier V eligibility, at no time shall the incentive package offered by the County exceed the Net

Tax Revenues generated by the project, whether property, sales, or transient occupancy taxes, or combination thereof.

Capital Investment[1]	Points
<$4,999,999	15
$5,000,000-9,999,999	20
$10,000,000-$24,999,999	25
$25,000,000-$49,999,999	30
$50,000,000 and Above	40
Total Points Possible	40

Number of New Jobs[2]	Points
5-10	5
11-49	15
50-149	17
150-249	20
250 and Above	25
Total Points Possible	25

Wage Level of New Jobs[3]	Points
Less than MSA Average	0
MSA Average	5
Greater than MSA <State Average	10
State Average	15
Above State Average	20
Total Points Possible	20

Percentage of County Residents Hired	Points
0-10%	2
11-25%	5
26-50%	7
51-75%	9
76% and Above	10
Total Points Possible	10

Policy Priorities	Points
Targeted Industry Representation	2
Targeted Industry Retention	1
Speculative Industrial Park Development	2
Excess Infrastructure Capacity	1
Total Points Possible	5

[1] Capital Investment will be determined by the increase in appraised value from the appraised value of the property on the date of the application compared to the appraised value on the January 1 after completion of improvements, all as determined by tax appraisal from the San Joaquin County Appraiser's office.

[2] "Eligible Net New Jobs" means each full-time equivalent job created above the monthly average full-time equivalent employee count for the 12-month period preceding the date of application. In order for a job to qualify as a "Eligible Net New Job," the number of Eligible Net New Jobs must be reported annually pursuant to Section 18, and if the actual number of Eligible Net New Jobs in any year during the Performance Agreement term is less than the Eligible Net New Jobs required therein, and any incentive payments for the remaining term are subject to reduction pursuant to Section 18 of this Policy.

[3] The County will utilize the State of California Employment Development Department's Labor Market Information ("LMI") as the official data source for calculating comparability between the wages paid for new positions and those existing in the Stockton-Lodi MSA and State of California. The median wages in the occupation(s) will be the basis for comparison. If there are multiple occupations, each will be compared and aggregated to arrive at a composite weighted average that will be used to assign points.

Each applicant or project will be assigned a point score in each of the aforementioned metrics and a composite numerical score will be determined. That numerical score will be used to establish the amount and term of the potential incentive award. For example, if an applicant or project scored 60 points it would fall into Tier III (See the Incentive Matrix below) and be eligible for an incentive term of five years and the **Job Creation Dividend** incentive would equal 60% of the Net Tax Revenue the County received from the business or project in Year 1, followed by 50% in Year 2, and so on. The County shall be under no obligation to grant the full percentage of the Net Tax Revenues contemplated in the Matrix to the business or project should it determine that there is substantial volatility in proposed revenues, the jobs created are Mid or Low priority, or that other risk factors exist that warrant a lesser award. Should circumstances change and the Eligible Applicant or Eligible Project produce the anticipated revenues for three consecutive years, the County may revisit the total award and "true up" the amount to align with the appropriate Tier maximum.

Incentive Matrix

Year	Tier I		Tier II		Tier III		Tier IV		Tier V	
1	50		55		60		70		75	
2	40		45		50		60		75	
3	30		35		40		50		75	
4	20		25		30		40		75	
5	10		15		20		30		75	
6							20		50	
7							10		50	
8									50	
9									50	
10									50	
Minimum Threshold Score	40		50		60		80		90	

When considering proposals brought before the County, County staff shall be cognizant of the investment being made by the business, the risk involved in doing business, and the reputation of the County which is created by decisions that are made. The County will account for the risks by utilizing an appropriate discount factor when evaluating the prospective revenue benefits, particularly in Net Present Value (NPV) and Internal Rate of Return (IRR) calculations.

SECTION 15. FEE SCHEDULE

Any individual business requesting any incentive shall pay to the County a nonrefundable application fee of $1,000 plus a deposit of $2,500.00 to be retained by the County to pay for the County's out of pocket costs associated with the County's review of the application and other actions and agreements associated with the proposed incentive, including but not limited to the EIA, County's cost of legal counsel, and financial advisors and consultants necessary to evaluate the application and administer the incentive (Due Diligence). In the event that costs for third-party services incurred by the County exceed the fee collected, the applicant shall reimburse the County for such additional cost, immediately upon request, but no later than prior to final consideration of the incentive by the Board of Supervisors. The application fee and deposit shall be submitted at the same time the *Application for Economic Incentives* is submitted. At its discretion, the County may consider waiving all or a portion of the fee or deposit upon request, based upon need. If a Performance Agreement is approved, the Applicant may request that the County recover its Due Diligence costs from the initial Incentive Payment.

All Performance Agreements shall be subject to an annual monitoring fee. The annual monitoring fee shall be determined by the complexity of the Performance Agreement and estimated staff or third-party costs to administer.

SECTION 16. PERFORMANCE AGREEMENT

Upon review of the completed application staff will, with the assistance of County Counsel, develop a draft Performance Agreement that will incorporate at a minimum the following obligations and terms:

- Term of the Performance Agreement, the duration that incentives will be payable to a complying business/applicant;
- Compliance with all applicable local, state, and federal codes, laws and regulations;
- Secure, and maintain all applicable licenses and permits;
- Make timely filings of required reports with County and state, and specifically those set

forth in the Performance Agreement;
- Shall be binding on the business, business owner(s), real property owner(s), and their successors and assigns;
- Circumstances that will trigger a "claw-back" of any incentives, plus penalties for non-compliance which could include a return of funds; and
- Indemnity and hold-harmless provisions that are germane to incentive agreements.

The Draft Performance Agreement will be presented to the San Joaquin Board of Supervisors for consideration. Prior to its decision, the Board of Supervisors will hold a public hearing as required by applicable law which sets forth the requirement to advise the public of potential economic development subsidies if such incentives exceed $100,000. The County may be required to comply with Governmental Accounting Standards Board Statement No. 77.

If approved, the applicant and County shall execute the Performance Agreement. If applicable, the land owner (if applicant leases land or building) shall either be a "co-signatory" on the Performance Agreement or provide a "Landowner Consent and Stand Still Agreement" enabling the County to recapture any incentive funds prior to the Landlord exercising its rights and remedies under a lease, should a breach of the Performance Agreement occur. To ensure compliance with claw-back remedies, the County may, in its sole and absolute discretion, record liens against the real and personal property of the applicant/business/project. The County will also record the existence of the Performance Agreement on the title of the property and file Uniform Commercial Code Financing Statements (UCC-1) with the San Joaquin County Recorder and State of California Secretary of State. Under no circumstances is the approval and execution of a Performance Agreement to be interpreted as approval of any required development permits, ministerial or discretionary. The decision of the Board of Supervisors is final and no appeal process is available. The Agreement shall not be assigned, transferred or sold without the prior written consent of the County.

Each Performance Agreement shall be reviewed annually by the County. The County shall receive the annual review report, and if the County determines that a business or project is not in compliance with the provisions of the Performance Agreement, then the incentive may be modified pursuant to the Performance Agreement as the County deems appropriate. Modifications to the incentive may include, but are not limited to, termination of the incentive, reduction of any incentive and claw-back of any existing incentive.

SECTION 17. ECONOMIC IMPACT ANALYSIS

The Economic Impact Analysis (EIA) will offer a wide spectrum of information as it pertains to the proposed development, the appropriateness of offering certain financial incentives, and finally, the net gain, current and future, of entering into these types of endeavors on behalf of the County and its residents. The EIA will address, at a minimum the following items:

1. DIRECT COSTS TO THE COUNTY. Any identified direct cost should be included in the analysis. Examples of these types of costs include installation and assumed annual liability of county infrastructure to the proposed site, and costs of providing County general services such as public works and safety (fire and law enforcement). Any fee abatements, reductions, etc., will also be considered in the EIA. Because the County will only be considering incentives funded from its general fund revenues, no special district costs will be considered.

2. BENEFIT TO THE COUNTY. Direct benefits include wages/salaries/benefits paid to employees, any taxes collected (property, sales, transient occupancy and use) franchise fees, and purchases of products/services from local vendors. Other direct benefits may include the value of excess infrastructure capacity that will facilitate future development in a

target area of the County.

3. INDIRECT BENEFIT TO COUNTY. Indirect benefits inuring to the benefit of the County that are induced by the investment and hiring by the proposed applicant/project and represent changes in other employment, income or outputs. Other induced benefits will be evaluated and the totality of these indirect benefits shall represent the “multiplier effect” of the new economic activity proposed.

4. COST VERSUS BENEFIT. From a community perspective, incentives are used because a net benefit is expected. A desired Benefit-to-Cost (BTC) ratio should be at least 1.25:1. The County reserves the right to reduce the BTC threshold should appropriate safeguards and surety be deemed satisfied, thereby mitigating the risks of any deviation.

The County will determine, based upon the scope of the incentive request, the level and breadth of the EIA. In some cases, a computer modeling software may be adequate, while other large scale, multi-million-dollar incentive requests will likely precipitate the hiring of a third-party consultant to complete the required EIA.

Applicant shall provide a detailed listing of the incentives being requested; the determination of any revenues generated from property and capital investment, transient occupancy, sales or use taxes anticipated, the direct cost to the County to the extent it can be calculated by the applicant, and any other anticipated costs that would impact the County.

SECTION 18. ANNUAL REVIEW FOR COMPLIANCE

All incentives granted shall be subject to an annual review to ensure that the ownership, use of property, and the economic performance of the business, including the capital investment, employment, and wages, are pursuant to requirements and criteria of this policy, the application, and the conditions of the granting of incentives. The review shall also include a comprehensive review of the entire incentive period for the business (if applicable), including milestones and project phases for the business.

If the County determines that the business:

A. no longer qualifies for the incentive pursuant to law or this Policy;
B. ceases or substantially scales back its operations (excepting non-voluntary events described in the following paragraph)
C. substantially fails to meet the expectations set forth in the application for an incentive, including failure to meet employment, wage, or capital investment plans in the application; or
D. substantially fails to meet the criteria or objectives of this policy;

the San Joaquin County Board of Supervisors may, after providing notice to the business, invoke its contractual remedies and rights to modify by resolution or order the Performance Agreement. If the County determines that a national or state-declared disaster force majeure event, or economic downturn substantially contributes to the non-compliance, the County may amend the Performance Agreement to reconcile the recipient’s obligations with the expected benefits to the County. An updated, limited-scope EIA may be required to frame the new Performance Agreement terms and obligations.

The Performance Agreement will grant the County the right to levy appropriate penalties for non-compliance. These may include; 1) rescissions, which is a complete cancellation of the Performance Agreement, 2) monetary penalties, which shall be assessed when the business does not meet a certain level of performance or relocates, and finally, 3) recalibrations, which are the provisions for changing the Performance Agreement in some manner in order to accommodate an evolving economic climate. The County use of these penalties are intended to motivate compliance and ensure that the community realizes the promised economic and public benefits that were the basis for the original Performance Agreement.

Each business receiving an incentive shall be required to complete an annual report in a County-provided format by March 1. The information in the report will cover the time period of January 1 through December 31 of the previous year. The annual report will be reviewed by May 1. Any material omission or misstatement of fact in information provided to the County may be deemed grounds for repeal of any Performance Agreement approved, renewed or extended in reliance thereon.

At the end of each fiscal year, an annual report listing all financial incentives that remain in effect will be presented to the Board of Supervisors. The annual report shall include information regarding when the incentive was granted, when the incentive expires, current property taxes paid for the property, in lieu of tax payments, amount of any industrial revenue bonds issued, the assessed value of the property, number of employees, salary and payroll of employees, and any additional information concerning the operation of the business receiving the incentive, and other information as requested by the Board of Supervisors.

The failure of a business (a) to provide accurate and timely information to the County in the preparation of the annual report or (b) to comply with the performance standards set forth in the Performance Agreement, shall be grounds for the modification or revocation of the incentive granted.

SECTION 19. TRANSFER OF OWNERSHIP OR USE

Incentives granted by the County may be transferred as a result of a change in the majority ownership of the business. The transferee shall file a new application, along with a renewal fee, for the County's consideration of modifying the Performance Agreement. The County shall be immediately notified by the business of any change in ownership and any substantive change in operations that were the foundation of the original incentive award. The County shall not be obligated to transfer the Performance Agreement should the new ownership or use not satisfy eligibility requirements of this Policy.

SECTION 20. RETROACTIVE GRANTING OF INCENTIVES; "BUT FOR" PRINCIPLE

No incentives will be distributed on a retroactive funding basis. Incentives will be granted pursuant to the guidelines of this policy and effective on the date indicated and approved by the Board of Supervisors. Neither the applicant/business or the County shall be obligated to the other until such time the approved Performance Agreement is fully executed and all conditions precedent met.

SECTION 21. AUTHORITY

The County Administrative Officer is authorized to respond to any request for proposal (RFP), inquiry, or other solicitation and take the following actions including: offering of incentives contained herein, negotiating draft Performance Agreements with prospective applicants, developing administrative procedures to implement this Policy, and taking any other steps necessary to satisfy the intent of this Policy subject only to the limitations imposed by the San Joaquin County Board of Supervisors.

SECTION 22. AMENDMENTS

The San Joaquin County Board of Supervisors retains the exclusive right to amend any portion of this Policy, up to and including its termination. Should this Policy be rescinded, the County will honor any valid Performance Agreement for its duration.

SECTION 23. WAIVER OF POLICY

The San Joaquin County Board of Supervisors reserves the right to award or not to award incentives under certain circumstances that are beyond the scope of this Policy, or to waive any procedural requirement. Notwithstanding the foregoing, the Board of Supervisors will not take any action, approve any waiver, or make exceptions to this Policy without making a finding that a compelling reason exists to depart from this Policy or an emergency exists that could cause irreparable financial harm.

For more information on the EDIP contact:

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