

RESOLUTION NO. R-2008-27

A RESOLUTION AFFIRMING “BLUEPRINT” FINANCIAL POLICIES AND APPROVING THE ESTABLISHMENT OF CITY OF TYLER, TEXAS GUIDELINES & CRITERIA FOR GRANTING SECTION 380 BUSINESS INCENTIVES.

WHEREAS, the City of Tyler is committed to continuing its long standing “Blueprint” financial policies to build Tyler’s future without debt by using the Half Cent Sales Tax only for public infrastructure improvements and not for direct business incentives, thus creating a business friendly environment by:

- Shifting the burden from property tax to sales tax;
- Reducing property taxes;
- Eliminating general obligation debt;
- Practicing “pay-as-you-go” funding for capital improvements; and

WHEREAS, Section 380 of the Texas Local Government Code provides authority for municipalities to establish economic development programs, including programs for making grants to promote state and local economic development and stimulate business and commercial activity in the municipality; and

WHEREAS, the Tyler 21 comprehensive plan adopted in November, 2007, for the City of Tyler includes a chapter and implementation plan for business and economy that includes 28 separate action items, including an effort to develop written guidelines for potential City-related incentives for business retention, expansion, and attraction; and

WHEREAS, the attraction of long-term investment and the establishment of new jobs in Tyler would enhance the City’s economic base; and

WHEREAS, Tyler must compete with other communities across the nation currently offering a variety of business incentives to attract new jobs and business; and

WHEREAS, the Tyler Economic Development Council (TEDC) was formed in 1989 to diversify the economic base of Tyler/Smith County and create new job opportunities; and

WHEREAS, the TEDC promotes business growth through a four point strategy:

- Retention and expansion of existing businesses
- New and small business development
- Targeted marketing and attraction of new business
- Incentives and infrastructure; and

WHEREAS, the City of Tyler contracts with the TEDC to promote, encourage and enhance the creation of jobs through retention, expansion and recruitment of Primary Employers.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TYLER TEXAS:

PART 1. That the Guidelines and Criteria for Granting Business Incentives as follows be adopted:

Section 1. Definitions.

- (a) "Agreement" means a contractual agreement between "owner" and/or lessee and the City for the purposes of granting business incentives.
- (b) "Business Incentives" means economic incentives for a Primary Employer to induce the creation or retention of jobs and Capital Investment within the City of Tyler that may include, but are not limited to, land, facilities, equipment & infrastructure grants to be determined by the City on a case by case basis.
- (c) "Capital Investment" means the increase in the assessed value of an eligible property as a result of "expansion" or "modernization" of an "existing facility" or construction of a "new facility." It does not mean or include "deferred maintenance".
- (d) "City" means the City of Tyler, Texas.
- (e) "Deferred Maintenance" means improvements necessary for continued operations which do not improve productivity or are performed to meet regulatory obligations.
- (f) "Economic Life" means the number of years a property improvement is expected to be in service in a "facility".
- (g) "Facility" means property improvements completed or in the process of construction which together comprise an integral whole, as well as new fixed machinery or equipment. Includes an existing building purchased for expansion or relocation.
- (h) "Industrial District" means an industrial district as defined by Sec. 42.044, Tex. Local Gov. Code.
- (i) "Modernization" means the replacement and upgrading of existing "facilities" which increase the productive input or output, updates the technology or substantially lowers the unit cost of the operation, and extends the economic life of the "facilities". Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing, repairing or completion of "deferred maintenance".

(j) "New Facility" means a property previously undeveloped which is placed into service by means other than or in conjunction with an expansion or "modernization".

(k) "Owner" means the owner of a "facility" or program subject to business incentives. If the "facility" is constructed on a leased property, the owner shall be the party which owns the property subject to the business incentive. A Lessee or other interested third party may, at the discretion of the City, be required to join in the execution of the Agreement but shall not be obligated to assure performance of the party receiving the Business Incentive.

(l) "Primary Employer" means a business in which at least 70% of its goods and/or services are sold to customers that are located more than 50 miles from the intersection of Broadway and Erwin and whose goods and/or services are in one of the following three-digit NAICS codes 31-33 Manufacturing; 42 Wholesale Trade; 48-49 Transportation and Warehousing; 52 Finance and Insurance; 54 Professional and Technical; or 55 Management of Companies (as defined by Texas Legislature HB 2912, 2003 Regular Session); or is a supplier who supplies at least 70% of its non-retail goods and/or services to local primary employer(s) that are located within a 50-mile radius of the intersection of Broadway and Erwin Streets.

(m) "TEDC" means the Tyler Economic Development Council.

Section 2. Mission & Goals

(a) It shall be the mission of the City in administration of these Guidelines and Criteria to promote, encourage and enhance the creation and retention of jobs which retain and/or expand the City tax base and economy through granting Business Incentives which assist in the retention, expansion and recruitment of Primary Employers.

(b) The goals of the City in administration of these Guidelines and Criteria are to:

- Create and retain primary jobs;
- Expand the City tax base and economy;
- Strengthen and diversify Primary Employers within the local economy.

Section 3. Principles & Guidelines

(a) In making a determination regarding Business Incentives under these Guidelines and Criteria, the City of Tyler shall take into consideration the following non-exclusive list of principles and guidelines, if applicable, as factors in its determination.

- 1) The number of jobs potentially added or retained by the Primary Employer;
- 2) The average or median gross annual pay and any benefits for each job potentially added or retained by the Primary Employer
- 3) Whether the potential recipient of Business Incentives would otherwise locate in Tyler without the Business Incentives;

- 4) The type and amount of Capital Investment by the Primary Employer; and
- 5) The contributions pledged to the Primary Employer, if any, by the State of Texas, any other governmental entity, the TEDC or any other person, entity, or association.
- 6) Any issues related to the degree of potential risk of public funds.

(b) Nothing in this section shall be binding upon the City of Tyler, but is presented for reference by any prospective Primary Employer and the TEDC. Moreover, the factors listed herein are not an exclusive list. Each determination shall be determined on a case-by-case basis taking into account the factors deemed relevant by the City of Tyler to that particular project.

Section 4. Business Incentives Authorized.

Primary Employer Business Incentives Authorized. The City's Half Cent Sales Tax will not be used to fund any business incentives. Incentives granted by Agreement under these guidelines pursuant to Section 5 below may include, but are not limited to land, facilities, equipment & infrastructure grants in a form and schedule to be determined by City on a case by case basis.

Section 5. Primary Employer Business Incentives.

(a) Authorized Facilities. A Capital Investment for a Facility may be eligible for incentives by Agreement if it creates or retains jobs for a Primary Employer. Incentives may be granted for land or Capital Investment related to either New Facilities or improvements to existing Facilities for the purpose of Modernization, Expansion, or for Capital Investment necessary for the retention of an existing primary employer. The following types of property shall be ineligible for business incentives: inventories; supplies; tools; furnishings and other forms of movable personal property (not including capital production equipment); vehicles; vessels; aircraft; deferred maintenance investments; improvements to real property which have an economic life of less than 10 years; with the exception of the City, property owned or used by the State of Texas or its political subdivisions or by any organization owned, operated or directed by a political subdivision of the State of Texas.

(b) Annual Certification. The Business Incentive Agreement shall require annual certification of capital investment as required by the Agreement.

(c) Completion of Facility Construction. The completion of Facility construction or installation of Capital Investment shall be deemed to occur upon the earliest of the following events (as determined by the City):

- when a certificate of occupancy is issued for the project;
- when commercial production of a product or provision of a service is achieved at the Facility;

- when the architect or engineer supervising construction issues a certificate of substantial completion, or some similar instrument; or,
- two (2) years after the date of the Agreement.

(d) Wage Requirement. In determining an incentive based on new jobs, the following matrix shall be considered.

New Gross Payroll	Incentive per New Job
<\$30,000 per new job	Up to \$750 per new job
\$30,000 to \$40,000 per new job	\$751 to \$2,000 per new job
\$40,001 to \$50,000 per new job	\$2,001 to \$3,500 per new job
>\$50,000 per new job	\$3,501 to \$10,000 per new job

(e) Job Creation Qualification. Unless there are extraordinary circumstances, in order to be eligible for business incentives, the planned Capital Investment shall create or retain and maintain the minimum number of 50 full-time (2,080 hours/year) permanent jobs within two (2) years of an effective date as set out in the Agreement.

(f) Schedule of Incentives. The implementation schedule of any and all incentives shall be determined on a case by case basis to include periods of one or more years.

Section 6. Universal Requirements.

(a) Project Implementation. An authorized project funded by a business incentive under this Section must be implemented within two (2) years from the date of the Effective Date of the Agreement.

(b) Location or Residency Requirement. Facilities or land may generally be eligible for business incentives only in the event that any associated Capital Investment is located within the City or will be within two years. Property that is covered by an executed Industrial District agreement shall be considered to be within the City for purposes of determining if a project meets location requirements.

(c) "Buy Local" Provision. Each recipient of business incentives shall additionally agree to use best efforts to give preference and priority to local manufacturers, suppliers, contractors and labor, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency. For the purposes of this provision, the term "local" as used to describe manufacturers, suppliers, contractors and labor shall include firms, businesses, and persons who reside in or maintain an office within Smith County.

(d) Insurance Requirements. Each recipient of business incentives shall carry workers' compensation insurance and/or other appropriate liability insurance coverage as the City may determine is appropriate.

Section 7. Application Process.

(a) Written Application. Any present or potential Owner or sponsor may request business incentives by filing an authorized and signed application with the TEDC. Upon receipt, a copy of said application shall be sent to the City Manager or his designee within three business days of receipt by the TEDC for review and comment. An application, application checklist, and summary of the application process are attached hereto as Exhibits A, B and C, respectively.

(b) Contents of Application. The application process shall consist of a completed application form accompanied (when applicable) by: a general description of proposed Capital Investments to the Facility; a descriptive list of the improvements or program for which business incentives are requested; a list of the kind, number and location of all proposed improvements of the property; a map and property description; and, a time schedule for undertaking and completing the proposed improvements or programs. In the case of a Modernization or Expansion project, a statement of the assessed value of the existing Facility as stated by the Smith County Appraisal District, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The application form may require such financial and other information as the City and/or TEDC deems appropriate for evaluating the financial capacity and other relevant factors of the applicant.

(c) Feasibility/Economic Impact Study. After receipt of a completed application, the City may cause to be performed a study of feasibility and economic impact using an independent consultant selected by the City. If performed, this study shall include, but not be limited to, an estimate of the economic effect of incentives, including job creation, employment enhancement and capital investment. The costs and expenses of the feasibility/economic impact study shall be borne by the City.

(d) No Business Incentives if Construction has Commenced. No Agreement shall be approved if the application was filed after the commencement of any construction, alteration or installation of improvements related to the proposed Facility Modernization, Expansion or New Facility.

(e) Due Diligence Financial Review. At the discretion of the City, the applicant shall provide the last three years financial statements. The specific type and format of financial statements required will be determined by the City. After receipt of the financial statements, the City may perform a financial review. The City may require the applicant to provide audited or reviewed financial statements at the cost of the applicant. The applicant will be allowed to address, and explain in writing, any negative findings before the City takes action on an Agreement.

Section 8. Approval.

Reservation of Rights. The City reserves the right to determine the eligibility of a project and the terms and conditions of any grant. Nothing herein shall be construed to limit the authority of the City to examine each application for business incentives before it on a case-by-case basis and determine in its sole and absolute discretion whether or not the proposed project should be granted any business incentive; whether or not it complies with these Guidelines and Criteria, is feasible, and whether or not the proposed business incentives will be to the long-term benefit of the City. The final decision regarding any Business Incentive Agreement shall be made by the City.

Section 9. Agreement.

- (a) Consistency with Guidelines. Any Agreement or representations for granting City Business Incentives by the TEDC shall be consistent with these Guidelines.
- (b) Contents of Agreement. The Agreement shall include (when applicable)
- the estimated value of Capital Investment;
 - the commencement date and termination date of the business incentive;
 - the proposed use of the Facility, nature of construction, time schedule, map, property description and improvements list as provided in the application as required;
 - the contractual obligations in the event of default, delinquent taxes, recapture, administration and assignment as provided in these Guidelines or other provisions that may be required for uniformity or by state law; and,
 - the number of permanent jobs, and wage/salary minimums for jobs created or retained.
- (c) Time of Execution. Following the receipt and review of a completed application as determined by the City, the City shall make best efforts to consider the agreement within 60 days.
- (d) Deadline for Execution. If the incentive proposal is approved by the City, then the Owner will have sixty (60) days from the date the final Agreement is received by the Owner to execute the Agreement. Failure to execute the Agreement within sixty (60) days from date of receipt will result in the Agreement being null and void and of no effect.

Section 10. Recapture.

- (a) Failure to Timely Comply and Continue Operations. In the event that the Owner of a Facility or program fails to timely, fully and completely comply with any one or more of the Agreement requirements, obligations, duties, terms, conditions or warranties, such failure shall be an act of default and, if not fully and completely cured and corrected, City may terminate the Agreement or any Business Incentives and pursue all legal or equitable remedies provided by law or otherwise agreed to by parties. If the Owner is not in compliance during any compliance reviews, then the City, in its sole discretion, shall determine the incentives that the Owner shall be required to refund or forfeit.
- (b) Employment Verification. Owner shall annually provide documentation as required in the Agreement. TEDC or City may request Owner to provide such documentation at any time as outlined in the Agreement.
- (c) Delinquent Taxes. In the event that the Owner allows its ad valorem taxes to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, the Agreement shall terminate and so shall the business incentives.
- (d) Closure. Formal announcement of company closure may be cause for immediate termination of this Agreement and the business incentives.

(e) Utility Payments. In the event that the Owner allows its utility billing payments to become 60 days delinquent, the City at its sole discretion may immediately terminate this and any Business Incentives.

(f) Notice of Default. Should the City and/or TEDC determine that the Owner be in default according to the terms and conditions of its Agreement, TEDC shall notify the Owner in writing at the address stated in the Agreement that if such is not cured within 60 days from the date of such notice (the "Cure Period"), then the Agreement may be terminated. In the event the Owner fails to cure said default during the Cure Period, the Agreement may be terminated. If default on new construction occurs at the fault of the Owner, then the Owner must provide a written explanation of the reason for the default to TEDC. This written explanation, and any legitimate reasons for delay, will be taken into consideration as a possible remedy for the default. The Owner shall also notify the City, in writing, explaining any delays in completing any required Agreement milestones as soon as the delays are realized. These Agreement milestones would include deadlines for completion of new construction, hiring new employees, or any other required Agreement milestones.

(g) Potential Liability. After exhausting good faith attempts to address any perceived default during the Cure Period, and taking into account any extenuating circumstances that might have occurred through no fault of the Owner as determined by the City, potential liability under an Agreement may include the immediate return of all money grants, value of in-kind contributions and any consideration previously paid, the maximum lawful rate of interest on all money paid until fully repaid, reasonable attorney fees and costs of court to collect such money, and the termination of all further obligations made under Agreement. In addition, City shall not be liable for any alleged consequential damages.

Section 11. Administration.

(a) Access to Facility. The Agreement shall stipulate that employees and/or designated representatives of the TEDC will have access to the Facility or program during the term of the Agreement for inspection to determine if the terms and conditions of the Agreement are being met. All inspections will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the Facility or program. Inspections will be made with one or more representatives of the Owner and in accordance with its safety standards.

(b) Annual Reviews. Agreement reviews will be conducted annually to ensure that the Owner is in compliance with the provisions of the Agreement. If the Owner is not in compliance or is in default, then the appropriate provision of the Agreement will be enforced to recover any Business Incentives paid to Owner, unless the Owner remedies the default on or before the conclusion of any Cure Period.

(c) Annual Evaluation. Within 30 days after the anniversary date of any Agreement, TEDC shall annually evaluate compliance with the Agreement and report possible violations of the Agreement to City immediately. As part of this evaluation, the Owners shall provide information sufficient to ensure compliance. A failure on the part of an Owner to timely provide information sufficient to ensure compliance shall be considered an event of Default under the Agreement.

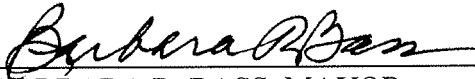
(d) Right to Modify or Cancel. Notwithstanding anything herein or in any agreement to the contrary, the City may cancel or modify the Agreement if the Owner fails to comply with the Agreement.

Section 12. Waivers/Variances

Notwithstanding any other provision in these Guidelines, the City shall have discretion to vary, alter, and/or waive any guideline or criteria set forth herein when such variance, alteration, and/or waiver shall be in the public interest.

PART 2. That this Resolution shall become effective upon its passage and approval.

PASSED AND APPROVED this 12th day of November, 2008.



BARBARA R. BASS, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:

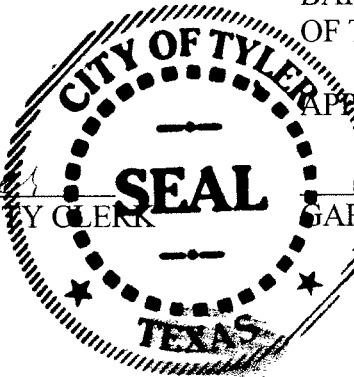


CASSANDRA BRAGER, CITY CLERK

APPROVED:



GARY LANDERS, CITY ATTORNEY





INCENTIVE APPLICATION

(To be submitted to the City through the Tyler Economic Development Council)

I. Applicant Information

- a. **Company Legal Name:**

- b. **Name of Contracting Entity (if different from company applying for incentive package):**

- c. **Entity's Corporate Address:**

- d. **If the contracting entity is different from the applicant, please provide financial information of the company.**

- e. **Type of Project:** Retention; Expansion; Modernization; New Facility

- f. **% Goods/Services Export:** *Percentage of the company's goods and/or services that are, or will be, exported outside of a 50-mile radius of the intersection of Broadway and Erwin Streets or if a supplier the percentage of its non-retail goods and/or services that are supplied to local primary employer(s) that are located within a 50-mile radius of the intersection of Broadway and Erwin.*

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g. Type of Legal Entity:

h. State & Year of Incorporation or Formation:

II. Contact Information

a. Authorized Contact:

Title:

Telephone:

E-mail:

b. Names of Principal Owners, Partners, Officers and/or Directors:

c. Name of Individual authorized to enter into contract on behalf of the entity:

Title:

Telephone:

E-mail:

III. Project Narrative

(Include description of industry, product or services, target market, area served, etc.)

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IV. Proposed Investment

As of December 31 Year 1 Year 2 Year 3 Year 4 Year 5

a. New Capital Investment

Building	\$	\$	\$	\$	\$
FFE	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Total	\$	\$	\$	\$	\$

b. Address or legal description of site (include separate map of site):

c. Smith County Appraisal District assessed value for existing property, facilities and equipment at the site:

d. Construction, acquisition and improvement schedule/timeline:

e. Sources and Uses of Funds (as much detail as possible)

(a) Source(s) of Funds and Amount(s) for total investment:

(b) Descriptive list of improvements or use(s) of Funds and Amount(s):

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V. Existing and Proposed Employment & Gross Payroll

As of December 31 Year 1 Year 2 Year 3 Year 4 Year 5

a. Employment

Existing Jobs

Full-time

Part-time _____ _____ _____ _____ _____

Total

New Jobs

Full-time

Part-time _____ _____ _____ _____ _____

Total

b. Gross Payroll

Existing Payroll

Full-time \$ \$ \$ \$ \$

Part-time \$ _____ \$ _____ \$ _____ \$ _____ \$ _____

Total \$ \$ \$ \$ \$

New Payroll

Full-time \$ \$ \$ \$ \$

Part-time \$ _____ \$ _____ \$ _____ \$ _____ \$ _____

Total \$ \$ \$ \$ \$

c. Average Wage \$ \$ \$ \$ \$

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- d. **Schedule of Employee Benefits** (Please list benefits to be provided to employees.)

VI. Incentives Requested by Applicant

- a. **Has the applicant ever received economic development incentives from any other governmental entity? If so, please provide detailed information.**
- b. **Has the applicant ever defaulted on an economic development agreement or any other incentive package?**
- c. **What contributions are pledged, if any, by the State of Texas, any other governmental entity, the Tyler Economic Development Council, or any other person, entity or association?**
- d. **Please list requested incentives:**

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VII. DECLARATION

I understand the information provided by the company in this incentive request shall be incorporated into various agreements between the company and local units of government and the Tyler Economic Development Council. Any changes to the information provided may result in a change in the incentives offered from the various entities. Applicant hereby certifies that the information provided in this application is true and correct at the time of executing this application. If any information changes, or is, or becomes incorrect, the applicant shall promptly provide the new or additional information.

By signing this application, the applicant verifies that at least 70% of its goods and/or services are, or will be, exported outside a 50-mile radius of the intersection of Broadway and Erwin Streets or that it is a supplier who supplies at least 70% of its non-retail goods and/or services to local primary employer(s) that are located within a 50-mile radius of the intersection of Broadway and Erwin Streets.

Signature of Company Agent	Printed Name of Company Agent
Company Agent's Title	Date



EXHIBIT B TO RESOLUTION R-2008-27 INCENTIVE APPLICATION CHECKLIST

(To be completed by the Tyler Economic Development Council and submitted to the City Manager)

APPLICANT/COMPANY LEGAL NAME: _____

- _____ 1. The application is entirely complete and was received by the TEDC on _____ (date).
- _____ 2. The applicant is a Primary Employer – *and has provided documentation that at least 70% of its goods and/or services are, or will be, exported outside a 50-mile radius of the intersection of Broadway and Erwin Streets or that it is a supplier who supplies at least 70% of its non-retail goods and/or services to local primary employer(s) that are located within a 50-mile radius of the intersection of Broadway and Erwin Streets.*
- _____ 3. The incentive being requested is for land, capital investment or infrastructure.
- _____ 4. If the application is approved, the completion of any facility construction or installation of capital investment may be completed no later than two years after the effective date of a subsequent incentive agreement.
- _____ 5. The project will create a minimum of 50 full-time permanent jobs within two years after the effective date of a subsequent agreement.
- _____ 6. The project is located within the City Limits of the City of Tyler, or will be within two years.
- _____ 7. The applicant will agree to make best efforts to give preference and priority to local manufacturers, suppliers, contractors and labor.
- _____ 8. The applicant agrees to provide financial or other information requested to enable evaluation of the financial capacity of applicant and potential financial impact of project.
- _____ 9. Construction or improvements related to the application or project have not commenced.
- _____ 10. The applicant would not otherwise locate in Tyler without the incentive requested.

Completed by: _____

Date: _____

EXHIBIT C TO RESOLUTION NO. R-2008-27

SUMMARY OF APPLICATION PROCESS

- STEP 1:** Applicant contacts the Tyler Economic Development Council (TEDC) to obtain an Incentive Application, or the TEDC provides an application to the applicant.
- STEP 2:** Applicant submits a confidential application to TEDC for processing, or TEDC completes the application on the applicant's behalf.
- STEP 3:** TEDC submits confidential application and a completed application checklist to the Tyler City Manager for processing within three business days of receipt of application from applicant.
- STEP 4:** A subcommittee of up to three members of the City Council, three members of the TEDC Executive Committee and appropriate City/TEDC staff meet to review the confidential application and requests any additional information necessary to ensure a completed application.
- STEP 5:** City may conduct, at the City's discretion and cost, a third party feasibility/economic impact study on the confidential application. TEDC assists with compiling information for the feasibility/economic impact study in a format prescribed by the City. Once complete, a copy of the study will be forwarded to the TEDC for review and comment. TEDC submits written comments to City Manager for use in evaluating the application.
- STEP 6:** Upon the request of the City, the applicant shall provide the last three years financial statements through the TEDC. The specific type and format of financial statements required will be determined by the City. After receipt of the financial statements, the City may perform a financial review. The City may require the applicant to provide audited or reviewed financial statements at the cost of the applicant. The applicant will be allowed to address, and explain in writing, any negative findings.
- STEP 7:** Once the confidential application is deemed complete by the Tyler City Manager, application is reviewed and discussed by Tyler City Council in closed executive session as provided by state law.
- STEP 8:** In the event the City wishes to proceed with consideration of the application, the City Manager drafts a proposed Incentive Agreement to include all items required by *City of Tyler, Texas Guidelines & Criteria for Granting Business Incentives*. The proposed Incentive Agreement is forwarded to the TEDC.
- STEP 9:** On behalf of the City, the TEDC presents the proposed Incentive Agreement to the applicant. The applicant is provided 60 days from the date the proposed Incentive Agreement is sent to the TEDC to execute an Incentive Agreement that will be subject to final City Council approval.
- STEP 10:** Best effort is made to present the Incentive Agreement to the Tyler City Council for public and final consideration within 60 days of confidential application being deemed complete.