

2020 RESOLUTION AMENDING ECONOMIC DEVELOPMENT INCENTIVE POLICY

WHEREAS, the Board of Commissioners finds that expenditures for economic development of industrial and commercial plants stimulate the local economy, increase the tax base, promote business, and result in the creation of jobs for the citizens of Durham County; and

WHEREAS, the Board of Commissioners desires to amend its consolidated, uniform plan for providing economic development funds which will not duplicate the investment efforts of other governmental units; and

WHEREAS, the Board of Commissioners intends to implement its economic development policy in conjunction with related County policies and plans that allow Durham County residents to compete for jobs which pay a liveable wage; and

WHEREAS, the Board of Commissioners desires to provide for the option of infrastructure investments in lieu of or in addition to other appropriations in Durham County; and

WHEREAS the County may make these appropriations pursuant to N.C.G.S. § 158-7.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS FOR THE COUNTY OF DURHAM DOETH RESOLVE:

1. The prior Resolution entitled "Resolution Amending Economic Development Policy" is hereby amended by the adoption of this Resolution.

2. Appropriations will be for Companies with a presence in or that locate in Durham County and which meet the new investment and jobs thresholds. In no event will appropriations be made for residential development.

3. Appropriation shall only be considered for:

- a) Companies which produce new taxable capital investment of at least \$50 million in assessed valuation at the potential Durham County location as determined by the tax value placed on the property by the Durham County Tax Administrator. These minimum amounts shall be calculated in the most current schedule of values. Only taxable capital invested within five years of the date of the incentive agreement will be counted in determining the investment amount.

or

- b) Companies which create a minimum of 200 new full-time jobs. For a new job to qualify and be counted towards the minimum 200 new jobs, the following criteria must be met:
 - (i) the new job must be a net increase in the Company's number of full-time employees working in Durham County; and
 - (ii) the new job must be filled by a full-time employee. A full-time employee is defined as a person who is employed by the Company for at least 35 hours per week and whose wages are subject to withholding, or a permanent hourly or salaried position of employment with the Company that requires not less than 1820 hours of work per year at the Durham County site, to include paid time off,

- and is intended to be performed by one employee during the entire year; and
- (iii) the average wage for new full-time jobs must equal the average wage as to each category of employee hired, as defined by the Department of Labor or similar Government entity, for Durham County or Metropolitan Statistical Area; and
- (iv) the Company must also agree to provide health insurance satisfying the standard established for Job Development Investment Grants in N.C. Gen. Stat. § 143B-437.53(c) that includes Company paying a minimum of 50% of the premiums; and
- (v) the net new jobs must represent the number of full-time jobs in Durham County tied to the incented project and cannot include employees transferred or relocated from another Company site in North Carolina.

4. Companies seeking to qualify for an appropriation pursuant to this policy shall provide Durham County with a written statement which includes the following project information:

- Project physical location and parcel number(s)
- Estimated value and square footage of the facility(s) to be constructed or upfitted
- Estimated value and type of equipment to be installed
- Estimated costs and schedule of the design and construction of any activity related to the proposed project, including land use costs that are being incurred by the County
- Number of new full-time jobs created
- Position type or classification and salary information
- As available, projected educational requirements or certifications necessary for new positions
- If applicable, anticipated number of new jobs that will be transferring from out of state
- If applicable, projected number of existing positions that are at risk of relocating out of state if not retained
- The presence of competition for the project with other states
- List of locations in other states being considered by the Company
- Written affirmation that without funding from this program, the project would not occur in Durham County

5. The Board of Commissioners is not obligated to make any appropriations for a Company. If an appropriation is made, the amount of the appropriation shall be determined by, but not limited to, the following factors:

a) Base Factors:

- Project information identified in Section 4
- Capacity of available infrastructure
- Whether the incentives in any given year exceed the amount of taxes collected by the County

b) Company Policies and Project Attributes - The following criteria are a priority for Durham County and can provide a benefit to the greater Durham community. Interested Company should identify which of the following criteria apply to the proposed project or are policies that the Company maintains:

- Diversity of project's employment opportunities, including jobs that do not require an advanced degree and/or contain manufacturing jobs (Identify all that apply)
- Employers that provide childcare support and/or pre-k programming (Identify all that apply)
- Sustainable building design, construction and operating practices

- Employers that hire current or previous justice-involved individuals
- All Company positions exceed \$15 an hour (Durham County Living Wage)
- Companies that have a Diversity Purchasing program or M/WBE goals for purchasing agreements
- Transportation Demand Management (TDM) strategies that reduce or redistribute travel demand by coordinating and promoting flex scheduling, carpooling, transit, biking, etc.
- Companies that create clean technology jobs that contribute towards a more sustainable environment
- Relation to existing industry clusters such as Life Sciences, Information Technology and Cleantech
- Companies that diversify Durham's economy
- Retention of existing jobs at stake
- Companies locating their Headquarters in Durham County
- Companies locating in Research Triangle Park, Treyburn Corporate Park or Downtown
- Contains high-paying jobs with an increased multiplier effect on the Durham economy
- Project location in a Durham County Opportunity Zone

c) Workforce Partnership - As necessary to ensure that Durham County continues to offer a skilled workforce capable of successfully meeting future employment needs and to further strengthen the education to jobs pathway, Companies are encouraged to identify the partnerships in which they will make good faith efforts to participate in. The Workforce Partnership includes but is not limited to the following:

- Hold job fairs with NC Works
- Paid summer Internships and jobs - Identify High School and/or College
- Work with Durham Tech to create apprenticeships which combine on-the-job learning and classroom instruction
- Participate in any of the following Durham Public Schools Career and Technical Education programs:
 - Educational sessions with students to include Guest Speaking and Career Conversations
 - Hosting teachers over the summer or Career Readiness Expo participation
 - Hosting students to include Job Shadowing and the Scholars-At-Work-Program
 - Serving as a Durham Public Schools Career and Technical Education Advisor
- Collaborate with North Carolina Central University's Biomanufacturing Research Institute and Technology Enterprise (BRITE) Center
- Partner with local organizations to advise with Diversity Purchasing policy creation and/or attend related training events
- Participate in Diversity Purchasing trade and outreach events
- Partner with Criminal Justice Resource Center to identify employment ready participants
- Work with Durham Public Library to provide job awareness programming
- Collaborate with Durham Technical Community College's (DTCC) BioWorks Advisory Committee and similar local organizations to recruit local talent
- Communicate employment opportunities with relevant industry networks like DTCC's BioWorks Program, Research Triangle Cleantech Cluster, etc.
- Engage Duke's Office of Durham and Regional Affairs to participate in workforce and community activities
- Work with DTCC to ensure that necessary course curriculum is available to support project's employment opportunities

6. Notwithstanding the foregoing, in no event shall an appropriation be made to a Company for property which has been or is proposed to be classified as historic for purposes of *ad valorem* taxation pursuant to N.C.G.S. § 105-278 or any successor statute.

7. Companies may seek incentives through the taxable capital investment criteria or the jobs criteria.

- (i) For Companies seeking incentives through the investment criteria, appropriations may be considered between 10%-50% of the net new revenue resulting from the Company's taxable, capital investment as determined by the Durham County Tax Administrator. Section 5 criteria will be used to determine the award amount that is considered.
- (ii) For Companies which are requesting incentives through job creation criteria, the project must include a minimum of 200 new full-time jobs. Incentives of up to \$1,000 per job may be offered. Section 5 criteria will be used to determine the amount that is considered per job. One of the goals of the jobs criteria is to potentially facilitate a State award by participating with a required, qualifying local match.
- (iii) In lieu of the appropriation provided in subparagraph "7.(i)" and "7.(ii)" above, the Board of Commissioners, in its sole discretion, may elect to provide or recognize infrastructure investments made by Durham County that are necessary to the execution of the project as a part or the sum of the total incentive offer from the County. Infrastructure may include but is not limited to utilities, public amenities, structured parking, lift stations and roads.

8. The payments shall be made based on a schedule, of up to 10 years, which is acceptable to the Company and the Board of Commissioners. Awards greater than \$1 million are to be paid out on a minimum of a seven-year schedule. Given the market dynamics that influence the scale of a project from conception to completion, a Performance Compliance model may be implemented based on the following principles:

- 100% performance compliance equals full scheduled payment
- Annually, 80% of investment and 80% of jobs targets must be achieved to qualify for payment
- Between 80%-100% of performance compliance, for every % reduction in performance, there is an equal % reduction in payment
- Performance compliance below 80% fails to qualify for payment

9. All funds appropriated or spent pursuant to this policy shall be used only for the purposes as stated in N.C. G.S. § 158-7.1 (a) or (b). Per N.C. G.S. 158-7.2, Company will inform the County how funds will be used as part of the consideration process so that funds may be approved in advance of agreement execution. Whenever funds are provided for projects that include new personnel, the incentive Agreement shall provide that the Company post job openings with the North Carolina Works Career Center. Whenever funds are provided for projects that include taxable capital investment related to new construction or building upfit, the Company shall post investment-related Request for Proposals (RFP), with a state or local organization that notifies minority vendors of bid opportunities.

10. Any appropriations of funds pursuant to this policy may only be made following a public hearing before the Board of Commissioners, which notice of such hearing shall be published at least ten days before the hearing is held. The notice shall contain the information as required by N.C.G.S. § 158-7.1(c).

11. Companies receiving appropriations of funds pursuant to this policy shall enter into an incentive Agreement with Durham County. Briefing sheets detailing significant project attributes and terms will be made available at the Public Hearing. All incentive Agreements are performance based and shall be subject to performance criteria as set forth therein. Performance criteria shall include, but not be limited to verification of jobs, investment, and related agreement criteria prior to payment. If for any reason, the Company fails to meet its obligations under the agreement by not achieving jobs, investment and related criteria outlined in the annual schedule of payments, then it will not qualify for payment.

12. All Companies seeking and receiving appropriations shall be and remain current on all Durham County and Durham City levied bills. Pertaining to the County's environmental standards, notwithstanding any other regulations or requirements, Companies currently located in Durham County and looking to expand shall be in full compliance with all applicable Federal, State and local environmental laws, ordinances, regulations and standards including all applicable Durham County environmental ordinances and standards in order to be considered for any Durham County incentives. Further, any Company, currently located in Durham County or seeking to locate in Durham County, if incentivized shall maintain full compliance with all applicable environmental standards for the full period of the incentive Agreement. Failure to maintain such compliance may cause refusal of the County to pay the incentive for that period and any period in which a violation of these referenced standards exists. Should a violation be discovered following a payment, the Company may be required to either pay back said payment or to forfeit the upcoming payment.

13. During the Schedule of Payments portion of the agreement, which are years 1-5 or 1-7, if an appropriation is to be made to a Company, a provision in the Agreement referenced above shall contain, among other provisions including default of the agreement, a "claw-back" provision which will require a repayment, in full, of any appropriation to the Company from the County should:

- (i) a Company close its operations in Durham County;
- (ii) a Company not achieve 50% of investment and jobs thresholds.

Throughout the maintenance portion of the agreement, which are years 6-10 or 8-10, if a Company reduces the number of employees by more than 30% below the number agreed to in the incentive agreement, the Company shall repay the County any appropriation based on the following schedule:

- (i) if the reduction occurs in year six after signing the agreement, the Company shall repay the County an amount equal to 80% of the total appropriation paid;
- (ii) if the closing or reduction occurs in years seven through ten after the Agreement is signed, starting with year six, a declining amount of 20% per year of the total appropriation shall be repaid to the County with 10% of the amount of the appropriation to be repaid in year ten. i.e. 60% in year seven, 40% in year eight, and 20% in year nine.

The Company shall not be entitled to receive incentive payments after any public announcement by Company of its plan to cease operations at the Facility and shall be required to pay back incentives in full. For any year in which a Payment is due, no payment shall be made unless the Company operated the Facility continuously throughout the applicable Payment Year with the exception of brief periods necessary for maintenance or repair, facility closures due to extreme adverse weather or other conditions beyond the Company's reasonable control. If performance criteria are not met, a request to review conditions explaining performance may be submitted to the Board of County Commissioners.

Payment requests must be submitted as specified within the annual schedule of payments or will be considered forfeited. The County and the Company respectively bind themselves in respect to covenants, agreements and obligations contained herein. Company shall not assign, transfer, sell or convey any of its rights to incentive payments contemplated by this Agreement, except in the event of a corporate name change or merger, and then only upon the written prior approval of County.

14. The provisions of this policy do not create and are not intended to create any property interest or legal expectation by any Company. Additionally, this policy is not intended to limit the discretion given to the Board of Commissioners for the promotion of local economic development under applicable laws. Any assistance provided to a Company will be limited to the availability of funds by Durham County.

This the 10th day of February 2020.