

# CRITERIA FOR OPERATION AND IMPLEMENTATION OF JOB DEVELOPMENT INVESTMENT GRANT PROGRAM (“the Program”)

*The following Criteria for the Program are submitted for publication and comment by the Department of Commerce.*

*Hard copies of the Criteria will be made available by the Public Affairs Office of the Department of Commerce to those persons requesting them. Electronic copies will be posted on the Department of Commerce website at the following location:*

<http://www.nccommerce.com/research-publications/incentive-reports>

*Public comments on the Criteria will be accepted in oral and written form until 5:00 p.m. on Tuesday, March 29, 2016. Written comments are to be provided to the Commerce Finance Center by mail addressed to:*

*Commerce Finance Center  
N.C. Department of Commerce  
4301 Mail Service Center  
Raleigh, North Carolina 27699-4301*

*or by hand delivery addressed to:*

*Commerce Finance Center  
N.C. Department of Commerce  
Education Building  
301 North Wilmington Street  
Raleigh, North Carolina*

*or by e-mail delivery to the following address: [CFC@nccommerce.com](mailto:CFC@nccommerce.com)*

*An opportunity for oral comments will be provided as well. A public comment session will take place from 2:00 p.m. to 3:00 p.m. on Monday, March 21, 2016 in the Department of Commerce Fourth Floor Small Conference Room in the Education Building, 301 North Wilmington Street, Raleigh, North Carolina, and provide their oral comments.*

# CRITERIA FOR OPERATION AND IMPLEMENTATION OF JOB DEVELOPMENT INVESTMENT GRANT PROGRAM

## 1.0 GENERAL PROVISIONS

### 1.1 Policy

The policies underlying the Job Development Investment Grant Program are those set out by the North Carolina General Assembly in N.C. Gen. Stat. §143B-437.50.

### 1.2 Authorization

The Economic Investment Committee is authorized by Chapter 143B, Article 10, Part 2G of the N.C. General Statutes to implement and administer the Job Development Investment Grant Program and to develop such criteria as may be necessary to carry out that purpose, as set forth in these Criteria for Operation and Implementation of Job Development Investment Grant Program (the “Criteria”).

These Criteria do not address every situation and available option discussed in Part 2G. For example, these Criteria do not address the availability and process of awarding grants surrounding high-yield projects (as that term is defined below), and the resulting effect on the total grant-awarding capacity. Where express statutory authority exists, such authority supersedes anything to the contrary in these Criteria.

Additionally, if statutory changes made after the enactment of these Criteria include terms different than or inconsistent with those contained herein, then the terms of the statute shall control and supersede the applicable terms in these Criteria.

### 1.3 Definitions

- (a) “Agreement.” Defined in N.C. Gen. Stat. §143B-437.51(1).
- (b)(1) “Applicant.” A Business applying for a Grant.
- (b)(2) “Application.” The application of a Business to the Committee for a Grant on the form prescribed by the Committee, as described in N.C. Gen. Stat. §143B-437.55(a).
- (c) “Base Period.” Defined in N.C. Gen. Stat. §143B-437.51(2).

- (d) “Business.” Defined in N.C. Gen. Stat. §143B-437.51(3).
- (e) “Committee.” Defined in N.C. Gen. Stat. § 143B-437.51(4).
- (f) “Development tier.” Defined in N.C. Gen. Stat. §143B-437.51(4a).
- (g) “Partnership Economic Developer.” An economic developer employed by the Economic Development Partnership of North Carolina, Inc. (“Partnership”).
- (h) “Eligible Position.” Defined in N.C. Gen. Stat. §143B-437.51(5).
- (i) “Full-time Employee.” Defined in N.C. Gen. Stat. §143B-437.51(6).
- (j) “Grant.” An award under the Program.
- (k) “Grantee.” A specifically identified entity that has been or will be awarded a Grant by the Committee. The term includes potential Grantees.
- (l) “New Employee.” Defined in N.C. Gen. Stat. §143B-437.51(7).
- (m) “Overdue Tax Debt.” Defined in N.C. Gen. Stat. §143B-437.51(8).
- (n) “Permanent positions,” as defined in N.C. Gen. Stat. §143B-437.51(6), do not include positions filled by:
  - (1) Consultants.
  - (2) Contract workers.
  - (3) Independent contractors.
  - (4) Persons filling positions that are temporary and time-limited as a condition of employment.
  - (5) Employees of a temporary service.
  - (6) Employees of some entity that pays withholding taxes other than the Grantee unless that entity is a Related Member Party or an entity whose employees may be included as Full-Time Employees by operation of State law.
- (o) “Program.” The Job Development Investment Grant Program set out in Chapter 143B, Article 10, Part 2G of the N.C. General Statutes.
- (p) “Project.” A business, commercial or industrial development project involving new job creation in North Carolina for which an Applicant is seeking a Grant or for which a Grant has been made. A Project can involve development of an entirely new facility in North Carolina or the expansion of an existing facility.
- (q) “Related Member.” Defined in N.C. Gen. Stat. §143B-437.51(9).

- (r) “Related Member Party.” A Related Member that is included in an Application, whose performance is, will be, or is proposed to be, included in the Agreement, for the purpose of determining eligibility for Grant payments.
- (s) “State.” The State of North Carolina.
- (t) “Utility Account.” The Utility Account of the Industrial Development Fund created pursuant to N.C. Gen. Stat. §143B-437.01(b)(1).
- (u) “Withholdings.” Defined in N.C. Gen. Stat. §143B-437.51(10).
- (v) “High-yield project.” Defined in N.C. Gen. Stat. § 143B-437.51(6a).

#### 1.4 **Purpose**

The purposes of the Program are those set out by the North Carolina General Assembly in N.C. Gen. Stat. §§143B-437.50 and 143B-437.52 and include fostering job creation and investment in the economy of North Carolina. These Criteria have been developed by the Committee, in consultation with the Attorney General, to set forth the conditions for the award and administration of Grants.

#### 1.5 **Limitations on Liability for Grants**

- (a) The maximum total liability of the State, including amounts transferred to the Utility Account, for Grants approved during a single calendar year may not exceed the amount specified in N.C. Gen. Stat. §143B-437.52(c).

The Committee will monitor the caps for each Grant awarded to ensure that no new Grant award would cause the State to exceed the maximum amount of liability that the State may incur for the aggregate of all Grants made during a given year.

## 1.6 **Changes to Criteria**

The Committee may change the Criteria from time to time pursuant to the procedures set out by the North Carolina General Assembly in N.C. Gen. Stat. §143B-437.54(d), as the needs of the State and circumstances change.

## 1.7 **Procedure for Notice of and Comment on Proposed Criteria**

Persons requesting notice of proposed Criteria should submit requests in writing to the Commerce Finance Center of the Department of Commerce, with a copy to the Department of Commerce Director of Public Affairs. Requests should include the name and address of the person or organization requesting a copy of proposed Criteria.

At least 20 days before the effective date of any nontechnical amendments to the Criteria, the Department will publish the proposed Criteria on the Department's Web site and provide notice to persons who have requested notice of proposed Criteria. The notice will include instructions for submission of oral or written comments.

The Department will accept oral and written comments on the proposed Criteria during the 15 business days beginning on the first day that the Department has completed these notifications.

A technical amendment is either:

1. An amendment that corrects a spelling or grammatical error.
2. An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment.

Oral and written comments on proposed Criteria will be provided to all members of the Committee. Comments may be incorporated into revisions of proposed Criteria and adopted by the Committee.

## 1.8 **Oral Comment Session**

An oral comment session is intended to provide an opportunity for persons who wish to communicate their comments orally, as opposed to submitting them in written form. The oral comment session will typically be convened by the staff of the Department of Commerce Finance Center, who will use a tape recorder to record oral comments. These comments will be transcribed or summarized in written form and circulated to Committee members, along with the written comments.

1.9 **Effective Date of Criteria**

Criteria or changes to the Criteria that have been approved by the Committee become effective after the period of public notice and comment has expired. Following the conclusion of the comment period, the Committee may revise Criteria based on comments received. If revisions based on comments substantively change the previously published proposed Criteria, an additional opportunity for notice and comment will be provided.

1.10 **Reserved**

1.11 **Reserved**

1.12 **Reserved**

## 2.0 COMMITTEE COMPOSITION AND GOVERNANCE

### 2.1 Membership

The membership of the Committee is that set out by the North Carolina General Assembly in N.C. Gen. Stat. §143B-437.54.

### 2.2 Terms of Governance

- (a) The terms of governance of the Committee include those terms set out by the North Carolina General Assembly in N.C. Gen. Stat. §143B-437.54.
- (b) All matters before the Committee, except those for which the statutes specifically direct a different procedure, will be decided only upon the vote of at least three members. N.C. Gen. Stat. §143B-437.54(b). Where only three members are present for a meeting, a vote of two members in favor and one member opposed shall constitute a valid affirmative vote of the Committee.
- (c) The Committee shall elect one of its members to serve as Chair. The Chair shall preside at all meetings of the Committee and perform such other duties as may be directed by the Committee.
- (d) The Committee shall elect one of its members to serve as Vice-Chair. An Acting Chair chosen by the Committee shall preside at all meetings of the Committee when the Chair is absent.

### 2.3 Handling of Confidential Information

It is anticipated that members of the Committee will receive and have access to information that is confidential and documents that are not subject to disclosure under the North Carolina Public Records Act.

When a member becomes privy to information that is confidential and documents that are not subject to disclosure under the North Carolina Public Records Act, that member shall take all steps necessary to preserve the confidentiality of the information or documents.

Upon request, members will sign appropriate confidentiality agreements with agencies that may have access to confidential information agreeing to protect the confidentiality of the data to the extent required or authorized by North Carolina law and not to disclose such information without first consulting with the agency that provided the information and the North Carolina Attorney General's Office.

## 2.4 Conflicts of Interest

- (a) *Agenda to Contain Conflicts Reminder.* Each agenda will contain a notice reminding members to reflect upon and screen for possible conflicts of interest.
- (b) *Chair to Inquire as to Conflicts Prior to Discussions of Application.* Prior to the discussion of a particular application, the Chair should inquire of members as to whether they have a conflict or feel there is the appearance of a conflict with respect to their consideration of the particular Application.

Conflicts may take any form. They could include any situation in which a member's independent judgment with respect to a particular Application could be compromised or could be perceived by a reasonable person as being compromised. They may include, for example, having a financial interest in a company, such as owning property leased to the company or being considered for acquisition by the company. They may include having business contracts or a business relationship with a company that has an interest in the Application. They may also include, for example, employment of a member of a Committee member's family by an Applicant or Grantee.

Because of the nature of the Committee's work, one possible conflict issue that may recur with some frequency involves ownership of securities in an Applicant or Grantee.

- (c) *Members Responsible for Assessing Their Own Conflicts.* Members of the Committee are responsible for determining whether they may have a conflict or the appearance of a conflict in a particular case.
- (d) *Chair to Assess and Decide Conflicts Questions When Posed by Members.* In the event a member has reason to believe he has a conflict of interest with respect to a particular Application, or the appearance of such a conflict, that member should either:
  - (1) Recuse himself from deliberations on the particular Application, or
  - (2) Disclose the potential conflict to the Chair of the Committee and seek a determination by the Chair as to whether the conflict or appearance of conflict is of such magnitude as to render recusal appropriate and/or necessary.

A determination by the Chair as to whether a member should recuse himself will be final. The vote of any member that is directed to be recused shall be void and shall not be recognized by the Committee unless that member is

called back to the Committee in accordance with Section 2.4(i) below (“Rule of Necessity”).

- (e) *Ownership Interests that May Create Conflict.* For purposes of assessing conflicts of interest in the particular case of ownership of securities, a member should consider those securities that either he and/or his spouse directly or beneficially own or control.
- (f) *Conflict of Interest Presumed.* For purposes of assessing the existence of a conflict or appearance of conflict with respect to ownership in an Applicant or Grantee, an ownership or controlling interest of 10% or greater will be considered a conflict of interest and will disqualify a member from considering an Application for that company.

A member owning or controlling more than 10% of an Applicant or Grantee should declare a conflict and recuse himself from consideration of that Application.

- (g) *No Conflict of Interest or Appearance of Conflict Presumed.* For purposes of confirming that no conflict of interest exists, ownership of less than \$10,000 in securities of an Applicant or Grantee and less than 10% of its shares or other membership interests will be presumed insufficient to create a conflict of interest or raise the appearance of a conflict of interest.

If a member who owns less than \$10,000 in securities of an Applicant or Grantee and less than 10% of the company, nonetheless, believes he has a conflict of interest, he may choose to recuse himself.

- (h) *Whether Appearance of Conflict Exists for Ownership of Shares in Excess of \$10,000.* In situations where a member owns less than 10% of a company and more than \$10,000 in securities of a company that is an Applicant or that may receive a Grant, a member may either:
  - (1) Elect to recuse himself from deliberations with respect to the particular Application, or
  - (2) Disclose to the Chair sufficient facts regarding his ownership of securities, including the amount and number of shares, for a determination by the Chair as to whether a conflict or appearance of conflict exists and is of such magnitude as to render recusal appropriate and/or necessary.

A determination by the Chair as to whether a member should recuse himself will be final. The vote of any member that the Chair has directed to be recused shall be void and shall not be recognized by the Committee unless

that member is called back to the Committee in accordance with Section 2.4(i) below (“Rule of Necessity”).

- (i) *Rule of Necessity.* When the presence of conflicts or appearance of conflicts results in the recusal of more than two members of the five-member Committee or the recusal of so many members as may destroy the quorum, thus rendering the Committee unable to act for lack of a quorum, recused members may be brought back to create a quorum and serve in the Committee’s decision-making.

In such cases, members shall disclose the nature of their conflicts or appearances of conflict to the Chair, and the Chair shall bring back only so many members as may be required to achieve a quorum. The Chair shall bring back members in the order of those having the least conflicts first. Determination of the magnitude of particular conflicts shall be made by the Chair in the exercise of reasonable judgment.

## 3.0 MEETINGS

### 3.1 **Conduct of Meetings**

Meetings of the Committee are to be conducted in accord with the applicable terms set out by the North Carolina General Assembly in N.C. Gen. Stat. §143B-437.54. Notice, scheduling and conduct of the meetings are to be in accordance with the provisions of N.C. Gen. Stat. §143-318.10 *et seq.* (Open Meetings Act).

### 3.2 **Reserved**

### 3.3 **Reserved**

### 3.4 **Quorum**

A simple majority of three of the five members of the Committee shall constitute a quorum for the transaction of business. The existence of a quorum shall be determined at the beginning of each meeting. N.C. Gen. Stat. §143B-437.54(b).

### 3.5 **Telephonic Participation**

Any one or more or all members may participate in a meeting of the Committee by means of telephone or similar communications device that allows all persons participating in the meeting to hear each other. Participation in a meeting by means of a conference telephone or similar communications device shall be deemed presence in person at such meeting.

### 3.6 **Minutes of Meetings**

The Commerce Finance Center shall provide staff at meetings for the purpose of keeping those minutes of meetings required under N.C. Gen. Stat. §143-318.10(e).

## 4.0 **RESPONSIBILITY FOR ADMINISTRATION**

### 4.1 **Department of Commerce**

The Department of Commerce is requested to administer those aspects of the Program relating to solicitation, receipt, and screening of Applications; collection of fees; coordinating presentation of information to the Committee regarding Applications; communicating with Applicants and Grantees concerning Applications and awards; drafting of Agreements at the direction of the Committee; review and assessment of compliance with Agreements; auditing compliance with Agreements; and such other responsibilities as the Committee may request and the Secretary of Commerce may direct.

The Department of Commerce, and the Partnership, are requested to serve as the point of public contact for the Program. The Secretary of Commerce is requested to actively promote the Program to businesses and industries that may be considering expanding or locating facilities in North Carolina and whose Projects would appear to be appropriate and promising candidates for the limited amount of Grant funds available.

The Secretary of Commerce is expected to discuss the potential benefits that may be available under the Program to companies that appear to be promising candidates for the Program and he may express his support of an Application on behalf of a particular Project, business or industry. The Secretary will report to the Committee on economic development projects for which the Program has been promoted.

Neither the Secretary, nor his staff, nor any member of the Committee, has the power to bind the Committee, and this fact is to be made clear in communications between the Secretary and his staff and any potential Applicant or Grantee.

#### **4.2 Department of Revenue**

The Department of Revenue is requested to administer those aspects of the Program relating to certifications required of the Department under Chapter 143B, Article 10, Part 2G of the N.C. General Statutes (i.e., that there are no outstanding overdue tax debts of a Business, and the amount of Withholdings received in a given year from a Business), review and assessment of compliance with Agreements, auditing of Agreements, and such other responsibilities as the Committee may request and the Secretary of Revenue may direct.

#### **4.3 Office of State Budget and Management**

The Office of State Budget and Management is requested to aid in the administration of those aspects of the Program relating to analysis of Applications, compliance with the limitations on amount of Grants set out in N.C. Gen. Stat. §143B-437.52(c), production of the Annual Funding Study, and such other responsibilities as the Committee may request and the Director of the Office of State Budget and Management may direct.

#### **4.4 Requests of Committee**

Staff to the Department of Commerce, Revenue and the Office of State Budget and Management will provide such other support to the Committee as may be requested by the Committee and directed by the leadership of the respective State agency.

#### **4.5 Role of Office of Attorney General**

The development of Criteria and the drafting of Agreements will be done in consultation with the Office of Attorney General. *See, e.g.*, N.C. Gen. Stat. §§143B-437.52 and 143B-437.57(b).

## **5.0 BASIC ELIGIBILITY FOR RECEIVING GRANTS**

### **5.1 Basic Criteria**

To be eligible to receive a Grant, a Grantee must satisfy the following basic criteria:

- (a) The Grantee must be a Business. N.C. Gen. Stat. §143B-437.51.
- (b) The Grantee and any Related Member Parties must have no citations in North Carolina under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations

or for failing to abate serious violations with respect to the location for which the Grant is to be made. N.C. Gen. Stat. §143B-437.53(e).

The Committee will solicit this information from the Applicant or Grantee and seek to cross check it with data prepared by the North Carolina Department of Labor.

(c) The Project must create the required minimum number of Eligible Positions. N.C. Gen. Stat. §143B-437.53(a).

(d) The Project may not be a retail facility. N.C. Gen. Stat. §143B-437.53(b).

*(Note: Catalog distribution centers are not considered retail facilities. N.C. Gen. Stat. §143B-437.53(b).)*

A determination on this criterion will be made with reference to guides such as the North American Industry Classification System (NAICS), as well as analysis of the particular facts and circumstances of the Project.

(e) The Project may not be a warehouse facility that is part of a retail facility and that serves that retail facility only. N.C. Gen. Stat. §143B-437.53(b).

A determination on this criterion will be made with reference to guides such as the North American Industry Classification System (NAICS), as well as analysis of the particular facts and circumstances of the Project.

(f) The Project may not be a professional or semi-professional sports team or club, other than a professional motorsports racing team. N.C. Gen. Stat. §143B-437.53(b).

(g) All Full-Time Employees of the Project must be offered health insurance as specified in N.C. Gen. Stat. §143B-437.53(c).

(h) Any other criteria of a threshold nature set out in Chapter 143B, Article 10, Part 2G of the N.C. General Statutes.

(i) The Project should be an active collaboration among the Applicant, the Partnership and the Department.

## 6.0 GRANT APPLICATION PROCEDURES

### 6.1 Referral to Partnership Economic Developer

Inquiries from Businesses interested in submitting Applications to the Committee should first be referred to the Partnership, which will assign each potential Applicant to a Partnership Economic Developer.

### 6.2 Assistance to Potential Applicants

- (a) The Partnership Economic Developer will work with the potential Applicant to evaluate the nature of the Project in advance of any Application, including an evaluation of whether the Project is likely to satisfy the Program requirements. If aspects of the Project appear likely to render it ineligible, the Partnership Economic Developer will inform the Applicant of that fact prior to its submission of an Application.
- (b) The Commerce Finance Center will ensure that the potential Applicant receives a printed copy, or is made aware of how it may obtain an electronic copy, of the Criteria, the statutes governing the Program (Chapter 143B, Article 10, Part 2G of the N.C. General Statutes), and any other information pertinent to the Program that may be available to the public.
- (c) Once the Partnership Economic Developer has gained sufficient information regarding the Project, he or she will also discuss the nature and status of the Project with the Commerce Finance Center and/or the Secretary of Commerce to make an assessment. Based on these discussions, the Partnership Economic Developer will advise the potential Applicant on the prospects for a Grant and funds being available for the particular Project.
- (d) Whenever working with a potential Applicant to evaluate a project and its possible eligibility or ineligibility for a Grant, the Partnership Economic Developer will inform the potential Applicant that neither the representative, nor the Partnership, nor the Secretary of Commerce, nor any individual member of the Committee, has the authority to bind the Committee or approve a Grant. Notwithstanding any assessment by a Partnership Economic Developer of the prospects for Grants and funds being available for a particular Project, an Applicant is free to submit an Application to the Committee, which is the only body with authority to make decisions regarding the award of Grants.

### 6.3 Submission of Applications and Application Fees

- (a) Applications for Grants will be submitted to the Department of Commerce's Commerce Finance Center, which will screen them for completeness and confirm that, on the face of the Application, the Project does not appear ineligible for a Grant. The Commerce Finance Center will request additional information from Applicants, as needed, to ensure that Applications are complete and contain all information necessary for the Committee's review.
- (b) Each Application submitted to the Committee must be accompanied at the time of filing by payment of a fee in the amount set forth in N.C. Gen. Stat. §143B-437.55(b). Payment will be made to the NC Department of Commerce (Finance Center). The Commerce Finance Center shall allocate the Application fee in a manner determined by agreement of the Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management. N.C. Gen. Stat. §143B-437.55(b).
- (c) Where an Application is not sufficiently complete to enable the Commerce Finance Center to process it, or where it appears on the face of the Application that the Project would not be eligible, the Application fee will be returned or refunded along with the Application. Fees for Applications that are processed, including apparently eligible Applications that are later determined to be ineligible, will not be returned.
- (d) Applications shall be completed on-line and original signed copies submitted to the Commerce Finance Center by US Postal Service addressed to:

Commerce Finance Center  
N.C. Department of Commerce  
4318 Mail Service Center  
Raleigh, North Carolina 27699-4300

or by UPS, FedEx or hand delivery addressed to:

Commerce Finance Center  
N.C. Department of Commerce  
Education Building  
301 North Wilmington Street  
Raleigh, North Carolina 27601

Applicants shall also submit the Application via the on-line system.

#### **6.4 Timing of Submission**

Applications for Grants in a particular calendar year may be submitted at any time prior to December 1 of that calendar year, and must be complete in all respects, with no further information required by the Committee, in order to provide sufficient time for processing and completion of all steps required for a Grant to be considered for public award. Applications submitted after December 1, which seek one of the Grants available in that calendar year, will be returned unless the Committee votes to consider the Application.

#### **6.5 Maintaining Confidentiality of Qualifying Application Materials**

Unless otherwise indicated in the relevant law, all documents of the Committee, including Applications for Grants, are public records governed by Chapter 132 of the General Statutes and any applicable provisions of the General Statutes protecting confidential information.

When specific information in an Application or other document is regarded by the delivering party and by law as confidential, the party seeking confidential treatment should specifically and clearly designate it as such in writing on that portion of the document in which the information appears, at the time of disclosure of such information to the Committee or the Department of Commerce. N.C. Gen. Stat. §143B-437.54(e). An Applicant (or Grantee or Related Member Party, or other delivering party, as applicable) should provide an explanation for why particular information is regarded as confidential. Applications should not be indiscriminately marked as confidential. Broad and non-specific designations of materials as confidential will be disregarded.

Where information qualifies as confidential and/or not subject to disclosure under the North Carolina Public Records Act, the information will be prominently marked and the Application and other applicable documents distributed in a fashion designed to preserve confidentiality.

### **7.0 CONTENT OF APPLICATIONS**

#### **7.1 Information Contained in Application**

To be eligible for consideration for a Grant, the Applicant must complete an Application which shall contain at a minimum the information set out by the North Carolina General Assembly in N.C. Gen. Stat. §143B-437.55(a), and any additional information specified by the Committee.

Applications shall also contain, at a minimum:

- (a) The taxpayer identification number of the Applicant and/or Grantee, and any Related Member Parties.

- (b) In cases where the Application contemplates a Grantee that is a taxpaying entity not yet in existence entering into an Agreement, a thorough explanation of the circumstances and the relationship of the taxpaying entity to the Applicant and to the State of North Carolina.
- (c) Information as to whether the Applicant, Grantee, or any Related Member Party have ever:
  - (1) defaulted on an economic development grant or incentive,
  - (2) been sued by a grantor with respect to an economic development grant or incentive, or
  - (3) been subjected to the terms of a clawback or comparable recapture provision in an economic development grant or incentive.
- (d) Information as to whether the Applicant, Grantee, or any Related Member Party have outstanding Overdue Tax Debts in North Carolina.
- (e) Information concerning all grants that the proposed Project has applied for, has received, or will receive, in addition to the Grant.
- (f) Information concerning the bankruptcy history of the Applicant, Grantee, and any Related Member Parties, as applicable.
- (g) Information concerning the existence and composition of an audit committee for the Grantee and Applicant, the existence of and compliance with conflict of interest policies for the committee, and the existence of and compliance with any ethics policy or anti-retaliation policy.
- (h) Financial performance information for the Applicant and/or Grantee, and a description of the corporate structure of the Applicant and/or Grantee.

**7.2 Applications Seeking Grants for Projects Involving Related Members**

- (a) In the event an Applicant seeks a Grant for a Project that involves increases in new employees or other required performance under the Grant by its Related Members, the Applicant must complete a consolidated Application that includes Related Member Parties, and all information with respect to such Related Member Parties, as set out in Section 7.1. Related Member Parties will be required to certify representations required to be made in the Application.
- (b) Applications that include Related Member Parties must include proof that the Related Member Parties:

- (1) have assigned or will assign to the Grantee any claim of right that the Related Member Party may have to apply for Grants related to the Project individually during the term of the Agreement, and
- (2) have agreed to cooperate with the Grantee in providing to the Committee all the information required for the initial Application and the Agreement.

N.C. Gen. Stat. §143B-437.55(a).

- (c) When a Grantee seeks a Grant for a Project that includes Related Member Parties, the Grantee and Related Member Parties may meet the requirements for a Grant collectively and have Grant payments calculated as if they were one business entity. N.C. Gen. Stat. §143B-437.55(a). All Grant payments will be made to a single Grantee, which may apportion the payment among Related Member Parties in a manner determined by the Grantee. Related Member Parties must execute and agree to the terms of the Agreement, including requirements regarding annual reporting.

## 8.0 REVIEW OF APPLICATIONS

### 8.1 Initial Screening – Incomplete or Ineligible Applications

When Applications are returned to Applicants, as provided in Section 6.3(c), the Commerce Finance Center will inform the Committee of the name of the Applicant, the reason for the return, and a brief description of the Project. Upon request, copies of the Application will be provided to the Committee.

Applications that have been returned for lack of completeness or apparent ineligibility may be resubmitted in completed form or with additional information to clarify or establish eligibility. If an Applicant disputes the reason for return of an Application, it may resubmit the Application, pay the Application fee, and request that the Application be processed and that a determination of completeness or eligibility be made by the Committee.

### 8.2 Distribution to Committee Members – Complete Applications

Applications deemed to be complete and which appear, on their face, to be eligible for consideration, and Applications for which the Applicant disputes a Commerce Finance Center assessment of completeness or eligibility, will be forwarded to members of the Committee.

### 8.3 Cost/Benefit Analysis

Upon receipt and distribution of a completed Application, the Commerce Finance Center will coordinate the performance of an analysis, in a form approved by the

Committee, to determine whether the total benefits of the Project to the State outweigh its costs. N.C. Gen. Stat. §143B-437.52(5).

A copy of the results of this analysis will be distributed by the Commerce Finance Center to the members of the Committee.

#### 8.4 **Additional Information Requested**

Members who wish to request additional information from an Applicant should inform the Commerce Finance Center of the additional information sought. The Commerce Finance Center will coordinate obtaining any additional information sought from the Applicant.

#### 8.5 **Evaluation of Application**

The Commerce Finance Center will coordinate obtaining information for the Committee to assist in its evaluation of the Application. In doing so, it may seek such assistance as may be required in the context of a particular Application from the Department of Commerce Labor and Economic Analysis Division, the Office of State Budget and Management, the Department of Revenue, the Department of Environment and Natural Resources, the Department of Labor, and/or local governments and local or regional economic development organizations involved with a Project.

The Commerce Finance Center will provide the Committee with comments and observations on the Application.

The Committee will evaluate Applications considering criteria set out in N.C. Gen. Stat. §§143B-437.52, 143B-437.53, and 143B-437.56 and the policies set out in N.C. Gen. Stat. §143B-437.50, as well as those criteria specifically set out in the Criteria.

## 9.0 **CRITERIA FOR DECISION-MAKING**

### 9.1 **General Principles**

Grant decisions under the Program require a qualitative analysis of a variety of different factors, both in the decision to award and the decision on the particular percentage of Withholdings on which a Grant award would be based.

The relatively small amount of capacity for Grants that may be awarded in a given year, the wide array of factors recommended or required for consideration, and the requirement that Committee decisions be made upon a majority vote, operate to compel the making of fine distinctions on which reasonable people, including members of the Committee, may differ.

The Committee will endeavor to weigh all factors in considering an Application, always being mindful of the need to identify Projects consistent with the purposes of the Program.

The realities of economic development by private businesses and industries dictate that the Committee must make its decisions one at a time over the course of a calendar year, and not collectively at the end of a calendar year. Thus, the decision to award a Grant to a particular Applicant will reflect the Committee's best judgment at that point in time concerning use of the limited resources available to it at that time.

## 9.2 **Criteria to be Weighed in Selecting Projects for Grants**

The legislature has included and proposed numerous decision-making criteria for the Committee in the legislation creating the Program.

A decision to award a Grant to a particular Project will be guided by a weighing and balancing of these many different criteria.

In addition to the basic criteria required to be eligible to apply, set out in Section 5.0, the Committee will consider factors such as the following in determining whether a Project should be awarded a Grant:

- (a) Whether the Project will create, during the term of the Agreement, a net increase in the Grantee's employment in this State and the amount of that increase. N.C. Gen. Stat. §143B-437.52(a)(1).

This factor will be evaluated by comparing the current employment and future plans of the Grantee in North Carolina to the employment projected for the Project.

Projects that would create no net increase in a Grantee's employment will not be awarded Grants.

- (b) Whether the Project will increase opportunities for employment and strengthen North Carolina's economy and the degree to which the Committee finds that to be the case. N.C. Gen. Stat. §143B-437.52(a)(2).

This factor will be evaluated by analysis of the Project's overall impact on the State, based on information gleaned from a variety of sources, including economic modeling, cost/benefit analysis, and opinions and assessments of those experienced in economic development. It will also be evaluated based on opportunities the Project may provide for boosting the skills of the workforce, investment in land, infrastructure, machinery and equipment and research and development.

Projects that would not increase opportunities for employment and strengthen North Carolina's economy will not be awarded Grants.

- (c) Whether the Project is consistent with economic development goals for North Carolina and for the area where it will be located. N.C. Gen. Stat. §143B-437.52(a)(3).

This factor will be evaluated by analysis of the opinions and assessments of persons experienced in economic development, including the Secretary of Commerce and local and/or regional economic development professionals.

Projects that are not found to be consistent with economic development goals for North Carolina and for the areas where they will be located will not be awarded Grants.

- (d) Whether a Grant under the Program is necessary for the completion of the Project in North Carolina and the degree of assurance with which this criterion can be assessed by the Committee. N.C. Gen. Stat. §143B-437.52(a)(4).

This factor will be evaluated by analysis of information submitted by the Applicant, information provided by State, regional and/or local economic development representatives, and such other information as the Committee may gather.

Projects for which a Grant is not found to be necessary for their completion in North Carolina will not be awarded Grants.

The following is a nonexclusive list of situations in which Grants will be regarded as *not necessary* for Projects to be completed in North Carolina:

- (1) Where the Applicant has commenced construction and/or hiring for the Project, as described in the Application, in North Carolina prior to the effective date of the Program.
- (2) Where the Applicant has commenced construction and/or hiring for the Project, as described in the Application, in North Carolina without knowledge of the Program such that undertaking the project elsewhere is impracticable.
- (3) Where, prior to Application, the Applicant has taken actions to commence construction and/or hiring for the Project in North Carolina that, in the Committee's assessment, render development of the Project in North Carolina a foregone conclusion.

- (4) Where the Applicant is unable to demonstrate to the satisfaction of the Committee that the Project is at risk of not being undertaken in North Carolina without a Grant.
- (5) Where the Applicant has entered into binding agreements to lease space or commence construction for the Project in North Carolina prior to the award of the Grant, that would render undertaking the Project elsewhere impracticable.
- (6) Where a decision is made by the Applicant's Board of Directors to undertake the Project in North Carolina prior to an initial proposal of a Grant.

The Committee may find a Grant to be *not necessary* to the completion of a Project in North Carolina in situations other than the examples listed above.

The following is a nonexclusive list of fact situations in which the Committee could find (but is not compelled to find) that a Grant is necessary for the Applicant's completion of a Project in North Carolina.

- (1) Where the Applicant has hired or located, prior to Application or to the issuance of an initial Grant proposal by the Committee, a relatively small number of jobs in North Carolina that would be part of a Project, when those jobs are reasonably subject to being transferred or terminated.
- (2) Where the Applicant has hired or located positions, following a Grant proposal by the Committee but prior to a final award of a Grant, when that hiring or location is undertaken at the Applicant's own risk.
- (3) Where the Applicant has entered into contracts with regard to the development of the Project in North Carolina, when those contracts contain clauses that render performance contingent on the award of State or local incentives.
- (4) Where the Applicant has commenced site testing and/or initial site infrastructure development in North Carolina following the initial proposal of a Grant by the Committee but prior to the final award of a Grant, when that testing and/or initial development activity is performed at the Applicant's own risk.
- (5) Where the Applicant owns land in North Carolina on which a Project could be developed or has existing facilities in North Carolina that may have some relationship to a Project.

- (6) Where an Applicant's Board of Directors, following an initial proposal of a Grant by the Committee but prior to the final award of a Grant, makes a decision to undertake the Project in North Carolina.
- (7) Where internal announcements are made to employees that the Applicant intends to undertake the Project in North Carolina, when those announcements are made in reasonable proximity to a final award of a Grant and after the initial proposal of a Grant by the Committee. Such internal announcements may include layoffs of employees in other states.
- (8) Where public statements are made of the Applicant's consideration of North Carolina as a possible location for the Project when, based on the facts, consideration of North Carolina for the Project hinges on the availability of a Grant from the Program.
- (9) Where the Applicant is considering either keeping operations in an existing location in another state or locating those operations in North Carolina, and the Department of Commerce has offered the prospect of a Grant as an inducement to locate those operations in the State.

The Committee, after considering all of the relevant facts contained in the Application, testimony or other materials and information brought before it, may, in its sole discretion, award a Grant when situations such as those described above are present. The Committee may also determine, based on the particular facts of individual Applications, that situations such as those set out above would support a finding by the Committee that a Grant is not necessary for a Project.

- (e) Whether the total benefits of the Project to the State outweigh its costs and render the Grant appropriate for the Project and the magnitude of the benefits. N.C. Gen. Stat. §143B-437.52(a)(5).

This factor will be evaluated by conducting a cost/benefit analysis in a form developed for the Program.

Projects whose total benefits to North Carolina are not found to outweigh their costs will not be awarded Grants.

- (f) Whether the Committee has incurred the maximum amount of total annual liability for Grants that it is allowed to incur in the year in which the award will be made. N.C. Gen. Stat. §143B-437.52 (c).
- (g) The economic impact of the Project, as reflected in measures such as the following:

- (1) the impact on gross regional product and gross State product.
- (2) the costs and benefits of the Project to the State, including the expected return on investment made in the Project by the State.
- (3) the number of direct jobs that will be created by the Project, the wages of those jobs, and the total payroll for the Project.
- (4) the number of induced short-term, Project-related jobs expected to be generated by the Project as well as the number of long-term permanent jobs expected to be generated indirectly in the economy as a result of the Project.
- (5) The dollar value of the investment, including the size of the investment in real versus personal property and expected depreciation rates.
- (6) the economic circumstances of the county and region, including the extent to which the Project will serve to mitigate unemployment.
- (7) the time frame during which the Project is expected to pay back in State tax revenues the amount of any Grants to be paid out.
- (8) the economic demands the Project is expected to place upon the community or communities in which it will locate.
- (9) .

N.C. Sess. Laws 2002-172, s. 2.1(b)(1).

Factors such as the foregoing will be evaluated by analysis of information submitted by the Applicant and information gleaned from a variety of sources, including economic modeling, cost/benefit analysis, opinions and assessments of those experienced in economic development and the economic circumstances of the State.

As a general rule, the greater and more positive the economic impact, the more appropriate a Project may appear for a Grant. Whether the level of a particular economic impact is deemed to be worthy of a Grant may vary depending on the tier status and economic circumstances of the proposed location. A greater economic impact is likely to be expected in more prosperous and urban areas, while a relatively smaller impact could be regarded by the Committee as sufficient in more rural or distressed areas.

- (h) Factors related to the strategic importance of the Project to the State, region, or locality, as reflected in measures such as the following:
  - (1) the extent to which the Project builds or enhances an industrial cluster.
  - (2) the extent to which the Project falls within a classification of business and industry that the Department of Commerce regards as a target for growth and expansion in the State.

- (3) the ability of the Project to attract follow-on investment in the State by suppliers and vendors.
- (4) the extent to which the Project serves to maintain and grow jobs in the State in a business undergoing an internal restructuring or rationalization process. *Note: This factor is intended to refer to circumstances in which an existing North Carolina industry with multi-state locations is in an internal competition for a company expansion or relocation.*
- (5) the extent to which the Project can be expected to contribute significantly to and support the local community.

N.C. Sess. Laws 2002-172, s. 2.1(b)(2).

Factors such as the foregoing will be evaluated by analysis of information submitted by the Applicant, reference to formal and informal cluster analyses, and consultation with personnel in the Department of Commerce, local and/or regional economic development organizations, and/or the university system. Information regarding the impact of Projects, to the extent available, may be derived through economic modeling, research on such industries, or experience with similar industries or projects.

In evaluating this factor, the Committee will strive to identify Projects with the best “fit” for the State, region and/or community, recognizing that the needs of the State’s many regions and communities vary. The Committee will also strive to identify Projects that may themselves serve as catalysts for growth.

- (i) Factors related to the quality of jobs, as reflected in measures such as the following:
  - (1) the wage level and status of the jobs to be created.
  - (2) the quality and value of benefits offered by the company.
  - (3) the potential for employee advancement.
  - (4) the extent of training programs offered by the company.
  - (5) the sustainability of the jobs in the future.
  - (6) the workplace safety record of the company.

N.C. Sess. Laws 2002-172, s. 2.1(b)(3).

Factors such as the foregoing will be evaluated by analysis of information submitted by the Applicant, comparisons with local conditions and consultation with personnel in the Department of Commerce, local, and/or regional economic development organizations. Data prepared by the North Carolina Department of Labor will be consulted with respect to evaluating a company’s workplace safety record.

As a general rule, the higher the wages, skill levels, benefits and sustainability of the jobs, the more appropriate a Project may appear for a Grant. Whether a set of jobs is deemed to be worthy of a Grant, however, may vary depending on the tier status and economic circumstances of the proposed location. For example, Projects in rural or distressed areas will not be denied simply because they fail to offer the same wages, skill levels, and benefits as may be typical in more prosperous urban areas.

- (j) Factors related to the quality of the industry and the Project, as reflected in measures such as the following:
  - (1) the nature of the Project and the Project's relationship to the larger business of the company.
  - (2) the nature of the industrial classification of the Project and the nature of the business of the company undertaking it.
  - (3) the long-term prospects for growth at the Project site or sites.
  - (4) The long-term prospects for growth of the company and the industry within the United States.
  - (5) the financial stability of the company associated with the Project.

N.C. Sess. Laws 2002-172, s. 2.1(b)(4).

Factors such as the foregoing will be evaluated by analysis of information submitted by the Applicant, reference guides such as the North American Industry Classification System (NAICS), and the insights of State, regional and/or local economic development professionals.

As a general rule, these factors are designed to help assess whether the jobs associated with a particular Project are sustainable. Projects that involve industries in declining sectors or sectors with little economic future, as well as Projects that are of a high risk nature or unable to secure adequate funding through the private sector, are unlikely to be awarded Grants absent a compelling showing of factors that suggest sustainability in a particular case.

- (k) Factors related to the environmental impact of the Project, as reflected in measures such as the following:
  - (1) the nature of the business to be conducted.
  - (2) the ability of the Project to satisfy State, federal, and local environmental law and regulations.

N.C. Sess. Laws 2002-172, s. 2.1(b)(5).

Inquiry will be made of the North Carolina Department of Environment and Natural Resources with respect to the nature of a Project being considered

for a Grant. Projects that are at significant risk of being unable to satisfy State, federal, and local environmental law and regulations are unlikely to be awarded Grants. Projects that pose significant risks to the environment are less likely to be funded.

- (l) The degree to which use of the Program has been geographically dispersed among the various regions of the State and between rural and urban areas. N.C. Sess. Laws 2002-172, s. 2.1(b)(6).

The Committee will strive to achieve geographic diversity with its Grants. The Committee will track the businesses with which Grants are discussed, Applications received, and Grants awarded. Assuming all threshold criteria are met and that a Grant is necessary to secure the Project, decisions to award or not to award may be made on the geographic location of the Project to ensure that the benefits of the Program are dispersed.

- (m) The past performance of the Applicant or any proposed party to an Agreement under other Grants.

To the extent an Applicant or proposed party to an Agreement can be determined to have a poor performance record under other Grants, in particular, economic development performance-based Grants, that factor will weigh against award of a Grant.

This factor will be evaluated by analysis of information submitted by the Applicant and such inquiry as the Committee may be able to make into the subject.

- (n) The bankruptcy history of the Applicant or any proposed party to an Agreement.

The Committee may consider this factor in determining whether to award a Grant. The mere presence of a bankruptcy, however, may be outweighed by the particular circumstances of the Project and the Committee's assessment of the sustainability of the jobs that the Project could bring to the State.

- (o) The presence of certain corporate good governance practices.

The Committee will inquire regarding the existence of an audit committee for the Applicant and/or Grantee, the composition of the audit committee, the presence of and compliance with conflict of interest policies for the committee, and the presence of and compliance with an ethics and anti-retaliation policy. The Committee may consider this factor in determining whether to award a Grant. The Committee may solicit the assistance of the North Carolina Attorney General's Office in evaluating this factor.

### 9.3 **Criteria to be Weighed in Selecting the Percentage Used to Determine the Amount of a Grant**

A decision to select the percentage of Withholdings upon which a Grant will be based will be guided by a weighing and balancing of many different criteria.

In addition to any limitations set forth in statute, the Committee will consider factors such as the following in determining the percentage for a Grant:

- (a) The degree to which the total benefits of the Project to the State outweigh its costs and render the Grant appropriate for the Project. N.C. Gen. Stat. §143B-437.52(a)(5).

This factor will be evaluated by conducting a cost/benefit analysis in a form developed for the Program.

- (b) The number of Eligible Positions to be created. N.C. Gen. Stat. §143B-437.56(a)(1).

The impact of this factor will vary based on the circumstances of each particular Project.

- (c) The expected duration of those positions. N.C. Gen. Stat. §143B-437.56(a)(2).

- (d) The type of contribution the business can make to the long-term growth of the State's economy. N.C. Gen. Stat. §143B-437.56(a)(3).

This factor will be evaluated by analysis of the Project's overall impact on the State based on information gleaned from a variety of sources, including economic modeling, cost/benefit analysis, and opinions and assessments of those experienced in economic development. It will also be evaluated based on opportunities the Project may provide for boosting the skills of the workforce, investment in land, infrastructure, machinery and equipment, and research and development.

Generally, a more substantial contribution to the State's economy would weigh in favor of a higher percentage.

- (e) The amount of other financial assistance the Project will receive from the State or local governments. N.C. Gen. Stat. §143B-437.56(a)(4).

Grants under this Program are typically viewed as Grants of "last resort," to be employed when existing incentives are insufficient to enable the Project to be developed in North Carolina. The existence of substantial Grants from

the State and local governments, however, may weigh in favor of a smaller percentage.

- (f) The total dollar investment the Grantee will make in the Project. N.C. Gen. Stat. §143B-437.56(a)(5).

The impact of this factor will vary based on the circumstances of each particular Project. In counties with weak tax bases or a lack of industrial infrastructure, for example, a larger investment in land and infrastructure may weigh in favor of a larger percentage. In larger counties, with Projects in industry sectors with higher unemployment that offer a substantial number of high paying jobs, the size of the investment may be less relevant to the percentage.

- (g) Whether the Project utilizes existing infrastructure and resources in the community. N.C. Gen. Stat. §143B-437.56(a)(6).

Where there is significant vacancy or underutilization of existing infrastructure in a community, the fact that a Project utilizes the existing infrastructure and resources and reduces that vacancy or increases utilization may weigh in favor of a higher percentage.

- (h) The extent to which the Project will mitigate unemployment in the State and locality. N.C. Gen. Stat. §143B-437.56(a)(9).

That a Project would significantly reduce unemployment and the burdens it places on government in North Carolina or in a particular community will weigh in favor of a higher percentage. That a Project has only a marginal impact on unemployment will weigh in favor of a lesser percentage.

- (i) The economic impact of the Project, as reflected in measures such as those described in section 9.2(h). N.C. Sess. Laws 2002-172, s. 2.1(b)(1).

The economic impact will vary based on the circumstances of each particular Project. As a general rule, the greater and more positive the economic impact, the more appropriate a Project may appear for a higher percentage. Whether a particular economic impact is deemed to merit a higher percentage may vary depending on the tier status and economic circumstances of the proposed location. A greater economic impact is likely to be expected in more prosperous and urban areas, while a relatively smaller impact could be regarded by the Committee as sufficient in more rural or distressed areas.

- (j) Factors related to the strategic importance of the Project to the State, region, or locality, as reflected in measures such as those described in section 9.2(i). N.C. Sess. Laws 2002-172, s. 2.1(b)(2).

In evaluating these factors, the Committee will strive to identify Projects with the best “fit” for the State, region and/or community, recognizing that the needs of the State’s many regions and communities vary. The Committee will also strive to identify Projects that may themselves serve as catalysts for growth. Such Projects may merit higher percentages.

- (k) Factors related to the quality of jobs, as reflected in measures such as those described in section 9.2(j). N.C. Sess. Laws 2002-172, s. 2.1(b)(3).

As a general rule, the higher the wages, skill levels, benefits and sustainability of the jobs, the more appropriate a Project may appear for a Grant. Whether a set of jobs is deemed to be worthy of a higher or lower percentage, however, may vary depending on the tier status and economic circumstances of the proposed location. For example, Projects in rural or distressed areas will not be assigned lower percentages simply because they fail to offer the same wages, skill levels, and benefits as may be typical in more prosperous urban areas.

- (l) Factors related to the quality of the industry and the Project, as reflected in measures such as those described in section 9.2(k). N.C. Sess. Laws 2002-172, s. 2.1(b)(4).

The impact of these factors will vary based on the circumstances of each particular Project. As a general rule, these factors are designed to help assess whether the jobs associated with a particular Project are sustainable. That a Project involves jobs regarded as particularly sustainable may weigh in favor of a higher percentage.

- (m) Where the Committee stands, at the time the Grant is considered, with respect to whether it has incurred the maximum amount of total annual liability for Grants that it is allowed to incur in the year in which the award will be made. N.C. Gen. Stat. §143B-437.52 (c).

The Committee must necessarily consider the limits under which the entire Program must operate when making decisions on percentages for particular Grants. As a practical matter, particular percentages for particular Grants may be dictated by a need to preserve funds for future Grants in that calendar year.

## 10.0 DECISIONS ON APPLICATIONS

### 10.1 Meeting

Decisions with respect to each completed Application and each Application for which an Applicant has requested a Committee determination of completeness or eligibility will be made at a meeting of the Committee.

### 10.2 Timing of Decisions

If an Applicant requires a decision within a particular timeframe, that fact should be specified in its Application, and the Committee will endeavor to accommodate it. Otherwise, decisions will be made during the course of a calendar year as the Committee completes its review and assessment of each Application.

After December 1 of a given calendar year, the Committee will meet to determine whether any Applications remain for which decisions have not been made. The Committee will make decisions with respect to any such Applications and decide whether any Applications should be carried forward into the next calendar year, if the Program has been authorized for the following year.

The Committee will make decisions with respect to completeness or eligibility as soon as is reasonably practical following a request for a determination of an Application's completeness or eligibility.

### 10.3 Communication with Applicant Prior to Decision

Prior to making a decision with respect to an Application, the Committee may communicate with an Applicant regarding possible terms for a Grant in an effort to assess whether a Grant would be appropriate under the circumstances. N.C. Gen. Stat. §143B-437.52(a). The Committee will undertake or direct whatever further action may be required to reach consensus over the terms of a public Grant award and/or an Agreement.

### 10.4 Manner of Decision

Decisions on Applications will be made by a vote of at least three members of the Committee. Where only three members are present for a meeting, a vote of two members in favor and one member opposed shall constitute a valid affirmative vote of the Committee.

### 10.5 Decisions to be Made

With respect to an Application, the Committee will make a decision as to whether to award a Grant and the amount and terms of the Grant, including the percentage of Withholdings upon which the Grant would be based.

Terms to be specified may include, for example, sequence and timing of job creation and required investment, date for commencement of Grant term, length of Grant period, required job retention, conditions that must occur or be met before a Grant may become effective, etc.

The Committee may make tentative, nonbinding proposals of potential Grant terms to an Applicant prior to making a public award of a Grant.

#### **10.6 Specific Findings**

A decision to award a Grant must be accompanied by the specific findings set forth in N.C. Gen. Stat. § 437.52(a), and the conditional finding set forth elsewhere in N.C. Gen. Stat. Chapter 143B, Article 10, Part 2G, or other law if applicable.

#### **10.7 Notification to Applicant**

The Committee will notify each Applicant in writing of whether or not a Grant has been awarded for its Project and, if so, shall provide a description of the final basic terms of the Grant.

### **11.0 COMMUNITY ECONOMIC DEVELOPMENT AGREEMENT**

#### **11.1 Contract Required to Receive Funds**

Funds will be conveyed to Grantees under Agreements with the Economic Investment Committee, the standardized form of which shall be approved by the Economic Investment Committee and the Attorney General, and executed by all Grantees.

#### **11.2 Parties**

The parties to an Agreement will be the Economic Investment Committee and the Grantee. The Attorney General is a required signatory.

If a consolidated Application has been submitted to and approved by the Committee, all approved Related Member Parties must also be included as parties to the Agreement.

The Committee may require other parties associated with the Application or the Project to be included as parties to the Agreement as a condition of awarding the Grant. The Applicant or other party acceptable to the Committee may be required to execute the Agreement as guarantor of the Grantee's obligations under the Grant.

#### **11.3 Statutorily Required Terms**

The Agreement will contain, at a minimum those terms required in N.C. Gen. Stat. §143B-437.57(a).

#### 11.4 **Additional Terms**

The Agreement will also contain:

- (a) A term setting out the aggregate average annual wage that must be paid each year to the group of employees in jobs to be created under the Grant.
- (b) A term requiring that the Grantee and any Related Member Parties receive no citations in North Carolina under the Occupational Safety and Health Act that become a final order for willful serious violations or for failing to abate serious violations with respect to the location for which the Grant is made.
- (c) A term requiring that the Grantee and all Related Member Parties have no outstanding Overdue Tax Debts.

#### 11.5 **Term Specifying Maximum Liability for Each Year of Grant**

To ensure compliance with the provisions of N.C. Gen. Stat. §143B-437.52(c), each Agreement will include a term specifying the maximum possible dollar amount of liability that the State could have for that Agreement in each year during which that Agreement could be in effect. N.C. Gen. Stat. §143B-437.57(a)(20).

The Committee will track these amounts for all Grants awarded to ensure that in no future year could the maximum liability of the State for Grants awarded in a given calendar year exceed the cap on liability set for Grants awarded in that calendar year, pursuant to N.C. Gen. Stat. §143B-437.52(c).

#### 11.6 **Exhibits to Agreement**

An Agreement will include as exhibits a copy of the Criteria and the general statutes establishing and governing the Program (Chapter 143B, Article 10, Part 2G of the N.C. General Statutes). The exhibits may be amended by replacing the foregoing with amended Criteria and/or statutes, if the parties agree.

#### 11.7 **Approval of Attorney General**

An Agreement prepared by the Committee must be reviewed and approved by the Attorney General. N.C. Gen. Stat. §143B-437.57(b).

#### 11.8 **Signatures**

To be effective against the State of North Carolina, an Agreement must be signed personally by the Chair of the Committee and by the Attorney General. In the event the Chair is unavailable, an Agreement may be signed personally by the Vice-Chair.

An Agreement must be signed by an officer of the Grantee with authority to bind the Grantee, by officers of any required guarantor with authority to bind the guarantor, and by officers of all Related Member Parties who have the authority to bind the Related Member Parties.

#### **11.9 Amendment and Termination of Agreements For Failure to Meet Conditions**

The Agreements will enumerate certain measurable conditions and requirements that will enable a Grantee's performance to be tracked, along with any allowed variation as required by N.C. Gen. Stat. §143B-437.57(a)(14). Such conditions and requirements may include, for example, amount, sequence and timing of job creation and investment, wages for jobs, and required retention of jobs. N.C. Gen. Stat. §143B-437.57(a).

### **12.0 REPORTING REQUIREMENTS**

#### **12.1 Annual Reports and Certifications Required of Grantees**

- (a) Every Grantee is required to submit annual reports and certifications to the Committee. As a condition of continuation in the Program, every Grantee shall submit to the Committee a report showing Withholdings, an annual payroll report showing the Eligible Positions that are created and retained during each Grant Year of the Base Period and Eligible Positions that remain filled at the end of each Grant Year. Reports shall include social security numbers of individual employees. Upon request by the Committee, the Grantee shall also submit a copy of its State and federal tax returns. Payroll and tax information submitted under this subsection is tax information subject to N.C. Gen. Stat. §105-259 and N.C. Gen. Stat. §143B-437.58(a). This information must be provided for both the Grantee and any Related Member Parties.
- (b) In addition to the information required under N.C. Gen. Stat. §143B-437.58(a), each annual report must contain the following:
  - (1) a certification that the Grantee, all Related Member Parties, and the guarantor, if any, have met the terms of the Agreement;
  - (2) any information required to be reported annually under the Agreement;
  - (3) the average wage of all jobs at the location(s) of the Project;

- (4) the Development Tier area in which each Eligible Position is located;
  - (5) a certification that the Grantee and all Related Member Parties, if any, have received no citations in North Carolina under the Occupational Safety and Health Act that have become a final order for willful serious violations or for failing to abate serious violations with respect to the location for which the Grant is made;
  - (6) a certification that the Grantee and all Related Member Parties, if any, have no outstanding Overdue Tax Debts;
  - (7) a certification that none of the Grantee, Related Member Parties, or guarantor, if any, has manipulated or attempted to manipulate employee Withholdings with the purpose of increasing the amount of a Grant;
  - (8) a certification that the Grantee and all Related Member Parties continue to provide health insurance for all Full-Time Employees of the Project. N.C. Gen. Stat. §143B-437.53(c); and
  - (9) any additional information that the Grantee, Related Member Parties, or guarantor, if any, reasonably deem to be material, or that the Committee deems necessary or desirable to verify compliance with the Agreement or statutes governing the Program. N.C. Gen. Stat. §143B-437.58(b).
- (c) Annual reports are due on or before March 1 for the preceding Grant year. N.C. Gen. Stat. §143B-437.58(a).

## 12.2 **Confidential Information Included in Annual Report**

All documents of the Committee, including annual reports, are public records governed by Chapter 132 of the General Statutes and any applicable provisions of the General Statutes protecting confidential information.

When specific information in an annual report is regarded by the submitter and by law as confidential, that entity should specifically and clearly designate it as such in writing, at the time of delivery, in the manner specified in Section 6.5 of these Criteria, and should provide an explanation for why such information should be regarded as confidential. Reports should not be indiscriminately marked as confidential.

## 12.3 **Annual Report Processing Fee**

- (a) When submitting an annual report under this section, a Grantee must pay the Committee a processing fee equal to that required by statute. *See* N.C. Gen. Stat. §143B-437.58(a).
- (b) The processing fee is nonrefundable.
- (c) Payment to the Committee will be made to the Department of Commerce Finance Center. The Commerce Finance Center shall allocate the processing fee in a manner determined by agreement of the Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management. N.C. Gen. Stat. §143B-437.58(a).

**12.4 Procedure for Handling Reports**

- (a) Annual reports shall be typed or printed, certified, and submitted to the Commerce Finance Center by US Mail addressed to:

Commerce Finance Center  
 N.C. Department of Commerce  
 4318 Mail Service Center  
 Raleigh, North Carolina 27699-4300

or by UPS, FedEx or hand delivery addressed to:

Commerce Finance Center  
 N.C. Department of Commerce  
 Education Building  
 301 North Wilmington Street  
 Raleigh, North Carolina 27601

Grantees shall also upload the excel file to the JDIG Drop Box:  
<http://www.nccommerce.com/cfc>.

- (b) The Commerce Finance Center will distribute the annual report to the Department of Revenue and both agencies will review the annual report for completeness.

If the agencies find that a report is incomplete, the Grantee will be notified of the deficiency by the Commerce Finance Center and must provide a changed and corrected report within thirty (30) working days.

- (c) The Commerce Finance Center and the Department of Revenue will review the annual report and assess compliance with the terms of the Grantee's Agreement and the status of the Grantee's performance under the

Agreement. The Commerce Finance Center and the Department of Revenue will report the results of their review and assessment to the Committee, along with any recommendations for further inquiry.

- (d) The Department of Revenue will specifically determine:
  - a. whether the Grantee or any Related Member Parties have any outstanding Overdue Tax Debts, and
  - b. the amount of Withholdings received in the preceding year by the Department of Revenue from the Grantee and any Related Member Parties.

## 13.0 COMMITTEE EVALUATION OF REPORTS

### 13.1 **Committee Review of Reports and Assessments of Compliance**

After the Commerce Finance Center and the Department of Revenue have completed their review and assessment of an annual report and of a Grantee's compliance under an Agreement, they will present the results of their review and assessment to the Committee.

Following a presentation, the Committee may direct such other action by staff as it deems appropriate. In an appropriate case, it may direct a Grantee to appear before it or staff to address particular issues raised in the review and assessment process.

The Committee reserves the right to deny any grant payment where the Company, Related Member Party or Guarantor are in breach of any provision of the Agreement.

Additionally, the Committee reserves the right to deny counting jobs as Eligible Positions where a Company or Related Member Party (i) failed to properly report the employee filling that position to the North Carolina Department of Commerce's Division of Employment Security and (ii) failed to pay applicable unemployment insurance tax on that employee.

#### 13.1a **Cooperation with the State**

The Company's cooperation with the Committee and Commerce is of utmost importance throughout the course of the grant term to ensure that any state funds are properly paid. Where a Company fails to respond to any request for information from the Committee within 30 days, the Committee may (but is not obligated to) terminate the Agreement. Additionally, where a Company fails to respond to any request for information from the North Carolina Department of Revenue within 30 days, the Committee may (but is not obligated to) terminate the Agreement.

#### 13.2 **Amendment and/or Termination**

In the event the Committee finds a Grantee's performance raises an issue of amendment or termination, the Committee will take such action as it determines may be required or appropriate under the terms of the Agreement, the Program, and N.C. Gen. Stat. §143B-437.59, given all of the circumstances.

#### 13.3 **Committee Approval of Reports**

If the Committee is satisfied with a Grantee's annual report and compliance under the Agreement and the Program, it will make the following specific determinations and certifications:

- (a) the Grantee and Related Member Parties have no outstanding Overdue Tax Debts;
- (b) the Grantee, any Related Member Parties and/or guarantor have met the terms and conditions of the Agreement;
- (c) the amount of the Grant for which the Grantee would be eligible under the Agreement factoring in any reductions required under N.C. Gen. Stat. §143B-437.56(d);
- (d) the amount of the Grant for which the Grantee would be eligible under the Agreement, without regard to reductions required under N.C. Gen. Stat. §143B-437.56(d); and
- (e) the amount is consistent with the maximum annual total liability that the State may incur in any given calendar year for Grants awarded during a single calendar year as specified in N.C. Gen. Stat. §143B-437.52(c).

## 14.0 AUDITS AND RECORD-KEEPING

### 14.1 **Audit Authority**

The Committee may require any Grantee, Related Member Party, or guarantor, as applicable, to submit to an audit to confirm compliance under the Program at any time under such terms and conditions as it may specify. N.C. Gen. Stat. §143B-437.58 (c).

### 14.2 **Audit Teams**

Audits under the Program will be conducted by a team that includes representatives of both the Department of Revenue and the Department of Commerce following a decision to audit by the Committee.

### 14.3 **Audit Results**

The results of an audit will be reported to the Committee by the audit team in such form as may be specified by the Committee. At the direction of the Committee, an audit opinion will be prepared by the audit team. The Committee may then take appropriate action under the terms of the General Statutes governing the Program, the Criteria, and/or the Agreement.

### 14.4 **Reserved**

### 14.5 **Grantee Record-Keeping**

Grantees are required to keep financial and other records that establish compliance with the Program for the duration of the Grant period and for a period of three years following termination of the Agreement.

### 14.6 **Manipulation of Withholdings**

In the event the Committee receives a report that a Grantee has manipulated Withholdings in the manner described in N.C. Gen. Stat. §143B-437.59(c), the Committee shall make such inquiry as may be necessary to evaluate the credibility of the report, considering all of the relevant circumstances.

Following an evaluation of the credibility of the report, the Committee may take whatever action it deems appropriate under the circumstances, including directing an audit of the Grantee.

In the event the Committee finds that manipulation of Withholdings has occurred, it shall take such action as is required by N.C. Gen. Stat. §143B-437.59(c).