

**Resolution adopting the revised the City's Guidelines and Criteria for
Granting Tax Abatements**

WHEREAS, on December 6, 2011, the City Council by Resolution 029298, adopted the City's Guidelines and Criteria for Granting Tax Abatement;

WHEREAS, the City's Guidelines and Criteria for Granting Tax Abatement, by State statute, expires two years from date and need to be adopted to make tax abatement available;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
CORPUS CHRISTI, TEXAS:**

SECTION 1. The City's Guidelines and Criteria for Granting Tax Abatement are adopted. A copy of the revised Guidelines and Criteria are attached to and incorporated into this resolution as Exhibit A.

ATTEST:

THE CITY OF CORPUS CHRISTI

Rebecca Huerta
City Secretary

Nelda Martinez
Mayor

Corpus Christi, Texas

_____ of _____, 2014

The above resolution was passed by the following vote:

Nelda Martinez	_____
Kelley Allen	_____
Rudy Garza Jr.	_____
Priscilla G. Leal	_____
David Loeb	_____
Chad Magill	_____
Colleen McIntyre	_____
Lillian Riojas	_____
Mark Scott	_____

EXHIBIT A
Tax Abatement Guidelines

**CITY OF CORPUS CHRISTI
GUIDELINES AND CRITERIA
FOR GRANTING TAX ABATEMENT
September 30, 2014**

WHEREAS, the attraction of long-term Added Value and the establishment of new permanent full-time jobs in the area would enhance the economic base of area taxing entities;

WHEREAS, Corpus Christi must compete with other communities across the nation currently offering tax inducements to attract new plant and modernization projects, and studies have shown that a favorable local tax climate and start-up tax concessions rank second on the list of priorities for new plant installations or expansions;

WHEREAS, tax abatement is one of the principal means by which the public sector and the private sector can forge a partnership to promote real economic growth within a community;

WHEREAS, any tax incentives offered must be strictly limited in application to those new and existing industries that bring new wealth to the community in order to avoid reducing the needed tax revenues of area taxing entities;

WHEREAS, the Property Redevelopment and Tax Abatement Act ("Act"), Chapter 312 of the Texas Tax Code authorizes taxing units to provide property tax abatement for limited periods of time as an inducement for the development or redevelopment of a property;

WHEREAS, a Texas Enterprise Zone constitutes designation as a Reinvestment Zone without further hearing or other procedural requirements under Chapter 312, Texas Tax Code;

WHEREAS, the Act requires eligible taxing jurisdictions to establish Guidelines and Criteria ("Guidelines") as to eligibility for tax abatement agreements prior to granting any future tax abatement, the Guidelines may not be changed for a two-year period unless amended by a three-fourths vote;

WHEREAS, the City Council by Resolution 028424, on November 17, 2008, adopted the City of Corpus Christi Economic Development Policies, 2009-2011, which contain the City's Guidelines for tax abatement;

WHEREAS, there is a need to supplement those Guidelines with greater detail on the requirements for tax abatement agreements;

WHEREAS, in order to assure a common, coordinated effort to promote economic development in the area, these Guidelines have been circulated among Nueces County, Del Mar College, and other taxing entities for consideration as a common policy for all jurisdictions which choose to participate in tax abatement agreements; and

NOW, THEREFORE, BE IT RESOLVED by the City of Corpus Christi that these Guidelines for granting tax abatement be adopted:

Section 1. Definitions.

"Abatement" means the temporary, full or partial exemption from ad valorem taxes of certain added value to real and personal property in a zone designated for economic development purposes under the Act.

"Added Value" means the increase in the assessed value of an eligible property as a result of "expansion" or "modernization" of an existing facility or construction of a "new facility." It does not mean or include "deferred maintenance."

"Agreement" means a contractual agreement between an Owner and the City for the purposes of tax abatement.

"Base Year Value" means the assessed value of eligible property as of the January 1 preceding the execution of an Agreement, plus the agreed upon value of eligible property improvements made after January 1 but before the execution of the Agreement.

"Basic Manufacturing or Service Facility" means buildings and structures, including fixed machinery and equipment not elsewhere described, used or to be used for the production of products or services that derive a majority of revenue from points beyond a 50 mile radius of Nueces County.

"Catalyst Area" mean an area within a Texas Enterprise Zone, Downtown, Corpus Christi (North) Beach, Padre and Mustang Islands (other than areas within Tax Increment Reinvestment Zone Number Two, City of Corpus Christi), or other areas designed as catalyst areas by the City Council.

"City" means the City of Corpus Christi that levies ad valorem taxes upon and provides services to property located within a proposed or existing zone designated under the Act.

"Convention Center Hotel" means a hotel.

"Deferred Maintenance" means improvements necessary for continued operations that do not improve productivity or alter the process technology.

"Downtown Revitalization Housing Facility" means a Multi-family Housing Facility constructed or renovated in the area encompassed by the Downtown Management District; provided that a Multi-family Housing Facility, which is located near the boundaries of the Downtown Management District, may be considered if the Facility is determined by the City Council to assist in the revitalization of the downtown area.

"Economic Life" means the number of years a property improvement is expected to be in service in a Facility.

"Enterprise Zone Residential Redevelopment Facility" means buildings and structures used or to be used primarily for residential purposes that is located within a Texas enterprise zone.

"Expansion" means the addition of buildings, structures, fixed machinery, or equipment for the purposes of increasing capacity.

"Facility" means property improvements completed or in the process of construction that together compromise an integral whole.

"Historic Structure" means any structure that has been designated by the Corpus Christi Landmark Commission as historically significant.

"Locally Owned" means a facility, manufacturer, supplier, contractor, and labor supplier whose owner resides in or maintains its principle office within a 50 mile radius of Nueces County.

"Mixed-use facility" means a facility having residential and commercial uses where the commercial use occupies more than 20% of the structure.

"Multi-family housing" means a facility designed, arranged, or used exclusively for the use and occupancy of three or more families living independently of each other. The dwelling structure may include a triplex, apartment, townhouse, condominium, cooperative, high-rise, etc.

"Modernization" means the replacement and upgrading of existing facilities that increases the productive input or output, updates the technology, or substantially lowers the unit cost of the operation, and extends the economic life of the facilities. Modernization may result from the construction, alteration, or installation of buildings, structures, fixed machinery, or equipment.

"Modernization" does include work done for the purpose of reconditioning, refurbishing, repairing, or completion of deferred maintenance to a structure.

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

"Owner" means the owner of a Facility subject to abatement. If the Facility is constructed on a leased property, the Owner is the party that owns the property subject to tax abatement. The other party to the lease must join in the execution of Agreement, but may not be obligated to assure performance of the party receiving abatement.

"Permanent full-time job" means a new employment position or full-time equivalent created by a business that provides a regular work schedule of at

least 32 hours per week or 1,664 hours of employment per year to a Corpus Christi Metropolitan Statistical Area resident and maintains the employment position during the term of the Agreement.

"Petrochemical Facility" means buildings and structures, including fixed machinery and equipment, the primary purpose of which is or will be the manufacture or processing of petrochemicals or fuels by physical or chemical change.

"Regional Distribution Center Facility" means buildings and structures, including fixed machinery and equipment, used or to be used primarily to receive, store, service, or distribute goods or materials owned by the Facility operator where a majority of the goods or services are distributed to points beyond a 50 mile radius of the City.

"Regional Telecommunications/Data Processing Center Facility" means buildings and structures used or to be used primarily for the provision of telecommunication or data processing services by the Facility operator where a majority of the services are provided to points beyond a 50 mile radius of the City.

"Regional Visitor/Amusement Facility" means buildings and structures used or to be used primarily as a stadium, arena, amusement park, or similar attraction or sports venue.

"Rehabilitation" means that the Added Value, as defined, of the project exceeds the base year of a development property by \$250,000.

"Texas Enterprise Zone" means any area designated as an enterprise zone under Chapter 2303, Texas Government Code.

Section 2. Abatement Authorized.

(a) *Authorized Facilities.* A Facility may be eligible for abatement if it is one of the following:

- (1) Basic Manufacturing Facility.
- (2) Basic Service Facility.
- (3) Regional Distribution Center Facility.
- (4) Regional Telecommunications/Data Processing Center Facility.
- (5) Regional Visitor/Amusement Facility.
- (6) Enterprise Zone Facility.

- (7) Downtown Revitalization Housing Facility.
- (8) Petrochemical Facility.
- (9) Convention Center Hotel.
- (10) Historically Significant Structure.

(b) *Abatement for New Facilities or Improvements to Existing Facilities.* Abatement may be granted for new facilities and improvements to existing facilities for the purpose of modernization or expansion.

(c) *Creation of New Value.* Abatement may only be granted for the additional value of eligible property improvements made subject to and listed in an Agreement between the City and the Owner, subject to the limitations as the City requires. The economic life of the improvements must exceed the term of the Agreement.

(d) *Eligible Property.* Abatement may be extended to the value of the improvements to real property, including buildings, structures, fixed machinery and equipment, and site improvements, plus that office space and related fixed improvements necessary to the operation and administration of the Facility. Abatement may also be extended for tangible personal property as defined by the Texas Tax Code.

(e) *Ineligible Property.* The following types of property are fully taxable and ineligible for abatement, unless specifically authorized by the City Council:

- (1) Land.
- (2) Inventories.
- (3) Supplies.
- (4) Tools.
- (5) Furnishings and other forms of movable personal property.
- (6) Vehicles.
- (7) Vessels.
- (8) Aircraft.
- (9) Housing, other than an Enterprise Zone Residential Redevelopment Facility or Downtown Revitalization Housing Facility.
- (10) Hotel accommodations, other than a convention center hotel.
- (11) Deferred maintenance investments.

(12) Property to be rented or leased, except when the Owner is the lessee of the land, but is the Owner of the Facilities.

(13) Improvements for the generation or transmission of electrical energy not wholly consumed by a New Facility or expansion.

(14) Any improvements, including those to produce, store, or distribute natural gas, fluids, or gases that are not integral to the operation of the Facility.

(15) Improvements to real property that have an economic life of less than 15 years.

(16) Property owned or used by the State of Texas or its political subdivisions, or by any organization owned, operated, or directed by a political subdivision of the State of Texas.

(f) *Period of Abatement.*

(1) Abatement may be granted effective with the January 1 valuation date immediately following the date of execution of the Agreement. Abatement may be allowed for a period of up to ten years, including the period of construction. If the period of construction exceeds two years, the Facility is considered completed for purposes of abatement at the end of two years, and in no case may the total period of abatement, inclusive of the construction period, exceed ten years.

(2) Abatement for a Downtown Revitalization Housing Facility may be granted effective with the January 1 valuation date immediately following the date of execution of the Agreement. Abatement may be allowed for a period of seven years, including the period of construction. If the period of construction exceeds two years, the Facility is considered completed for purposes of abatement at the end of two years, and in no case may the total period of abatement, inclusive of the construction period, exceed seven years.

(g) *Completion of Construction.* The completion of construction is deemed to occur upon the earliest of the following events:

(1) When a certificate of occupancy is issued for the project (if it is located within a city).

(2) When commercial production of a product or provision of a service is achieved at the Facility.

(3) When the architect or engineer supervising construction issues a certificate of substantial completion, or some similar instrument.

(4) Two years after the date of the Agreement.

(h) *Determination of Completion of Construction.* The determination of the completion of construction is made by the City, in its sole and absolute discretion, based upon the above criteria and the other factors as the City deems relevant. The determination of the completion of construction is conclusive, and any judicial review of the determination must be governed by the substantial evidence rule.

(i) *Abatement Percentage.* Temporary property tax abatement may be authorized for the development of a New Facility, Expansion, or Modernization that meets either qualification criteria of capital investment or a qualification criteria based upon a combination of the number of new jobs created plus the average salary of all jobs at the facility.

(1) The capital investment qualification criteria is as follows:

Added Value from Capital Investment ¹	Abatement Level
\$2,000,000 to \$10,000,000	Level 1
\$10,000,001 to \$50,000,000	Level 2
\$50,000,001 to \$150,000,000	Level 3
\$150,000,001 to \$500,000,000	Level 4
Over \$500,000,000	Level 5

Note: ¹ The qualification for abatement by capital investment is based upon the added value of Eligible Property as reflected on the tax rolls of the applicable appraisal district.

(2) The combination of new jobs and salary criteria is as follows:

Number of New Jobs ¹	Average Salary Up to \$50,000	Average Salary \$50,001 to \$70,000	Average Salary Over \$70,000
20 to 99 New Jobs	Level 1	Level 2	Level 3
100 to 199 New Jobs	Level 2	Level 3	Level 4
200 or more New Jobs	Level 3	Level 4	Level 5

Note: ¹ Provided that, obtaining temporary tax abatement based solely on the creation of the new jobs must be further conditioned on the requirement for the improvement or repair of property in order to meet the minimum requirements of the Act.

(3) The level of any New Facility, Expansion, or Modernization that is located within a Catalyst Area or that is a Locally-Owned Facility is increased by one level above the standards set forth in Section 2(i)(1) and (2) above, with a minimum level of 3 for any the project. Further, if a Facility qualifies under both the capital investment qualification criteria and the new jobs and salary criteria, the Facility will be increased by one level above the highest criteria level achieved.

(4) A historically significant structure is a minimum of Tier 3.

(5) Any New Facility, Expansion, or Modernization that utilizes the Leadership in Energy and Environmental Design (LEED) Green Building Rating System may be increased at least one level above the qualifying level for abatement.

(6) Abatement for a small business facility providing Added Value of at least \$250,000 may be considered within a Catalyst Area or as a Locally-Owned Facility by the City Council on a case-by-case basis.

(7) Upon compliance with the above criteria, the percentage of tax abated may be under the following schedule, with 100% abatement in each case during the construction period of up to two years:

Year	Level 1	Level 2	Level 3	Level 4	Level 5
Year 1*	100%	100%	100%	100%	100%
Year 2*	100%	100%	100%	100%	100%
Year 3	100%	100%	100%	100%	100%
Year 4	75%	100%	100%	100%	100%
Year 5	50%	75%	100%	100%	100%
Year 6	25%	50%	75%	100%	100%
Year 7		25%	50%	75%	100%
Year 8			25%	50%	75%
Year 9				25%	50%
Year 10					25%

*Construction Period

(8) In the event the Added Value caused by the Project is less than \$2.0 million, no abatement may be granted unless the Facility is a Rehabilitation Project as described in Section 2(k) or historically significant as described in Section 2(l).

(9) In order to be counted as a permanent job under these Guidelines, the job must be a full-time position providing regular work schedules of at least 32 hours per week.

(10) For a Downtown Revitalization Housing Facility, the percentage of tax abated is under the following schedule:

Year	Percentage of Abatement
Year 1*	100%
Year 2*	100%
Year 3	100%
Year 4	100%
Year 5	100%

* Construction Period

(11) For compliance purposes, the date for determining a permanent full-time job will be six months from the date of completion. The business must maintain the same level of employment or increase employment during the term of the agreement.

(12) For an Enterprise Zone Facility, the jobs must be created within six months following the completion of construction. One new permanent full-time job must

be added per \$50,000 of Added Value to a property. The Owner must maintain the same level of employment or increase employment during the term of the Agreement. For example:

Company X is rehabilitating a building in a Texas Enterprise Zone for a commercial use. The current value of the building is \$250,000 and Company X estimates an added value of \$750,000. The job requirement will be to create and maintain a minimum of 15 permanent full-time positions during the term of the Agreement. ($\$750,000 / \$50,000 = 15$)

(13) For residential multi-family housing, the job creation requirement will be waived.

(14) For mixed-use facilities, the job requirement will be prorated. For example:

Company Y is constructing a mixed-use facility that is 30% non-residential and the Added Value is \$1,500,000. The job requirement will be to create and maintain a minimum of 9 permanent full-time jobs during the term of the Agreement. ($1,500,000 \times .30 = \$450,000 / \$50,000 = 9$)

(f) Living Wage Requirement. In order to count as a permanent full-time job under this tax abatement program, the job should provide a "living wage" for the employee. The target living wage under this abatement program is that annual amount equal or greater than poverty level for a family of three, established by the U.S. Department of Health and Human Services Poverty Guidelines, divided by 2,080 hours per year for that year. The City has the right to adjust the living wage target under these Guidelines and insert a specific target in each property Agreement to govern the abatement offered under that Agreement.

(g) Health Insurance. To qualify for this incentive, an employer shall certify that it has offered a health insurance program for its employees during the term of the Agreement

(h) Utilization of Local Contractors and Suppliers. Developer agrees to exercise reasonable efforts in utilizing local contractors and suppliers in the construction of the Project, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency in the normal course of business, with a goal of 50% of the total dollar amount of all construction contracts and supply agreements for elements that are not owner-provided or owner affiliate-provided being paid to local contractors and suppliers. For the purposes of this section, the term "local" as used to describe manufacturers, suppliers, contractors, and labor includes firms, businesses, and persons who reside in or maintain an office within a 50 mile radius of Nueces County. The Developer agrees, during the construction of the Project and for four years after Completion, to maintain written records documenting the efforts of the Developer to comply with the Local Requirement.

(i) Utilization of Disadvantaged Business Enterprises. Developer agrees to exercise reasonable efforts in utilizing contractors and suppliers that are determined to be disadvantaged business enterprises, including minority business enterprises women-owned business enterprises and historically-underutilized business enterprises, in the construction of elements of the Project that are not owner-provided or owner affiliate-provided. In order to qualify as a business enterprise under this provision, the firm must be certified by the City, the Regional Transportation Authority or another governmental entity in the jurisdiction of the home office of the business as

complying with state or federal standards for qualification as such an enterprise. The Developer agrees to a goal of 30% of the total dollar amount of all construction contracts and supply agreements, for elements of the Project that are not owner-provided or owner affiliate-provided, being paid to disadvantaged business enterprises, with a priority made for disadvantaged business enterprises which are local. The Developer agrees, during the construction of the Project and for four years after Completion, to maintain written records documenting the efforts of the Developer to comply with the DBE Requirement. For the purposes of this section, the term "local" as used to describe contractors and suppliers that are determined to be disadvantaged business enterprises, including minority business enterprises women-owned business enterprises and historically-underutilized business enterprises includes firms, businesses, and persons who reside in or maintain an office within a 50 mile radius of Nueces County.

(j) *Rehabilitation Projects.* The \$2 million minimum Added Value requirement for abatement does not apply to rehabilitation projects that involve the adaptive reuse of an existing structure or building for a Facility.

(1) In order to qualify as a rehabilitation project under this provision, the project must involve a minimum Added Value, as defined, of \$250,000. Any rehabilitation project must involve the adaptive reuse of an existing structure or building currently on the property tax rolls so that the Base Year Value associated with the project will include both the value of the land and the existing improvements.

(2) For the rehabilitation projects, all Eligible Property in excess of the Base Year Value are subject to abatement, plus the value of personal property, such as furniture and movable equipment that would otherwise be considered Ineligible Property for any other type of abatement category.

(3) In no event, however, may the total value of personal property subject to abatement exceed \$1 million or the total amount of all property subject to abatement in a rehabilitation project exceed \$5 million.

(k) *Historical Significant Structures.* The \$2 million minimum Added Value requirement for abatement does not apply to historical projects.

(1) In order to qualify as an historical significant project under this provision, the project must be designated as historically significant by the CC Landmark Commission.

(2) For the historical projects, all Eligible Property in excess of the Base Year Value are subject to abatement, plus the value of personal property, such as furniture and movable equipment that would otherwise be considered Ineligible Property for any other type of abatement category.

Properties in Industrial Districts. For eligible property to be constructed in an area which is covered by an executed industrial district agreement with the City, the method of calculating payments in lieu of property taxes for the eligible property is set forth in the

industrial district agreement. As an alternative to an industrial district agreement, an eligible property may be covered by an Agreement.

(l) *Economic Qualification for Non-Residential Development and Mixed-Use Facilities.*

(1) In order to be eligible for tax abatement, the planned improvement for a Non-Residential Development or Mixed-Use Facility may create no later than the January 1 following the completion of construction and maintain throughout the remainder of the term of the Agreement the minimum number of 50 permanent full-time jobs in City.

(2) The planned improvement for a Non-Residential Development or Mixed-Use Facility may not adversely affect competition in the local market with established local businesses.

(m) *Taxability.* From the execution of the Agreement to the end of the abatement period, taxes will be payable as follows:

(1) The value of Ineligible Property as provided in Section 2(e) are fully taxable (except for personal property added in connection with a Rehabilitation Project).

(2) The Base Year Value of existing Eligible Property as determined each year are fully taxable.

(3) The Added Value of new Eligible Property (and certain personal property added in connection with a Rehabilitation Project) is taxable, less the authorized abatement provided in Section 2(i).

Section 3. Application.

(a) *Written Application.* Any present or potential owner of taxable property may request tax abatement by filing a written application with the City Manager.

(b) *Contents of Application.* The application must consist of a completed application form provided by the City or Corpus Christi Regional Economic Development Corporation accompanied by the following:

(1) A general description of the new improvements to be undertaken.

(2) A descriptive list of the improvements for which abatement is requested.

(3) A list of the kind, number, and location of all proposed improvements of the property.

(4) A map and metes and bounds property description.

(5) A time schedule for undertaking and completing the proposed improvements.

(6) In the case of a modernization or expansion project, a statement of the assessed value of the Facility, separately stated for real and personal property, must be given for the tax year immediately preceding the application.

(c) *Additional Information.* The City may require additional financial and other information that the City deems appropriate for evaluating the financial capacity and other relevant factors of the applicant.

(d) *Written Notification to Other Governing Bodies.* Upon receipt of a completed application, the City Manager will forward a copy of the application to the presiding officer of the governing body of each jurisdiction that has taxing authority over the property covered by the application.

(e) *Feasibility.* After receipt of an application for abatement, the City will consider the feasibility and the impact of the proposed tax abatement. The study of feasibility includes, but not be limited to, an estimate of the economic effect of the abatement of taxes and the benefit to the City and the property to be covered by the abatement.

(f) *No Abatement if Construction has Commenced.* No Agreement may be approved if the application for the abatement was filed after the commencement of construction, alteration, or installation of improvements related to the proposed Modernization, Expansion, or New Facility.

(g) *Variance.* Requests for variance from the provisions of Section 2 may be made in written form, provided, however, that no variance may extend the term of abatement beyond ten years. The requests must include a complete description of the circumstances explaining why the applicant should be granted a variance. Approval of a request for variance requires a three-fourths vote of the City Council.

Section 4. Public Hearing and Approval.

(a) *Designation of Tax Abatement Reinvestment Zone.* An action designating a reinvestment zone for tax abatement under the Act may not be adopted by the City Council until a public hearing has been held at which interested persons are entitled to speak and present evidence for or against the designation. Notice of the hearing must be provided to the public in the manner required by the Act.

(b) *Tax Abatement Reinvestment Zone.* Under Chapter 312, Texas Tax Code, a designated Texas Enterprise Zone constitutes designation as a Reinvestment Zone without further hearing or other procedural requirements. Under Chapter 2302 of the Texas Government Code, a federally designated Renewal Community or Census Block Group with poverty greater than 20% constitutes designation as a Texas Enterprise Zone. Therefore, the Renewal Community is a Reinvestment Zone, without further hearing.

Section 5. Agreement.

(a) *Required Findings.* In order to enter into an agreement, the City must find that the terms of the proposed Agreement meets the requirements of the Act and these Guidelines.

(b) *Reservation of Rights.* Nothing in these Guidelines may be construed to limit the authority of the City to examine each application for tax abatement before it on a case-by-case basis and determine in the City's sole and absolute discretion whether or not the proposed project should be granted temporary tax abatement, whether or not it complies with these Guidelines, is feasible, and whether or not the proposed temporary abatement of taxes will inure to the long-term benefit of the City.

(c) *Contents of Tax Abatement Agreement.* The Agreement with the Owner of the Facility must include all of the following:

- (1) The estimated value to Facility subject to abatement and the Base Year Value.
- (2) The percentage of value to be abated each year as provided in Section 2.
- (3) The commencement date and termination date of abatement.
- (4) A provision that the term of the Agreement must extend until five (5) years after the expiration of the period of tax abatement.
- (5) The proposed use of the Facility, nature of construction, time schedule, map, metes and bounds property description, and improvements list as provided in the application.
- (6) The contractual obligations in the event of default, delinquent taxes, recapture, administration, and assignment as provided in these Guidelines, or other provisions that may be required for uniformity or by state law.
- (7) The amount of Added Value and required number of permanent full-time jobs.

(d) *Time of Execution.* The Agreement will normally be executed within 60 days after the applicant has provided all necessary information and documentation.

(e) *Attorney's Fees.* In the event any attorney's fees are incurred by the City in the preparation of an agreement, the fees must be paid by the applicant upon execution of the Agreement.

Section 6. Recapture.

(a) *Failure to Commence Operation During Term of Agreement.*

(1) In the event that the Facility is not completed and does not begin operation with the required minimum number of permanent full-time jobs by the January 1 following the completion of construction, no abatement may be given for that tax year, and the full amount of taxes assessed against the property is due and payable for that tax year.

(2) In the event that the Enterprise Zone Facility is not completed and does not begin operation with at least one permanent full-time job per \$50,000 of Added Value within six months following the completion of construction, no abatement may be given for that tax year, and the full amount of taxes assessed against the property are due and payable for that tax year. In the event that the Owner of such a Facility fails to begin operation with the required minimum number of permanent full-time jobs by the next January 1 or for an Enterprise Zone Facility, at least one permanent full-time job per \$50,000 within 1 year following the completion of construction, then the abatement agreement terminates and all abated taxes during the period of construction must be recaptured and paid within 60 days of the termination.

(b) *Discontinuance of Operations During Term of Agreement.* In the event the Facility is completed and begins operation with the required number of jobs, but subsequently discontinues operations and the required number of permanent full-time jobs are not maintained as required, for any reason, except on a temporary basis due to fire, explosion, other casualty or accident, or natural disaster, the Agreement may be terminated by the City providing abatement, and all taxes previously abated by virtue of the Agreement must be recaptured and paid within 60 days of the termination.

(c) *Delinquent Taxes.* In the event that the Owner allows its ad valorem taxes to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, the Agreement automatically terminates and there may be no abatement of the taxes for the tax year of the delinquency. The total taxes assessed without abatement, for that tax year must be paid within 60 days from the date of termination.

(d) *Notice of Default.* Should the City determine that the Owner is in default under the terms and conditions of its Agreement, the City will notify the Owner in writing at the address stated in the Agreement that if the default is not cured within 60 days from the date of the notice ("Cure Period"), then the Agreement will be terminated. In the event the Owner fails to cure the default during the Cure Period, the Agreement may be terminated and the taxes abated by virtue of the Agreement will be recaptured and paid as provided in these Guidelines.

(e) *Actual Capital Investment.* Should the City determine that the total level of capital investment in eligible property is lower than provided in the Agreement, the difference

between the tax abated and the tax that should have been abated based upon the actual capital investment as determined must be paid to the City within 60 days of notification to the Owner of the determination.

(f) *Reduction in Rollback Tax Rate.*

(1) If during any year of the period of abatement with respect to any property any portion of the abated value that is added to the current total value of the Facility, but is not treated as "new property value" (as defined in Section 26.012(17) of the Texas Tax Code) for the purpose of establishing the "effective maintenance rate" in calculating the "rollback tax rate" under Section 26.04(c)(2), Texas Tax Code, and if the City's budget calculations indicate that a tax rate in excess of the "rollback tax rate" is required to fund the operations of the City for the succeeding year, then the City may recapture from the taxpayer a tax in an amount equal to the lesser of the following:

(A) The amount of the taxes abated for that year by the City with respect to the taxpayer.

(B) The amount obtained by subtracting the rollback tax rate computed without the abated property value being treated as new property value from the rollback tax rate computed with the abated property value being treated as new property value and multiplying the difference by the total assessed value of the City.

(2) If the City has granted an abatement of taxes to more than one taxpayer, then the amount of the recapture, calculated under Section 6(f)(1)(B) above, will be prorated on the basis of the amount of the abatement with respect to each taxpayer.

(3) All recaptured taxes must be paid within thirty (30) days after notice the recapture has been given to the affected taxpayer. Penalty and interest may not begin to accrue upon the sum until the first day of the month following the thirty (30) day notice, at which time penalty and interest accrues under the laws of the State of Texas.

(g) *Continuation of Tax Lien.* The amount of tax abated each year under the terms of these Guidelines and the Agreement must be secured by a first and prior tax lien that continues in existence from year to year throughout the entire term of the Agreement or until all taxes, whether assessed or recaptured, are paid in full.

(h) *Automatic Termination.* The Agreement must automatically terminate on and as of the date any of the following events occur:

(1) The filing of a petition in bankruptcy by the Owner.

(2) The making by the Owner of an assignment for the benefit of creditors.

(3) Any involuntary petition in bankruptcy or petition for an arrangement under the federal bankruptcy code is filed against the Owner.

(4) A receiver is appointed for the business of the Owner

(i) *Prior Notice of Automatic Termination Not Required.* In the event of automatic termination for any of the reasons in Section 6(h), the prior notice of default provisions in Section 6(d) do not apply.

Section 7. Administration.

(a) *Annual Assessment.* The applicable appraisal district shall annually determine an assessment of the real and personal property subject to an Agreement. Each year, the Owner shall furnish the Appraisal District with the information as may be necessary for the abatement. Once value has been established, the Appraisal District may notify the affected jurisdictions which levy taxes of the amount of the assessment and the abatement.

(b) *Access to Facility.* The Agreement must stipulate that employees or designated representatives of the City will have access to the Facility during the term of the Agreement to inspect the Facility to determine if the terms and conditions of the Agreement are being met. All inspections will be made only after giving 24 hours prior notice and will only be conducted in the manner as to not unreasonably interfere with the construction or operation of the Facility. All inspections will be made with one or more representatives of the Owner and under its safety standards.

(c) *Annual Evaluation.* Upon completion of construction, the City individually or in conjunction with other affected jurisdictions, will annually evaluate each Facility receiving abatement to ensure compliance with the Agreement and report possible violations of the Agreement.

(d) *Annual Reports.* The Owner shall certify to the City Council on or before April 1 each year that the Owner is in compliance with each applicable term of the agreement. Additionally, during the term of property tax abatement, the Owner shall provide to the City approving the abatement an annual report covering those items listed on Schedule 1 in order to document its efforts to acquire goods and services on a local basis. The annual report must be prepared on a calendar year basis and must be submitted to the City no later than ninety (90) days following the end of each the calendar year. The annual report must be accompanied by an audit letter prepared by an independent accounting firm which has reviewed the report.

(e) *"Buy Local" Provision.* Each recipient of property tax abatement shall additionally agree to give preference and priority to local manufacturers, suppliers, contractors, and labor, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency. In any exception involving purchases over \$10,000.00, a justification for the purchase must be included in the annual report. Each recipient shall further acknowledge that it is a legal and moral obligation of persons receiving property tax abatements to favor local

manufacturers, suppliers, contractors, and labor, all other factors being equal. For the purposes of this provision, the term "local" as used to describe manufacturers, suppliers, contractors, and labor included firms, businesses, and persons who reside in or maintain an office in the Corpus Christi Metropolitan Statistical Area. In the event of a breach of the buy-local provision, the percentage of abatement will be proportionately reduced equal to the amount the disqualified contract bears to the total construction cost for the project.

(f) *Right to Modify or Cancel.* Notwithstanding anything in these Guidelines or in any agreement to the contrary, the City Council may cancel or modify the agreement if the Owner fails to comply with the Agreement.

(g) *Transition Rule.* For any project which obtained an Agreement within the twelve months prior to adoption of these Guidelines, the project may, upon the agreement of the Owner and the City, obtain an amendment to its Agreement to incorporate the terms and conditions of these Guidelines.

SCHEDULE 1

"Buy Local" Annual Reports

The following information must be reported to the City on a calendar-year basis during the first four years of the tax abatement program:

1. Dollar amount spent for materials* (local).
2. Dollar amount spent for materials* (total).
3. Dollar amount spent for labor** (local).
4. Dollar amount spent for labor** (total).
5. Number of jobs created in the construction project (local).
6. Number of jobs created in the construction project (total).
7. Number of jobs created on a permanent basis (local).
8. Number of jobs created on a permanent basis (total).

* "Materials" is defined to include all materials used in excavation, site improvement, demolition, concrete, structural steel, fire proofing, piping, electrical, instruments, paintings and scaffolding, insulation, temporary construction facilities, supplies, equipment rental in construction, small tools and consumables. This term does not include major items of machinery and equipment not readily-available locally.

** "Labor" is defined to include all labor in connection with the excavation, site improvement, demolition, concrete construction, structural steel, fire proofing, equipment placement, piping, electrical, instruments, painting and scaffolding, insulation, construction services, craft benefits, payroll burdens, and related labor expenses. This term does not include engineering services in connection with the project design.

The term "local" as used to describe manufacturers, suppliers, contractors and labor includes firms, businesses, and persons who reside in or maintain an office in either Nueces County or San Patricio County.