

# **GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS IN HIDALGO COUNTY, TEXAS**

**Effective June 26, 2012  
As amended July 10, 2012**

## **I. General Purpose and Objectives**

The County is committed to the promotion of high quality development in all parts of the County and to an ongoing improvement in the quality of life for its citizens. Certain types of investment result in the creation of new jobs, new income and provide for positive economic growth which is beneficial to the County as a whole. The County will, on a case-by-case basis, give consideration to providing tax abatement as a stimulation for economic development in the County. It is the policy of the County that said consideration will be provided in accordance with the guidelines and criteria outlined in this document. The County is not obligated to grant tax abatement to any applicant and nothing herein will imply or suggest that the County is under any obligation to provide tax abatement to any applicant. All applicants will be considered on a case-by-case basis, and the decision to approve or deny tax abatement to any particular applicant will be at the discretion of the Commissioners Court of the County. As provided in section 312.002(d) of the Texas Tax Code, adoption of these guidelines and criteria does not (1) limit the discretion of the Commissioners Court to decide whether to enter into a specific tax abatement agreement, (2) limit the discretion of the Commissioners Court to delegate to its employees the authority to determine whether the Commissioners Court should consider a particular application for tax abatement or (3) create any property, contract or other legal right in any person to have the County consider or grant a specific application or request for tax abatement. Tax abatement agreements are made with the owners of real property to exempt from taxation a portion of the value of the real property or of tangible personal property, or both, and, as provided herein, may also be entered into with the lessees of such real property. The duration of an agreement may be for a period of time determined appropriate by the Commissioners Court of the County, based on the productive life of the improvements and consistent with the provisions of these Guidelines and Criteria, but in no case for more than ten (10) years in accordance with state law. Special terms and conditions may be set in the agreement governing each specific tax abatement.

## **II. Definitions**

A. "Abatement" means the full or partial exemption from ad valorem taxes of eligible properties in a reinvestment zone designated as such for economic development purposes.

B. "Agreement" means a contractual agreement for the purpose of tax abatement between (i) a property owner or a lessor and a lessee and (ii) a taxing authority. In no event will the duration of an agreement exceed ten (10) years, even if the abatement is not applied in the initial years of the agreement.

C. "Base year value" means the taxable value of the applicant's real and personal property of a type eligible for tax abatement (which excludes inventory and supplies) located in a designated reinvestment zone on January 1 of the year of the execution of the Agreement.

D. "Capital Cost" means the amount expended by the owner on improvements to real property or acquisition of eligible personal property needed to commence a project or operations. It expressly excludes amounts expended by the County or other governmental entities and any amounts expended with respect to ineligible property.

E. "Commissioners Court" means the elected governing body of the County.

F. "County" means the County of Hidalgo, a political subdivision of the State of Texas.

G. "Economic life" means the number of years a property qualifies for depreciation under the Internal Revenue Service Code (Section 168) Modified Accelerated Cost Recovery System.

H. "Eligible education facility" means new, expanded or modernized buildings and structures, including fixed machinery and equipment, which, when constructed or completed, will be leased to a public school district, community college district, or state-supported institution of higher education, for the entire term of the proposed abatement, and which will contribute to the economic development of the County.

I. "Eligible facility" means a new, expanded or modernized building or structure, including fixed machinery and equipment, which is reasonably likely as a result of granting abatement to contribute to the retention or expansion of primary employment or to attract major investment in the reinvestment zone that would be a benefit to the property and that would contribute to the economic development of the County, but does not include a facility which is intended primarily to provide goods or services to residents or existing businesses located in the County such as, but not limited to, a restaurant or a retail sales establishment.

J. "Expansion" means the addition of buildings, structures, fixed machinery, and/or equipment for the purpose of increasing production capacity or revenues.

K. "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.

L. "Guidelines and Criteria" mean these guidelines and criteria for granting tax abatement in the County.

M. “Improvement” means a building, structure, fixture, or fence erected on or affixed to land, or a transportable structure designed to be occupied for residential or business purposes, whether or not it is affixed to land, if the owner of the structure owns the land on which it is located, unless the structure is unoccupied and held for sale or normally is located at a particular place only temporarily.

N. “Job” means a permanent, full-time employment position, hired directly or contracted through another entity, that has provided or will result in employment of at least 1,820 hours in the position in a year. Any position providing less than the specified number of hours a year, regardless of the employer’s designation of such position, does not qualify as a “Job” for purposes of these Guidelines and Criteria.

O. “Lessee” means the tenant who is occupying and operating or will occupy and operate an eligible facility under a legally binding lease agreement with a landlord.

P. “Lessor” means the owner of an eligible facility that has a binding lease with a tenant who will occupy and operate the facility.

Q. “Modernization” means the replacement and upgrading of existing facilities which increase the productive input or output, updates the technology, or substantially lowers the unit costs of operation, and extends the economic life of the facility. Modernization may result from the construction, alteration, or installation of buildings, structures, fixed machinery, or equipment. It will not be for the purpose of renovation, reconditioning, refurbishing, repairing, or completion of deferred maintenance, except in reinvestment zones established based on conditions of economic impairment.

R. “New facility” means a property previously undeveloped which is placed into service by means other than expansion or modernization.

S. “Newly created value” means the difference between the taxable property value in the base year and the taxable property value at the time the value is being newly calculated.

T. “Personal property” means property that is not real property, and consists of intangible and tangible personal property. Intangible personal means a claim, interest (other than an interest in tangible property), right, or other thing that has value but cannot be seen, felt, weighed, measured, or otherwise perceived by the senses, although its existence may be evidenced by a document. It includes a stock, bond, note or account receivable, certificate of deposit, share account, share certificate account, share deposit account, insurance policy, annuity, pension, cause of action, contract, and goodwill. Tangible personal property means personal property that can be seen, weighed, measured, felt, or otherwise perceived by the senses, but does not include a document or other perceptible object that constitutes evidence of a valuable interest, claim, or right and has negligible or no intrinsic value.

U. “Primary employment” means retention or creation of new jobs for residents of the County as a result of new, expanded or modernized building projects.

V. “Productive life” means the number of years a property improvement is expected to be in service in a facility.

W. “Real property” means land, improvements, a mine or quarry, minerals in place, standing timber; or an estate, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation, in a property enumerated above.

X. “Reinvestment zone” is (i) an area designated as such for the purpose of tax abatement as authorized by the Property Redevelopment and Tax Abatement Act, Sections 312.401 or 312.201 of the Texas Tax Code or (ii) an area designated as an enterprise zone under Chapter 2303 of the Texas Government Code as authorized by the Property Redevelopment and Tax Abatement Act, Section 312.4011 of the Texas Tax Code.

Y. “Taxable property value” means the value of the Property being valued as determined by deducting from the assessed value of such Property, as recorded by the Hidalgo County Appraisal District, the amount of any applicable exemption as defined by the Texas Property Tax Code.

### **III. Abatement Authorized**

A. Eligible Facilities. Abatement may be granted for new facilities and for expansion or modernization of existing facilities. The economic life of a facility and/or eligible property must exceed the duration of the abatement.

B. Eligible Property. Abatement may be applied to both real and personal property used at an eligible facility for business purposes, excluding all ineligible property.

C. Ineligible Property. The following types of property will be fully taxable and ineligible for abatement: (i) land, (ii) inventory, supplies, tools, furnishings and other forms of moveable personal property, (iii) housing, (iv) deferred maintenance, and (v) property to be rented or leased except as provided in subsection E. of this Section III. No reference to property (real or personal) herein shall be deemed to incorporate any ineligible property into any calculation of investment or tax abatement.

D. New Value. Abatement may only be granted for the newly created value of eligible property improvements made subsequent to and specified in an agreement between the County and the owner or between the County and the lessor and lessee, subject to such limitations as the County may impose.

E. Owned/Leased Facilities. If a leased facility is granted abatement, the agreement will be executed with the lessor and the lessee.

F. Eligibility Criteria. In order to be considered for abatement, eligible facilities must be located in a reinvestment zone and result in a minimum added value of \$1,500,001 in real and business personal property or the creation of at least 26 full-time jobs.

G. Criteria and Value of Abatement. Abatement may be granted for eligible facilities on all or a portion of the newly created value of eligible property according to the following:

- (1) An owner of real property where an eligible facility is located, prior to the inception of the project(s) subject to an agreement, must agree to expend a designate sum of money as the Capital Cost of the project and/or provide a certain number of Jobs in order to qualify for an abatement and must expend at least the sum agreed to as the Capital Cost of the project and provide at least the agreed number of Jobs in accordance with the agreement in order to receive such abatement. The percent of value to be abated is dependent upon the greater of the Capital Cost expended by the owner in the project or the number of Jobs created:

Percent of Increase in Property Value To be Abated	Capital Cost of the Project	Number of Jobs Created
0%	Less than \$1,500,001	0 – 25
25%	\$1,500,001 up to and including \$5,000,000	26 – 50
50%	Over \$5,000,000 up to and including \$10,000,000	51 – 100
80%	Over \$10,000,000	101 or more

- (2) In a lessor-lessee abatement, the lessor’s abatement will be the applicable percentage set forth in subsection (G) (1) of this Section III based on the Capital Cost of the project and applicable only to the newly created value of real property at the eligible facility as determined by the Hidalgo County Appraisal District and these Guidelines and Criteria. The lessee’s tax abatement will be the applicable percentage based on Job creation as set forth in subsection G.(1) of this Section III and will be applied on the newly created value of personal property owned by the lessee at the eligible facility as may be determined by the Hidalgo County Appraisal District.

- (3) Only the newly created value will be eligible for abatement. The percentage of value to be abated is dependent upon the greater of the Capital Cost involved in the project or number or Jobs and then only to the extent that such increase exceeds any reduction in fair market value of

other real or personal property of an owner, lessor or lessee located within the reinvestment zone.

- (4) The length of an agreement may be for a period not to exceed ten (10) years from the successful completion of the development, redevelopment or improvement of the project. The abatement of the real and personal property in each year covered by the agreement shall only be received to the extent its taxable property value for that year exceeds its taxable property value for the year in which the agreement is executed.
- (5) As an additional incentive to create and sustain jobs, any abatement based upon job creation will be subject to increases or decreases in subsequent tax years based on the level of jobs added or lost. For example, a project that initially creates thirty (30) jobs is eligible for a 25% abatement. In the second year of the abatement period, if twenty-one (21) additional jobs are added, the abatement will then increase to 50% (although such increased abatement shall not apply retroactively), and so on as jobs are created during the abatement period. Conversely, if jobs are reduced, the percent of abatement will also be reduced.
- (6) With respect to any abatement based upon Capital Cost, the percent of value to be abated may qualify for increases in subsequent tax years based upon additional capital improvements. For example, a project that initially has a Capital Cost of \$2,500,000.00, is eligible for 25% tax abatement. In the second year of the abatement period, if additional capital improvements are made in the total amount of \$3,000,000, the abatement may then increase to 50% upon Commissioners' Court approval (although such increased abatement shall not apply retroactively).
- (7) Improvements, expansions or modernizations must not be expected to solely or primarily have the effect of transferring employment from one part of the County to another.
- (8) The project must be expected to prevent the loss of payroll or retain, increase or create payroll on a permanent basis in the County

H. Standards of Tax Abatement. The following factors, among others, will be considered in determining whether to grant abatement and, if so, the percentage of value to be abated and duration of tax abatement.

- (1) value of land and existing improvements, if any;
- (2) type and value of proposed improvements;
- (3) productive life of proposed improvements;

- (4) number of existing jobs to be retained by proposed improvements;
- (5) number and type of new jobs to be created by proposed improvements;
- (6) whether the new jobs to be created will be filled by persons residing within the affected taxing jurisdiction;
- (7) amount property tax base valuation will be increased during term of abatement, which will include a definitive commitment that such valuation will not in any case be less than \$1,500,001 and/or no less than 26 jobs created;
- (8) the costs to be incurred by the County to provide facilities or services directly resulting from the new improvements;
- (9) the amount of ad valorem taxes to be paid to the County during the abatement period considering (a) the existing values, (b) the percentage of new value abated, (c) the abatement period, and (d) the value after expiration of the abatement period;
- (10) the types and values of public improvements, if any, to be made by the applicant seeking abatement;
- (11) whether the proposed improvements compete with existing businesses to the detriment of the local economy;
- (12) the impact on the business opportunities of existing businesses;
- (13) the attraction of new businesses to the area;
- (14) whether the project is environmentally compatible with no adverse impact on quality of life; and
- (15) whether the real property is in an improvement project financed by tax increment bonds.

Each eligible facility will be reviewed on its merits utilizing the factors provided above. After such review, abatement may be entirely denied or may be granted to the extent deemed appropriate after full evaluation.

I. In addition to other abatements authorized hereunder, abatement may be granted for an eligible education facility as provided in this subsection I. The provisions of subsections G.(1), G.(2), G.(4), G.(5), G.(6), and H.(7), and Section VII of these Guidelines and Criteria will not apply to abatements for eligible education facilities. The term of the abatement for an eligible education facility will be established by the Commissioners

Court at the time the abatement is granted, but in no event will exceed the maximum term permitted under the Texas Tax Code.

#### IV. Procedural Guidelines

A. Preliminary Application Steps: Any person, organization or corporation meeting the abatement guidelines may request abatement by contacting the County Judge's Office Economic Development Division and filing a written application with the County in conformance with the following procedural guidelines. Consideration will be given to written requests from applicants for the confidentiality of proprietary information, consistent with state law, including without limitation Section 312.003 of the Texas Tax Code and Section 552 of the Texas Government Code.

- (1) A tax abatement application form approved by the County and in the form attached to these Guidelines and Criteria must be completed and submitted to the appropriate office or any other office or official designated by the County, with all of the information and documents specified therein and herein. prior to commencement of construction, alterations, or installation of improvements related to a proposed modernization, expansion or new facility by the applicant. Commencement of construction is considered to have taken place when any one of the following has occurred:
  - (a) If more than ninety days has passed since an abatement agreement with the municipality has been executed (if applicable);
  - (b) If a building permit has been issued for construction not associated with mitigating an environmental hazard;
  - (c) If the project's site has been cleared and prepared for development;
  - (d) If construction (including renovations or tenant finish-out) has begun;
  - (e) If site specific infrastructure has begun to be installed; or
  - (f) If equipment, inventory, or employees have been relocated to the new site.

**A complete tax abatement application, with all of the information and documentation specified therein and herein, must be submitted to the appropriate office or any other office or official designated by the County no later than October 1, in order to have an agreement**

**considered and executed in the same year that the tax abatement application is submitted to the County..**

- (2) The application will require such financial and other information as may be deemed appropriate for evaluating the financial capacity of the applicant. This may include an economic feasibility study including a detailed list of estimated improvement costs, a description of the methods of financing all estimated costs and the time when related costs or monetary obligations are to be incurred, and historical financial statements and statements of revenues, expenses, net income and cash flow for the first five years of the project, which have been audited, reviewed or compiled by a certified public accountant.
- (3) Applicant will prepare a descriptive list of the improvements for which abatement is requested. This will include the class life of the improvements based on the Internal Revenue Service Code (Section 168) Modified Accelerated Cost Recovery System.
- (4) Applicant will prepare a plat or map showing the precise location of the property, location of proposed improvements, all roadways within five hundred feet (500') of the site, and all existing land uses and zoning within five hundred feet (500') of the site. The correct legal description of the real property must be provided.
- (5) Applicant will address all criteria outlined in Section III, H. of these Guidelines and Criteria in letter format. In the case of a modernization or expansion, applicant will also include a statement of the facility's current property value, stated separately for real and personal property.
- (6) Applicant will prepare a time schedule for undertaking and completing the planned improvements.
- (7) Applicant will provide a tax certificate verifying that no taxes are past due on applicant's property located within the proposed reinvestment zone.
- (8) Applicant will provide a copy of the underlying lease if Applicant is a lessee of the facility.
- (9) Applicant will provide a copy of the contract between the applicant and any employment agency acting as the employer of the employees of eligible jobs pursuant to such contract.
- (10) Applicant will provide copies of the immediately preceding quarterly reports filled with the Texas Workforce Commission, documenting the current number of permanent full time employees.

- (11) Applicant will provide a current copy of any Enterprise Zone Map identifying the property location.
- (12) Applicant shall pay to the County a non-refundable application fee of \$1,000 at the time of submission of the tax abatement application unless
  - (a) the Applicant meets all of the following criteria:
    - (i) during the twelve months immediately preceding the submission of the tax abatement application, the Applicant submitted an application for a tax abatement to the County (the “Prior Application”);
    - (ii) during such twelve month period, the Applicant paid the \$1,000 fee to the County with respect to the Prior Application;
    - (iii) neither the Applicant nor any other party has received or will receive any tax abatement with respect to such Prior Application; and
    - (iv) the Commissioners Court deems such new application to be substantially similar to the Prior Application; or
  - (b) the total tax abatement that the Applicant is requesting is less than and capped at (i) \$1,000 per year and/or (ii) \$10,000 in the aggregate over the life of the abatement.

Applicant understands and, by submitting an application agrees, that such fee is to partially offset the County’s expenses in reviewing the Applicant’s application and shall not be refunded in the event the application is withdrawn by Applicant or denied by the County. Applicant will submit along with the application a copy of the receipt issued from the Hidalgo County Treasurer evidencing payment of the application fee.

B. Application Review Steps: Upon receipt of a completed application, the County will distribute copies of the application to the appropriate County departments for internal review and comments. The County may request additional information as needed to determine applicant’s eligibility for abatement according to Sections III A., B. and F.

C. Timing Provisions. Notwithstanding any provision to the contrary in Sections IV or V of these Guidelines and Criteria, to the extent allowable under applicable law, the Commissioners Court in its discretion may (i) allow additional time for compliance with the requirements in Sections IV and V with respect to any applications received after October 1 of the calendar year, and (ii) consider and approve a tax abatement and enter into an Agreement prior to receipt of all required information, provided that if such abatement is granted the Agreement requires the owner or lessor and lessee to comply with any such provisions within thirty days of the date of the Agreement and allows the

County to terminate the Agreement in the event any conditions in the Agreement are not timely met.

## **V. Consideration of Application and Adoption of Agreement**

A. When the County considers an abatement request, it will consider the feasibility and impact of the proposed abatement by making an estimate of the economic effect of the abatement of taxes and the benefit to the property to be covered by the abatement and to the taxing authorities involved.

B. In accordance with Section 312.401(b) of the Texas Tax Code, the Commissioners Court may not designate an area as a reinvestment zone until it holds a public hearing on the designation and finds that the designation would contribute to the retention or expansion of primary employment or would attract major investment in the reinvestment zone that would be a benefit to the property to be included in the reinvestment zone and would contribute to the economic development of the County. At the hearing, interested persons are entitled to speak and present evidence for or against the designation. Not later than the seventh day before the date of the hearing, the Commissioners Court will give notice of the hearing in accordance with Sections 312.401(b) and 312.201(d) of the Texas Tax Code.

C. (1) The Commissioners Court may consider adoption of an Order approving the execution of an agreement between the County and the applicant governing the provision of the abatement within the reinvestment zone only after the applicant has forwarded all necessary information and documentation to the County. The County will notify the applicant of approval or disapproval in writing as soon as such action has occurred. The County will not approve an agreement if it finds that the request for the abatement was filed after the commencement of construction, alterations, or installation of improvements related to a proposed modernization, expansion or new facility by the applicant except as provided in subsection V.C.(2) below. Any improvements performed by a taxing entity in anticipation will not be subject to this subsection C(1).

(2) The decision to provide any tax abatement will be considered on a case by case basis, in accordance with these guidelines and criteria, and at the discretion of the Commissioners Court who, with respect to applicants concerning projects of extraordinary impact that meet the following criteria:

- a. the project creates 500 or more Jobs; and/or
- b. the project's Capital Cost is \$25 million or more in real and personal property within the County

may waive Subsection IV(A)(1)(b) if reasonable proof is shown of why the waiver is needed and of the benefit to the County of granting the tax abatement.

D. Not later than the seventh day before the date on which the County enters into an agreement, the County will deliver, as provided by Section 312.2041 of the Tax Code, to

the presiding officer of the governing body of each other taxing unit in which the property to be subject to the agreement is located a written notice that the County intends to enter into the agreement. The notice will include a copy of the proposed agreement.

E. The governing bodies of the appropriate taxing authorities may consider ratification of and participation in the agreement between the County and the applicant.

F. After approval, the County will formally pass an Order and execute an agreement with the owner of the facility and lessee as required. Such agreement prior to execution will be reviewed by legal counsel for the County and the owner of the facility and lessee, if applicable. Such agreement shall be subject to the rights of holders of outstanding bonds of the County and shall be entered into by the County on the condition that the owner and, if applicable, the lessee makes specific improvements or repairs to the property. The abatement in each agreement shall take effect on January 1 of the next tax year after the date the improvements or repairs are substantially completed. Each agreement must include the terms required under Section 312.205 or the Texas Tax Code and will address various issues, including, but not limited to, the following:

- (16) General description of the project;
- (17) The percent of value to be abated each year;
- (18) Estimated value of the abatement including the base year value;
- (19) Duration of the abatement, including the commencement date and the termination date;
- (20) Legal description of the property;
- (21) Kind, number, location and timetable of planned improvements;
- (22) Specific terms and conditions to be met by applicant;
- (23) The proposed use of the facility and nature of construction;
- (24) A plat or map showing the precise location of the property;
- (25) Contractual obligations in the event of default, violation of terms conditions, delinquent taxes, recapture, administration and assignment;  
and
- (26) Size of investment and average number of new jobs created.

## **VI. Denial of Abatement**

A. All eligible applications for abatement will be considered on a case-by-case basis and except for the instances set forth in Section VI.B. herein, the decision to approve or deny abatement will be made at the discretion of the Commissioners Court in accordance with these Guidelines and Criteria.

B. The Commissioners Court shall not authorize either a reinvestment zone or an agreement if it is determined that:

- (1) there would be an adverse impact on the provision of government service or tax base;
- (2) the applicant has insufficient financial capacity to complete the project;
- (3) planned or potential use of the property would constitute a hazard to public safety, health or morals;
- (4) violation of other codes or laws exist;
- (5) the property is in an improvement project financed by tax increment bonds; or
- (6) there exists any other reason that is deemed appropriate by the Commissioners Court.

C. Nothing herein will imply or suggest that the County is under any obligations or duty to provide abatement to any eligible applicant, or that any applicant has an entitlement to abatement except as may be determined on a case-by-case basis by the Commissioners Court.

## **VII. Taxability**

From the execution of the agreement to the end of the agreement period, taxes will be payable as follows:

- (a) The value of ineligible property will be fully taxable;
- (b) The base year value of existing eligible property as determined each year will be fully taxable;
- (c) The additional value of eligible property will be taxable in the manner and for the period provided for in the abatement agreement; and

- (d) The additional value of eligible property will be fully taxable at the end of the abatement period.

### **VIII. Recapture**

A. The County will be entitled to terminate the agreement and shall recapture all or part of the taxes abated, in any one or more abatement periods upon the occurrence of one or more of the following events:

- (1) At any time that the owner or lessee voluntarily ceases to produce a product or service at the facility for a period of one (1) year;
- (2) If the owner, lessor or lessee allows its ad valorem taxes owed to the County to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest;
- (3) If the owner or lessee relocates the job creating activity outside the reinvestment zone;
- (4) Upon the owner's, lessor's or lessee's breach of the agreement;
- (5) As the County and the owner, lessor or lessee may otherwise agree in the agreement; or
- (6) In the case of an abatement for an eligible educational facility, the educational institution named in the agreement terminates the lease on the property or otherwise ceases to use and occupy the property for educational purposes, and the property owner fails to secure a new tenant that qualifies the facility for continued abatement under these Guidelines and Criteria within one hundred twenty (120) days of the expiration or other cessation of the use of the property for educational purposes.

B. Should the County determine that a party is in default according to the terms and conditions of the agreement, the County will notify the party in writing at the address stated in the agreement, and if such is not cured within thirty (30) days from the date of such notice, then the agreement may be terminated by the County pursuant to an Order adopted by the Commissioners Court.

C. The County by an Order adopted by the Commissioners Court will have the right to terminate the agreement and shall recapture all or a part of the abated taxes based on the following schedule and formula:

**RECAPTURE SCHEDULE**

<i>YEAR IN WHICH RECAPTURE EVENT OCCURS</i>	<i>COUNTY WILL RECAPTURE FOLLOWING PERCENTAGE OF TOTAL TAXES PREVIOUSLY ABATED:</i>
1-5	100%
6	85%
7	75%
8	65%
9	55%
10	45%

**FORMULA:** The Recapture Formula Will Be:

$$\text{Total Taxes Abated} \times \text{Applicable Percentage from above schedule} = \text{Amount to be Recaptured}$$

D. A lessor, lessee, or owner who is a party to an agreement that has been terminated or pursuant to which abated taxes have been ordered to be recaptured may appeal the Commissioners Court decision recapturing or terminating the agreement. In order to make an appeal, the party to the agreement must submit, within thirty (30) days of the Order by Commissioners Court recapturing or terminating the agreement, a written notice to the County and to any other party to the agreement specifying the grounds on which the party will be appealing the decision and requesting that the matter of the appeal be placed on the Commissioners Court agenda for the next Commissioners Court meeting occurring not less than three days following receipt by the County of the written request. The party appealing the decision may appear at the Commissioners Court’s meeting to discuss the appeal.

**IX. Administration**

A. Access to Facility. Each agreement will stipulate that employees and/or designated representatives of the County 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. The County may execute a contract with any other jurisdiction(s) to conduct such inspections of the facility. All inspections will be conducted in a manner as to not unreasonably interfere with the construction and/or operation of the facility; provided however, the County may conduct “spot” inspections requiring no advance notification to application. All inspections will be made with one or more representatives of the owner, lessor or lessee, and in accordance with such party’s safety standards.

B. Reports, Audits and Inspections: Owners of facilities and lessees, if any, of eligible property for which tax abatement is granted will annually certify to taxing authorities that

they are in compliance with the terms of the agreement. In addition, owners and lessees will provide reports and records reasonably necessary to support each year of the agreement. Such reports and records will include information supporting job creation and retention requirements, information on property purchases, and status reports on the project's progress. Reports supporting job creation and retention shall include Texas Workforce Commission Reports (all Social Security numbers must be redacted prior to submitting such reports to the County) submitted to the State Comptroller on a quarterly basis and a breakdown of all jobs with total annual hours per job. Upon completion of a project, property owners will provide taxing authorities with a final report (i) describing all property for which tax abatement is granted, (ii) providing documentation of the final Capital Cost and (iii) certifying the number of jobs created. If the tax abatement is given to a lessor and lessee, the lessee will provide and certify the portion of the final report concerning the number of jobs created. This final report will be accompanied by the opinion of an independent certified public accountant as to its accuracy and completeness. Taxing authorities will periodically evaluate each facility receiving abatement to ensure compliance with the agreement and report possible violations of the agreement. Taxing authorities will have the right to audit the books and records related to the eligible property and supporting the eligible property reports.

C. Transfer or Assignment. An agreement for tax abatement may be transferred or assigned by the original applicant to a new owner/lessor or lessee of the same facility upon the approval of the Commissioners Court subject to the financial capacity of the transferee or assignee and provided that all conditions and obligations in the agreement are guaranteed by the execution of a new agreement with the County. No assignment or transfer will be approved if any party to the existing agreement or any proposed new party is (i) liable to any jurisdiction in the County for outstanding taxes or other obligations or (ii) delinquent in the payment of ad valorem taxes to any taxing unit located in the County. Approval of a transfer or assignment will not be unreasonably withheld.

## **X. Tax Abatement by Other Taxing Units**

A. Other Taxing Entities. Section 312.206(a) of the Tax Code allows the County, when a municipality has entered into an agreement with an owner and, if applicable, a lessee, to enter into an agreement with the same owner and, if applicable, lessee under different terms and conditions than those contained in the municipality's agreement with the owner and, if applicable, lessee. When an application for tax abatement is originated with a taxing entity other than the County, the taxing entity desiring the County to provide tax abatement to the same applicant will cause the applicant to file an application requesting abatement with the County and such application will include the information requested by the County for abatements originating with the County and shall also include a copy of the agreement between the applicant and the municipality or other taxing entity and such other documentation as may be requested by the County. Such abatements will be considered in accordance with the provisions of these Guidelines and Criteria.

B. No obligation. The acceptance of an application for tax abatement will not be deemed as an obligation whatsoever of the County to grant any abatement of taxes. Nothing in these Guidelines and Criteria or in any prior abatement action by the County will obligate the County to provide tax abatement to party.

C. Taxing Unit With Tax Rate Set by Commissioners Court. Pursuant to Section 312.004 of the Tax Code, in the event the Commissioners Court enters into an agreement for the county, it may also enter into an agreement applicable to the same property on behalf of a taxing unit other than the County if by statute the ad valorem tax rate of the other taxing unit is approved by the Commissioners Court or the Commissioners Court is expressly required by statute to levy the ad valorem taxes of the other taxing unit. The agreement entered into on behalf of the other taxing unit is not required to contain the same terms as the agreement entered into on behalf of the County.

## **XI. Sunset Provision**

These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two years unless amended by three-quarters vote of the Commissioners Court, at which time all reinvestment zones and agreements created pursuant to these provisions will be reviewed to determine whether the goals have been achieved. Based on that review, the Commissioners Court may modify or renew these Guidelines and Criteria or enact new guidelines and criteria. The County reserves the right to allow these Guidelines and Criteria to lapse and to not thereafter adopt new guidelines and criteria.

## **XII. Severability**

If any provision, section, subsection, sentence, clause, or phrase of these Guidelines and Criteria, or the amendments duly adopted hereto, or the application of the same to any person, entity, or set of circumstances, is for any reason held to be unconstitutional, void, voidable, invalid, or contrary to any existing or prospectively enacted law or statute, the validity and enforceability of the remaining part of these Guidelines and Criteria and amendments thereto will not be affected thereby.