

GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENT

WHEREAS, the attraction of long-term investment and the establishment of new jobs in the area would enhance the economic base of area taxing entities; and

WHEREAS, Nueces County must compete with other counties 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; and

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; and

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; and

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

WHEREAS, the Act requires eligible taxing jurisdictions to establish Guidelines and Criteria as to eligibility for tax abatement agreements prior to granting any future tax abatement, said Guidelines and Criteria to be unchanged for a two-year period unless amended by a three-fourths vote; and

WHEREAS, the County would like to ~~amend and replace the existing~~ adopt Guidelines and Criteria ~~that supersede those last approved in March 2008~~ January 2010 with these Guidelines and Criteria ~~in order to comply with minor changes in state law and order~~ to provide for a common, coordinated effort to promote economic development in Nueces County;

NOW, THEREFORE, BE IT RESOLVED by the County of Nueces that these Guidelines and Criteria for granting tax abatement be adopted:

Section 1. **Definitions.**

- (a) "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 pursuant to the Act.
- (b) "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."
- (c) "Agreement" means a contractual agreement between a property owner and/or lessee and an Eligible jurisdiction for the purposes of tax abatement.
- (d) "Base Year Value" means the assessed value of eligible property as of the commencement date for the period of abatement specified in the Agreement.

- (e) "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 which derive a majority of revenue from points beyond a 50-mile radius of Nueces County.
- (f) "Deferred Maintenance" means improvements necessary for continued operations which do not improve productivity or alter the process technology.
- (g) "Economic Life" means the number of years a property improvement is expected to be in service in a Facility.
- (h) "Eligible Jurisdiction" means Nueces County and any municipality or school district, the majority of which is located in Nueces County, that levies ad valorem taxes upon and provides services to property located within the proposed or existing zone designated pursuant to the Act.
- (i) "Expansion" means the addition of buildings, structures, fixed machinery or equipment for the purposes of increasing capacity.
- (j) "Facility" means property improvements completed or in the process of construction which together compromise an integral whole.
- (k) "Modernization" means the replacement and upgrading of existing facilities which increase the productive input or output, updates the technology or substantially lowers the unit cost of the operation, and extends the economic life of the facilities. Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing, repairing or completion of deferred maintenance.
- (l) "New Facility" means a property previously undeveloped which is placed into service by means other than or in conjunction with an expansion or modernization.
- (m) "Owner" means the owner of a Facility subject to abatement. If the Facility is constructed on a leased property, the owner shall be the party which owns the property subject to tax abatement. The other party to the lease shall join in the execution of Agreement but shall not be obligated to assure performance of the party receiving abatement.
- (n) "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.
- (o) "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 Nueces County.
- (p) "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 Nueces County.

- (q) "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.
- (r) "Enterprise Zone Residential Redevelopment Facility" means buildings and structures used or to be used primarily for residential purposes and which are located within an enterprise zone.

Section 2. **Abatement Authorized.**

- (a) Authorized Facilities. A Facility may be eligible for abatement if it is a Basic Manufacturing or Service Facility, Regional Distribution Center Facility, Regional Telecommunications/Data Processing Center Facility, Regional Visitor/Amusement Facility, Enterprise Zone Residential Redevelopment Facility or Petrochemical Facility. Abatement may be granted for new facilities and improvements to existing facilities for the purpose of modernization or expansion.
- (b) Creation of New Value. Abatement may only be granted for the additional value of eligible property improvements made subject to and listed in an abatement Agreement between the Eligible jurisdiction and the property owner and lessee (if required), subject to such limitations as said jurisdiction may require. The economic life of the improvements must exceed the term of the abatement Agreement.
- (c) 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.
- (d) Ineligible Property. The following types of property shall be fully taxable and ineligible for abatement: land; inventories; supplies; tools; furnishings and other forms of movable personal property; vehicles; vessels; aircraft; housing; hotel accommodations; deferred maintenance investments; property to be rented or leased except as provided in Section 2(c); improvements for the transmission of electrical energy not wholly consumed by a New Facility or expansion; any improvements, including those to produce, store or distribute natural gas, fluids or gases, which are not integral to the operation of the Facility; improvements to real property which have an economic life of less than 15 years; 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; unless any of the above types of property are specifically authorized by the Eligible jurisdiction.
- (e) Period of Abatement. Abatement shall be granted effective with the January 1 valuation date specified in the Agreement. Abatement shall be allowed for a period of ~~five~~ up to seven years following the completion of construction. ~~If the period of construction exceeds five years, the Facility shall be considered completed for purposes of abatement and; provided that, in no~~ ease ~~event~~ shall the period of abatement, inclusive of the construction period exceed ten (10) years.
- (f) Completion of Construction. The completion of construction shall be 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, or

- (4) five (5) years after the date of the Agreement, except for a Basic Manufacturing or Service Facility which provides at least \$750 million in new capital investment and at least 200 new permanent jobs, three (3) years after date of Agreement.

The above determination shall be made by the Eligible jurisdiction offering the abatement, in its sole and absolute discretion, based upon the above criteria and such other factors as the jurisdiction may deem relevant. The determination of the completion of construction shall be conclusive, and any judicial review of such determination shall be governed by the substantial evidence rule.

(g) Abatement Percentage.

- (1) For a Facility which provides not less than 20 (but not more than 99) ~~new permanent~~ net new full-time jobs, the percentage of tax abated shall be in accordance with the following schedule:

<u>Year</u>	<u>Percentage of Abatement</u>
Construction Period (not to exceed 5 years)	100%
Year 1	50%
Year 2	50%
Year 3	50%
Year 4	50%
Year 5	50%

- ~~(2) — Provided that, for~~ For a Facility which provides not less than 100 (but not more than 199) net new permanent full-time jobs, the percentage of tax abatement shall be in accordance with the following schedule:

<u>Year</u>	<u>Percentage of Abatement (for first \$10 million)</u>	<u>Percentage of Abatement (over \$10 million)</u>
Construction Period (not to exceed 5 years)	100%	100%
Year 1	75%	50%
Year 2	75%	50%
Year 3	75%	50%
Year 4	75%	50%
Year 5	75%	50%

- ~~(3) — Provided that, for~~ For a Facility which provides at least 200 net new permanent full-time jobs, the percentage of tax abatement shall be in accordance with the following schedule:

<u>Year</u>	<u>Percentage of Abatement (for first \$10 million)</u>	<u>Percentage of Abatement (over \$10 million)</u>
Construction Period (not to exceed 5 years)	100%	100%
Year 1	100%	50%
Year 2	100%	50%
Year 3	100%	50%

Year 4	100%	50%
Year 5	100%	50%

(4) ~~Provided that, for~~ For a Basic Manufacturing or Service Facility which provides at least \$150 million in new capital investment, and at least 10 net new full-time jobs, the percentage of tax abatement shall be in accordance with the following schedule:

<u>Year</u>	<u>Percentage of Abatement</u>
Construction Period (not to exceed 5 years)	100%
Year 1	50%
Year 2	50%
Year 3	50%
Year 4	50%
Year 5	50%

(5) ~~Provided that, for~~ For a Basic Manufacturing or Service Facility which provides at least \$500 million in new capital investment, and at least 20 net new full-time jobs, the percentage of tax abatement shall be in accordance with the following schedule:

<u>Year</u>	<u>Percentage of Abatement</u>
Construction Period (not to exceed 5 years)	100%
Year 1	70%
Year 2	70%
Year 3	70%
Year 4	70%
Year 5	70%

(6) For a Basic Manufacturing or Service Facility which provides at least \$750 million in new capital investment, and at least 200 net new full-time jobs, the percentage of tax abatement shall be in accordance with the following schedule:

<u>Year</u>	<u>Percentage of Abatement</u>
<u>Construction Period</u> <u>(not to exceed 3 years)</u>	<u>100%</u>
<u>Year 1</u>	<u>70%</u>
<u>Year 2</u>	<u>70%</u>
<u>Year 3</u>	<u>70%</u>
<u>Year 4</u>	<u>70%</u>
<u>Year 5</u>	<u>70%</u>
<u>Year 6</u>	<u>70%</u>
<u>Year 7</u>	<u>70%</u>

In the event the Added Value caused by the Project is less than \$2.0 million, no abatement shall be granted unless the Facility is a Rehabilitation Project as described in Section 2 (h).

In order to be counted as a ~~permanent~~ new full-time job under these Guidelines, the job must be a full-time position providing regular work schedules of at least 35 hours per week. The percentage of abatement provided each year under the Agreement shall be based upon the employment information as of January 1 of such year. As a result, the actual amount of abatement may vary from year to year based upon employment levels and property valuations.

For example, Company A has an abatement Agreement entered 5/1/2010 and projects to create 250 permanent jobs. If the actual experience of Company A involves fluctuating job levels, the actual abatement under the Agreement could follow the following pattern:

<u>Year</u>	<u>Employment</u>	<u>Abatement (First \$10mm)</u>	<u>Abatement (Over \$10mm)</u>
1/1/11*	0	100%	100%
1/1/12*	0	100%	100%
1/1/13	150	75%	75 50%
1/1/14	250	100%	75 50%
1/1/15	150	75%	50%
1/1/16	50	50%	50%
1/1/17	250	100%	25 50%

*Construction Underway

- (h) Rehabilitation Projects. The \$2 million minimum Added Value requirement for abatement shall not apply to rehabilitation projects which involve the adaptive reuse of an existing structure or building for a Facility. In order to qualify as a rehabilitation project under this provision, the project must involve a minimum capital expenditure 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. For such rehabilitation projects, all Eligible Property in excess of the Base Year Value shall be subject to abatement plus the value of personal property such as furniture and movable equipment which would otherwise be considered Ineligible Property for any other type of abatement category. 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.
- (i) Estimated Added Value Requirement. At the time of execution of the tax abatement Agreement, the Owner shall reasonably estimate the Added Value upon completion of construction of any improvements to real property in connection with the Project. This "Estimated Added Value" shall be stated in the Agreement. In the event that upon completion of construction of the improvements, the Added Value, as determined by the Nueces County Appraisal District, shall at any time thereafter during the term of the abatement Agreement be less than eight-five percent (85%) of the Estimated Added Value, not due to circumstances beyond the control of Owner, the Owner agrees to pay an amount equal to the then current tax rate of each Eligible jurisdiction providing abatement applied to the difference between the actual Added Value from eighty-five percent (85%) of the Estimated Added Value, multiplied by 100% minus the net percentage of Abatement provided under the Agreement. For the purposes of this provision, the term "circumstances beyond the control of Owner" shall include casualty losses, national economic factors, shutdowns due to governmental regulations, strikes, acts of war, and the like. The formula for calculating such additional tax is outlined as follows:

$$[\text{Tax Rate}] \times [(85\% \text{ of Est. Added Value} - \text{Actual AV}) \times (100\% - \text{Abatement}\%)] = \text{Additional Tax}$$

- (j) 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 of Corpus Christi, the method of calculating payments in lieu of property taxes for such eligible property shall be as set forth in the industrial district agreement. As an alternative to an industrial district agreement, an eligible property may be covered by a tax abatement agreement, but such shall constitute an election by the Owner that the land and improvements shall not be included within any type of industrial district arrangement following the expiration of the tax abatement agreement.
- (k) Economic Qualification. In order to be eligible for tax abatement, the planned improvement:
- (1) must 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 required number of permanent jobs in Nueces County;
 - (2) must not adversely affect competition in the local market with established local businesses.
- (l) Taxability. From the commencement of the abatement period to the end of the abatement period, taxes shall be payable as follows:
- (1) The value of Ineligible Property as provided in Section 2(e) shall be 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 shall be fully taxable; and
 - (3) The Added Value of new Eligible Property (and certain personal property added in connection with a Rehabilitation Project) shall be taxable in the manner described in Section 2(g) above.
- (m) Environmental and Worker Safety Qualifications. In determining whether to grant a tax abatement, consideration will be given to compliance with all state and federal laws designed to protect human health, welfare and the environment (“environmental laws”) that are applicable to all facilities in the State of Texas owned or operated by the owner of the facility or lessee, its parent, subsidiaries and, if a joint venture or partnership, every member of the joint venture or partnership (“applicants”). Consideration may also be given to compliance with environmental and worker safety laws by applicants at other facilities within the United States.

Section 3. **Application.**

- (a) Written Application. Any present or potential owner of taxable property may request tax abatement by filing a written application with: (i) the City Manager of the City, if such property is within the city limits, or (ii) the County Judge of Nueces County, if such property is in the unincorporated areas of Nueces County.
- (b) Contents of Application. The application shall consist of a completed application form accompanied by: a general description of the new improvements to be undertaken; a descriptive list of the improvements for which abatement is requested; a list of the kind, number and location of all proposed improvements of the property; a map and property description; and a time schedule for undertaking and completing the proposed improvements. 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, shall be given for the tax year immediately preceding the application. The

application form may require such financial and other information as the County or other Eligible jurisdiction, as applicable, deems appropriate for evaluating the financial capacity and other relevant factors of the applicant.

- (c) Written Notification to Governing Bodies. Upon receipt of a completed application, the City Manager or County Judge, as the case may be, shall forward a copy of the application to the presiding officer of the governing body of each Eligible jurisdiction having jurisdiction of the property covered by the application.
- (d) Feasibility. After receipt of an application for abatement, the City or the County, as applicable, shall consider the feasibility and the impact of the proposed tax abatement. The study of feasibility shall include, but not be limited to, an estimate of the economic effect of the abatement of taxes and the benefit to the Eligible jurisdiction and the property to be covered by such abatement.
- (e) No Abatement if Construction has Commenced. No tax abatement Agreement shall 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.
- (f) 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 five years after completion of construction. Such requests shall 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 (3/4) vote of the governing body of each Eligible jurisdiction providing abatement.

Section 4. **Public Hearing and Approval.**

- (a) Designation of Zone. A resolution designating a zone for tax abatement under the Act may not be adopted by the City or the County 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 shall be provided to each Eligible jurisdiction and to the public in the manner required by the Act.
- (b) Required Findings. In order to enter into a tax abatement Agreement, the County, the City and any school district must find that the terms of the proposed Agreement meet these Guidelines and Criteria.
- (c) Reservation of Rights. Nothing herein shall be construed to limit the authority of the City, the County or any other jurisdiction to examine each application for tax abatement before it on a case-by-case basis and determine in its sole and absolute discretion whether or not the proposed project should be granted temporary tax abatement and whether or not it complies with these Guidelines and Criteria, is feasible, and whether or not the proposed temporary abatement of taxes will inure to the long-term benefit of such Eligible jurisdiction.

Section 5. **Agreement.**

- (a) Contents of Tax Abatement Agreement. The tax abatement Agreement with the Owner of the Facility shall include:
 - (1) the estimated value to be subject to abatement and the Base Year Value;
 - (2) the percentage of value to be abated each year as provided in Section 2(g);

- (3) the commencement date and termination date of abatement;
 - (4) a provision that the term of the Agreement shall 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, property description and improvements list as provided in the application as required;
 - (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; ~~and~~
 - (7) the amount of Added Value and required number of permanent jobs;
 - (8) a requirement that owner shall certify to the governing body of the Eligible Jurisdiction on or before April 1 each year that the owner is in compliance with each applicable term of the agreement; and
 - (9) a requirement that the owner or lessee will (a) obtain and maintain all required permits and other authorizations from the United States Environmental Protection Agency and the TCEQ for the construction and operation of the Facility and for the storage, transport and disposal of solid waste; and (b) seek a permit from the TCEQ for all grandfathered units on the site of the Facility by filing with the TCEQ, within three years of receiving the abatement, a technically complete application for such a permit.
- (b) Time of Execution. The tax abatement Agreement shall normally be executed within 60 days after the applicant has provided all necessary information and documentation.
- (c) Attorney's Fees. In the event any attorney's fees are incurred by the Eligible jurisdiction in the preparation of a tax abatement Agreement, said fees shall be paid by the applicant upon execution of the Agreement.

Section 6. **Recapture.**

- (a) Failure to Commence Operation During Term of Agreement. In the event that the Facility is not completed and does not begin operation with the minimum required number of permanent jobs by the January 1 following the completion of construction, no abatement shall be given for that tax year, and the full amount of taxes assessed against the property shall be due and payable for that tax year. In the event that the Owner of such a Facility fails to begin operation with the minimum required number of permanent jobs by the next January 1, then the abatement Agreement shall terminate and all abated taxes during the period of construction shall be recaptured and paid within 60 days of such termination.
- (b) Discontinuance of Operations During Term of Agreement. In the event the Facility is completed and begins operation with the required minimum required number of permanent jobs but subsequently discontinues operations and the minimum required number of permanent jobs is not maintained during any four (4) consecutive weeks during the term of the Agreement after the completion of construction, for any reason except on a temporary basis due to fire, explosion or other casualty or accident or natural disaster, the Agreement may be terminated by the Eligible

jurisdiction providing abatement, and all taxes previously abated by virtue of the Agreement shall be recaptured and paid within 60 days of such 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 shall terminate and so shall the abatement of the taxes for the tax year of the delinquency. The total taxes assessed without abatement, for that tax year shall be paid within 60 days from the date of termination.
- (d) Notice of Default. Should the Eligible jurisdiction providing abatement determine that the Owner is in default according to the terms and conditions of its Agreement, it shall notify the Owner in writing at the address stated in the Agreement that if such is not cured within 60 days from the date of such notice (the "Cure Period"), then the Agreement may be terminated. In the event the Owner fails to cure said default during the Cure Period, the Agreement may be terminated and the taxes abated by virtue of the Agreement will be recaptured and paid as provided herein.
- (e) Actual Capital Investment. Should the Eligible jurisdiction providing abatement 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 which should have been abated based upon the actual capital investment as determined shall be paid to the taxing agencies within 60 days of notification to the Owner of such determination.
- (f) Reduction in Rollback Tax Rate. If during any year of the period of abatement with respect to any property any portion of the abated value which is added to the current total value of the Eligible jurisdiction 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" in accord with Section 26.04(c)(2) of the Texas Tax Code and if the Eligible jurisdiction's budget calculations indicate that a tax rate in excess of the "rollback tax rate" is required to fund the operations of the Eligible jurisdiction for the succeeding year, then the Eligible jurisdiction shall recapture from the taxpayer a tax in an amount equal to the lesser of the following:
 - (1) The amount of the taxes abated for that year by the Eligible jurisdiction with respect to such taxpayer.
 - (2) 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 Eligible jurisdiction.

If the Eligible jurisdiction has granted an abatement of taxes to more than one taxpayer, then the amount of the recapture calculated in accord with subparagraph (2) above shall be prorated on the basis of the amount of the abatement with respect to each taxpayer.

All recaptured taxes must be paid within thirty (30) days after notice thereof has been given to the affected taxpayer. Penalty and interest shall not begin to accrue upon such sum until the first day of the month following such thirty (30) day notice, at which time penalty and interest shall accrue in accord with 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 shall be secured by a first and prior tax lien which shall continue 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 shall automatically terminate on and as of the date any of the following events occur: the filing of a petition in bankruptcy by the Owner; or the making by the Owner of an assignment for the benefit of creditors; or if any involuntary petition in bankruptcy or petition for an arrangement pursuant to the federal bankruptcy code is filed against the Owner; or if a receiver is appointed for the business of the Owner. In the event of automatic termination for any of the above reasons, the prior notice of default provisions in subsection (d) above shall not apply.

Section 7. **Administration.**

- (a) Annual Assessment. The Nueces County 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 such information as may be necessary for the abatement. Once value has been established, the Appraisal District shall notify the affected jurisdictions which levy taxes of the amount of the assessment and the abatement.
- (b) Access to Facility. The Agreement shall stipulate that employees and/or designated representatives of the Eligible jurisdiction 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 such manner as to not unreasonably interfere with the construction and/or operation of the Facility. All inspections will be made with one or more representatives of the Owner and in accordance with its safety standards.
- (c) Annual Evaluation. Upon completion of construction, the Eligible jurisdiction individually or in conjunction with other affected jurisdictions, shall 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 governing body of the Eligible Jurisdiction on or before April 1 each year that the Owner is in compliance with each applicable term of the agreement. Additionally, during the initial four years of the term of property tax abatement, the Owner shall provide to the Eligible Jurisdiction 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. Such annual report shall be prepared on a calendar year basis and shall be submitted to the Eligible jurisdiction no later than ninety (90) days following the end of each such calendar year. The annual report shall 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 such exception cases involving purchases over \$10,000.00 a justification for such purchase shall be included in the annual report. Each such 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 shall include firms, businesses, and persons who reside in or maintain an

office in either Nueces County or San Patricio County. In the event of a breach of the buy-local provision, the percentage of abatement shall 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 herein or in any agreement to the contrary, the governing body of the Eligible Jurisdiction may cancel or modify the agreement if the Owner fails to comply with the Agreement.
- (g) Transition Rule. For any project which obtained an abatement agreement within the twelve months prior to adoption of these Guidelines, such project may, upon the agreement of the Owner and the Eligible Jurisdiction, obtain an amendment to its tax abatement agreement to incorporate the terms and conditions of these Guidelines.

SCHEDULE 1

"Buy Local" Annual Reports

The following information shall be reported to the Governmental Unit 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 shall include firms, businesses, and persons who reside in or maintain an office in either Nueces County or San Patricio County.