

**AMENDED AND RESTATED GUIDELINES AND CRITERIA FOR
GRANTING TAX ABATEMENTS IN COLORADO COUNTY, TEXAS**

WHEREAS, the creation and retention of job opportunities that bring new wealth is one of the highest civil priorities; and,

WHEREAS, new jobs and investments will benefit the area economy, provide needed opportunities, strengthen the real estate market and generate tax revenue to support local services; and,

WHEREAS, Colorado County must compete with other localities across the nation currently offering tax inducements to attract new and modernization projects; and,

WHEREAS, any tax incentives offered in Colorado County would reduce needed tax revenue unless these tax incentives are strictly limited in application to those new and existing industries that bring new wealth to the community; and,

WHEREAS, the abatement of property taxes, when offered to attract primary jobs or investments in industries that bring in money from outside a community instead of merely recirculating dollars within a community, has been shown to be an effective method of enhancing and diversifying an area's economy; and,

WHEREAS, Texas law requires any eligible taxing jurisdiction to establish guidelines and criteria as to eligibility for tax abatement agreements prior to the granting of any future tax abatement, which guidelines and criteria are to remain unchanged for a two-year period unless amended by minimum votes, as provided by said state law; and,

WHEREAS, these guidelines and criteria shall not be construed as implying or suggesting that the County of Colorado, or any other taxing jurisdiction is under any obligations to provide tax abatement or other incentives to any applicant, and all applicants shall be considered on a case-by-case basis; and,

WHEREAS, these guidelines and criteria are approved for circulation to all affected taxing jurisdictions for consideration as a common policy for all jurisdictions that choose to participate in tax abatement agreements; and,

WHEREAS, Commissioners Court of Colorado County, Texas previously approved and authorized Guidelines and Criteria for granting Tax Abatement in Colorado County, Texas dated

March 10, 2014 ("Prior Guidelines") and now desires to amend and restate the Prior Guidelines in their entirety as of the date of the newly approved and authorized amended and restated guidelines and criteria herein; and,

WHEREAS, the Commissioners Court of Colorado County, Texas has approved and authorized these amended and restated guidelines and criteria; and,

NOW, THEREFORE BE IT RESOLVED THAT said guidelines and criteria are as follows:

Section 1 – DEFINITIONS.

(a) **"Abatement"** means the full or partial exemption from ad valorem taxes of certain eligible property in a Reinvestment Zone designated by Colorado County, Texas (sometimes referred to herein as "Colorado County" or the "County") to promote economic development.

(b) **"Aquaculture/Agriculture Facility"** means buildings, structures and major earth structure improvements, including fixed machinery and equipment, the primary purpose of which is the hatching, incubation, nursing, maturing and/or processing to marketable size aquatic culture in commercially marketable quantities or the processing, refining, packaging, and distribution of food and/or fiber products in commercially marketable quantities.

(c) **"Affected jurisdiction"** means Colorado County, Texas and any other tax jurisdiction with any substantial parts of its area located in Colorado County; and, that levies ad valorem taxes upon and/or provides services to property located and specified in Colorado County, Texas; and that chooses to participate in tax abatement agreements by or pursuant to these guidelines.

(d) **"Agreement"** means a contractual agreement between a property owner or lessee, or both, and an affected jurisdiction for the purpose of tax abatement.

(e) **"Base Year Value"** means the assessed value of eligible property on January 1, preceding the execution of the agreement plus the agreed upon value of eligible property improvements made after January 1, but before the execution of the agreement.

(f) **"Deferred maintenance"** means improvements necessary for continued operations which do not improve productivity or alter the process technology.

(g) **"Distribution Center Facility"** means buildings and structures, including machinery and equipment, used or to be used primarily to receive, store, service or distribute goods or materials owned by the facility, from which a majority of revenues generated by activity at the facility are derived from outside of Colorado County.

- (h) **"Expansion"** means the addition of buildings, structures, machinery or equipment for purposes of increasing production capacity.
- (i) **"Facility"** means property improvements completed or in the process of construction which together comprise an integral whole.
- (j) **"Manufacturing Facility"** means buildings and structures, including machinery and equipment, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.
- (k) **"Modernization"** means the upgrading and/or replacement of existing facilities which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation. 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 or repairing.
- (l) **"Electric Power Generation Facility"** means buildings or structures, including fixed machinery and equipment, used or to be used primarily in the generation or transmission of electricity.
- (m) **"New Facility"** means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.
- (n) **"Office Building"** means a new office building.
- (o) **"Other Basic Industry"** 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 serve a market primarily outside the County and result in the creation of new permanent jobs and create new wealth in the county.
- (p) **"Productive Life"** means the number of years a property improvement is expected to be in service in a facility.
- (q) **"Regional Entertainment/Tourism Facility"** means buildings and structures, including fixed machinery and equipment, used or to be used to provide entertainment and/or tourism related services, from which a majority of revenues generated by activity at the facility are derived from outside Colorado County.
- (r) **"Research Facility"** means buildings and structures, including machinery and equipment, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.

(s) **"Regional Service Facility"** means buildings and structures, including fixed machinery and equipment, used or to be used to provide a service, from which a majority of revenues generated by activity at the facility are derived from outside Colorado County.

(t) **"Reinvestment Zone"** means Real Property designation as a Reinvestment Zone under the provisions of the Texas Tax Code, including any related, successor or amended tax statutes or rules.

(u) **"Tangible Personal Property"** means any Personal Property not otherwise defined herein and which is necessary for the proper operation of any type of Facility.

Section 2 – ABATEMENT AUTHORIZED.

(a) **Authorized Facility.** A facility may be eligible for abatement if it is an Aquaculture/Agriculture Facility, a Distribution Center Facility, an Electric Power Generation Facility, a Manufacturing Facility, an office building, a Regional Entertainment/Tourism Facility, a Research Facility, a Regional Service Facility, a hotel/motel, Other Basic Industry.

(b) **Creation of New Value.** Abatement may only be granted for the additional value of eligible property improvements made subsequent to and specified in an abatement agreement between the County and the property owner, lessee or lessor, subject to such limitations as the guidelines and criteria may require.

(c) **New and Existing Facilities.** Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.

(d) **Eligible Property.** Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements, plus that office space and related fixed improvements necessary to the operation and administration of the facility.

(e) **Ineligible Property.** The following types of property shall be fully taxable and ineligible for abatement: land, inventories, supplies, tools, vehicles, vessels, aircraft, housing or residential property, deferred maintenance investments, 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) **Owned/Leased Facility.** If a leased facility is granted abatement, the agreement shall be executed with the lessor or lessee.

(g) **Value and Term of Abatement.** Abatement shall be granted effective with the January 1 valuation date immediately following the date of execution of the agreement or commence upon receipt of a Certificate of Occupancy, Substantial Completion or Commercial Operation Date as outlined in the agreement. The value of new eligible properties shall be abated according to one of the following two tables, or Section 2(k) below:

TIER 1: \$250,000.00 TO \$999,999.99 IMPROVEMENTS

Year 1	100% Abatement
Year 2	80% Abatement
Year 3	60% Abatement
Year 4	40% Abatement
Year 5	20% Abatement

**TIER 2: \$1,000,000.00 + IMPROVEMENTS AND
RETENTION OR CREATION OF 10 JOBS**

Year 1	100% Abatement
Year 2	100% Abatement
Year 3	75% Abatement
Year 4	50% Abatement
Year 5	25% Abatement

If a modernization project includes facility replacement, the abated value shall be the value of the new unit(s) less the value of the old unit(s).

(h) **Other Economic Qualifications.** In order to be eligible for tax abatement the planned improvement must meet the following requirements:

(1) **Tier 2** applications must retain not less than 10 employees or create employment for not less than 10 persons associated with the production of goods and services at the authorized facility on a full-time permanent basis in Colorado County. Each two or more part-time permanent employees totaling an average of not less than 40 hours per week may be considered as one full time permanent employee.

(2) Must not solely or primarily have the effect of transferring employment from one part of Colorado County to another.

(i) **Taxability.** From the execution of the abatement contract to the end of the agreement period, taxes shall be payable as follows:

(1) The value of ineligible property as provided in Section 2(e) shall be fully taxable.

(2) The Base Year Value of existing eligible property as determined each year shall be fully taxable.

(3) The additional value of new eligible property shall be taxable in the manner described in Section 2(g) and Section 2(k).

(j) **Tier 2** applicants must agree to remain in production for at least three (3) years after the abatement is complete or the applicant shall reimburse the County for **100%** of the taxes for years 3, 4 and 5 of the abatement.

(k) The County reserves the right to negotiate abatement agreements outside of the **Tier 1 and Tier 2** structures listed above (including without limitation abatement periods of up to ten (10) years and abatement percentages up to 100% in each abatement tax year and reserves the right to consider receiving payments in lieu of tax (PILOTs)).

Section 3 – APPLICATION: PUBLIC HEARING.

(a) Any present or potential owner of taxable property in Colorado County may request tax abatement by filing written request with the County, and have it filed with the County Clerk of the County.

(b) The application shall consist of a completed application form accompanied by:

(1) a general description of the proposed use and the general nature and extent of the modernization, expansion or new improvements to be undertaken;

(2) a description list of the improvements which will be a part of the facility;

(3) a map and property description;

(4) a time schedule for undertaking and completing the planned improvements;

(5) in the case of modernizing, 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; and,

(6) the application form may require such financial and other information as deemed appropriate for evaluating the financial capacity of the applicant and other factors of the application.

(c) Upon receipt of a completed application, the County Clerk receiving such application shall notify in writing the presiding officer of the Commissioners Court of the County ("Commissioners Court"). Before acting upon the application, the County receiving such application shall through public hearings afford the applicant an opportunity to show cause why the abatement should be granted.

(d) Notice of the public hearing shall be clearly identified on an agenda of the Commissioners Court receiving such application and shall be posted at least 10 days prior to the public hearing. At least seven (7) days prior to the public hearing the County must send written

notice to the presiding officers of all taxing units with jurisdiction over the property for which an abatement is sought and must publish notice of the hearing time, place and subject in the local newspaper. At the hearing the Commissioners Court shall evaluate the application against the criteria in Section 2 and decide whether to designate the property for which an abatement is sought as a reinvestment zone. If the reinvestment zone is not designated, the application fails, although it may be amended and resubmitted. If the reinvestment zone is designated, the Commissioners Court shall pass an order to that effect and may then arrange to consider for approval the tax abatement agreement between the applicant and the County at its next regularly scheduled meeting. At least seven (7) days prior to entering into a tax abatement agreement, County must give written notice of its intent to do so to the presiding officers of all taxing units with jurisdiction over the property for which an abatement is sought, along with a copy of the proposed tax abatement agreement. At the regularly scheduled meeting, the Commissioners Court may finally vote by simple majority to enter into the tax abatement agreement or to decline. An approved tax abatement agreement may be executed in the same manner as other contracts made by the County.

(e) If the County determines that the application should receive expedited consideration, then the County Judge shall schedule an opportunity to obtain public input on the application at the Commissioners Court next meeting. At least seven (7) days prior to the meeting, the County must send written notice to the presiding officers of all taxing units with jurisdiction over the property for which an abatement is sought and must publish notice of the hearing time, place and subject in the local newspaper. Also at this time, the County must give written notice of its intent to enter into a tax abatement agreement to the presiding officers of all taxing units with jurisdiction over the property for which the abatement is sought, along with a copy of the proposed tax abatement agreement. During the Commissioners Court meeting, the Commissioners Court shall evaluate the application against the criteria in Section 2 and shall decide whether to designate the property for which the abatement is sought as a reinvestment zone. If the reinvestment zone is designated, the Commissioners Court shall pass an order to that effect and may then immediately consider for approval the tax abatement agreement between the applicant and the County. After consideration, the Commissioners Court may finally vote by simple majority to enter into the tax abatement, or the decline. An approved tax abatement agreement may be executed in the same manner as other contracts made by the County.

(f) The County, in receiving the application, shall, not more than 60 days after receipt of the application, approve or disapprove the application for tax abatement. The presiding officer of the Commissioners Court receiving such application shall notify the applicant of approval or disapproval promptly thereafter.

(g) **Variance.** Requests for variance from the provisions of Section 2 may be made in written form to the presiding officer of the Commissioners Court receiving the application. Such request shall include a complete description of the circumstances explaining why the applicant should be granted a variance. The approval process for a variance shall be identical

to that for a standard application and may be supplemented by such additional requirements as may be deemed necessary by the County.

Section 4 – STANDARDS FOR DENYING APPROVAL OF ABATEMENT; EFFECT OF APPROVAL OF APPLICATION.

(a) Should the County be able to show cause in the public hearing why the granting of abatement will have substantial adverse effect on its bonds, tax revenue, service capacity or the provision of service, that showing shall be reason for the County receiving the application to deny any granting of abatements.

(b) No abatement agreement shall be authorized if it is determined that:

(1) There would be a substantial adverse effect on the provision of a government service or tax base of the County.

(2) The applicant has insufficient financial capacity.

(3) Planned or potential use of the property would constitute a hazard to the public safety, health or morals.

(4) Planned or potential use of the property violates other codes or laws.

The Colorado County Commissioners Court acts only for the taxing entity of Colorado County and for no other taxing entity within Colorado County. The County's approval or disapproval of an application has no effect on any other taxing entity within the jurisdiction or their right to approve or disapprove an application. Only the governing bodies of the affected jurisdictions may grant tax abatements, and enter into tax abatement agreements with applicants.

Section 5 – AGREEMENT.

(a) After approval for tax abatement, the County shall execute an agreement with the applicant (owner of the facility, and if applicable, the lessee involved which shall include:

(1) Estimated value to be abated and the Base Year Value.

(2) Percent of value to be abated each year as provided in Section 2(g) and Section 2(k).

(3) The commencement date and the termination date of abatement.

(4) The proposed use of the facility, nature of construction, time schedule for undertaking and completing the planned improvements, map, property description and improvements list as provided in Application, Section 3(b).

(5) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in Sections 2, 6, 7 and 8, and other provisions that may be required for uniformity or by state law.

(6) Amount of investment and average number of jobs involved for the period of abatement.

(b) Such agreement shall be executed within 60 days after the applicant has forwarded all necessary information and documentation to the County receiving the application, unless the governing taxing authority executing the agreement waives the sixty (60) day requirement.

Section 6 – RECAPTURE.

(a) In the event that the facility is completed and begins producing product or service, but subsequently discontinues producing product or service for any reason excepting fire, explosion or other casualty or accident or natural disaster for a period of more than one (1) year during the abatement period, then the agreement shall terminate and so shall the abatement of taxes for the calendar year during which the facility no longer produces. The taxes otherwise abated for that calendar year shall be paid to the affected jurisdiction within sixty (60) days from the date of termination.

(b) Should the County establishing a tax abatement agreement determine that a company or individual is in default according to the terms and conditions of its agreement, the County shall notify the Company or individual in writing at the address stated in the agreement, and if such is not cured within sixty (60) days from the date of such notice ("Cure Period"), then the agreement shall be terminated; provided, however, if such failure cannot be cured within such sixty (60) day period and the company or individual has commenced remedial action to cure such failure (and continued to diligently and timely pursue the completion of such remedial action), the company or individual shall be entitled to a total of one hundred eighty (180) days after receipt of notice within which to cure such default.

(c) In the event that the company or individual

(1) allows its ad valorem taxes owed the County or an affected jurisdiction to become delinquent after all applicable notice and cure periods and fails to timely and properly follow the legal procedures for their protest and/or contest, or

(2) violates any of the terms and conditions of the abatement agreement and fails to cure same during the Cure Period, the agreement may then be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within sixty (60) days of the termination.

Section 7 – ADMINISTRATION.

(a) The Chief Appraiser of the County shall annually determine an assessment of applicant's real and personal property located in the County Reinvestment Zone and comprising the facility. Each year the company or individual receiving abatement shall furnish the assessor with such information as may be necessary for abatement, including the number of new or retained employees associated with the facility. Once value has been established the Chief Appraiser shall notify the affected jurisdictions which levies taxes on the amount of the assessment.

(b) The agreement shall stipulate that employees and/or designated representatives of the jurisdiction entering into a tax abatement agreement will have access to the property during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twenty-four (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 company or individual and in accordance with its safety standards.

(c) Upon completion of construction the jurisdiction establishing the tax abatement agreement shall annually evaluate each facility and report possible violations of the contract and/or agreement to the Commissioners Court.

(d) All proprietary information acquired by the County for purposes of monitoring compliance with the terms and conditions of an abatement agreement shall be considered confidential. As required by Section 312.003 of the Texas Tax Code, information that is provided to the County in connection with an application or a request for a tax abatement that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property for which the abatement is sought is confidential and not subject to public disclosure until the tax abatement is executed.

Section 8 – ASSIGNMENT.

(a) Abatement may be transferred and assigned by the holder to a new owner of the same facility upon the approval by resolution of the affected jurisdiction, subject to the financial capacity of the assignee and provided that all conditions and obligations in the abatement agreement are guaranteed by the execution of a new contractual agreement with the affected jurisdiction.

(b) The contractual agreement with the new owner shall not exceed the termination date of the abatement agreement with the original owner.

(c) No assignment or transfer shall be approved if the parties to the existing agreement, are liable to the County for outstanding taxes or other obligations.

Section 9 –SUNSET PROVISION.

(a) These Guidelines and Criteria are effective upon the date of the adoption and will remain in force for two (2) years, at which time all tax abatement contracts created pursuant to its provisions will be reviewed by Colorado County’s Commissioners Court to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria may be modified, renewed or eliminated, providing that such actions shall not affect existing contracts.

(b) This policy is mutually exclusive of any existing Industrial District Contracts and owners of real property in areas deserving of specific attention as agreed by Colorado County’s Commissioners Court.

(c) Prior to the date for review, as defined above, these "Guidelines and Criteria" may be modified by a two-thirds vote of the Commissioners Court, as provided for under the laws of the State of Texas, providing that such actions shall not affect existing contracts.

Section 10 – SEVERABILITY AND LIMITATIONS.

(a) In the event that any section, clause, sentence, paragraph or any part of these Guidelines and Criteria shall, for any reason be adjudged by any court of competent jurisdiction to be invalid such invalidity shall not affect, impair, or invalidate the remainder of these Guidelines and Criteria.

(b) If these Guidelines and Criteria have omitted any mandatory requirements of the applicable tax abatement laws of the State of Texas, then such requirements are hereby incorporated as a part of these Guidelines and Criteria.

Section 11. – DISCRETION OF THE COUNTY.

The adoption of these Guidelines and Criteria by the County does not:

(a) Limit the discretion of the Commissioners Court to decide whether to enter into a specific Agreement, which absolute right of discretion the Commissioners Court reserves unto itself, whether or not such discretion may be deemed arbitrary, or without basis in fact;

(b) Limit the discretion of the Commissioners Court to delegate to its employees or assigns the authority to determine whether or not the Commissioners Court should consider a particular application or request for tax abatement; or

(c) Create any property, contract, or other legal rights in any person or entity to have the Commissioners Court consider or grant a specific application or request for tax abatement.

The foregoing was adopted by the Colorado County Commissioners Court on the 27th day of October, 2014.