Resolution No. 2013-R0370

November 7, 2013

Item No. 5.5

RESOLUTION

WHEREAS, in November of 2011, the City of Lubbock approved uniform guidel'nes and criteria for tax abatement for industrial projects within the City of Lubbock; and

WHEREAS, state law requires that the guidelines and criteria approved must be re-adopted every two years, and the City of Lubbock desires to approve new guidelines for industrial tax abatement; **NOW THEREFORE:**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the City Council of the City of Lubbock hereby approves and adopts "Guidelines and Criteria Governing Tax Abatement for Industrial Projects in the City of Lubbock", which guidelines and criteria are attached as Exhibit "A" and are made a part hereof for all intents and purposes. These guidelines shall become effective upon expiration of the previously approved guidelines.

Passed by the City Council on November 7, 2013.

GLEN C. ROBERTSON, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

Cheryl Brock, Executive Director of Budget

APPROVED AS TO FORM:

Linda Chamales,
Economic Development Attorney

Lc: city att/Linda/Resolutions/Res-Tax AbatementIndustrialGuidelines-2013
October 23, 2013

RESOLUTION

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Passed by the City Council on _____, 2013.

_____
GLEN C. ROBERTSON, MAYOR

ATTEST:

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Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

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Exhibit "A"
City of Lubbock, TX
Guidelines and Criteria Governing Tax Abatement For Industrial Projects In The City of Lubbock

SECTION I. General Purpose:

The City of Lubbock (City) is committed to the promotion of high quality development in all parts of the City of Lubbock, Texas; and to an ongoing improvement in the quality of life for the citizens residing within the City. The City recognizes that these objectives are generally served by enhancement and expansion of the local economy. The City will, on a case by case basis, give consideration to providing tax abatement, as authorized by V.T.C.A., Tax Code, Chapter 312, as stimulation for economic development within the City. It is the policy of the City that said consideration will be provided in accordance with the guidelines and criteria herein set forth and in conformity with the Tax Code.

Nothing contained herein shall imply, suggest or be understood to mean THAT the City is under any obligation to provide tax abatement to any applicant and attention is called to V.T.C.A., Tax Code, Section 312.002(d). With the above rights reserved all applications for tax abatement will be considered on a case by case basis.

SECTION II. Definitions:

As used within these guidelines and criteria, the following words or phrases shall have the following meaning:

1. **Abatement of Taxes**: To exempt from ad valorem taxation all or part of the value of certain Improvements placed on land located in a Reinvestment Zone designated for economic development purposes as of the date specified in the Tax Abatement Agreement for a period of time not to exceed ten (10) years.

2. **Abatement Agreement:** (1) A contract between a property owner and the City for the abatement of taxes on qualified property located within a Reinvestment Zone; or, (2) a contract for the abatement of taxes between the City and a certified air carrier who owns or leases Real Property located within the Reinvestment Zone or Personal Property or both as authorized by V.T.C.A., Tax Code, Section 312.204(e)

3. **Advanced Technologies:** advanced manufacturing which requires higher skills and results in higher wages and investment.

4. **Base Year Value**: The assessed value of property eligible for tax abatement as of January 1 preceding the execution of an Abatement Agreement as herein defined.

5. **Distribution Center Facility**: A building or structure including Tangible Personal Property used or to be used primarily to receive, store, service or distribute goods or materials.

6. **Expansion of Existing Facilities or Structures**: The addition of buildings, structures, machinery or equipment to a Facility.

7. **Existing Facility or Structure**: A facility as of the date of execution of the Tax Abatement Agreement, located in or on Real Property eligible for tax abatement.

8. **Facility**: The improvements made to Real Property eligible for tax abatement and including the building or structure erected on such Real Property and/or any Tangible Personal Property to be located in or on such property.

9. **Information and Data Center**: Facility used to house computer systems and associated components, such as telecommunications and storage systems. The main purpose of the facility is running applications that handle the core business and operational data of organizations, off-site backups and other informational operations.

10. **Improvements to Real Property or Improvements**: Shall mean the construction, addition to, structural upgrading of, replacement of, or completion of any facility located upon, or to be located upon, Real Property, as herein defined, or any Tangible Personal Property placed in or on said Real Property.

11. **Manufacturing Facility**: A Facility which is or will be used for the primary purpose of the production of goods or materials or the processing or change of goods or materials to a finished product.

12. **Medical Services**: Facilities such as hospitals, specialty hospitals and other like facilities that are classified under North American Industrial Classification System Code 622.

13. **Modernization/Renovation of Existing Facilities**: The replacement or upgrading of existing facilities.

14. **New Facility**: The construction of a Facility on previously undeveloped Real Property eligible for tax abatement.

15. **New Permanent Job**: A new employment position created by a business that has provided employment to an employee of at least 1,820 hours annually and intended to be an employment position that exists during the life of the abatement.

16. **Other Basic Industry**: A Facility other than a distribution center facility, a research facility, a regional service facility or a manufacturing facility which produces goods or services or which creates new or expanded job opportunities and services a market of which 50% of revenues come from outside of Lubbock County, Texas.

17. **Owner:** The record title owner of Real Property or the legal owner of Tangible Personal Property. In the case of land leased from the City or buildings leased from a private party or tax exempt property, the lessee shall be deemed the owner of such leased property together with all improvements and Tangible Personal Property located thereon.

18. **Productive Life**: The number of years a Facility is expected to be in service.

19. **Real Property**: Land on which improvements are to be made or fixtures placed.

20. **Regional Services Facility**: A Facility, the primary purpose of which is to service or repair goods or materials and which creates job opportunities within the affected jurisdictions.

21. **Reinvestment Zone**: Real Property designated as a Reinvestment Zone under the provisions of V.T.C.A., Tax Code, Section 312.202.

22. **Research Facility**: A Facility used or to be used primarily for research or experimentation to improve or develop new goods and/or services or to improve or develop the production process for such goods and/or services.

23. **Tangible Personal Property**: Any Personal Property, not otherwise defined herein and which is necessary for the proper operation of any type of Facility.

SECTION III. Intent of Criteria and Guidelines:

The Intent of the criteria and guidelines, as herein set forth, is to establish the minimum standards which an applicant for tax abatement must meet in order to be considered for such status by the City.

SECTION IV. Criteria and Guidelines for Tax Abatement:

Any type of Facility will be eligible for tax abatement consideration provided such Facility meets the following guidelines and criteria:

1. To qualify for Tax Abatement, the company must meet **both** of the following criteria:

    a) The modernization or expansion of an existing facility of any type as herein defined **or** construction of a new facility of any type as herein defined.

    b) Producer, manufacturer or distributor of goods and services of which 50 percent or more are distributed outside of Lubbock County.

2. In addition to the aforementioned, the City will consider abatement only if the company meets **one of the following criteria:**

    a) One of the following target industries:

        i) Advanced Technologies and Manufacturing

        ii) Value-added Agricultural Production including Food Processing and Machinery

        iii) Research and Development

        iv) Medical Services (as defined in Section II Definitions)

        v) Warehouse/Distribution

        vi) Corporate Headquarters of a Regional/National Service Center

        vii) Information and Data Centers

    b) The project is not included as a target industry, but has the potential of generating additional, significant economic development opportunities to Lubbock.

3. The company must meet one of the following criteria:

    a) The project will add at least $1 million in Real Property improvements, **or** $2 million in new Personal Property, **or** 25 new permanent jobs if the facility is a **new company to Lubbock.**

    b) The project will add at least $500,000 in Real Property improvements, **or** $1 million in new Personal Property, **or** 15 new permanent jobs if the facility is **an existing company**.

4. New or existing facilities of any type herein defined, located in a Reinvestment Zone or upon Real Property eligible for such status will be eligible for consideration for tax abatement status provided that all other criteria and guidelines are satisfied.

5. Improvements to Real Property are eligible for tax abatement status.

6. The following types of Property shall be ineligible for tax abatement status and shall be fully taxed:

   a) Real Property;

   b) inventories or supplies;

   c) tools;

   d) furnishings and other forms of movable personal property;

   e) vehicles;

   f) aircraft;

   g) housing (single family and multi-family);

   h) boats;

   i) hotel accommodations;

   j) motel accommodations;

   k) retail businesses;

   l) property owned by the State of Texas or any State agency; and,

   m) property owned or leased by a member of the City that did not have an active tax abatement in place before they became a member of the governing body or commission.

7. In order for a Facility to qualify for abatement, the following conditions must apply:

   a) The owner or leaseholder of Real Property must make eligible improvements to the real property; and,

   b) In the case of lessees, the leaseholder must have a lease commitment of at least five (5) years.

8. In Reinvestment Zones, the amount and term of abatement shall be determined on a case by case basis, however, in no event shall taxes be abated for a term in excess of ten (10) years. The amount of the taxable value of improvements to be abated and the term of the abatement shall be determined by the City in all cases where the property for which tax abatement is applied for is within the City limits of the City or by the County of Lubbock in all cases where the property for which tax abatement is applied for is outside of the City limits of a municipality, but within the County of Lubbock, except that a Reinvestment Zone that is a State Enterprise Zone is designated for the same period as a State Enterprise Zone as

provided by Chapter 2303, Government Code. The authority of all other taxing units shall be as set forth in V.T.C.A., Tax Code, Section 312.206.

In Enterprise Zones, the governing body of each taxing jurisdiction may execute a written agreement with the owner of the property. The agreement may, but is not required to, contain terms that are identical to those contained in the agreement with the municipality, county, or both, whichever applies, and the only terms for the agreement that may vary are the portion of the property that is to be exempt from taxation under the agreement and the duration of the agreement.

9. No property shall be eligible for tax abatement unless such property is located in a Reinvestment Zone in accordance with V.T.C.A., Tax Code, Section 312.202 and the tax abatement application is filed with the City before construction begins.

10. Notwithstanding any of the requirements set forth in Section IV(3), the Lubbock City Council upon the affirmative vote of a three-fourths (3/4) of its members may vary any of the above requirements when variation is demonstrated by the applicant for tax abatement that variation is in the best interest of the City to do so and will enhance the economic development of the City. By way of example only and not by limitation the Lubbock City Council may consider the following or similar terms in determining whether a variance shall be granted:

    a) That the increase in productivity of the Facility will be substantial and hence directly benefit the economy.

    b) That the increase of goods or services produced by the Facility will be substantial and directly benefit the economy.

    c) That the employment maintained at the Facility will be increased.

    d) That the waiver of the requirement will contribute and provide for the retention of existing jobs within the City.

    e) Any other evidence tending to show a direct economic benefit to the City.

11. Taxability:

    a) The portion of the value of improvements to be abated shall be abated in accordance with the terms and provisions of a Tax Abatement Agreement executed between the City and the owner of the Real Property and/or Tangible Personal Property, (which agreement shall be) in accord with the provisions of V.T.C.A., Tax Code, Section 312.205.

    b) All ineligible property, if otherwise taxable as herein described, shall be fully taxed.

12. The Lubbock City Council shall have total discretion as to whether tax abatement is to be granted. Such discretion, as herein retained, shall be exercised on a case by case basis. The adoption of these guidelines and criteria by the Lubbock City Council does not:

    a) Limit the discretion of the Lubbock City Council to decide whether to enter into a specific Tax Abatement Agreement;

    b) Limit the discretion of the Lubbock City Council to delegate to its employees the authority to determine whether or not the Lubbock City Council should consider a particular application or request for tax abatement; or,

c) Create any property, contract, or other legal right in any person to have the Lubbock City Council consider or grant a specific application or request for tax abatement.

13. The burden to demonstrate that an application for tax abatement should be granted shall be upon the applicant. The City shall have full authority to request any additional information from the applicant that the Lubbock City Council deems necessary to assist it in considering such application.

SECTION V. <u>Criteria and Guidelines for Creation of Reinvestment Zone</u>:

1. No Property shall be eligible for tax abatement unless such property is located in a Reinvestment Zone designated as such in accordance with V.T.C.A., Tax Code, Section 312.202. To be designated as a Reinvestment Zone an area must meet one of the following:

   a) Substantially arrest or impair the sound growth of the municipality or county creating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:

      1. a substantial number of substandard, slum, deteriorated, or deteriorating structures;

      2. the predominance of defective or inadequate sidewalks or streets;

      3. faulty size, adequacy, accessibility or usefulness of lots;

      4. unsanitary or unsafe conditions;

      5. the deterioration of site or other improvements;

      6. tax or special assessment delinquency exceeding the fair value of the land;

      7. defective or unusual conditions of title;

      8. conditions that endanger life or property by fire or other cause; or,

      9. any combination of these factors;

   b) Be predominantly open and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality;

   c) Be in a federally assisted new community located in a home rule municipality or in an area immediately adjacent to a federally assisted new community located in a home rule municipality;

   d) Be located entirely in an area that meets the requirements for federal assistance under Section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5318);

   e) Encompass signs, billboards, or other outdoor advertising structures designated by the governing body of the municipality for relocation, reconstruction, or removal for the

purpose of enhancing the physical environment of the municipality, which the legislature declares to be a public purpose; or,

f) Be reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the municipality.

2. For purposes of this Section, federally assisted new community is a federally assisted area:

   a) That has received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act (12 U.S.C., Section 1749aa et seq); and,

   b) A portion of which has received grants under Section 107 (a)(1) of the Housing and Community Development Act of 1974, as amended.

3. The Lubbock City Council, as required by Section 312.201, shall hold a public hearing on the designation of an area within its jurisdiction as a Reinvestment Zone. The burden shall be on the owner of the property sought to be included in the zone or applicant for the creation of the Reinvestment Zone to establish the following:

   a) That the requirements of Subsection 1 of this Section have been met.

   b) That the improvements sought are feasible and practical.

4. No later than the seventh day before the date set for the above public hearing notice of such hearing shall be:

   a) Published in a newspaper having general circulation in the City.

   b) Delivered in writing to the presiding officer of the governing body of each taxing unit that includes in its boundaries Real Property that is to be included in the Reinvestment Zone.

5. At the public hearing above described in Section 3 above, any interested person is entitled to speak and present evidence for or against the designation of such Reinvestment Zone.

6. At the conclusion of the hearing described in Section 3 above, the Lubbock City Council shall enter its findings as follows:

   a) That the applicant or owner has or has not met his burden as hereinabove set forth, and/or,

   b) That the improvements sought are or are not feasible and practical.

   c) That the proposed improvements sought will or will not be a benefit to the land to be included in the Reinvestment Zone and to the City after the expiration of an agreement entered into under V.T.C.A., Tax Code, Section 312.204.

7. An application for the creation of a Reinvestment Zone shall not be granted unless the City enters affirmative findings to Subsections a, b, and c of Section 6 above set forth.

8. At the conclusion of the public hearing herein required and upon the affirmative finding of the Lubbock City Council as required by Section 7 above set forth, the governing body may designate a Reinvestment Zone in accordance with the provisions of V.T.C.A., Tax Code, Sections 312.201.

9. The designation of a Reinvestment Zone expires five years after the date of the designation and may be renewed for periods not to exceed five years, except that a Reinvestment Zone that is a State Enterprise Zone is designated for the same period as a State Enterprise Zone as provided by Chapter 2303, Government Code. The expiration of the designation does not affect an existing Tax Abatement Agreement made in accordance with V.T.C.A., Tax Code, Section 312.201 through Section 312.209.

10. Designation of an area as an Enterprise Zone under the Texas Enterprise Zone Act, Chapter 2303, Subchapter C, Texas Government Code, constitutes designation of the area as a Reinvestment Zone under Subchapter B of the Property Redevelopment and Tax Abatement Act without further hearing or other procedural requirements other than those provided by the Texas Enterprise Zone Act, Chapter 2303, Subchapter C, Texas Government Code.

SECTION VI. <u>Tax Abatement Agreement</u>:

1. After the creation of a Reinvestment Zone as hereinabove authorized a Tax Abatement Agreement may be executed between the owner and City. A Tax Abatement Agreement shall:

   a) Establish and set forth the Base Year assessed value of the property for which tax abatement is sought.

   b) Provide that the taxes paid on the base year assessed value shall not be abated as a result of the execution of said Tax Abatement Agreement.

   c) Provide that ineligible property as subscribed in Section IV(6) hereinabove shall be fully taxed.

   d) Provide for the exemption of improvements in each year covered by the agreement only to the extent the value of such improvements for each such year exceeds the value for the year in which the agreement is executed.

   e) Fully describe and list the kind, number and location of all proposed improvements to be made in or on the Real Property.

   f) Set forth the estimated value of all improvements to be made in or on the Real Property.

   g) Clearly provide that tax abatement shall be granted only to the extent:

      1. The improvements to Real Property increase the value of the Real Property for the year in which the Tax Abatement Agreement is executed; and,

      2. That the Tangible Personal Property improvements to Real Property were not located on the Real Property prior to the execution of the Tax Abatement Agreement.

h) Provide for the portion of the value of the improvements to Real Property of improvements to be abated. This determination is to be made consistent with the provisions of Section IV(6) of these guidelines and criteria as hereinabove set forth.

i) Provide for the commencement date and the termination date. In no event shall the commencement date occur prior to 90 percent completion of the project (both Real and Personal Property). In no event shall the termination date exceed a period of ten years from the commencement date.

j) Describe the type and proposed use of the improvements to Real Property or improvements including:

1. The type of facility.

2. Whether the improvements are for a new facility, modernization of a facility, or expansion of a facility.

3. The nature of the construction, proposed time table of completion, a map or drawings of the improvements above mentioned.

4. The amount of investment and the commitment for the creation of new jobs.

5. A list containing the kind, number and location of all proposed improvements.

6. Any other information required by the City.

k) Provide a legal description of the Real Property upon which improvements are to be made.

l) Provide access to and authorize inspection of the Real Property or improvements by employees of the City, who have executed a Tax Abatement Agreement with owner to insure improvements are made according to the specifications and conditions of the Tax Abatement Agreement.

m) Provide for the limitation of the uses of the Real Property or improvements consistent with the general purpose of encouraging development or redevelopment of the zone during the period covered by the Tax Abatement Agreement.

n) Provide the contractual obligations in the event of default by owner, violation of the terms or conditions by owner, recapturing property tax revenue in the event owner defaults or otherwise fails to make improvements as provided in said Tax Abatement Agreement, and any other provision as may be required or authorized by State Law.

o) Contain each term agreed to by the owner of the property.

p) Require the owner of the property to certify annually to the Lubbock City Council that the owner is in compliance with each applicable term of the agreement.

q) Provide that the Lubbock City Council may cancel or modify the agreement if the property owner fails to comply with the agreement.

2. Not later than the seventh day before the City (as required by V.T.C.A., Tax Code, Section 312.2041) enters into an agreement for tax abatement under V.T.C.A., Tax Code, Section

312.204, the Lubbock City Council or a designated officer or employee thereof shall deliver to the presiding officer of the governing body of each of the taxing units in which the property to be subject to the agreement is located, a written notice that the City intends to enter into the agreement. The notice must include a copy of the proposed Tax Abatement Agreement.

3. A notice, as above described in Section 2, is presumed delivered when placed in the mail, postage paid and properly addressed to the appropriate presiding officer. A notice properly addressed and sent by registered or certified mail for which a return receipt is received by the sender is considered to have been delivered to the addressee.

4. Failure to deliver the notice does not affect the validity of the agreement.

SECTION VII. <u>Application</u>:

1. Any present owner of taxable property located within an affected jurisdiction may apply for tax abatement by filing an application with the City of Lubbock. The application has to be filed with the City prior to the construction start.

2. The application shall consist of a completed application form accompanied by:

   a) A general description of the improvements to be undertaken.

   b) A descriptive list of the improvements for which tax abatement is requested.

   c) A list of the kind, number and location of all proposed improvements of the Real Property Facility or Existing Facility.

   d) A map indicating the approximate location of improvements on the Real Property Facility or Existing Facility together with the location of any or all Existing Facilities located on the Real Property or Facility.

   e) A list of any and all Tangible Personal Property presently existing on the Real Property or located in an existing facility.

   f) A legal description of property.

   g) Address of property.

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

   i) A general description stating whether the proposed improvements are in connection with:

      1. the modernization of a facility (of any type herein defined); or,

      2. construction of a new facility (of any type herein defined); or,

      3. expansion of a facility (of any type herein defined); or,

      4. any combination of the above.

j) A statement of the additional value to the Real Property or Facility as a result of the proposed improvements.

k) A statement of the assessed value of the Real Property, Facility or Existing Facility for the Base Year.

l) Information concerning the number of new jobs that will be created or information concerning the number of existing jobs to be retained as result of the improvements undertaken.

m) A statement certifying that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker.

n) Any other information which the City of Lubbock deems appropriate for evaluating the financial capacity of the applicant and compatibility of the proposed improvements with these guidelines and criteria.

o) Information that is provided to the City in connection with an application or request for tax abatement and which describes the specific processes or business activity to be conducted or the equipment or other property to be located on the property for which tax abatement is sought is confidential and not subject to public disclosure until the Tax Abatement Agreement is executed. Information in the custody of the City after the agreement is executed is not confidential. (V.T.C.A., Tax Code, Section 312.003).

p) The City shall determine if the property described in said application is within a designated Reinvestment Zone. If the City determines that the property described is not within a current Reinvestment Zone then they shall so notify the applicant and said application shall then be considered both as an application for the creation of a Reinvestment Zone and a request for tax abatement to be effective after the zone is created.

SECTION VIII. Investment/Jobs Documentation

1. The investment commitment in the Tax Abatement Agreement will be verified as follows:

   a. The City will request the value of the Real and Personal Property from the Lubbock Central Appraisal Value, and if the value minus the base year, meets the agreement commitment, it will service as verification that the investment met the requirement in the agreement; or

   b. If the Lubbock Central Appraisal District value, minus the base year value, does not meet the investment commitment in the agreement, the Company will provide invoices documenting the actual investment to verify the investment met the investment commitment in the agreement.

2. Confirmation of the job creation requirement:

   a. The company will provide the City with a copy of the State Employment report filed with the State of Texas for the quarter ending after the date in the agreement that the jobs are required to be created.

3. Job creation will be audited annually to assure retention of jobs. Each year during the City audit of Tax Abatement Agreements, the company will provide the City with the 4th quarter employment report filed with the State of Texas to confirm job retention. If the employment in the 4th quarter report does not meet the requirement for retention of the created jobs, the City may request the quarterly reports for the 1st, 2nd, and 3rd quarters of that audit year to determine compliance. The City may request and the company shall promptly provide any additional information that the City deems necessary to confirm that the company is in compliance with the terms of the Tax Abatement Agreement.

SECTION IX. Default Options

1. In the event that the applicant, owner or lessee has entered into a Tax Abatement Agreement to make improvements as defined in Section IV(2) above, but fails to undertake or complete such improvements; fails to create all or a portion of the new jobs provided by the Tax Abatement Agreement; or is in default of any of the terms or conditions contained in the Tax Abatement Agreement; then in such event the City shall give the applicant or owner sixty (60) days notice of such failure. The applicant or owner shall demonstrate to the satisfaction of the City above mentioned that the applicant or owner has commenced to cure such failure within the sixty (60) days above mentioned. In the event the applicant or owner fails to demonstrate that he is taking affirmative action to cure his failure, the City shall have three options:

   (a) The City may renegotiate the Tax Abatement Agreement with the applicant or owner in which case the current Guidelines and Criteria Governing Tax Abatement for Industrial Projects in the City of Lubbock shall apply to the new Agreement; or

   (b) The City may determine that good cause exists to cancel the Tax Abatement Agreement and all abatement of taxes shall terminate immediately; or

   (c) The City may terminate the Tax Abatement Agreement and recapture taxes abated under Section X, Recapture.

2. In any of the three options in Paragraph 1 above, the City shall determine whether default has occurred by the applicant or owner in the terms and conditions of the Tax Abatement Agreement and shall so notify all other affected jurisdictions.

SECTION X. Recapture

1. In the event that any type of facility is completed and begins producing goods or services, but subsequently discontinues producing goods or services for any reason, excepting fire, explosion or other casualty or accident or natural disaster or other event beyond the reasonable control of applicant or owner for a period of 180 days during the term of a Tax Abatement Agreement, then in such event the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to the City by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to the City within sixty (60) days of the date of termination. The burden shall be upon the applicant or owner to prove to the satisfaction of the City that the discontinuance of producing goods or services was as a result of fire, explosion, or other casualty or accident or natural disaster or other event beyond the control of applicant or owner. In the event that applicant or owner meets this burden and the City is satisfied that the discontinuance of the production of goods

or services was the result of events beyond the control of the applicant or owner, then such applicant or owner shall have a period of one year in which to resume the production of goods and services. In the event that the applicant or owner fails to resume the production of goods or services within one year, then the Tax Abatement Agreement shall terminate and the abatement of all taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to the City by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to the City within sixty (60) days of the date of termination. The one year time period, hereinabove mentioned, shall commence upon written notification from the City to the applicant or owner.

2. In the event that the applicant or owner has entered into a Tax Abatement Agreement to make improvements to a facility of any type described in Section 1 above, but fails to undertake or complete such improvements or fails to create all or a portion of the number of new jobs provided by the Tax Abatement Agreement, then in such event the City shall give the applicant or owner sixty (60) days notice of such failure. The applicant or owner shall demonstrate to the satisfaction of the City, above mentioned, that the applicant or owner has commenced to cure such failure within the sixty (60) days above mentioned. In the event that the applicant or owner fails to demonstrate that he is taking affirmative action to cure his failure, then in such event the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to the City by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to the City within sixty (60) days of the date of termination.

3. In the event that the City determines that the applicant or owner is in default of any of the terms or conditions contained in the Tax Abatement Agreement, then in such event the City, shall give the applicant or owner sixty (60) days written notice to cure such default. In the event such default is not cured to the satisfaction of the City within the sixty (60) days notice period, then the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to the City by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to the City within sixty (60) days of the date of termination.

4. In the event that the applicant or owner allows ad valorem taxes on property ineligible for tax abatement owed to the City, to become delinquent and fails to timely and properly follow the legal procedures for their protest or contest, then in such even the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination, under this Section, takes place shall be payable to the City by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to the City within sixty (60) days of the date of termination.

5. In the event that the applicant or owner, who has executed a Tax Abatement Agreement with the City, relocates the business for which tax abatement has been granted, to a location outside of the designated Reinvestment Zone, then in such event, the Tax Abatement Agreement shall terminate after sixty (60) days written notice by the City to the applicant or owner. Taxes abated during the calendar year in which termination, under this Section takes place shall be payable to the City by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to the City within sixty (60) days of the date of termination.

6. The date of termination as that term is used in this Section IX shall, in every instance, be the 60th day after the day the City sends notice of default, in the mail to the address shown in the Tax Abatement Agreement to the applicant or owner. Should the default be cured by the applicant or owner within the sixty (60) day notice period, the applicant or owner shall be responsible for so advising the City and obtaining a release from the notice of default from the City, failing in which, the abatement remains terminated and the abated taxes must be paid.

7. In every case of termination set forth in Paragraphs 1, 2, 3, 4, and 5 above, the City shall determine whether default has occurred by the applicant or owner in the terms and conditions of the Tax Abatement Agreement and shall so notify all other affected jurisdictions.

8. In the event that a Tax Abatement Agreement is terminated for any reason whatsoever and taxes are not paid within the time period herein specified, then in such event, the provisions of V.T.C.A., Tax Code, Section 33.01 will apply.

SECTION XI. Miscellaneous:

1. Any notice required to be given by these criteria or guidelines shall be given in the following manner:

   a) To the applicant or owner: written notice shall be sent to the address appearing on the Tax Abatement Agreement.

   b) To the City: written notice shall be sent to the address appearing on the Tax Abatement Agreement.

2. The Chief Appraiser of the Lubbock Central Appraisal District shall annually assess the Real and Personal Property comprising the Reinvestment Zone. Each year, the applicant or owner receiving tax abatement shall furnish the Chief Appraiser with such information as may be necessary for the abatement. Once value has been established, the Chief Appraiser shall notify the City which levies taxes of the amount of assessment.

3. Upon the completion of improvements made to any type of Facility as set forth in Section VIII(1) of these criteria and guidelines a designated employee or employees of the City having executed a Tax Abatement Agreement with applicant or owner shall have access to the Facility to insure compliance with the Tax Abatement Agreement.

4. A Tax Abatement Agreement may be assigned to a new owner but only after written consent has been obtained from the City.

5. These guidelines and criteria are effective upon the date of their adoption by the City and shall remain in force for two years. At the end of the two year period these guidelines and criteria may be readopted, modified, amended or rewritten as the conditions may warrant.

6. Each affected jurisdiction shall determine whether or not said affected jurisdiction elects to become eligible to participate in tax abatement. In the event the affected jurisdiction elects by resolution to become eligible to participate in tax abatement, then such affected jurisdiction shall adopt guidelines and criteria by separate resolution forwarding a copy of both resolutions to all other affected jurisdictions.

7. These guidelines only apply to the City of Lubbock and any company wishing to apply for tax abatement from other taxing jurisdictions will need to contact the applicable taxing jurisdiction for their criteria and guidelines and requirements for applying for tax abatement.

8. In the event of a conflict between these guidelines and criteria and V.T.C.A., Tax Code, Chapter 312, then in such event the Tax Code shall prevail and these guidelines and criteria interpreted accordingly.

9. The guidelines and criteria once adopted by the City may be amended or repealed by a vote of three-fourths (3/4) of the members of the Lubbock City Council during the two-year term in which these guidelines and criteria are effective.