

**GUIDELINES AND CRITERIA OF THE COMMISSIONERS' COURT
OF CALHOUN COUNTY FOR GRANTING TAX ABATEMENT AS A
BUSINESS INCENTIVE IN REINVESTMENT ZONES
CREATED IN CALHOUN COUNTY**

(For the period June 25, 2019 through June 24, 2021)

PREAMBLE

WHEREAS, the Commissioners' Court of Calhoun County by resolution adopted on March, 18, 1988 declared its eligibility to grant tax abatement; and

WHEREAS, by subsequent resolutions the Commissioners' Court of Calhoun County adopted and extended Guidelines and Criteria for granting tax abatement in reinvestment zones created in Calhoun County; and

WHEREAS, as a direct result of being eligible to grant tax abatement, Calhoun County, the Calhoun County Independent School District, Calhoun County Navigation District and other taxing jurisdictions in the county have been able to compete for and obtain expansion projects of the Union Carbide Corporation Seadrift Plant, with projects exceeding one hundred million dollars, and the Formosa Plastics Corporation, Texas facilities of approximately 1.3 billion dollars; and

WHEREAS, pursuant to the **PROPERTY REDEVELOPMENT AND TAX ABATEMENT ACT, TEX. TAX CODE ANN.** Chapter 312, it is necessary to adopt Guidelines and Criteria for granting tax abatement agreements as a business incentive for the next two year period commencing June 25, 2019 through June 24, 2021, inclusive, said Guidelines and Criteria to be unchanged for the two year period, unless amended by three-quarters vote; and

NOW, THEREFORE, BE IT RESOLVED that the Commissioners' Court of Calhoun County does hereby adopt the following Guidelines and Criteria for granting tax abatement as a business incentive in reinvestment zones created within Calhoun County, Texas for the period June 25, 2019 through June 24, 2021, inclusive.

Section 1

DEFINITIONS

- (a) **“ABATEMENT”** means the exemption from ad valorem taxation of a portion or all of the eligible value of the real property or of tangible personal property located on the real property, or both, as limited by these Guidelines and Criteria and the provisions of TEX. TAX CODE ANN. §312.204.
- (b) **“AGREEMENT”** means a written contractual agreement between a property owner and/or lessee and an eligible taxing jurisdiction for the purposes of a business incentive.
- (c) **“AQUACULTURE FACILITY”** means buildings, structures and major earth structure improvements, including fixed machinery and equipment, the primary purpose of which is the hatching or incubation or nursing or maturing or processing to marketable size aquatic culture in commercially marketable quantities.
- (d) **“APPLICANT”** means the legal entity seeking tax abatement as a business incentive.
- (e) **“APPRAISED VALUE”** means the last certified property value as approved by the Calhoun County Appraisal Review Board.
- (f) **“BASE YEAR VALUE”** means the appraised value of all property owned by the Taxpayer/applicant in the reinvestment zone as most recently determined by the Calhoun County Appraisal District immediately preceding the application, plus the agreed upon value of all property improvements made in the reinvestment zone since the last appraisal, but before the execution of the agreement.
- (g) **“BUSINESS INCENTIVE”** means an item offered of value to a business that induces the business to locate in a particular jurisdiction.
- (h) **“COMMENCEMENT OF CONSTRUCTION”** means the placement or construction of any improvements that are part of the project in the reinvestment zone. The storage of building materials in the reinvestment zone that are to be used in construction of the improvements does not constitute commencement of construction. Engineering, site preparation and similar activity shall not be considered commencement of construction so long as permanent improvements that are part of the project have not been constructed and placed in the reinvestment zone.

- (i) **"COMMISSIONERS"** or **"COMMISSIONERS' COURT"** means the Commissioners' Court and governing body of Calhoun County, Texas.
- (j) **"COUNTY"** means Calhoun County, Texas, a political subdivision of the State of Texas.
- (k) **"DEFERRED MAINTENANCE"** means improvements necessary for continued operations which do not improve the productivity or alter the process technology.
- (l) **"DESIGNATING AUTHORITY"** means the taxing unit that has the authority to designate the reinvestment zone in which the proposed project is located.
- (m) **"DESIGNEE"** unless otherwise indicated, means any person or entity authorized by the Commissioners' Court to act on behalf of the County.
- (n) **"ECONOMIC LIFE"** means the number of years a property improvement is expected to be in service in a facility, and will continue to have value for ad valorem tax purposes throughout such term.
- (o) **"ELIGIBLE JURISDICTION"** includes Calhoun County and any navigation district, any drainage district, and municipal utility district, any water quality improvement district, any municipality, and the Calhoun County Independent School District, that levies ad valorem taxes upon property located within the proposed or existing reinvestment zone.
- (p) **"EXPANSION"** means the addition of building, structures, fixed machinery or equipment for purposes of increasing production capacity.
- (q) **"FACILITY"** means property improvements proposed, completed, or in the process of construction which together comprise an integral whole.
- (r) **"INFRASTRUCTURE"** means a system of public works installed in a residential subdivision, whether public or private, to include, but not be limited to, roadways, utility service including water, sewer and electrical service, and bulk heading.
- (s) **"MANUFACTURING FACILITY"** means building and structures, including fixed 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.
- (t) **"MATERIAL MISREPRESENTATION"** means a false statement about a material matter which induced the Commissioners' Court to take any specific action on

an application for tax abatement as a business incentive, and without such misrepresentation, the Commissioners' Court would either not have designated a reinvestment zone, or granted tax abatement as a business incentive or would have taken some action different than it actually did.

(u) **"MODERNIZATION"** means the replacement or upgrading of existing facilities which increases the productivity 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.

(v) **"NEW FACILITY"** means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.

(w) **"OTHER BASIC INDUSTRY"** means buildings and structures including fixed machinery and equipment not elsewhere described, used, or to be used for the production or products, and result in the creation of new permanent jobs within Calhoun County and inject new wealth into Calhoun County.

(x) **"PROJECT"** is a reference to the entire proposal of work and improvements to be accomplished in the reinvestment zone as described in the application and tax abatement as a business incentive agreement.

(y) **"REGIONAL DISTRIBUTION CENTER FACILITY"** means building 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 operator.

(z) **"REGIONAL ENTERTAINMENT"** means buildings and structures, including fixed machinery and equipment, used or to be used to provide entertainment through the admission or the general public.

(aa) **"REGIONAL SERVICE FACILITY"** means buildings and structures, including fixed machinery and equipment, used or to be used to service goods.

(bb) **"REINVESTMENT ZONE-COUNTY DESIGNATED"** means any area of Calhoun County which has been designated a reinvestment zone for tax abatement as a business incentive and which is not within the taxing jurisdiction of any incorporated municipality. It is the province of the Calhoun County Commissioners' Court to designate Reinvestment Zones - County Designated on a case-by-case basis in order to

maximize the potential incentives for eligible enterprises to locate or expand within Calhoun County.

(cc) **“REINVESTMENT ZONE - MUNICIPALITY DESIGNATED”** means an area of Calhoun County which lies within the taxing jurisdiction of a municipality and has been designated a reinvestment zone by that municipality for tax abatement as a business incentive. It is the province of the City Council of any eligible municipality to designate Reinvestment Zones Municipality Designated on a case-by-case basis in order to maximize the potential incentives for eligible enterprises to locate or expand within the City.

(dd) **“RENOVATION”** is a repair or improvement of an existing facility or structure.

(ee) **“REPAIR”** means any improvement or betterment of an existing facility or structure.

(ff) **“REPLACEMENT”** means the substitution of something new or different for an existing facility or structure, or portion thereof, when the replacement facility or structure is to be used for the same general purpose as the old facility or structure that is being replaced.

(gg) **“RESEARCH FACILITY”** means buildings and structures, including fixed machinery and equipment, used or to be used primarily for research or experimentation to improve or develop or develop the production processes thereto.

(hh) **“SCHOOL DISTRICT”** or **“DISTRICT”**, unless otherwise indicated, means the Calhoun County Independent School District.

(ii) **“SUBSTANTIAL COMPLIANCE”** means that any estimate or prediction that comes within eighty-five percent of a stated amount shall be construed as compliance, but only when estimates are expressly authorized. Unless expressly authorized, strict compliance with a statement or representation shall be required.

(jj) **“TAXPAYER”** means the legal entity that seeks, or who has been approved for tax abatement as a business incentive. It also is a reference to the owner of the property constituting the reinvestment zone and the improvements and tangible personal property to be located therein.

Section 2

ELIGIBILITY CRITERIA GENERALLY

(a) **General Eligibility** Subject to the limitations and exceptions contained in these Guidelines and Criteria, TEX. TAX CODE ANN. §312.204 shall govern to what extent real property and tangible personal property located in a reinvestment zone are eligible for tax abatement as a business incentives.

(b) **Commencement of Construction.** If the reinvestment zone is designated by a municipality, the applicant shall not commence construction until after it and the municipality have both executed an agreement on similar terms for the same project then under consideration by the County. Any property otherwise eligible for abatement that is placed or constructed in the reinvestment zone before the agreement is executed with the municipality shall not be eligible for tax abatement as a business incentive. However, any eligible improvements made or property placed in the reinvestment zone after executing the agreement with the municipality shall be eligible for abatement with the County, even though such improvements or property are placed in the reinvestment zone prior to filing the application or executing the agreement with the County, provided that a municipality is the designating authority. If the reinvestment zone is County designated, applicant shall not commence construction until the County executes the agreement.

(c) **Property Value Eligible for Abatement** Subject to the limitations and other eligibility requirements contained in these guidelines, the County may abate the value of tangible personal property located on the real property in the reinvestment zone in each year covered by the agreement, other than tangible personal property that was located on the real property at any time before the period covered by the agreement. The value of real property to the extent its value for each year during the agreement exceeds its value for the year in which the agreement was executed is eligible for abatement.

(d) **New and Existing Facilities** A business incentive may be granted for both eligible new facilities and structures, as well as for expansion or modernization of existing facilities and structures.

(e) **Eligible Property to be Described** The application for tax abatement as a business incentive or any other business incentive and any agreement must describe the project and improvements with such detail and certainty as required by the County in order to identify the property that is declared to be eligible for business incentives. Any

property, even though otherwise eligible for business incentives, that is not sufficiently described in the application, as determined by the Commissioners' Court, or their designee, shall not be eligible for business incentives under such agreement.

(f) **Exclusions.**

(1) This policy is mutually exclusive of existing Industrial District Contracts. The real property cannot be in an improvement project financed by tax increment bonds.

(2) Any business incentive agreement granted is subject to the rights of holders of outstanding bonds of the County.

(3) When any project that otherwise satisfies the eligibility criteria for tax abatement as a business incentive is for the purpose of repairing, replacing, modernizing, or upgrading an existing facility, if, prior the commencement of the project, or upon completion of the project the value of the existing facility is reduced or deleted from the tax rolls, then, in such event, the applicant shall only be eligible for tax abatement as a business incentives to the extent of the difference in the last appraised value of the property value that is being dropped or reduced from the tax rolls and the project cost.

Section 3

ELIGIBILITY CRITERIA AND TERMS FOR FACILITIES/INDUSTRY

(a) **Eligible Facilities.** A facility may become eligible for abatement if it is located in a designated Reinvestment Zone, and is a:

- (1) Manufacturing Facility; or
- (2) Research Facility; or
- (3) Aquaculture Facility; or
- (4) Regional Distribution Center Facility; or
- (5) Regional Service Facility; or
- (6) Regional Entertainment Facility; and,
- (7) Other Basic Industry.

(b) **Economic Qualifications** In addition to satisfying the other eligibility criteria, in order to be eligible for business incentives, the new facility or structure, or the expanded or modernized existing facility or structure must meet the following qualifications:

- (1) The project must cost at least Five Million Dollars (\$5,000,000.00); and
- (2) Be expected to retain or create employment for at least 10 persons of the eligible facility on a full time and permanent basis in Calhoun County; and
- (3) Not be expected to solely or primarily have the effect of transferring employment from one part of Calhoun County to another; and
- (4) Be expected to attract major investment in the reinvestment zone that would be a benefit to the property to be included in the zone; and
- (5) That development anticipated to occur in the proposed reinvestment zone would contribute to the economic development of the County.
- (6) The County reserves the right to grant abatements up to the state maximum of 100% for 10 years.

(c) **Term of Abatement.** The term of tax abatement as a business incentive granted by the County shall be six (6) years, and shall be applied commencing January 1 following the effective date of the agreement.

(d) **Effective Date.**

- (1) If the County is the designating authority, the effective date of the agreement shall be the date that the County executes the agreement.
- (2) If a municipality is the designating authority, the effective date of any agreement that the County approves shall be same date as that of the agreement entered into for the same project by the municipality.
- (3) Abatement applies to all eligible improvements placed in the reinvestment zone after the designating authority and Taxpayer execute their agreement. Taxes will be abated on eligible property for the number of years approved by the County, commencing January 1 immediately following the effective date of the agreement. Property otherwise eligible for abatement under the agreement shall be eligible for abatement only if the property is placed or constructed in the reinvestment zone after the effective date of the agreement, but on or before December 31 immediately preceding the beginning of the last full tax year that taxes are to be abated.

(e) **Percent of Tax Abatement as a Business Incentive.** The percent of tax abatement as a business incentive of eligible property value to be granted each year shall be as follows:

		Year					
Taxable							
Investment (Millions)		1	2	3	4	5	6
Up to	5.00	—	—	—	—	—	—
5.00 to	9.99	90	50	25	—	—	—
10.00 to	14.99	90	75	50	25	—	—
15.00 to	19.99	90	90	75	50	25	—
20.00 or more		90	90	85	75	50	25

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

- (1) the value of ineligible property as provided in Section 2 shall be fully taxable.
- (2) the base year value of existing eligible property as determined each year shall be fully taxable; and
- (3) the unabated value of eligible property shall be taxable.

(g) **Limitations.** If, during the term of the business incentive period the taxpayer should close, cease production, or demolish any or all of a facility that was in existence on the effective date of the business incentives agreement, or take any other similar action that would have the effect of reducing or deleting the value of the facility, or portion thereof from the tax rolls that was in existence on the effective date of the business incentives agreement regardless of the reason, then the eligible value for abatement allowed in the business incentives agreement shall be reduced by the amount of existing property value owned by the taxpayer that is reduced or deleted from the tax roll. Depreciation, agreed to by the Chief Appraiser, or Appraisal Review Board, shall not be construed as a reduction or deletion of value for purposes of this limitation.

Section 4

ELIGIBILITY CRITERIA AND TERMS FOR REAL ESTATE DEVELOPMENT

(a) **Eligible Development.** A development may become eligible for abatement if it is located in a designated Reinvestment Zone, and is a:

- (1) New single family residential housing project;
- (2) Multi-family housing project; and/or,
- (3) Apartment project.

(b) **Duration of Abatement as a Business Incentive.** Any Agreement under this section shall not exceed three (3) years.

(c) **Economic Qualification.** To be eligible to receive tax abatement as a business incentive, the developer must expend a minimum of two million dollars (\$2,000,000.00) in infrastructure costs for the development.

(d) **Taxability.** From the initial application to the end of the abatement period, taxes shall be paid as follows:

(1) All ineligible property shall be fully taxable during the term of the abatement.

(2) Any property within the reinvestment zone that is sold, transferred, conveyed, occupied or otherwise no longer part of the developer's inventory shall be taxed at the appraised value determined by the Calhoun County Appraisal District beginning January 1 of the year following the sale, transfer, conveyance, or occupation.

(3) At the end of the abatement period, all property subject to the Agreement shall be subject to full taxation.

APPLICATION

(a) **Filing.** Any property owner of taxable property in Calhoun County located in a designated or proposed reinvestment zone may request tax abatement as a business incentive by filing a written application with the Commissioners' Court, or their designee. When appropriate, the application may combine a request for designation of a reinvestment zone with an application for tax abatement as a business incentive.

(b) **Contents.** The application shall include all information contemplated by these Guidelines and Criteria in order for the Commissioners' Court to evaluate the applicant's eligibility and to determine whether to grant any business incentives. The application

shall be submitted on a form provided by the County, or alternatively, if unavailable, the contents of the application shall be in order of this subsection and respond to each element of this subsection, and shall contain such other information as required by the County, or its representative. Specifically, the application shall include the following:

- (1) A list of the kind, number and location of all proposed improvements of the property, including a general written description of the general nature and extent of modernization, expansion or new improvements to be undertaken.
- (2) A statement of the current and proposed uses of the property showing that planned usage is consistent with the general purpose of encouraging development or redevelopment of the reinvestment zone during the period that the property tax exemptions are in effect.
- (3) A map showing locations of existing and proposed improvements. The map should also show general uses and conditions of the real property in the reinvestment zone.
- (4) A legal description of the property.
- (5) An estimate of the project cost and new value that will result from the modernization, expansion or new improvements to be undertaken. A statement of the base year value separately stated for land and existing improvements located in the reinvestment zone, plus any improvements or changes in value in the reinvestment zone after the last appraisal and prior to the application. In any case where the value of an existing facility will be deleted or diminished as a result of the project, the application must contain verification from the Chief Appraiser of the last appraised value of any portion or all of a facility whose value will be reduced or removed from the tax rolls.
- (6) An estimate of the number of jobs that will be created or retained by the modernization, expansion or new improvements.
- (7) Estimated date of start of construction, length of construction, estimated value of new improvements to be completed during each year of construction and estimated date of completion.
- (8) An estimate of what the property value subject to abatement will be on January 1 immediately following the end of the abatement period.

(9) In the case of applicants unknown to the Commissioners' Court, a financial statement of the individual or corporation filing the application, complete with letters of credit and other documents which the County may request in order that the Commissioners' Court can appropriately evaluate the financial capacity and other factors of the applicant.

(10) The Taxpayer shall make the following assurances in the application:

(a) That all the information contained in the application is true and correct.

(b) That the person signing the application on behalf of the Taxpayer/Applicant has unrestricted authority to execute the application and the contract documents on behalf of the Taxpayer/Applicant, and has the unrestricted authority to obligate the Taxpayer/Applicant to all the terms, covenants and conditions that will be contained in the agreement.

(c) That construction will not commence on any of the eligible improvements until an agreement has been executed with the designating authority, whether the designating authority is the County, or a municipality.

(d) That the project will not be constructed without first obtaining all necessary local, state and federal environmental and construction permits, and that the Taxpayer will abide by all conditions of the permits, laws and ordinances, rules and regulations governing the operation of the project throughout its economic life.

(e) That the Taxpayer/applicant will abide by all conditions of the agreement and the Guidelines and Criteria adopted by the Commissioners' Court applicable to the agreement.

(f) That the planned use of the property will not constitute a hazard to public health or safety throughout the economic life of the project.

(g) That the applicant will make the specific improvements to the property as described in its application.

(h) That although estimates of the cost of the project and the number of jobs retained or created as a result of the project that are within 85 % of actual cost and/or number of jobs may be construed to be substantial compliance,

the actual total cost of the project and actual number of jobs retained or created shall not be less than the minimum amounts required in the County's Guidelines required to qualify for tax abatement as a business incentive.

(11) The applicant will identify the type of legal entity making the application, such as corporation, partnership, etc. If a corporation, the statement should include the home state of incorporation, the name and address of the registered agent for service in Texas, and a commitment to notify the County within sixty days of any change of the registered agent or status of the corporation. Similar information will be required of a general or limited Partnership or other legal entity.

(12) The application shall contain the name, title and address of the Taxpayer's local and corporate representatives for the purposes of giving notice.

(13) In its application, the applicant shall include a statement that it waives all rights of confidentiality with regard to the contents of its application for tax abatement as a business incentive otherwise granted under TEX. TAX CODE ANN. §312 .003.

(14) The applicant shall agree to reimburse the County for all legal fees and any other expenses that the County incurs in establishing eligibility for granting business incentives and for reviewing, processing and acting on its application. Further, applicant shall agree to pay for the costs of an economic impact assessment, if the County requires one in connection with its application for business incentives. In the event the County determines an economic impact assessment is required, the Taxpayer shall be given notice and the opportunity to withdraw its application prior to commencement of the economic impact assessment, if applicant is unwilling to pay the total cost of the economic impact assessment. In its application, the Taxpayer shall agree to pay for all fees and expenses incurred by the County in establishing eligibility to grant business incentives and processing the application, even though the Commissioners' Court ultimately denies the application.

(15) Any other information that the Commissioners' Court or Applicant may deem appropriate to assist the Commissioners' Court in determining whether to enter into a business incentives agreement with the Applicant.

(16) If a variance from any provision in these Guidelines and Criteria is

requested, a statement describing the variance, and a detailed statement supporting the Applicant's reasons for the requested variance must be included.

(c) **Completed Application.** Upon receipt of a completed application, the Commissioners' Court shall mail written notice to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is included in the application. Such notice shall be mailed at least seven (7) days before the Commissioners' Court takes any action on the application. The notice shall include a copy of the proposed agreement, if the County is the designating authority. There shall be a \$1,000 nonrefundable fee payable the County at the time the application is submitted.

(d) **Economic impact assessment.** After receipt of an application for business incentives, the Commissioners' Court may cause to have prepared an economic impact assessment setting forth the impact of the proposed agreement. The study shall include, but not necessarily be limited to, an assessment of the economic effects of the abatement of taxes. The County shall give at least ten (10) days written notice to the Applicant of its intent to conduct an economic impact assessment, which notice shall include a description of the scope of the study. If the Applicant is unwilling to pay for the economic impact assessment, it may give notice to the County within seven (7) calendar days from the date it received notice of the proposed economic impact assessment that the Applicant is withdrawing its application. The economic impact assessment may include any other issue that the Commissioners' Court determines to be appropriate in considering the application, including, without limitation by enumeration, environmental issues, short term/long term effect on issues of adequacy of existing physical plants, need to increase number of employees in the County, and the impact on the County of any resulting increased costs as a result of the project and the County's ability to pay such costs during the abatement period.

Section 5

DESIGNATION OF REINVESTMENT ZONE

(a) **Authority to Designate Reinvestment Zones.** Reinvestment zones may be designated by either the Commissioners' Court for property located outside the jurisdiction of any municipality in the County, or by a municipality, if the property is

located within the jurisdiction of such municipality.

(b) **Application for County Designated Reinvestment Zone.** An application to the County for designation of a Reinvestment Zone may be combined with the application for business incentives. The application must include information to support the required findings in subsection (c), inclusive of this section. It must also include a map showing the boundaries of the proposed reinvestment zone and a legal description of the proposed reinvestment zone. Any information contained in the application for business incentives that answers the requirements for designation of a reinvestment zone does not need to be duplicated, if the application for designation of a reinvestment zone and business incentives are combined in one application.

(c) **Designation.** The Commissioners' Court may not designate an area as a reinvestment zone until:

(1) The Commissioners' Court has held a public hearing on the designation at which time interested persons shall be entitled to speak and present evidence for or against the designation; and

(2) The Commissioners' Court must make the following findings in order to designate an area as a reinvestment zone:

(a) The designation would contribute to the retention or expansion of primary employment; or,

(b) The designation would attract major investment in the zone that would be a benefit to the property to be included in the zone; and,

(c) The designation would contribute to the economic development of the county.

(d) **Notice of Hearing.** Notice of the hearing shall be clearly identified on the Commissioners' Court agenda. In addition, notice shall issue as follows:

(1) Notice of the hearing must be published in a newspaper of general circulation in the County not later than the 7th day before the date of the hearing; and

(2) Written notice of the hearing shall be delivered to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is included in the proposed reinvestment zone. Such notice

shall be delivered at least 7 days before the hearing. Pursuant to Tex Tax Code Ann. §312.201(e) this notice shall be presumed delivered when placed in the mail postage paid and properly addressed to the appropriate presiding officer.

(e) **Municipality Designated Reinvestment Zones.** If the reinvestment zone is designated by a municipality, to be eligible for tax abatement as a business incentive with the County, the property must be located in a reinvestment zone and the municipality must have entered into an agreement for the same project with the applicant no more than ninety days before the County enters into an agreement with the same applicant for the same project.

(f) **Date of Expiration.** The designation of a reinvestment zone shall expire five (5) years after the date of designation. However, the designation of a reinvestment zone that has expired may be renewed by the County or municipality for periods not to exceed five (5) years. The expiration of the designation of a reinvestment zone shall not affect existing agreements made under these Guidelines and Criteria.

Section 6

AGREEMENTS

(a) **Resolution of Commissioners' Court.** After approval, the Commissioners' Court shall formally pass a resolution and execute an agreement with the owner of the facility and lessee as required, which shall include those matters contained in Texas Tax Code §312.205 and any other terms and conditions in the best interests of the County.

(b) **Notice to Other Taxing Jurisdictions.** If the County is the designating authority, it shall deliver written notice to the presiding officer of the governing body of each other taxing unit in which the property that is the subject of the agreement is located that the County intends to enter into an agreement. The notice must be delivered at least 7 days before the County enters into the agreement. The notice must also include a copy of the proposed agreement. The notice shall be presumed to be delivered when placed in the mail postage paid and properly addressed to the appropriate presiding officer.

(c) **Execution/Effective Date.** After giving the notices required above, and after making

the necessary findings, the County may, in its discretion, approve and execute the agreement. The effective date of the agreement shall be the date that the County's designated representative or official executes the agreement if the County is the designating authority. If a municipality is the designating authority, the effective date of the agreement shall be the date that the City's designated representative or official executes the agreement.

Section 7

RECAPTURE

(a) **Conditions of Default. Cure and Termination.** Should the Commissioners' Court determine that the Taxpayer is in default according to the terms and conditions of its agreement, the Commissioners' Court shall notify the Taxpayer in writing at the address stated in the agreement, and if such default is not cured within sixty (60) days from the date of such notice ("Cure Period"), then the agreement may be terminated by the Commissioners' Court. Provided, that upon proof of a curative effort commencing within sixty (60) days, if construction is required, the Commissioners' Court may extend the time to complete the curative work, based upon reasonable construction requirements.

(b) **Elements of Default.** The following shall be considered elements of default, in the event that the Taxpayer:

- (1) Allows its ad valorem taxes owed to Calhoun County to become delinquent without timely and proper protest and/or contest; or
- (2) Violates any of the terms and conditions of the abatement agreement, or any prior or subsequent agreement with the County, or any other taxing jurisdiction that has granted an agreement to the Taxpayer for any project that the Commissioners' Court has also granted business incentives; or
- (3) Discontinues producing product or service at the improvements subject to abatement and described in the application, for any reason excepting fire, explosion or other casualty or accident or natural disaster for a period of one year during the abatement period after the facility is completed and begins producing product or service.

(4) Violates any written term, covenant, condition, agreement, or promise of a gift or donation made by the taxpayer to the County, although such may be extraneous to the agreement, and even though same might be otherwise legally unenforceable; or

(5) Makes any material misrepresentations, either in the application or agreement.

(c) **Termination.** If, after written notice, the Taxpayer fails to cure within the prescribed period any specified default, such failure shall be grounds for termination for cause. Termination of the agreement for cause shall be retroactive to the beginning of the agreement. Termination shall be effected by resolution of the Commissioners' Court and written notice mailed to the Taxpayer.

(d) **Non Waiver.** In the event the County fails to act on or enforce any element or breach that is identified as a default, such failure to act shall not be a waiver of the County's right to subsequently enforce the same default or any other prior or subsequent default.

(e) **Recapture.** On termination for cause, the Taxpayer shall then become liable for the payment of all taxes that would have otherwise become due but for the abatement agreement for all calendar years during which the abatement agreement was in effect. Said taxes shall be paid to the Calhoun County Consolidated Tax Office for the credit of Calhoun County within sixty (60) days from the date of receipt of notice of termination. All such taxes due shall include statutory penalty and interest from the date they would otherwise have become delinquent but for the agreement, until the date they are actually paid.

Section 8

ADMINISTRATION

(a) **Duties of Chief Appraiser.** The Chief Appraiser of the County shall, as a normal consequence of his duties, annually determine an assessment of the real and personal property comprising the reinvestment zone. Each year, on or before April 1, the Taxpayer receiving abatement shall furnish the Chief Appraiser with such information as may be

reasonably requested. Once value has been established, the Chief Appraiser shall notify the affected taxing jurisdictions, which have granted tax abatement as a business incentive in the reinvestment zone, of the amount of the appraisal.

(b) **Compliance Inspections.** All compliance inspections will be made only after giving twenty-four (24) hours notice and will only be conducted in such manner as not to 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) **Annual Evaluations** Upon completion of construction, the Commissioners' Court of Calhoun County, or their designees, shall annually evaluate each facility receiving abatement to ensure compliance with the agreement.

(d) **Notice Requirements.** Any notice required to be given to Calhoun County hereunder shall be in writing, and mailed or personally delivered to the County Judge. Notices to the Taxpayer shall be in writing, and addressed to its designated representative at the address provided in its application or the agreement.

Section 9

MISCELLANEOUS

(a) **Variance.** An application for a variance from the provisions of these Guidelines and Criteria may be made in written form to the Commissioners' Court. The total duration of abatement shall in no instance exceed ten (10) consecutive tax years commencing January 1 following the effective date of the agreement, including any extension. Such request shall include a complete description of the circumstances explaining why the applicant should be granted such variance. Approval of a request for variance requires at least a three-fourths (3/4) vote of the Commissioners' Court.

(b) **Assignments.** An abatement agreement may be transferred and assigned by the holder to a new owner or lessee of the same facility, subject to obtaining written approval by resolution of the Commissioners' Court. Approval shall be conditioned upon the assignee providing whatever proof the Commissioners' Court may require to show the assignee's financial capability to carry out all the terms and conditions of the agreement.

The County reserves the right to require such additional information as it may deem appropriate to determine not only the assignee's financial capability to carry out the terms and conditions of the agreement, but also its experience and historical record to determine that it is in fact capable of operating the project subject to the abatement in such a manner that it can reasonably be expected to strictly comply with every term, covenant, condition and assurance contained in the agreement. Further, the assignee shall agree in writing by amendment to the original agreement that it shall be bound by all the terms, covenants and conditions contained in the original agreement. No assignment or transfer shall be approved if the parties to the existing agreement, the new owner or new lessee are liable to Calhoun County or any other taxing unit affected by the agreement for delinquent taxes, or otherwise in default of any of the terms, covenants or conditions contained in the agreement. Subject to the foregoing conditions, the Commissioners' Court shall not unreasonably withhold approval of any proposed assignment. Any approval of assignment of the agreement shall not release any previous Taxpayer who has been a party to the agreement from its obligations under the agreement.

(c) **Application for Exemption.** It shall be the responsibility of the Taxpayer to perfect any right of exemption as a result of any agreements entered into with the County. For each year in which abatement has been authorized by the County under the agreement, it shall be the responsibility of the Taxpayer to file its annual application with the Calhoun County Appraisal District for property exemption in accordance with the Texas Tax Code and related administrative regulations.

(d) **Effective Date.** These Guidelines and Criteria shall be effective for two (2) years, from June 25, 2019 through June 24, 2021, inclusive.

(e) **Sunset Provision.** At the end of the two year effective period of these Guidelines and Criteria, all agreements created pursuant to these provisions will be reviewed by the Calhoun County Commissioners' Court to determine whether the goals have been achieved. Based upon that review, the Guidelines and Criteria may be modified, renewed or eliminated. In the event that these Guidelines and Criteria are not modified or renewed, they shall automatically terminate effective June 24, 2021.

(f) **Effect of Modification or Termination.** The modification or termination of these Guidelines and Criteria shall have no effect upon existing agreements entered into while these Guidelines and Criteria are in effect.

(g) **Subtitles.** The use of subtitles in these Guidelines and Criteria is strictly for convenience, and shall have no legal significance whatsoever. The use of the singular shall include the plural and the use of plural shall include the singular when appropriate. The use of any reference to gender shall include any and all other genders when appropriate.

(h) **Severability.** In the event any paragraph, clause, phrase or other provision of these Guidelines and Criteria should be declared to be unconstitutional, void or otherwise unenforceable the remaining provisions shall remain in full force and effect as if the unconstitutional, void or otherwise unenforceable provisions had not been included.

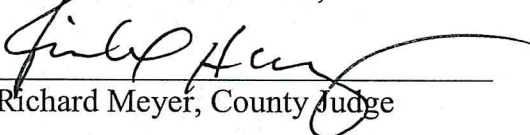
Section 10

ADOPTION

Upon motion by Commissioner _____, seconded by Commissioner _____, the foregoing resolution to amend these Guidelines and Criteria of the Commissioners' Court of Calhoun County for Granting Business incentives in Reinvestment Zones Created in Calhoun County was approved by a vote of 5 for and 0 against.

PASSED, ADOPTED AND APPROVED on this ____ day of _____, 2019.

**COMMISSIONERS' COURT OF
CALHOUN COUNTY, TEXAS**



Richard Meyer, County Judge

ATTEST:

Anna Goodman, County Clerk

By: _____, Deputy