

RESOLUTION NO. 2022.10.02
GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENT
IN VELASCO DRAINAGE DISTRICT

WHEREAS, the creation, retention and diversification of job opportunities that bring new wealth are among the highest civic priorities; and

WHEREAS, the purpose of tax abatement is to provide an incentive offered by the taxpayers, i.e. citizens of Velasco Drainage District (sometimes called “the District” herein), to attract investments, that lead to better quality of life and better services. The wealth created by these enterprises leads to more service and retail businesses, which in addition to improving quality of life, increases the tax base. In summary, by giving incentive in terms of tax abatement, the citizens agree to give up short term tax benefits, for long term benefits; and

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

WHEREAS, the communities within Velasco Drainage District must compete with other localities across the nation currently offering tax inducements to attract new plant and modernization projects; and

WHEREAS, any tax incentives offered in Velasco Drainage District would reduce needed tax revenue unless 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 capital investment and primary jobs in industries which 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 of economy;

WHEREAS, a public hearing concerning this resolution has been held in compliance with Texas Tax Code section 312.002;

WHEREAS, Texas law requires any eligible taxing jurisdiction to establish Guidelines and Criteria as to eligibility for tax abatement agreements prior to granting of any future tax abatement, and said Guidelines and Criteria to be unchanged for a two year period unless amended by a three-quarters vote;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Velasco Drainage District, duly assembled, that Velasco Drainage District does hereby adopt these Guidelines and Criteria for Granting Tax Abatement in Velasco Drainage District.

DEFINITIONS. Section 1

- (a) "Abatement" means the full or partial exemption from ad valorem taxes on certain real property in a reinvestment zone designated by an authorized governmental entity for economic development purposes.
- (b) "Abatement Period" means the period during which all or a portion of the value of real property or tangible personal property that is the subject of a tax abatement agreement is exempt from taxation.
- (c) "Abated Facility Site" (or "proposed abated facility site") means the tract(s) or area of land underlying the proposed improvements to be abated.
- (d) "Agreement" means a contractual agreement between a property owner and/or lessee and Velasco Drainage District for the purpose of tax abatement.
- (e) "Base year value" means the assessed value of eligible property 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) "Brazoria County Vendor and Services" means a company that employs Brazoria County residents and pays Brazoria County taxes.
- (g) "Deferred maintenance" means the improvements necessary for continued operations which do not improve productivity or alter the process technology.
- (h) "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 operator where seventy percent (70%) of the goods or services are distributed outside of Brazoria County.
- (i) "Economic Development" means participation in or support of an organized program or entity which for the purpose of its mission, engages in activities designed to encourage employment opportunities development/commercial and manufacturing business/industry to locate and/or expand in Brazoria County, thus expanding and diversifying the tax base as well as increasing the economic strength and stability of Brazoria County.
- (j) "Eligible jurisdiction" means Velasco Drainage District, Brazoria County, and any municipality or other local taxing jurisdictions eligible to abate taxes according to Texas law, the majority of which is located in Brazoria County that levies ad valorem taxes upon and provides services to reinvestment zone designated by Brazoria County.
- (k) "Employee" for the purposes of the economic qualifications of Section 2(h)(2) of these Guidelines and Criteria shall include all persons directly employed by the owner of the planned improvement at the abated facility site/reinvestment zone together with any independent contractor or employee of independent contractors employed on a full-time (40

hours per week equivalent) basis at the facility site/reinvestment zone continuously for the duration of the abatement agreement.

- (l) "Existing facility" is the facility described in Section 2 (a) that will be expanded or modernized and which contains the proposed improvements to be abated. A manufacturing or processing unit or units of a larger plant complex that separately comprise a manufacturing or production sub-unit of the larger plant shall be considered the existing facility for purposes of the Section 2 (h) (2) employment retention requirement (that the planned improvements cause the retention or prevention of loss of employment of 10 employees or 50% of the employees of the existing facility, whichever is greater). For example, if an existing facility has 100 employees, an expansion or modernization of all or part of that facility must result in the retention of at least 50 employees employed at or in connection with the expanded or modernized "existing facility" in order for the facility improvements to qualify for abatement.
- (m) "Expansion" means the addition of buildings, structures, machinery or equipment for purposes of increasing production capacity.
- (n) "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.
- (o) "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.
- (p) "Modernization" means the replacement and upgrading 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.
- (q) "New Facility" means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.
- (r) "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 Brazoria County.
- (s) "Productive Life" means the number of years a property improvement is expected to be in service. After a cessation of production, the productive life of property improvements may be deemed to end, at Velasco Drainage District's option, on the date of cessation of production either upon (1) a determination by Velasco Drainage District that it is unlikely the improvement(s) will be reactivated as an integral part of a producing facility, and/or (2) the expiration of eighteen (18) continuous or non-consecutive months of non-production in any twenty-four (24) month period following the date the property improvement(s) cease to be in active service as part of a facility operating in a producing capacity. Although this

subsection establishes one way in which a cessation of production may be established, this is not the only way, and a cessation of production may be established in other ways instead. Upon cessation of production and for calculation of the recapture amount of taxes, the “productive life” will be determined to begin on the effective date of the tax abatement as set forth in the Agreement.

- (t) "Qualified Vendors and Services" means those vendors and services that meet the company's or individual's individual stated requirements, which can include but are not limited to: safety, financial condition, environmental record, quality or ability to perform.
- (u) "Regional Entertainment Facility" means buildings and structures, including machinery and equipment, used or to be used to provide entertainment through the admission of the general public where seventy percent (70%) of users reside at least 50 miles from its location in Brazoria County.
- (v) "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.
- (w) "Regional Service Facility" means buildings and structures, including machinery and equipment, used or to be used to service goods where seventy percent (70%) of the goods being serviced originate outside of Brazoria County.
- (x) “Tangible personal property” means tangible personal property classified as such under state law, but excludes inventory and/or supplies, ineligible property as defined herein, and tangible personal property that was located in the investment zone at any time before the period covered by the agreement with Velasco Drainage District.

ABATEMENT AUTHORIZED. Section 2

- (a) Authorized Facility. A facility may be eligible for abatement if it is a: Manufacturing Facility, Research Facility, Distribution Center or Regional Service Facility, Regional Entertainment Facility, Other Basic Industry, or a facility that Velasco Drainage District determines would enhance job creation and the economic future of Velasco Drainage District.
- (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 Velasco Drainage District and the real property owner, tangible personal property owner, leasehold interest, and/or lessee, subject to such limitations as Velasco Drainage District 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, tangible personal property as defined in the Tax Code including fixed machinery and equipment, site

improvements and related fixed improvements necessary to the operation and administration of the facility.

Tangible Personal Property: Abatement may be granted to the owner of tangible personal property located on real property in a reinvestment zone to exempt from taxation (1) all or a portion of the value of the real property, (2) all or a portion of the value of the tangible personal property located on the real property, or (3) all or a portion of the value of both.

An abatement may be granted to the owner of tangible personal property or an improvement located on tax-exempt real property that is located in a designated reinvestment zone to exempt all or a portion of the value of the tangible personal property or improvement located on the real property.

- (e) **Ineligible Property.** The following type of property shall be fully taxable and ineligible for tax abatement: land, existing improvements, tangible personal property that the Brazoria County Appraisal District classifies as inventory or supplies, tools, furnishings, and other forms of movable personal property; vehicles, watercraft, aircraft, housing, convalescent homes, assisted living homes/centers, hotel accommodations, retail facilities, deferred maintenance investments, property to be rented or leased except as provided in Section 2(f), tangible personal property located in the reinvestment zone prior to the effective date of the tax abatement agreement, property already subject to real or personal property tax(es) moved from one location in Brazoria County to the reinvestment zone, real property with a productive life of less than 10 years, property owned or used by the State of Texas or its political subdivisions or by any organizations owned, operated or directed by a political subdivision of the State of Texas, or any other property for which abatement is not allowed by state law.

- (f)
 - (1) **Leased Facilities. Leasehold Interest:** Abatement may be granted to the owner of a leasehold interest in tax-exempt real property located in a reinvestment zone designated to exempt all or a portion of the value of the leasehold interest in the real property.

 - (2) **Lessee Interest:** Abatement may be granted to a lessee of taxable real property located in a reinvestment zone to exempt from taxation (1) all or a portion of the value of the fixtures, improvements, or other real property owned by the lessee and located on the property that is subject to the lease, (2) all or a portion of the value of tangible personal property owned by the lessee and located on the real property that is the subject of the lease, or (3) all or a portion of the value of both the fixtures, improvements, or other real property and the tangible personal property defined herein.

 - (3) **Leasehold Interest/Lessee** shall be required to submit with its application a copy of the executed lease agreement between lessor/lessee demonstrating a minimum lease term double the abatement term granted.

 - (4) Any reference to an Owner or Applicant in these Guidelines and Criteria or in an abatement agreement shall also include any Lessee of any portion of the property to

be abated. Any reference to a Lessee or Applicant in these Guidelines and Criteria or in an abatement agreement shall also include any Owner of any portion of the property to be abated.

- (g) Value and Term of Abatement. The percentage of property value abated and the term of abatement shall be the same as that stated in the tax abatement agreement with the entity that created the reinvestment zone unless otherwise specifically ordered in the Velasco Drainage District action granting abatement or stated in the District's abatement agreement.

Abatement shall be granted effective with the January 1 valuation date immediately following the date of the Velasco Drainage District action approving the abatement application, except as otherwise provided herein or in the District's tax abatement agreement.

The District shall consider the percent of value abated and the term of the abatement based upon the overall value of the project, the number of new jobs being created, and other factors herein. The term of abatement may be up to 10 years or one-half (1/2) of the productive life of the improvement, whichever is less. The "productive life" will be calculated from the effective date of the tax abatement and the date the equipment ceased to be in service.

The abatement may be extended, to the extent allowed by law, if the parties to the agreement mutually consent in a written extension agreement.

If it is determined that the abatement period would better benefit Velasco Drainage District and the Applicant by deferring the commencement date beyond the January 1st following the Velasco Drainage District action granting the abatement and approving the abatement application, Velasco Drainage District may defer the commencement date of the abatement period to a future date certain. The deferral of the commencement date will not allow the duration of the abatement period to extend beyond 10 (10) years. However, in no event shall the abatement begin later than the January 1 following the commencement of construction.

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).

New eligible properties must be in continuous active service and operation as part of a facility operating in a producing capacity for a period equal to double the abatement period, (*i.e.* for a seven year abatement, it must be in producing capacity for 14 years) in order to receive the full term of the abatement granted and not be subject to the term reduction and recapture/payment obligation provisions. For example, if the abatement agreement provides an abatement period of seven years, then the abated properties must be in continuous active service and operation as part of a facility operating in a producing capacity for a period of fourteen years, following the start of the abatement period.

- (h) Economic Qualification. In order to be eligible for designation as a reinvestment zone and to qualify for tax abatement the planned improvement:
- (1) must be reasonably expected to increase and must actually increase the value of the property in the amount of \$1 million or more;

- (2) must create employment for at least 10 people on a full-time (40 hours per week equivalent) basis in Brazoria County for the duration of the abatement period at the abated facility site described in the tax abatement application; or alternatively, must retain and prevent the loss of employment of 10 employees or fifty percent (50%) of the existing number of employees, at the time of application, employed at or in connection with the existing facility containing the abated facility site described in the tax abatement application, whichever is greater, for the duration of the abatement period. The following is applicable to the employment retention/preventing loss of employment requirement:
- a. “Existing facility” is the facility described in Section 2 (a) that will be expanded or modernized and which contains the proposed improvements to be abated. A manufacturing or processing unit or units of a larger plant complex that separately comprise a manufacturing or production sub-unit of the larger plant shall be considered the existing facility for purposes of the Section 2(h)(2) employment retention requirement (that the planned improvements cause the retention or prevention of loss of employment of 10 employees or 50% of the employees of the existing facility, whichever is greater). For example, if a large plant complex has a sub-unit that produces chlorine and 100 employees are employed at or in connection with that unit, an expansion or modernization of all or part of that facility must result in the retention of at least 50 employees employed at or in connection with the expanded or modernized “existing facility” in order for the facility improvements to qualify for abatement.
 - b. Employees of a larger plant unit transferred or assigned to and employed at or in connection with a new sub-unit containing the planned improvements, constructed on undeveloped land constituting the proposed abated facility site/reinvestment zone shall be considered “created” employment for purposes of this sub-section.

The proposed number of employees to be employed at the abated facility as stated in the abatement application for the property that is the subject of the tax abatement agreement (including the projected creation or retention of employment) must be maintained for the duration of the abatement period at the abated facility site. For purposes of this sub-section, in order for a planned improvement to be considered as preventing the loss of employment or retaining employment, the abated facility/project must be necessary in order to retain or keep employment at levels as indicated in the application and in order to retain the proposed number of employees at the abated facility as indicated in the application. The owner/Applicant seeking to qualify on the basis of retention or preventing loss of employment must provide a detailed statement as an attachment to its application affirmatively representing compliance with this sub-section and explaining the necessity of this project to prevent loss of employment. Any variance from the requirements of this sub-section is subject to approval of Velasco Drainage District in accordance with the variance section of these Guidelines & Criteria.

- (3) must be not expected to solely or primarily have the effect of transferring employment from one part of the county to another part of the county. A variance may be requested relative to this provision which approval shall be at the sole discretion of Velasco Drainage District.
- (4) must be necessary because capacity cannot be provided efficiently utilizing existing improved property;
- (5) The owner of the project must provide for and pay to Velasco Drainage District, at the time of filing an application for tax abatement, a non-refundable application fee of \$1,000.
- (6) The owner of the project must file a plan statement with application demonstrating willingness and planned efforts to use qualified Brazoria County vendors and services where applicable in the construction and operations of the facility. Brazoria County vendors and services must be competitive with non-county vendors and services regarding price, quality, safety, availability and ability to perform
- (7) The owner of the project must annually, for the term of the abatement, contribute to the District .000165 of the value reported in "Part IV Section F" of the abatement application (estimated value of abated improvements at the conclusion of the abatement period). Air carriers receiving abatement will contribute to the District an amount equal to .000165 of the estimated value of the personal property of the air carrier indicated in its Application. Each project will contribute annually to Brazoria County no more than \$25,000 for projects of \$500 million or less in capital investment, and no more than \$50,000 for projects of greater than \$500 million in capital investment, nor less than \$2,000, to be used specifically to fund economic development in Brazoria County as authorized by Local Government Code, Section 381.004. The annual contribution shall be paid to Brazoria County through the County Auditor's Office on or before January 1 of each year of the tax abatement contract term.
- (8) The owner of the project must not file with the Brazoria County Appraisal District a valuation or taxpayer protest or notice of protest pursuant to the Texas Property Tax Code during the abatement period legally protesting the valuation of the abated improvements of a manufacturing facility pursuant to an appraisal method that produces a valuation of improvements based on each improvement's value as a separate item of personal property rather than the improvements' value as integral fixtures of a producing manufacturing facility. An owner's legal protest of the improvements' value pursuant to the Texas Property Tax Code must be based on and use accepted appraisal methods and techniques allowed by law (Texas Property Tax Code) and uniform standards of professional appraisal practice. The filing of a valuation protest or notice of protest contrary to this standard shall cause the tax abatement agreement to be subject to termination and recapture of all previously abated taxes.

- (9) The owner of the project must not be a defendant in any litigation by Brazoria County, Velasco Drainage District, or any taxing entity wholly or partly in Brazoria County, seeking recovery or recapture of previously abated taxes.
- (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; and
 - (3) the additional value of new eligible property shall be taxable in the manner described in Section 2(g).

APPLICATION FOR TAX ABATEMENT. Section 3

- (a) The applicant must file with Velasco Drainage District an application for tax abatement, which may be either a copy of the application to Brazoria County on the County's form or on the form provided by Velasco Drainage District, unless the District requires its own application form in any particular case. Applicant may contact Velasco Drainage District at its office or by telephone at (979) 265-4251 to request an Application form. The County form may be obtained from the Brazoria County website at www.brazoria-county.com or from the County Judge's office at 979-864-1200 or 281-756-1200.
- (b)
 - (1) Velasco Drainage District is not authorized to create a reinvestment zone. However, the District may grant tax abatement in a reinvestment zone created by another governmental entity that is authorized to do so. Thus, an application to Velasco Drainage District is only for tax abatement, not for a reinvestment zone.
 - (2) Any present or potential owner of taxable property in Brazoria County may request the creation of a reinvestment zone and tax abatement by filing a tax abatement application with Brazoria County. The application shall be filed with the County Judge by providing twelve (12) copies or an electronic version and five (5) copies. The additional copies provided will be furnished to each member of Commissioners Court and the Tax Abatement Review Committee (TARC). After filing the application, the Applicant shall provide an economic impact analysis report, in a format comparable to the Texas Governor's economic impact analysis report, to the County Judge's Office prior to the TARC meeting on the Applicant's tax abatement application.
- (c) The application shall consist of a completed application form accompanied by: a general description of the proposed use and the general nature and extent of the modernization, expansion or new improvements which will be a part of the facility; a map and property description; and a time schedule for undertaking and completing the planned improvements. 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. The application form shall require such financial and other information as Brazoria County or Velasco Drainage District deems appropriate for evaluating the financial capacity and other factors of the Applicant. Applicant should not submit confidential information as part of the application. If doing so cannot be avoided, a general description in non-confidential terms should be included on the application, along with a sealed document containing the confidential information as an attachment and clearly marked "CONFIDENTIAL".

- (d) Upon receipt of a completed application, the County Judge shall notify in writing the presiding officer of the legislative body of each eligible jurisdiction. Before acting upon the application, Brazoria County Commissioners' Court shall hold a public hearing at which interested parties shall be entitled to speak and present written materials for or against the approval of the tax abatement. The public hearing shall also afford the Applicant and the designated representative of any eligible jurisdiction opportunity to show cause why the abatement should or should not be granted. Notice of the public hearing shall be clearly identified on a Brazoria County notice to be posted at least 30 days prior to the hearing.
- (e) After receipt of an application for creation of a reinvestment zone and application for abatement, the Tax Abatement Review Committee (TARC) shall prepare a feasibility study setting out the impact of the proposed reinvestment zone and tax abatement. The feasibility study shall include, but not be limited to, an estimate of the economic effect of the creation of the zone and the abatement of taxes and the benefit to the eligible jurisdiction and the property to be included in the zone. The economic impact analysis report provided by the Applicant shall be attached to the feasibility study and included as part of the feasibility study report.
- (f) If upon written request for a legal opinion or interpretation from the Commissioners' Court or its members, the legal counsel for Brazoria County determines that the application does not appear to comply with the written language of the Guidelines and Criteria, a public hearing on said application if already set, shall be postponed for a period of at least thirty days from the scheduled date of public hearing to allow time for further review by the Commissioners' Court or any duly appointed review committee, or if an initial setting has not been made, the hearing on such application shall be set on the Commissioners' Court agenda no sooner than sixty (60) days from the time the Court enters an order to set the public hearing date.

The Applicant shall file a supplement or addendum to its application to show cause why the application should be approved and shall present reasons at the public hearing on the same.

Any final decision or interpretation as to the intent and meaning of this policy and any final decision as to whether or not an application complies or does not comply with the guidelines and criteria; and any final decision as to whether to grant or deny tax abatement by Velasco Drainage District shall be made by Velasco Drainage District at its sole discretion.

- (g) Velasco Drainage District shall not grant abatement if it finds that the request for the abatement was filed after the commencement of construction, alteration, or installation of improvements related to a proposed modernization, expansion or new facility.

- (h) Variance. Requests for variance from the provisions of Subsections (a) (b) (e) (g), (h) (1), (h) (2) and/or (h) (3) of Section 2 and/or any other provisions hereof may be made in written form to Velasco Drainage District. Such requests shall include a complete description of the circumstances explaining why the Applicant should be granted a variance. Approval of a request requires a two-thirds (2/3) vote of the governing body. Sections 312.007 and 312.208 of the Texas Tax Code now prohibit an abatement of longer than ten years, and for so long as those sections or any other law limits the duration of an abatement, the District shall not grant an abatement exceeding such limit.
- (i) Special Variance: Air Carriers. A special variance from all applicable provisions of these guidelines and criteria, with the exception of Section 2 (h) (5) and (h) (7) may be granted allowing abatement or partial abatement of ad valorem taxes on the personal property of a certificated or non-certificated air carrier that owns or leases taxable real property in Brazoria County provided that the personal property has a value of at least \$10,000,000. Approval of a request for this variance requires a two-thirds (2/3) vote of the governing body.
- (j) **By filing an Application or executing an Agreement, Applicant and Owner jointly and severally release and indemnify Velasco Drainage district and its supervisors, officers, employees, agents, and representatives from all claims, costs and expenses of any nature, and liability (to any person) of any nature in any way fully or partially, directly or indirectly, arising from or related to any decision to grant or deny tax abatement or any processing or handling of the Application or Agreement. This indemnity also indemnifies the indemnitees against the consequences of their own negligence, alone or in combination with the fault of others.**
- (k) Before granting an application for tax abatement, the District shall give notice as required by Texas Tax Code section 312.207(c, d):
- “(c) In addition to any other requirement of law, the public notice of a meeting at which the governing body of a municipality or other taxing unit will consider the approval of a tax abatement agreement with a property owner must contain:
- “(1) the name of the property owner and the name of the applicant for the tax abatement agreement;
- “(2) the name and location of the reinvestment zone in which the property subject to the agreement is located;
- “(3) a general description of the nature of the improvements or repairs included in the agreement; and
- “(4) the estimated cost of the improvements or repairs.

- “(d) The notice of a meeting required by this section must be given in the manner required by Chapter 551, Government Code, except that the notice must be provided at least 30 days before the scheduled time of the meeting.”

DISQUALIFICATIONS. Section 4

Neither a reinvestment zone nor abatement agreement shall be authorized if it is determined that:

- (1) there would be a substantial adverse affect on the provision of government service or tax base;
- (2) the Applicant has insufficient financial capacity;
- (3) planned or potential use of the property would constitute hazard to public safety, health or morals; or,
- (4) violation of other codes or laws.

AGREEMENT. Section 5

- (a) After approval, Velasco Drainage District shall formally pass a resolution and execute an agreement, which may be the same document as said resolution, with the Applicant as required, 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), which shall be the same as in the corresponding agreement between the Applicant and Brazoria County, unless Velasco Drainage District specifically states otherwise in its agreement or its action approving the abatement;
 - (3) the commencement date and the termination date of abatement, which shall be the same as in the corresponding agreement between the Applicant and Brazoria County, unless Velasco Drainage District specifically states otherwise in its agreement or its action approving the abatement;
 - (4) the proposed use of the facility; nature of construction, time schedule, map, property description and improvement list as provided in Application, Sections II and III;
 - (5) contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in Sections 2(a), 2(f), 2(g), 2(h) 6, 7, and 8;

- (6) size of investment and average number of jobs involved for the period of abatement; and
 - (7) provision that Applicant shall annually furnish information necessary for Velasco Drainage District's evaluation of Applicant's compliance with the terms and conditions of the tax abatement agreement and these guidelines and criteria (in the form of an annual report/statement of compliance), together with an additional provision that Velasco Drainage District may, at its election, request and obtain information from Applicant as is necessary for the District's evaluation of Applicant's compliance with the terms and conditions of the tax abatement agreement and these guidelines and criteria. See Attachment A.
 - (8) provision that, upon expiration of the tax abatement agreement, Applicant shall begin annually reporting the status of the abated improvements regarding active service and operation as part of a facility operating in a producing capacity. Reporting will be for the same amount of years as the tax abatement period (*i.e.* seven year abatement, then follow-up reporting for seven more years). See Attachment B.
- (b) Such agreement shall be executed within sixty (60) days after the Applicant has forwarded all necessary information and documentation to Velasco Drainage District.
 - (c) The adoption of Guidelines and Criteria by the District does not:
 - (1) limit the discretion of the Board of Supervisors of the District to decide whether to enter into a specific tax abatement agreement;
 - (2) limit the discretion of the Board of Supervisors to delegate to its employees the authority to determine whether or not the Board of Supervisors should consider a particular application or request for tax abatement; or
 - (3) create any property, contract, or other legal right in any person to have the Board of Supervisors consider a grant a specific application or request for tax abatement.
 - (d) To the extent that these Guidelines and Criteria require or provide for any resolution by the Board of Supervisors of Velasco Drainage District, a written agreement approved by the Board of Supervisors in the same manner as a resolution and containing the matter for which a resolution is required shall satisfy the requirement of the resolution.

DEFAULT AND REMEDIES. Section 6

- (a) The following are events of default by an Applicant or party to a tax abatement agreement with Velasco Drainage District:
 - 1. Any violation of these Guidelines & Criteria;
 - 2. Any violation of a tax abatement agreement with Velasco Drainage District;
 - 3. Any failure to attain and maintain the levels of employment (including the projected creation or retention of employment) stated in the abatement application that is the subject of the abatement agreement;

4. Any failure to place the abated facility in active service and operation as part of a facility operating in a producing capacity or to keep it in such service continuously for twice the length of the abatement period provided by the agreement (for example, a seven year abatement period requires the Applicant to keep the abated facility in such continuous service and operation for fourteen years following the start of the abatement period);
 5. The failure to pay any ad valorem taxes when due to Brazoria County, a city creating the reinvestment zone in which the abated facility is located, or Velasco Drainage District; or
 6. The presentation of any false or misleading statement or information to the District concerning the abatement;
 7. The failure to provide any requested statement or information pursuant to the provisions described in section 5(a)(7) within sixty days of the request for information; and no sixty day cure period under the following subsection shall be added to the sixty days under this paragraph for providing the information, so that the party does not have 120 days total to provide the information.
- (b) Unless Velasco Drainage District determines in its sole discretion that notice of default and a cure period would for any reason be impracticable or might jeopardize any rights or remedies of the District, the District shall notify the defaulting party of the default, and the defaulting party shall have sixty days after such notice in which to cure the default, except to the extent that these Guidelines & Criteria or the tax abatement agreement provide that such notice or a cure period are not required.
- (c) If the defaulting party fails to cure within the cure period, or if no cure period is required, then Velasco Drainage District may exercise any or all of its remedies and rights upon default. These rights and remedies are cumulative of each other and of any other rights and remedies. Furthermore, the doctrine of election of remedies shall not apply against the District. The District's remedies upon default are as follows:
1. Declare a default;
 2. Terminate the abatement agreement;
 3. Recapture all or part of abated taxes for any years;
 4. Set specific terms and conditions for the continuation of the abatement and/or alter the amount or duration of the remaining term of the abatement;
 5. Recover all damages, losses, costs, attorneys' fees, costs of collection, costs of enforcement, and costs of litigation, all of any nature whatsoever, resulting wholly or partly, directly or indirectly, from the default, and such amounts shall be payable immediately upon the expiration of the cure period, if any, and if no cure period is required, then such amounts are payable immediately upon the default or upon demand by the District, whichever is earlier;
 6. Any and all other rights and remedies of any nature whatsoever of the District from any source whatsoever.
- (d) All rights and remedies of Velasco Drainage District under this Resolution or under any tax abatement agreement are cumulative of each other and of all other rights and remedies of the District from any source whatsoever. The doctrine of election of remedies shall not apply

against the District. By demanding, pursuing, or receiving any rights, remedies, or combination thereof, the District does not waive any other rights, remedies, or combination thereof.

- (e) If a party to an abatement agreement with Velasco Drainage District believes that the District is in violation of such agreement, then that party shall give the District written notice of the claimed violation, and the District shall have sixty days after such notice in which to cure the violation.

ADMINISTRATION. Section 7

- (a) The Chief Appraiser of the County shall annually determine an assessment of the real and personal property comprising the reinvestment zone. Each year, the company or individual receiving abatement shall furnish the assessor with such information as may be necessary for the abatement. Once value has been established, the Chief Appraiser shall notify the eligible jurisdictions which levies taxes on the amount of the assessment.
- (b) The agreement shall stipulate that TARC of Brazoria County and employees and designated representatives of Velasco Drainage District will have access to the reinvestment zone 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 a 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 their safety standards.
- (c) Tax Abatement Review Committee:

The Commissioners' Court shall appoint a standing Tax Abatement Review Committee (TARC) for purposes of (i) reviewing the tax abatement application and preparing the feasibility study report required by Section 3(d) of these guidelines; (ii) conducting annual inspections and/or evaluations of the abated facilities to insure compliance with the terms/conditions of the tax abatement agreement.
- (d) The Tax Abatement Review Committee shall be comprised of, but not limited to, a representative appointed by each Commissioners' Court member. The County Auditor, County Treasurer, District Attorney representative, and County Tax Assessor Collector shall serve as ex-officio members of the Committee to advise on abatement qualifications and procedures. The County Judge and the Commissioner of the Precinct in which a proposed abated facility will be located will serve on the Committee during the period when the Committee is preparing the feasibility study report and conducting the annual inspection and/or evaluation of the facility.
- (e) Upon completion of construction, the owner of an abated facility must submit a written report/statement of compliance annually during the life of the abatement to Velasco Drainage District clearly detailing the status of the facility and how it is complying with the abatement

guidelines. Velasco Drainage District may evaluate each abated facility at any time. A form of annual report that may be used by the owner is attached as Attachment A to these Guidelines & Criteria, and the owner's annual report shall, at a minimum, contain the information shown in the Attachment A form. However, Velasco Drainage District may choose to accept a copy of the annual report to Brazoria County, in place of a separate annual report to Velasco Drainage District, provided that the Applicant files a copy of the annual report to the County with Velasco Drainage District.

- (f) Upon expiration of the Tax Abatement term, the owner of the abated improvements must submit a written report/statement of compliance annually, beginning January 1 after the expiration of the tax abatement term, documenting that the abated improvements remain in active service and operation as part of a facility operating in a producing capacity for an additional period equal to the abatement period granted and completed (*i.e.* seven year abatement, then in producing capacity for an additional 7 years after expiration of the tax abatement agreement) in order to receive the full term of the abatement granted and not be subject to the term reduction and recapture/payment obligation provisions. The Report shall be delivered to the County Judge and to Velasco Drainage District. The Committee shall annually evaluate each abated facility and report possible violations to the contract and agreement to the Brazoria County Commissioners' Court. A form of annual report that may be used by the owner is attached as Attachment B to these Guidelines & Criteria, and the owner's annual report shall, at a minimum, contain the information shown in the Attachment B form. However, Velasco Drainage District may choose to accept a copy of the annual report to Brazoria County, in place of a separate annual report to Velasco Drainage District, provided that the Applicant files a copy of the annual report to the County with Velasco Drainage District.
- (g) The County shall timely file with the Texas Department of Commerce and the Property Tax Division of the State Comptroller's office all information required by the Tax Code.

ASSIGNMENT. Section 8

Abatement may be transferred and assigned by the holder to a new owner or lessee of the same facility upon the approval by resolution of Velasco Drainage District 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 Velasco Drainage District. No assignment or transfer shall be approved if the new parties to the existing agreement, the new owner or new lessee are liable to Velasco Drainage District, Brazoria County, or any eligible jurisdiction for delinquent taxes or other obligations. Approval shall not be unreasonably withheld.

PROVISIONS REGARDING CITY-INITIATED ABATEMENTS. Section 9

- (a) This section is applicable to tax abatement applications for property located in a reinvestment zone designated by a City or other qualified governmental entity other than the County and applications by Applicants who have previously entered into a tax abatement agreement with such other entity regarding that property.

- (b) All provisions of these Guidelines & Criteria are applicable to City-initiated reinvestment zones and abated areas within a City's territorial limits unless otherwise stated herein or provided by law. In a City-initiated reinvestment zone, all provisions of these Guidelines & Criteria concerning the County or any officer or agency of the County (other than the Brazoria County Appraisal District) shall instead be deemed to refer to the City or its corresponding officer or agency. Without limiting the generality of the foregoing, the Applicant must comply with all provisions of these Guidelines & Criteria in a city-initiated reinvestment zone, but anything the Applicant must report to the County must be reported to the City instead, and any authority of the County (other than the Brazoria County Appraisal District) shall be held by the City instead. In the event of any uncertainty concerning the application or scope of this paragraph, the terms of the abatement agreement between Velasco Drainage District and the Applicant shall govern and control.
- (c) The percentage of property value abated and the term of abatement shall be the same as that stated in the City's tax abatement agreement unless otherwise specifically ordered in the Velasco Drainage District action granting abatement or stated in the District's abatement agreement.
- (d) For convenience of reference, this Section sometimes refers to such abatements and reinvestment zones as "City-initiated" or similar words, but such phrases also include reinvestment zones created by a school district or other qualified governmental entity other than the County.

SUNSET PROVISION. Section 10

- (a) These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two years, at which time all reinvestment zones and tax abatement contracts created pursuant to its provisions may be reviewed by Velasco Drainage District to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria will be modified, renewed or eliminated, provided that such actions shall not affect existing contracts or applications for tax abatement filed prior to the expiration of said Guidelines and Criteria. Applications for abatement filed prior to the expiration of the Guidelines and Criteria shall be governed by the provisions of these Guidelines and Criteria regardless of any subsequent modification or amendment.
- (b) This policy is mutually exclusive of existing Industrial District Contracts and owners of real property in areas deserving of special attention as agreed by the eligible jurisdictions.
- (b) These guidelines and policies for Tax Abatement shall be effective on the Effective Date herein stated, and shall remain in force through the Expiration Date herein stated, unless amended, superseded, modified, renewed, or eliminated by Velasco Drainage District prior to that date, which requires a three-fourths vote of the District's Board of Supervisors.
- (c)

EFFECTIVE DATE: 10-18-2022

EXPIRATION DATE: 10-18-2024

RESOLVED on the Effective Date herein stated by the Board of Supervisors of Velasco Drainage District, duly assembled.

VELASCO DRAINAGE DISTRICT

By: 

F. Robert Hamlet, Chairman

ATTEST:



Stuart Herbst, Secretary

ATTACHMENT

A

TO THE VELASCO DRAINAGE DISTRICT GUIDELINES & CRITERIA FOR
GRANTING TAX ABATEMENT

ANNUAL REPORT FORM

ANNUAL REPORT
PURSUANT TO SECTION 5(a)(7) AND 7(e) OF
THE VELASCO DRAINAGE DISTRICT GUIDELINES &
CRITERIA ON TAX ABATEMENT

RE: TAX ABATEMENT AGREEMENT

_____ (Company/Owner Name)

REINVESTMENT ZONE (RZ) NO. _____ (Number of RZ, if applicable)

1. Commencement and/or completion date of the contemplated improvements described in the tax abatement agreement.

Date of commencement of construction: _____

Date of completion all contemplated improvements: _____

2. Number of permanent employees, contract employees and temporary contract employees currently employed by you at the tax abated facility location or construction site as of the date of this Report. (See definitions below).

Permanent Employees: _____

* Permanent Contract Employees _____

(* List contract employees employed on a full-time, 40 hours per week equivalency basis and who are expected to be employed on a full-time basis for the duration of the abatement period. Do not include temporary contract employees.)

**Temporary Contract Employees _____

(**List temporary contract employees who are employed for a temporary period ending prior to expiration of the tax abatement term)

3. Status of construction of the contemplated improvements, percentage of construction completed and Owner's estimate of taxable value of constructed improvements on the date of the Report.

Percentage of construction completed: _____

Estimated value of Improvements: _____

As of _____

4. Status of production of the completed facility and the productive service capacity of the improvements. *(only applicable to a completed facility that has previously commenced production)*

Is the abated facility currently producing the product or similar product described in the tax abatement agreement?

Check One
 Yes or No

If the answer to the above question is "No", _____ please state the date or time period when production ceased and attach a narrative explanation of the reason for cessation of production as Attachment B.

If production at this abated facility is _____ shut down please state the expected date or time period, if any, at which/during which you expect the facility to resume production operations. If you do not expect to resume production at this abated facility, please state "plant closed" in the blank space.

State your estimate of the expected _____ productive life of the abated facility and its improvements as measured from the beginning date of production until the expected permanent cessation of production (*or in other words*, the total number of years, if any, that you expect the abated facility improvements to be in service as part of the operations of a producing facility, including in your total any previous years of production prior to the date of this report.)

5. Include a narrative of your use of Brazoria County vendors and services and attach the same as Attachment A to this Report.

Is the narrative on use of Brazoria County vendors and Services attached?

Check One
 Yes or No

To the best of my knowledge, the above information and estimates are true and correct.

Owner: _____

By: _____

Printed Name: _____

Title/Position _____

Date: _____

ATTACHMENT B

TO THE VELASCO DRAINAGE DISTRICT GUIDELINES & CRITERIA FOR
GRANTING TAX ABATEMENT

ANNUAL REPORT FORM
After the initial term of the
Tax Abatement Agreement

PRODUCTIVE LIFE REPORT
TAX ABATEMENT TERM COMPLETED
PURSUANT TO SECTION 5(a)(8) AND 7(f) OF
THE VELASCO DRAINAGE DISTRICT GUIDELINES &
CRITERIA ON TAX ABATEMENT

RE: TAX ABATEMENT AGREEMENT

_____ (Company/Owner Name)

REINVESTMENT ZONE (RZ) NO. _____ (Number of RZ, if applicable)

Effective Date of Tax Abatement: _____

1. Status of production of the completed facility and the productive service capacity of the improvements.

Is the abated facility currently producing the product **Check One**
or similar product described in the tax abatement agreement? () Yes or () No

If the answer to the above question is "No", _____
please state the date or time period when production ceased
and attach a narrative explanation of the reason for cessation
of production as Attachment A.

If production at this abated facility is _____
shut down, please state the expected
date or time period, if any, at which/during which
you expect the facility to resume production operations.
If you do not expect to resume production at this
abated facility, please state "plant closed" in
the blank space.

State your estimate of the expected _____
productive life of the abated facility and its improvements as
measured from the beginning date of production until the expected
permanent cessation of production (*or in other words*, the total number
of years, if any, that you expect the abated facility improvements to be
in service as part of the operations of a producing facility, including
in your total any previous years of production prior to the date of this report.)
To the best of my knowledge, the above information and estimates are true and correct.

Owner: _____

By: _____

Printed Name: _____

Title/Position _____

Date: _____