

**RESOLUTION NO. 2020-03**

**A RESOLUTION OF THE COUNTY OF ORANGE, TEXAS ESTABLISHING, AND RENEWING THE GUIDELINES AND CRITERIA FOR TAX ABATEMENT AGREEMENTS FOR USE IN THE COUNTY'S TAX ABATEMENT PROGRAM TO PROMOTE DEVELOPMENT AND/OR REDEVELOPMENT IN CERTAIN AREAS OF THE COUNTY; FINDING THAT THE MEETING COMPLIES WITH THE OPEN METINGS ACT**

**WHEREAS**, the County of Orange, Texas (the "County") desires to promote and encourage the continued development and establishment of economic growth within the County;

**WHEREAS**, the County is authorized to enter into Tax Abatement Agreements as authorized by Chapter 312 of the Texas Property Code (the "Code");

**WHEREAS**, the County previously passed a resolution stating that the County elects to become eligible to participate in tax abatements;

**WHEREAS**, the County desires to participate in tax abatement for creation, retention and diversification of job opportunities in the County, new construction and for the expansion or modernization of buildings and structures, tangible personal property as defined by the Code, including fixed machinery and equipment, which is likely to contribute to the retention or expansion of primary employment or to attract major investment in the reinvestment or enterprise zones that will be a benefit to the County and will contribute to the economic development within the County;

**WHEREAS**, the Code requires the County to establish guidelines and criteria for tax abatement agreements and for the designation of reinvestment zones, which will be effective for two (2) years;

**WHEREAS**, Commissioners Court of the County established and renewed the guidelines and criteria for tax abatement agreements and for the designation of reinvestment zones attached hereto as Exhibit "A", entitled "**ORANGE COUNTY UNIFORM TAX ABATEMENT POLICY-2020**" (the "Guidelines and Criteria") at its Special Session held on November 24, 2020;

**WHEREAS**, Commissioners Court of the County affirmatively finds that the Guidelines and Criteria are in the best interests of the County, are for the good and will benefit the public, are for a valid governmental purpose and will serve as an economic development tool of the County.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY:**

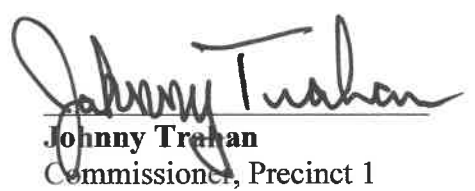
1. **Adoption of Recitals.** The County finds that the recitals set forth above are incorporated herein for all purposes and are found to be true and correct.

2. **Guidelines and Criteria Established and Renewed.** The County hereby establishes and renews the guidelines and criteria for tax abatement agreements and for the designation of reinvestment zones attached hereto as Exhibit "A", entitled "**ORANGE COUNTY UNIFORM TAX ABATEMENT POLICY-2020**".
3. It is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place and purpose of said meeting was given as required by law.
4. **Effective Date.** This Resolution shall take effect immediately upon its passage

**PASSED, APPROVED and ADOPTED**, this the 24th day of November, 2020, at a Special Session of the Commissioners Court of Orange County, Texas.



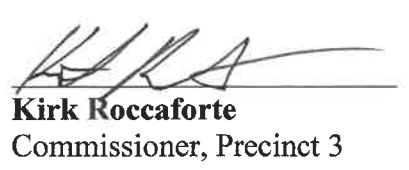
**John Gothia**  
Orange County Judge



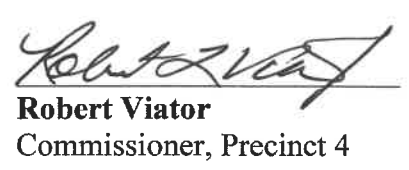
**Johnny Trahan**  
Commissioner, Precinct 1



**Theresa Beauchamp**  
Commissioner, Precinct 2

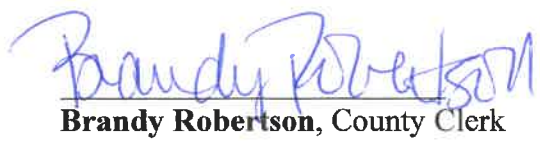


**Kirk Roccaforte**  
Commissioner, Precinct 3



**Robert Viator**  
Commissioner, Precinct 4

ATTEST:



**Brandy Robertson**, County Clerk

# ORANGE COUNTY UNIFORM COMMERCIAL TAX ABATEMENT POLICY- 2020

## SPECIAL PROVISION OF THE ORANGE COUNTY APPRAISAL DISTRICT

The final determination of value to be abated is vested with the Orange County Appraisal District (OCAD), an agency autonomous from the Orange County. The Procedures used by OCAD are attached as Exhibit "A" and incorporated and adopted in this Abatement Policy for all purposes. These provisions are illustrative only and shall not limit OCAD in making determinations in any manner otherwise allowed by law, as applicable.

Businesses and individuals receiving an abatement must apply annually to the OCAD for recognition of the abatement agreement. Further, businesses applying for tax abatement with Orange County are advised that any agreement with Orange County applies only to taxes assessed by Orange County and not other local taxing entities. Any abatement agreement with other taxing entities must be negotiated and agreed directly with such taxing entities.

## STATEMENT OF PURPOSE SECTION I

- (a) Orange County adopted this tax abatement policy to provide incentives to the owner of real property who proposes a project to develop, redevelop or improve eligible facilities. The incentives will consist of a limited special exemption from certain taxes provided that the Owner agrees to accept and abide by this Policy and provided that the real property is located in a lawfully created Reinvestment or Enterprise Zone.
- (b) This policy is intended to improve the quality of life in economically depressed areas in Orange County by stimulating development, and job creation and retention, provided that the taxable value of the property of the owner is not adversely affected.

## DEFINITIONS SECTION II

- (a) "**Abatement**" means the full or partial exemption from ad valorem taxes of certain real property values and/or tangible personal property values in a reinvestment or enterprise zone designated by Orange County for economic development purposes.
- (b) "**Agreement**" means a contractual agreement between a property owner and/or lessee and Orange County.
- (c) "**Base Year**" means the calendar year in which the abatement contract is executed (signed).
- (d) "**Base Year Value**" means the assessed value of eligible industrial realty improvements of the owner within Orange County on January 1 preceding the execution of the abatement agreement and which property is owned by the owner, co-owner, its parent companies, subsidiaries, partner or joint ventures, or any entity exercising legal control over the owner or subject to control by the owner. Owner will attach as Exhibit

“B” those properties which are co-owned or which are parent companies, partnerships, joint ventures or other entities in Orange County over which the owner exercises control.

e) “**Bulk Buys**” include but are not limited to material which is purchased in the early phase of the project. This material includes commodity and special order items that may have long lead times due to fabrication timeframe or by the significant size of the order(s). Orange County recognizes “Bulk Buys” historically represent a significant percentage of the material purchase for a project.

(f) “**Deferred Maintenance**” means improvements necessary for continued operation which that do not improve productivity, or alter the process technology, reduce pollution or conserve resources.

(g) “**Distribution Center**” means buildings and structures, including fixed machinery and equipment, used or to be used primarily to receive, store, service or distribute goods or materials owned by the Facility operator where a majority of the goods or services are distributed to points beyond Orange County.

(h) “**Eligible Facilities**” or “**Eligible Projects**” means new, expanded or modernized improvements as defined in the Texas Property Tax Code (and not otherwise excluded hereunder), including buildings, facilities, structures, fixed machinery and equipment, which is reasonably likely as a result of granting abatement to contribute to the retention or expansion of primary employment or to attract major investment in the reinvestment or enterprise zone that would be a benefit to the property and that would contribute to the economic development within Orange County, Eligible facilities may include, but shall not be limited to, industrial buildings and facilities, distribution centers and warehouses. Eligible facilities may also include facilities designed to serve a regional population greater than Orange County for medical, scientific, recreational or other purposes.

(i) “**Eligible Property**” means realty improvements, the on-site buildings, structures, fixed machinery and equipment, storage tanks, process units including all integral components, site improvements, and infrastructure included in the project, and the permanent office space and related fixed improvement necessary to the operation and administration of the project, as defined in the Tax Code, but does not include personal property.

(j) “**Expansion**” means the addition of buildings, structures, machinery, tangible personal property, equipment or payroll for purposes of increasing production capacity.

(k) “**Field Buys**” include but are not limited to the procurement of material that is conducted by the project procurement team which is typically located on site throughout the duration of the project.

(j) “**Facility**” means property improvements completed or in the process of construction which together comprise an integral whole.

(k) “**Modernization**” means a complete or partial demolition of facilities and the complete or partial reconstruction or installation of a facility of similar or expanded production capacity. Modernization may result from the construction, alteration, or installation of buildings, structures, machinery, equipment, pollution control devices or resource

conversation equipment. Modernization shall include improvements for the purpose of increasing productivity or updating the technology of machinery and equipment, or both.

(l) "**New Facility**" means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion or Modernization.

(m) "**Productive Life**" means the number of years a property improvement is expected to be in service in a facility.

### **ABATEMENT AUTHORIZED SECTION III**

(a) **Eligible Facilities.** Upon application, Eligible Facilities shall be considered for tax abatement as hereinafter provided.

(b) **Creation of New Value.** Abatement may only be granted for the creation of additional value of eligible facilities made subsequent to and specified in an abatement agreement between Orange County and the property owner or lessee, subject to such limitations as Orange County may require. Orange County will not consider an abatement once construction on a facility or project has begun. Due diligence will not be considered construction.

(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 increase in value of buildings, structures, fixed machinery and equipment, site improvements, and related fixed improvements necessary to the operation and administration of the facility.

(e) **Ineligible Property.** The following types of property shall be fully taxable and ineligible for tax abatement: land, supplies, inventory, vehicles, vessels, housing, improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion, any improvements, including those to produce, store or distribute natural gas, fluids or gases, which are not integral to the operation of the facility, deferred maintenance, property to be rented or leased (except as provided in Section III(f)), property which has a productive life of less than ten years, or any other property for which abatement is not allowed by state law.

(f) **Owned/Leased Facilities.** If a leased facility is granted abatement, the agreement shall be executed with the owner/lessor and the lessee.

(g) **Economic Qualification.** In order for an Eligible Facility to receive tax abatement the planned improvement:

(1) Must create an increased appraised ad valorem tax value based upon OCAD's assessment of the eligible property; and

(2) Must prevent the loss of payroll or retain, increase or create

Payroll (full-time employment) on a permanent basis in Orange County at the average County wage by industry

(3) Must not have the effect of displacing workers or transferring employment from one part of Orange County to another unless necessary to retain the business in Orange County but not at an economic loss

(4) Must demonstrate by an independent economic impact analysis that the local economic benefit will be in excess of the amount of anticipated foregone tax revenues resulting from the abatement.

**(h) Standards For Tax Abatement.** The following non-exclusive factors, among others, shall be considered in determining whether to grant tax abatements for an Eligible Facility or Eligible Project, and if so, the percentage of value to be abated and the duration of the tax abatement:

(1) Existing improvements, if any;

(2) Type and value of proposed improvements;

(3) Productive life of proposed improvements;

(4) Number of existing jobs to be retained by proposed improvements;

(5) Number and types of new jobs to be created by proposed improvements;

(6) The extent to which new jobs to be created will be filled by persons who are economically disadvantaged, including residents of a Reinvestment or Enterprise Zone;

(7) The extent to which local labor or local subcontractors will be used in the construction phase of the project;

(8) Amount of local taxes to be generated directly. In this regard, it is understood that purchases for the project will be invoiced locally that Orange County will be credited with sales taxes for purchases. Owner will make every reasonable effort to enter into a separate contract as defined in 34 Texas Administrative Code 3.291 (a) (13) with an EPC contractor for the construction of the new facility to be located in Orange County.

Owner will obtain a Texas Direct Payment Permit (DPP) and issue a DPP exemption certificate in lieu of sales tax to EPC. Owner will remit use taxes on taxable purchases made for use in the project directly to the State of Texas on its monthly Texas Direct Payment Return for both State and County taxes at the applicable rates. The State of Texas collects Limited, Sales, Excise and Use Taxes for both the state and local tax jurisdictions. The state is responsible for distributing the local taxes it collected to the applicable local jurisdiction.

(9) Amount the property tax base valuation will be increased during term of abatement and after abatement;

- (10) Amount of economic impact the Eligible Facility will provide to the local community;
- (11) The costs to be incurred by Orange County to provide facilities or services directly resulting from the new improvements;
- (12) The amount of ad valorem taxes to be paid to Orange County during the abatement period considering (a) the existing values; (b) the percentage of new value abated; (c) the abatement period; and (d) the value after expiration of the abatement period;
- (13) The population growth of Orange County projected to occur directly as a result of new improvements;
- (14) The types and values of public improvements, if any, to be made by applicant seeking abatement;
- (15) Whether the proposed improvements compete with existing businesses to the detriment of the local economy;
- (16) The impact of the proposed project on the business opportunities of existing businesses;
- (17) The attraction of other new businesses to the area as a result of the project;
- (18) The overall compatibility with the zoning ordinances and comprehensive plan for the area;
- (19) Whether the project is environmentally compatible with no negative impact on quality of life perceptions;
- (20) The extent to which local vendors and suppliers will be used in the construction phase of the project.

Each application for tax abatement shall be reviewed on its merits utilizing the factors provided above. After such review, abatement may be denied entirely or may be granted to the extent deemed appropriate after full evaluation.

**(i) Local Employment.** For purposes of evaluating Section III(h)(7), Local labor is defined as those laborers or skilled craftsmen who reside in a seven county region comprised of Jefferson, Orange, Hardin, Jasper, Newton, , Tyler and Chambers counties. Local vendors and suppliers shall include only those located or having a principal office in Orange County. Local Subcontractors shall include only those located or having a principal office in Orange County.

Each recipient of property tax abatement shall additionally agree to give preference and priority to local manufacturers, suppliers, vendors, contractors except where not reasonably possible to do so without significant added expenses, substantial inconvenience, or sacrifice in operating efficiency. In any such exception, cases involving purchases over \$250,000, as a total spend, or single transaction by a vendor,

supplier or manufacturer, a justification for such purchase shall be included in the quarterly report during construction, and annual report during the term of the agreement. Additionally, an all spends report will be required quarterly during construction and annually during the term of the agreement.

Local labor should account for 50% of the hiring during construction and throughout the term of the agreement except where not reasonably possible to do so without significant added expenses, substantial inconvenience, or sacrifice in operating efficiency. In any such exception, cases involving local hiring of less than 50%, a justification for such shall be included in the quarterly report during construction and in the annual report during the term of the agreement. Each recipient shall acknowledge that it is a legal and moral obligation of persons receiving property tax abatement to favor local manufacturers, suppliers, contractors and labor, all other factors being equal. In the event of breach of the "buy-local" provision, the percentage of abatement shall be proportionately reduced in an amount equal to the amount the disqualified contract bears to the total construction cost for the project.

Each recipient of a property tax abatement must also provide bidding information to local suppliers, contractors, manufacturers and labor to allow them to have sufficient information and time to submit their bids and pre-bid meetings must be held between the owner and potential local bidders and suppliers of services and materials. In this regard, each recipient of an abatement will provide sufficient notice and information regarding the project to qualified contractors and suppliers to enable them to submit bids in the early procurement processes for materials, including but not limited to Bulk Buys.

**(k) Historically Underutilized Businesses/Disadvantaged Business Enterprises.**

Orange County will also strongly consider the extent to which the project will encourage and promote the utilization of Historically Underutilized Businesses (HUBs) (also known as Disadvantaged Business Enterprises, or DBEs) by the owner and general contractor by ensuring that qualified HUB vendors and contractors are given an opportunity to bid on all contracts.

1. A Historically Underutilized Business (HUB) is a business owned or controlled by Socially and Economically Disadvantaged Individuals as defined by all applicable federal or state laws and local policies, including Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, women and individuals who actively participate in the conduct of the business or, in the case of a publicly owned business, one in which at least 51 percent of the stock is controlled by one or more women or Socially and Economically Disadvantaged Individuals. A business that has been certified as a HUB/DBE by an agency of the federal government or the State of Texas is presumed to be a HUB/DBE for purposes of this policy. Only a HUB/DBE with its principal office in Jefferson, Hardin and Orange County will be recognized as a HUB/DE for purposes of this policy. Orange County will supply a Minority Business Directory to each applicant.
2. Orange County will require that each abatement contract between itself and any individual or entity seeking the abatement of ad valorem taxes contain a provision requiring the owner, on at least a quarterly basis, and at owner's cost, to allow the full examination by Orange County or its designated representative(s) of all documents necessary for Orange County to assure that



best efforts have been used by owner to utilize local labor, subcontractors, vendors, suppliers and HUBs/DBEs. Orange County will also require that such contracts contain provisions binding the engineering/construction firms utilized as general contractors on the project to the terms of the abatement contract.

(l) **Denial of Abatement.** Neither a reinvestment or enterprise zone nor abatement agreement shall be authorized if it is determined that:

- (1) There would be a substantial adverse effect 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 a substantial hazard to public safety, health or morals;
- (4) The project would cause a violation of state or federal laws; or
- (5) Any other reason deemed appropriate by Orange County, including the pendency of litigation between the individual or entity requesting the creation of the reinvestment or enterprise zone and Orange County, or any other Orange County authority.

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

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

#### **APPLICATION SECTION IV**

(a) Any present, potential owner, or Lessee of taxable property in Orange County may request the creation of a reinvestment or enterprise zone and tax abatement by filing a written request with the County Judge of Orange County.

(b) The application shall consist of a completed application form which shall provide detailed information on the items described in Section III(h) hereof; a map and property description with specific metes and bounds; a time schedule for undertaking and completing the planned improvements. In the case of modernization, a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The application form may require such financial and other information as may be deemed appropriate for evaluating the financial capacity and other factors of the applicant. The County may also require a non-refundable application fee in the amount of \$1,000.00 to be submitted with the application, in accordance with Article IX.

(c) Prior to the adoption of an ordinance order designating a reinvestment zone or application by Orange County for designation of an enterprise zone, Orange County shall: (1) give written notice to the presiding officer of the governing body of each taxing unit in which the property to be subject to the agreement is located not later than the seventh (7<sup>th</sup>) day before the public hearing; and (2) publish notice of a public hearing in a newspaper of general circulation within such taxing jurisdiction not later than the seventh

(7<sup>th</sup>) day before the public hearing. Before acting upon the designation, Orange County shall, through public hearing, afford the applicant and the designated representative of any governing body referenced hereinabove opportunity to show cause why the zone should or should not be designated.

(d) Once a reinvestment zone is designated, Orange County may enter into a tax abatement agreement with the property owners for a period not to exceed 10 years as set forth in Sections 312.204 and 312.402, Tax Code. Prior to approval of a tax abatement agreement, Orange County must provide at least 30 days public notice of the meeting in which the agreement will be discussed. The notice should be given in the manner prescribed by the Open Meetings Act. Among other requirements, the notice must contain: 1) the property owner's name and the applicant's name in the agreement; 2) the name and location of the reinvestment zone subject to the agreement; 3) a general description of the nature of the improvements or repairs in the agreement and 4) the estimated cost of the improvements or repairs.

By an affirmative majority vote, the governing body may approve a tax abatement agreement upon finding that the agreement terms and property meet the applicable guidelines and criteria governing tax abatement agreements.

(e) Orange County shall make every reasonable effort to either approve or disapprove the application for tax abatement within sixty (60) days after receipt of the fully completed and compliant application. Orange County shall notify the applicant of approval or disapproval.

(f) Orange County shall not establish a reinvestment or enterprise zone or enter into an abatement agreement if it finds that the request for the abatement was filed after the commencement of construction, alteration, or installation or improvements related to a proposed modernization, expansion or new facility.

(g) Information that is provided to Orange County in connection with an application or request for tax abatement and that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property for which a tax abatement agreement is requested is confidential and not subject to public disclosure pursuant to the Texas Public Information Act until the tax abatement agreement is executed. That information in the possession of a taxing unit after the agreement is executed is not confidential and is subject to disclosure.

#### **AGREEMENT SECTION V**

(a) Not later than the seventh (7<sup>th</sup>) day before the date on which Orange County enters into the abatement agreement, the County shall deliver to the presiding officer of the governing body of each other taxing unit in which the property is located a written notice that the County intends to enter into the agreement. The notice shall include a copy of the prepared agreement.

(b) After approval, Orange County shall formally pass a resolution and execute an agreement with the owner of the facility and lessee as required which shall include at least the following terms:

- (1) Estimated value to be abated and the base year value;
- (2) Percent of value to be abated each year as provided in Section III;
- (3) The commencement date and the termination date of abatement;
- (4) The proposed use of the facility, nature of construction, time schedule, map, property description and improvement list as provided in application, Section IV(b);
- (5) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, or assignment;
- (6) Provision for access to and authorization for inspection of the property by Orange County employees to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement;
- (7) Limitations on the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect;
- (8) Provision for recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement;
- (9) Provision that each permanent job be registered with the Texas Workforce Commission and that all contractors shall give preference to, and seek qualified workers through, the Texas Workforce Commission and in accordance with the local labor and local vendor provisions.
- (10) Contain each and every term agreed to by the owner of the property;
- (11) Requirement that the owner or lessee of the property certify annually to the governing body of each taxing unit that the owner or lessee is in compliance with each applicable term of the agreement; and
- (12) All terms required by Texas Tax Code §312.205, as amended; Such agreement shall normally be executed within sixty (60) days after the applicant has forwarded all necessary information and documentation to Orange County

#### **RECAPTURE SECTION VI**

(a) In the event that the company or individual (1) allows its ad valorem taxes owed to Orange County to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest; or (2) violates any of the terms and conditions of the abatement agreement; and fails to cure during the cure period, or discontinues production, the agreement then may be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within thirty (30) days of the termination.

(b) Should Orange County determine that the company or individual is in default according to the terms and conditions of its agreement, the County shall notify the company or individual of such default in writing at the address stated in the agreement; and if such is not cured within thirty (30) days from the date of such notice ("Cure Period"), then the agreement may be terminated. Alternatively, the County may, as a penalty for default or non-compliance with the provisions of an abatement contract, reduce the term of the abatement period and/or the annual percentage abatements available thereunder. The County may also terminate the agreement or, in the County's sole discretion, reduce the duration or annual percentages of such abatement.

(e) Payment in Lieu of Taxes: If, during the period of the abatement, any Federal or State law provides an additional tax exemption for the property that is already the subject of this agreement, Applicant agrees to decline that tax exemption during the period of this abatement. If Applicant is unable to decline the tax exemption, Applicant agrees to pay the taxes, or payment in lieu of taxes, on the reduction of property tax revenue to the County that is in the result of said exemption. Any payment in lieu of taxes shall be due on or before November 15 of the year in which payment is due.

(f) By this, it is understood and agreed that if the party granted this abatement avails itself of a Foreign Trade Zone exemption, the abated value subject to this contract will be reduced dollar for dollar and taxed.

(g) It is specifically understood and agreed by the owner that, if at any time during the effective dates of an agreement relating to abatement, the owner files or prosecutes an action to contest the appraised value of any property of the owner or owner's affiliates within Orange County for unequal appraisal or revision thereof pursuant to Sec. 42.26, Texas Tax Code, any and all abatements granted by Orange County to the owner or its affiliates shall become null and void and cancelled.

#### **ADMINISTRATION SECTION VII**

(a) The Chief Appraiser of OCAD will annually determine an assessment of all property subject to each abatement agreement. Each year, the company or individual receiving abatement shall furnish the appraiser with such information as may be necessary to determine compliance with the abatement agreement. Once value has been established, the Chief Appraiser will notify the County of the amount of the assessment.

(b) The abatement agreement shall stipulate that employees and/or designated representatives of Orange County will have access to the facility during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. Inspections will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representative of the company or individual and in accordance with its safety standards.

(c) Upon completion of construction, the designated representative of Orange County shall annually evaluate each facility receiving abatement to insure compliance with the agreement, and a formal report shall be made to the County

- (d) The Chief Appraiser of OCAD shall timely file with the Texas Department of Economic Development and the State Property Tax Board all information required by the Tax Code.
- (e) During the course of construction of the project, the owner, lessee and its general contractor and/or subcontracts shall, on at least a quarterly basis, meet with designated representatives of Orange County for an onsite inspection to assure compliance with the terms of the abatement agreement. The owner or lessee shall be responsible to Orange County for the payment of costs associated with such monitoring.
- (f) In the event it is determined that the owner, lessee or its contractors have failed to comply with the terms of the abatement agreement, then the County may terminate the abatement agreement or, in the County's sole discretion, reduce the duration or annual percentages of such abatement.
- (g) During construction, the applicant shall maintain appropriate records of the employees affected by this agreement, including but not limited to, proof of employees' legal residence, proof of immigration-resident status, and, if applicable, such other documentation that may be required to document compliance with the agreement.
- (h) All requirement of the abatement agreement shall apply to applicant's contractors/subcontractors and applicant shall ensure that they abide by the terms of the agreement.

#### **AGREEMENT SECTION VIII**

Abatement may be transferred and assigned in whole or in part by the holder to a new owner or lessee of the same facility upon the approval by resolution of the Commissioners' Court; subject to the financial capacity of the assignee and provided that all conditions and obligations in the abatement agreement are assumed. No assignment or transfer shall be approved if the parties to the existing agreement, the new owner or new lessee are liable to any jurisdiction for outstanding taxes or other obligations. Approval shall not be unreasonably withheld. As a condition of transfer, an assignment fee of \$10,000.00 may be required, with the maximum fee being \$10,000.00

#### **APPLICATION FEE SECTION IX**

Orange County may impose an application fee of up to One Thousand and No/100 Dollars (\$1,000. The fee is payable to the Orange County Economic Development Corporation). This fee will be due and payable at the time of application.

#### **SUNSET PROVISION ARTICLE X**

These guidelines and criteria are effective upon the date of their adoption and will remain in force for two years, unless amended by three-quarters of the Commissioners Court, at which time all reinvestment and enterprise zones and tax abatement agreements created pursuant to these provisions will be reviewed to determine whether the goals have been achieved. Based on that review, the guidelines and criteria may be modified, renewed or eliminated.

**DISCRETION OF THE TAXING JURISDICTION(S)  
SECTION XI**

The adoption of these guidelines and criteria by Orange County does not:

- (1) Limit the discretion of Orange County to decide whether to enter into a specific tax abatement agreement;
- (2) Limit the discretion of Orange County to delegate to its employees the authority to determine whether or not the County should consider a particular application or request for tax abatement; or
- (3) Create any property, contract, or other legal rights in any person to have Orange County consider or grant a specific application or request for tax abatement.

**QUESTIONS TO BE ANSWERED IN ORDER TO DEVELOP  
AN APPLICATION AND ECONOMIC IMPACT STATEMENT  
FOR VALUE ADDED TAX ABATEMENTS IN ORANGE COUNTY**

**General:**

Orange County will provide a representative to assist in preparation and presentation of all documents and to guide them through the abatement process.

**Opening Paragraph:**

The application should include a summary statement about the company and its operations. This information can come from an annual report, corporate 10K or other document provided by the company. (Please include these documents with this questionnaire.)

**Maps and Plats**

Provide maps, plats, and drawings necessary to establish the location of the improvements and their relationships to the boundaries of cities, ETJ's, and reinvestment or enterprise zone boundaries.

**Economic Impact Analysis**

The application must include the attachment of an independently prepared economic impact analysis of the proposed facility as it impacts the local economy detailing the information referred to in Section III herein.

**Questions to be Answered**

- (1) Is your project within a city limit? \_\_\_\_\_. Name of City \_\_\_\_\_
- (2) Is your project within an ETJ? \_\_\_\_\_. Name of City  
ETJ \_\_\_\_\_
- (3) Is your project within an Enterprise or Reinvestment Zone? \_\_\_\_ Which? \_\_\_\_\_
- (4) Will you own the realty or lease the realty? \_\_\_\_\_
- (5) Present Appraisal District value of land and any EXISTING improvements owned by the OWNER: \_\_\_\_\_  
(Answer this question based on Appraisal District records for the specific site you select.)  
Cost of Land (If you are purchasing): \$ \_\_\_\_\_  
Number of Acres: \_\_\_\_\_ or Square Feet: \_\_\_\_\_

(6) Type and value of proposed improvements (In this answer list the specific amount of investment that will be expended for the entire project for which you seek abatement) \_\_\_\_\_

Type of construction: \_\_\_\_\_  
(Tiltwall, Build-Out of Existing Facility, Etc.)

Value of Construction: \_\_\_\_\_

Value of Equipment: \_\_\_\_\_

Value of Pollution Control Devices. It is understood and agreed that Applicant will not seek a tax exemption for any equipment or portion of the facility which merely reduces the pollution characteristics of the finished produce produced by the facility and that an exemption will only be sought for equipment and technology utilized to reduce pollution at or around the facility.: \_\_\_\_\_

(7) Productive life of proposed improvements: \_\_\_\_\_ years, or term of initial lease: \_\_\_\_\_

(8) Number of existing jobs to be retained by proposed improvements: \_\_\_\_\_  
(Answer only if the location is already in or near Orange County and now employs Orange County residents.)

(9) Number and types of new jobs to be created by proposed improvements: \_\_\_\_\_

(10) Amount of Annual local payroll to be created: \_\_\_\_\_.

(11) What percentage and type of jobs to be created will local residents have the opportunity to fill? \_\_\_\_\_

(12) Amount property tax base valuation will be increased:  
During term of abatement: \_\_\_\_\_  
After term of abatement: \_\_\_\_\_

(13) The costs to be incurred by local government to provide facilities or services directly resulting from the new improvements: \_\_\_\_\_  
(Explain any costs for development or depletion of infrastructure the county or city is being asked to absorb, if any.)

(14) The amount of ad valorem taxes to be paid to the County during the abatement period considering: (a) the existing values; (b) the percentage of new value abated; (c) the abatement period; and (d) the value after expiration of the abatement period.

(15) The population growth of the county that will occur directly as a result of new improvements: \_\_\_\_\_



(If you relocate to Orange County, how many of your employees do you anticipate to relocate?)

(16) The types and values of public improvements, if any, to be made by applicant seeking abatement:

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(List any facilities from which the public might benefit.)

(17) Whether the proposed improvements compete with existing businesses to the detriment of the local economy:

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(18) The impact on the business opportunities of existing businesses:

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(Are there possibilities for local businesses to become suppliers? Any new retail opportunities? If you have previously conducted business within Orange County, please provide a list of any and all local/non-local HUB/DBE companies with whom you have worked and the extent of that work relationship)

(19) The attraction of other new businesses to the area:

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(Will any of your suppliers, customers, parent, or sister companies relocate because of your relocation?)

(20) The overall compatibility with the zoning ordinances and comprehensive plan for the area:

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(21) Describe, including the estimated value, all pollution control devices and other improvements for which you intend to seek TCEQ and/or TNRCC exemption from taxation:

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(22) Describe the methods/procedures you (and any procurement personnel) will use to provide bidding information to local contractors, manufacturers and labor to allow them to have sufficient information and time to submit their bids and attend pre-bid meetings to enable them to submit bids in all stages of the procurement process, including but not limited to "bulk buys".

**NOTE: Failure to accurately disclose exempted property may result in a total default under the Abatement Contract, resulting in recapture of previously abated taxes and forfeiture of future abatement.**

**(This section will need to be checked and approved by the Orange County Appraisal District)**

**EXHIBIT "A"**  
**ORANGE COUNTY APPRAISAL DISTRICT**  
**PROCEDURE FOR CALCULATING ABATEMENTS**

Purpose

The purpose of this procedure is to clarify the method used in calculating the tax abatement under the attached Contract. This requires calculation of the Current Market Value, Base Year Value, and Taxable Value as these terms are defined below. By deducting the abatable value from the current market Value the Taxable Value may be determined. However, in accordance with the Orange County Uniform Tax Abatement Policy, the Real Property Owner's Current Taxable Value shall not be less than the Base Year Value in order for a project to receive the full amount of abatement.

Calculation of "Current Market Value"

"Current Market Value" for each taxing entity executing an abatement agreement is determined by calculating that the Current Tax Year the Market Value of all industrial realty improvements of a property owner that comprise the "Base Year Value" for each taxing entity.

Calculation of "Base Year Value"

"Base Year Value" for each taxing entity executing an abatement agreement is the Taxable Value of all industrial realty improvements of a property owner and/or its affiliates located within that entity for the tax period defined as the "Base Year." "Base Year" is defined as the calendar year in which the abatement contract is executed (signed).

Calculation of "Taxable Value"

"Taxable Value" for each taxing entity is determined by deducting from the Market Value of all industrial realty improvements of a property owner and/or its affiliates the amount of any applicable exemptions or abatements granted for that Tax Year.

Calculation of Abated Value

The following procedures are followed for each project for which a tax abatement agreement has been executed and for each taxing entity granting the abatement.

The Base Year Value is subtracted from the Current Year Market Value. If the difference is greater than zero (0), then the remaining value is the value potentially eligible for

abatement. If the difference is zero (0) or less, then the project is not eligible for an abatement for that Tax Year..

### Value Available for Abatement

For each project that remains potentially eligible for abatement, a preliminary calculation of the abated value of all other projects for the owner and/or its affiliates, if any, must be made. This calculation must first be done based on a preliminary abated value for subsequent projects since the full calculation has yet to be performed. For multiple abated projects, the calculations of the preliminary abated values are made in chronological order based on the date the agreement was executed. Once the abated value for the subsequent project is calculated, if the actual abated value differs from the preliminary abated value, this calculation must be redone in order to reflect the actual abated value.

Once all calculations have been completed, the abated value of other projects for the owner and/or its affiliates, if any, is subtracted from the Value Potentially Available for Abatement. If the difference is greater than zero (0), then remaining value is the Value Available for Abatement.

If the difference is zero (0) or less, then the project is not eligible for an abatement for that Tax Year.

### Value Subject to Abatement

The project base value, if applicable, is subtracted from the current year project value, and the percentage of abatement to be granted is then applied to the net amount to determine the Value Subject to Abatement.

Abated Value:

Any applicable reductions or Foreign Trade Zone or Pollution Control restrictions are subtracted from the Value Subject to Abatement. If the difference is less than the Value Available for Abatement, then this is the Abated Value.

If the difference is greater than the Value Available for Abatement, then the Value Available for Abatement becomes the Abated Value.