

**2019-2020**  
**Guidelines and Criteria Governing Tax Abatement**  
**Agreements by North Central Texas College**



Adopted by Resolution of the Board of Regents of North Central Texas College on  
August 26, 2019

## 2019-2020

### North Central Texas College Tax Abatement Guidelines and Criteria (Guidelines and Criteria)

1. **Introduction.** These 2019-2020 Guidelines and Criteria Governing Tax Abatement Agreements by North Central Texas College (“NCTC” or the “College”) to support the College’s priority of utilizing planning and implementing policies and incentives to attract, retain, and expand industries, increase employment and wages, expand the tax base, and create new wealth opportunities in the community. Planning and implementing policies and incentives are critical goals towards achieving the growth, sustainability, and diversity of a regional economy. The abatement of property taxes takes into consideration various project criteria when determining whether to grant abatement and the amount to be abated. The College is authorized to abate property taxes in accordance with the Property Redevelopment and Tax Abatement Act.

This same statute requires the College to develop and review its guidelines at least every two years for the eligibility and award of tax abatement. These guidelines have been reviewed to help ensure that any abatement of property taxes achieves the College’s economic development goals. The NCTC Board of Regents (“Board”) remains committed to fully evaluating the merits and benefits of each application for tax abatement and retains full discretion on whether or not and to what extent to grant the abatement of ad valorem taxes for any given project.

2. **Resolution/Authority.** These 2019-2020 Guidelines and Criteria Governing Tax Abatement Agreements by the College (“Guidelines and Criteria”) are attached to and made a part of the Resolution of the NCTC Board on September 23, 2019, adopting the Guidelines and Criteria. The Board is authorized to adopt and amend guidelines and criteria governing tax abatement agreements in accordance with the Property Redevelopment and Tax Abatement Act, which is codified as Chapter 312 of the Texas Tax Code. In accordance with requirements of the Property Redevelopment and Tax Abatement Act, the Board, by resolution, has elected to become eligible to participate in tax abatement and to that end has adopted guidelines and criteria governing tax abatement agreements and amended the guidelines and criteria.
3. **Effective Period – Sunset Provision.** These Guidelines and Criteria are and shall be effective on September 1, 2019 through August 31, 2021, unless repealed or further amended during the interim period by action of the NCTC Board.
4. **Amendment or Repeal (super-majority required).** Pursuant to Tex. Tax Code § 312.002(c), these Guidelines and Criteria may be amended or repealed only by a vote of, at minimum, three-fourths

of the members of the governing body of the College. Thus, any repeal or amendment to these Guidelines and Criteria shall require a vote of no less than five (5) members of the Board (a “super-majority”).

5. **No property right created/discretion retained.** The adoption of these Guidelines and Criteria does not limit the discretion of the College to decide whether to enter into a specific tax abatement agreement; does not limit the discretion of the College to delegate to its employee(s) the authority to determine whether or not the College should consider a particular application or request for tax abatement; does not limit the discretion of the College to determine the proportion of value to be abated; and does not create any property, contract, or other legal rights in any person to have the College consider or grant a specific application or request for tax abatement.
6. **Definitions.** The following words and terms, when used in these Guidelines and Criteria shall have the meanings set forth below unless the context *clearly* indicates otherwise:
  - a. **Abatement** means the full or partial exemption from ad valorem taxes of certain real property in a reinvestment zone designated 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 an Agreement is exempt from taxation.
  - c. **Affected jurisdiction** means the North Central Texas Community College District (“College District”), and every other taxing unit within the College District that includes within its boundaries real property that is to be included in a proposed or existing reinvestment zone.
  - d. **Agreement** means a contractual agreement between a property owner and the College acting by and through the NCTC Board, or between a property owner and a taxing unit in the College District, for the purposes of tax abatement.
  - e. **Applicant** means a current or potential owner or taxable real property, or current or potential owner of a leasehold interest in taxable real property, applying for abatement pursuant to these Guidelines and Criteria and the Property Redevelopment and Tax Abatement Act.
  - f. **Base year value** means the assessed value of eligible property on January 1 preceding the effective date of the Agreement plus the agreed upon value of eligible property improvements made after January 1 but before the full execution of the Agreement, or the sales price if the property was conveyed subsequent to January 1, whichever is greater.

- g. **Board** means the Board of Regents of North Central Texas College.
- h. **College** means North Central Texas College.
- i. **College District** means the North Central Texas College District Service Area, as that term is defined by Texas Education Code Section 130.190.
- j. **Convergent Technologies Facility** means buildings and structures, including fixed machinery and equipment, used or to be used primarily for research or development of computer and other electronic systems and hardware design or testing, software development, testing, or publishing, wireless telecommunications, or related product manufacturing.
- k. **Deferred maintenance** means improvements necessary for continued operations which do not improve productivity or alter the process technology.
- l. **Employee** means a person whose employment is both permanent and full-time, who is employed by the applicant for abatement for a minimum of 1,750 hours per year exclusively within the reinvestment zone, and whose employment is reflected in the tax abatement applicant's quarterly report filed with the Texas Workforce Commission.
- m. **Expansion** means the addition of buildings, structures, fixed 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. **Local Economic Zone** means the College District, as defined by Texas Education Code Section 130.190.
- p. **Manufacturing Facility** means buildings and structures, including fixed machinery and equipment, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.
- q. **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, or equipment. Modernization shall include improvements for the purpose of increasing productivity or updating the technology of machinery and equipment, or both, but

not for the purpose of reconditioning, refurbishing, or repairing.

- r. **New Facility** means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.
- s. **Other Basic Industry Facility** 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 primarily serve a market outside the Local Economic Zone. Corporate home office is included in this definition.
- t. **Productive Life** means the number of years a property improvement is expected to be in service in a facility.
- u. **Regional Distribution Center Facility** 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 at least 100 miles from any part of the College.
- v. **Regional Entertainment Facility** means buildings and structures, including fixed machinery and equipment, used or to be used to provide entertainment through the admission of the general public where the majority of users reside at least 100 miles from any part of the College.
- w. **Regional Office Facility** means a building of at least 100,000 square feet in construction excluding related parking facilities, constructed specifically for use by private companies whose scope of business is in the State of Texas and beyond and not limited to the Local Economic Zone.
- x. **Regional Service Facility** means buildings and structures, including machinery and equipment, used or to be used to service goods where a majority of the goods being serviced originate outside the Local Economic Zone.
- y. **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.
- z. **Research & Development Facility** means buildings and structures, included fixed-in-place machinery and equipment, used or to be used entirely for research or experimentation to improve or develop current technology in biomedicine, electronics, or pre-commercial emerging

industries.

- aa. **Taxing unit** has the meaning ascribed in Sections 1.04 and 312.002(g) of the Texas Tax Code.

7. **Eligibility.**

- a. **Reinvestment Zone.** To be eligible for tax abatement the owner must own taxable real property which is the subject of the tax abatement which is located within a reinvestment zone designated by the governing body of a municipality or a county in accordance with the Property Redevelopment and Tax Abatement Act and must enter into a written agreement with the governing body of the municipality or county wherein the owner agrees to make specified improvements or repairs to the property and, if applicable, that such specified improvements or repairs to the property are being made in conformity with the county or municipality's comprehensive plan.
- b. **Authorized Facility.** A Facility may be eligible for abatement if it is a Convergent Technologies Facility, Manufacturing Facility, Regional Distribution Center Facility, Regional Entertainment Facility, Regional Office Facility, Regional Service Facility, Research Facility, Research & Development Facility, or Other Basic Industry and meets the other requirements of these Guidelines and Criteria.
- c. **Creation of new value.** Abatement may only be granted for the increase in appraised value of eligible property located in the reinvestment zone made subsequent to and specified in the Agreement between the College and the property owner and lessee (if applicable), subject to such limitations as the Board and the Texas Tax Code may require.
- d. **New and existing facilities.** Abatement may be granted for both new facilities and structures and for the expansion or modernization of existing facilities and structures, unless the property is property described by Section 312.211(a) of the Texas Tax Code (in which event requirements must conform with Section 312.211).
- e. **Leased facility.** If a leased facility is granted tax abatement, then the Agreement shall be executed with both the lessor (owner) and the lessee and the term of Abatement that may be granted shall be no greater than seven (7) years or the term of the lease between lessor and lessee, whichever is less.
- f. **Eligible Property.** Abatement may be extended to the value of buildings, structures, fixed

machinery and equipment, site improvements plus that office space and related fixed improvements necessary to the operation and administration of the Facility at the discretion of the Commissioners Court. The value of all property shall be the certified appraised value for each year, as finally determined by the Central Appraisal District(s) with jurisdiction over the property.

- g. **Ineligible Property.** The following types of property shall be fully taxable and are ineligible for tax abatement: land; inventories; supplies; tools; furnishings and other forms of movable personal property; vehicles; vessels; aircraft; housing; hotel accommodations; furniture; deferred maintenance investments; property to be rented or leased (except as provided in Leased Facilities above); property which has a productive life of less than 15 years; any improvements, including those to produce, store, or distribute natural gas, fluids or gases, which are not integral to the operation of the facility; property owned or used by the State of Texas or its political subdivisions or by any organization owned, operated, or directed by a political subdivision of the State of Texas; or any property exempted by local, state, or federal law.
- h. **Forego Protest.** Applicant agrees to forego any protest, application, negotiations, or other procedures available to taxpayers that would challenge or dispute the assessed value annually determined by the appropriate Central Appraisal District.
- i. **Basic Qualifications.** To be eligible to receive tax abatement, the planned improvement:
  - 1.) Must be shown to directly create employment for at least 15 additional permanent full-time Employees or prevent the loss of at least 15 permanent full-time Employees, wherein the worksite for the Employees is within the reinvestment zone;
  - 2.) Must be shown to not solely or primarily have the effect of transferring employment from one part of the College to another part of the College;
  - 3.) The total expenditure for the construction and addition of eligible, taxable property must exceed \$3,000,000 upon completion of the contractually defined construction period; and
  - 4.) Notwithstanding the immediately preceding subsection, if the Board finds, by way of the application for tax abatement, that the project is within a concentration of tourist related business activities and that the project would substantially enhance neighboring tourist related businesses, including increasing average occupancy of existing hotel rooms by a minimum of twenty-percent (20%), the Board may consider granting tax abatement for a base total expenditure for construction of eligible taxable property of \$2,000,000 upon

completion of the contractually defined construction period.

**8. Term/Maximum Term of Tax Abatement.**

- a. **Effective date.** Abatement shall be effective with the January 1 valuation date immediately following the date of execution of the Agreement.
- b. **Term limit.** Tax abatement may be granted for an abatement period of up to seven (7) years, inclusive of construction. The Board reserves the right to set the proportion and length of the abatement, but will first consider granting the proportion and term of tax abatement adopted by the municipality, if applicable. In no event shall the abatement period, inclusive of construction and completion, exceed seven (7) years.
- c. **Earlier term limit for Regional Office Facility.** Notwithstanding the foregoing, abatement for a Regional Office Facility is terminated at the end of the abatement period or sixty (60) days following the date that the respective municipality in which the facility is located has issued certificates of occupancy for at least eighty percent (80%) of the total leasable space in the building, whichever occurs first. Applicant shall provide, at minimum, yearly reports to the College showing the percentage of certificates of occupancy issued relative to total leasable space with such yearly reports being provided to the College no later than the end of February in each year, and shall provide notification of reaching the eighty-percent (80%) threshold no later than thirty (30) calendar days after reaching the eighty percent threshold.

**9. Abatement in taxing jurisdiction of a municipality (joining municipal tax abatement).**

- a. **Term.** The College may consider joining in approved municipal abatements for an abatement period of up to seven (7) years, inclusive of construction, upon application by the municipality to the Commissioners Court.
- b. **Application by municipality.** In making such application to the Board, the municipality must include a certified copy of the tax abatement application that the applicant submitted to the municipality and a certified copy of the tax abatement agreement entered into between the municipality and the Applicant.
- c. **Eligibility.** To be eligible for abatement by the College, the requested tax abatement must be eligible and conform to the requirements of these Guidelines and Criteria, including without limitation, Sections 6, 7, 8 and 17 of these Guidelines and Criteria.

**d. Agreement (amendment to municipal agreement or separate agreement).**

- 1.) The College may participate in the abatement through the vehicle of an amendment to a municipal or county tax abatement agreement, or through a separate agreement entered into between the College and the Applicant. The terms of the College’s participation in the abatement are not required to contain terms identical to those contained in the agreement with the municipality or county.
  
- 2.) In the event of an amendment to a municipal or county tax abatement agreement, the amendment shall, at minimum, include specifying the term of the College’s participation, the proportion of value to be abated, the date upon which abatement commences (for the municipality and for the College), the date upon which the abatement ends (for the municipality and the College), and the date that taxes shall be due and payable. The amendment shall also, at minimum, include provisions addressing Sections 10 through 16 of these Guidelines and Criteria. The College’s participation in abatement on property within the taxing jurisdiction of a municipality or county remains subject to these Guidelines and Criteria.

**10. Proportion of tax to be abated.**

- a. The total proportion of value to be abated shall be provided on the following schedule based on percent of College District hires:

Percent of College District Hires	Maximum percent of value that may be abated
0 - 05%	20%
06 - 15%	30%
16 - 25%	40%
26 - 35%	50%
36 - 45%	60%
46-55%	70%
56-66%	80%
66-75%	90%
76+%	100%

- b. Notwithstanding the foregoing, in the event the Applicant plans the removal in whole or in part of existing improvements in connection with the construction of new eligible properties, tax

abatement shall be reduced from the percentage level provided for herein. The percentage to be abated shall be calculated as follows:

- 1.) Ascertain the appraised value of the improvements to be removed as of January 1 immediately preceding the date of the application;
- 2.) Subtract the above appraised value from the amount of the eligible properties to be constructed; and then
- 3.) Divide the remainder by the said amount of eligible properties to be constructed to find the percentage of abatement of the value of such eligible properties and multiply that result by the total of allowed percentage abatement.

**11. Taxability.** Subsequent to full execution of the Agreement and for the duration of the abatement period specified within the Agreement, taxes shall be payable as follows:

- a. The value of ineligible property shall be fully taxable;
- b. The base year value of existing eligible property as determined each year shall be fully taxable;
- c. The additional value of new eligible property shall be taxable in the manner described in Subsection (10) above; and
- d. If the base year value decreases during the term of a tax abatement or if an additional exemption is granted by the State or Federal government, then the maximum amount of abatable value to be used in abatement calculation (the Cap) will be reduced each year at the same rate.

**12. College District Employment.** Applicant and Applicant's contractors may employ in the construction phase and afterwards in facility operations, supervisory and administrative personnel as deemed most suitable, wherever located. Preferential treatment shall be given to hiring operations and construction workers residing in the College District, not only in the construction phase of the facility, but also during operations thereafter.

**13. College District Vendors.** The Applicant and Applicant's contractors shall make every effort to utilize the services of College District vendors where applicable during construction and operations.

**14. Application for Abatement.**

- a. **Written application.** Any current or potential owner or lessee of taxable property in the College District may request tax abatement by filing a written application with the College, through its Vice Chancellor Fiscal Affairs/CFO, prior to any public expression of a siting decision. The physical location and mailing instructions for the submission of application, are as follows:

Attn: Dr. Van D. Miller  
North Central Texas College  
1525 W. California St.  
Gainesville, TX 76240

- b. **Contents.** The application shall be signed by the owner or lessee, as applicable, and accompanied by:

- 1.) A general description of the proposed use and the general nature and extent of the modernization, expansion, or new improvements to be undertaken;
- 2.) An application fee of \$1,000, payable to North Central Texas College (fee is non-refundable);
- 3.) A descriptive list of the improvements which will be a part of the facility;
- 4.) An estimate of the cost of the improvements;
- 5.) An estimate of the number of employees during construction and thereafter to operate the facility;
- 6.) A map and metes and bounds of the property;
- 7.) A legal description of the property;
- 8.) A time schedule for undertaking and completing the proposed improvements;
- 9.) A proposed program for the recruitment of local employees in the construction and operation of the facility together with a statement affirming the Applicant's commitment to equal employment opportunity and hiring, at all levels, including a plan to implement and ensure such equal employment opportunity;
- 10.) A certification prepared by the appropriate county Tax Assessor-Collector stating that

all of Applicant's tax accounts within the College District are paid on a current basis;

- 11.) Financial and other information the College deems necessary for evaluating the financial capacity of the Applicant;
- 12.) Information pertaining to the reasons that the requested tax abatement is necessary to ensure the proposed project is built in the College District (i.e., documentation supporting assertion that "*but for*" a tax abatement, the stated project could not be constructed in the College District);
- 13.) For a leased facility, the Applicant shall provide with the application the name and address of the lessor and a draft copy of the proposed lease or option to contract. In the event a lease or option contract has already been executed with the owner of the site, the document must include a provision whereby the abatement applicant may terminate such contract without penalty or loss of earnest money in the event the College does not grant a tax abatement;
- 14.) A narrative addressing the points raised in the description of narrative accompanying the Application for Tax Abatement form;
- 15.) Applicant shall include its history of environmental compliance;
- 16.) Confirmation on whether the property is located within a reinvestment zone established under the Tax Increment Financing Act (TIFA), and if so, then Applicant shall also provide a list of the members of the board of directors for the TIFA reinvestment zone, detailing their positions on the board, and, at minimum, contact information for the chair of the board and the secretary of the board; and
- 17.) For abatement of property located within a municipality, Applicant shall provide a true and complete copy of the respective city ordinance or ordinances designating the reinvestment zone, including any amendments to the city ordinance or ordinances designating the reinvestment zone. For abatement of property located within a municipality and located within an enterprise zone, the Applicant shall provide a true and complete copy of the ordinance or ordinances designating the enterprise zone, including any amendments to the respective designation ordinance or ordinances, or when applicable, documentation from the Governor's Office showing the enterprise zone is active. Such ordinances or documentation shall show that the reinvestment zone or enterprise zone remain active at the time of the submission of Applicant's application.

Applicant further acknowledges and agrees that the respective zone must also still be active at the time of full execution of the Agreement on the date of the last Party executing thereto.

18.) For abatement of property located within a county, Applicant shall provide a true and complete copy of the respective county ordinance or ordinances designating the reinvestment zone, including any amendments to the county ordinance or ordinances designating the reinvestment zone. For abatement of property located within a county and located within an enterprise zone, the Applicant shall provide a true and complete copy of the ordinance or ordinances designating the enterprise zone, including any amendments to the respective designation ordinance or ordinances, or when applicable, documentation from the Governor's Office showing the enterprise zone is active. Such ordinances or ordinances or documentation shall show that the reinvestment zone or enterprise zone remain active at the time of the submission of Applicant's application. Applicant further acknowledges and agrees that the respective zone must also still be active at the time of full execution of the Agreement on the date of the last Party executing thereto.

- c. **Modernization.** In the case of modernization, Applicant shall include a statement of the assessed value of the facility separately stated for real and personal property for the tax year immediately preceding the application.
- d. **Job Retention.** In the case of an application based on job retention, Applicant shall include a statement and sufficient information to verify the potential of job loss that would occur without the abatement.
- e. **Review by Vice Chancellor Fiscal Affairs (VCFA).** Upon receipt of a complete application, the VCFA shall make an initial determination of whether the project qualifies for tax abatement under these Guidelines and Criteria, and issue his or her recommendation as to whether the proposed project qualifies under these Guidelines and Criteria to the Board, including requesting authorization from the Board regarding negotiating the tax abatement agreement. If an Agreement is subsequently approved by the Board, then the VCFA shall provide a fully executed copy of the Agreement to the appropriate Tax Assessor-Collector with jurisdiction over the property outlined in the Agreement.
- f. **Prohibition.** The College shall not enter into a tax abatement agreement if the College finds that an application was received after a project commenced construction or installation of

improvements.

- g. **Increase in value.** If the College intends to act favorably on the application and enter into an agreement with the Applicant, the College shall do so in writing with the owner of the taxable real property located in an area designated as a reinvestment zone to exempt from taxation all or a portion of the increase in the value of the property over its value in the year in which the agreement is executed, subject to the provisions of these Guidelines and Criteria. Property eligible for abatement includes only new improvements commencing after approval of a tax abatement agreement with the College. The College may not enter into a tax abatement agreement unless it finds that the terms of the agreement and the property subject to the agreement meet the requirements of these Guidelines and Criteria.

## **15. Agreement.**

- a. **Prior written notice of tax abatement agreement to other taxing units.** Not later than the seventh (7) day before the date on which the College enters into an Agreement, the VCFA serving as the County's designee shall deliver to the presiding officer of the governing body of each other taxing unit in which the property to be subject to the agreement is located a written notice stating that the County intends to enter into the agreement. The notice must include a copy of the proposed agreement. The notice is presumed delivered when placed in the mail postage paid and properly addressed to the presiding officer. A notice properly addressed and sent by registered or certified mail for which a return receipt is received by the College is considered to have been delivered to the addressee.
- b. **Resolution required.** To be effective, an agreement must be approved by the affirmative vote of a majority of the members of the Board at a regularly scheduled meeting of the Board. After the public hearing, the Board shall adopt a resolution finding that the proposed agreement filed with the resolution, a copy of which must be attached thereto, meets the applicable provisions of these Guidelines and Criteria. The resolution shall also authorize the execution of the agreement with the owner of the facility or, if applicable, the lessee.
- c. **Specific terms of tax abatement agreement – statutory mandatory requirements.**  
The execution, duration, and other terms of the Agreement are governed by the provisions of Chapter 312 of the Tax Code as applicable. Accordingly, the Agreement shall:
  - 1.) List the kind, number, and location of all proposed improvements of the property;
  - 2.) Provide access to and authorize inspection of the property by College employees to ensure

that the improvements or repairs are made according to the specifications and conditions of the agreement;

- 3.) Limit 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;
- 4.) Provide 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;
- 5.) Contain each term agreed to by the owner of the property;
- 6.) Require the owner of the property to certify annually to the governing body of each taxing unit that the owner is in compliance with each applicable term of the Agreement; and
- 7.) Provide that the Board may cancel or modify the Agreement if the property owner fails to comply with the Agreement.

**d. Specific terms of tax abatement agreements – additional mandatory requirements.**

The Agreement shall also:

- 1.) Include a map showing existing uses and conditions of real property in the reinvestment zone;
- 2.) Include a map showing proposed improvements and uses in the reinvestment zone;
- 3.) List the commencement date and termination date of abatement;
- 4.) Include a provision that the Agreement shall be effective when executed by all parties and, if the reinvestment zone is being designated by a municipality, upon the final passage of an ordinance designating the reinvestment zone;
- 5.) Include provisions that the owner or lessee will: obtain and maintain all required permits and other authorizations from the Federal and State agencies with authority regarding the property, including without limitation and if applicable, the United States Environmental Protection Agency and the Texas Commission on Environmental Quality (TCEQ) for the

construction and operation of its facility and for the storage, transport, and disposal of solid waste; and seek a permit from the TCEQ for all grandfathered units on the site of the abated facility by filing with the TCEQ, within three years of receiving the abatement, a technically complete application for such a permit;

- 6.) List the proposed use of the facility, the nature of construction, time schedule, property description, and improvement list;
- 7.) Include a requirement that the Applicant annually file a report with the College describing the Applicant's efforts towards local hires and using local vendors and subsequent to completion, progress on construction. This annual report to the College shall also include a January employee count for the abated facility that corresponds to employee counts reported in the facility Employer's Quarterly Report to the Texas Workforce Commission for the quarter most recently ended at calendar year-end; and
- 8.) List whether the property subject to abatement is located within a reinvestment zone established under the Tax Increment Financing Act, and if no, then the Owner shall be required to represent and warrant that the property is not located within a reinvestment zone established under the Tax Increment Financing Act.

- e. **Mandatory terms in these Guidelines are not limitations on requiring additional terms for tax abatement.** The Board retains the right to require additional terms and conditions for abatement and the listing of mandatory provisions specified in this section is not a limitation on the terms and conditions that may be required by the Board.

## 16. **Recapture.**

- a. **Discontinuation/Significant Reduction of production.** In the event the facility is completed and begins producing product or service, but subsequently discontinues or significantly reduces producing product or service for any reason for a period of 180 days while the Agreement is active, or one year in the event of a declared disaster under the Texas Disaster Act of 1975 in which the disaster is the cause for the discontinuation, then the Agreement shall terminate and so shall the abatement of the taxes for the calendar year during which the facility no longer produces or significantly reduces production. The taxes otherwise abated for that calendar year shall be paid to the College within sixty (60) calendar days from the date of termination. Any reduction of 50% or more from the estimated production/service in the application shall constitute a significant reduction in the production of product or service. The company or individual shall notify the College in writing at the address stated within the Agreement within

ten (10) business days from any discontinuation or significant reduction, stating the reason for the discontinuation or significant reduction and the projected length of the discontinuation or significant reduction. If the College determines that this requirement for notification has not been complied with, the Agreement may be terminated immediately and all taxes previously abated by virtue of the Agreement shall be recaptured and must be paid within sixty (60) calendar days.

- b. **Default under terms and conditions of Agreement.** Should the College determine that the company or individual is in default according to the terms and conditions of its Agreement, the College shall notify the company or individual in writing at the address stated within the Agreement or at such other address that the individual or company has subsequently provided to the College for notice, and if the default is not cured within sixty (60) calendar days from the date of such notice (Cure Period), the Agreement may be terminated immediately and all taxes previously abated by the Agreement shall be recaptured and must be paid within sixty (60) calendar days. If the College does not receive full payment within said sixty (60) days, a penalty equal to fifteen percent (15%) of the total amount abated may be added.
- c. **Delinquent ad valorem taxes cause for termination.** If the company or individual allows any ad valorem taxes owed to the College or other taxing unit within the College to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest, then the Agreement may be terminated and all taxes previously abated by the Agreement shall be recaptured and must be paid within sixty (60) calendar days of the termination. If the College does not receive full payment within said sixty (60) days, a penalty equal to fifteen percent (15%) of the total amount abated may be added

## 17. Administration.

- a. **Appraisal by Appropriate CAD.** Each year the company or individual receiving abatement shall furnish the Chief Appraiser of the appropriate Central Appraisal District (“CAD”) with such information as may be necessary for the abatement. After the value has been established by the CAD, the CAD shall notify the affecting taxing jurisdictions of the certified appraised value of the property.
- b. **Completion of construction.** Upon completion of construction, the VCFA shall annually evaluate each facility receiving abatement to ensure compliance with its Agreement and report violations to the Board.

## 18. Assignment. An Agreement may be assigned to a new owner or lessee of a facility only with the

prior written consent of the Board. Assignment is subject to the financial capacity of the proposed assignee and other factors at the discretion of the Board. No assignment shall be approved if the assignor or the assignee is indebted to the College or to other affected taxing jurisdictions for past due ad valorem taxes or other obligations. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions set forth in the Agreement. Any assignment shall be to an owner that continues the same improvements or repairs to the property (except to the extent that such improvements or repairs have been completed, in which event the assignor and assignee shall each certify as to such completion) and continues the same use of the facility as stated in the Agreement with the Applicant (now proposed assignor). Approval of assignment shall not be unreasonably withheld.

**19. Confidentiality of Proprietary Information/Public Information Act.** Applicant acknowledges that the College is a governmental body subject to the Public Information Act and thus is required to release information in accordance with the Public Information Act. Applicant may be required to provide information in connection with its application or ongoing monitoring requirements 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 abatement is being sought. Section 312.003 of the Tax Code provides for the confidentiality of such information provided to a taxing unit in connection with an application or request for tax abatement until the tax abatement agreement is executed. Applicant acknowledges that Section 312.003 affords confidentiality for such information only until the tax abatement agreement is executed. Applicant further agrees to and shall clearly and conspicuously mark any information that it considers to be proprietary, trade secret, or otherwise confidential in its application or other information furnished to the County to facilitate the procedures for notice to third party under the Public Information Act, which are contained at Section 552.305 of the Government Code.

**20. Immigration Compliance/Use of E-Verify required.**

- a. **Compliance with U.S. Immigration Reform and Control Act of 1986.** To the best of Applicant's knowledge, having undertaken reasonable diligence, none of the Applicant's personnel is an unauthorized alien and Applicant at all times shall comply with the U.S. Immigration Reform and Control Act of 1986, as amended. Applicant further agrees that it shall not subcontract services to any subcontractor who utilizes persons not eligible for employment within the United States.
- b. **Use of E-Verify required.** The United States Department of Homeland Security's Employment Eligibility Program is known as E-Verify. The E-Verify Program is used to electronically

confirm an employee's eligibility to work in the United States; however it is not a substitute for complying with I-9 requirements. To be eligible for abatement, an Applicant shall comply with I-9 requirements and shall utilize E-Verify to confirm the eligibility of its employees to work in the United States.

**21. Abatement on properties within a TIFA reinvestment zone.** In the event of real property located within a reinvestment zone established under the Tax Increment Financing Act (TIFA) (codified at Chapter 311 of the Tax Code), the College may enter into an Agreement with an owner of real property in the TIFA reinvestment zone regardless of whether the College deposits or agrees to deposit tax increment into the tax increment fund. However, to be effective, the agreement to abate taxes on real property in a TIFA reinvestment zone must also be approved by the board of directors of the respective TIFA reinvestment zone and the governing body of each taxing unit that imposes taxes on real property in the TIFA reinvestment zone and deposits or agrees to deposit any of its tax increment into the tax increment fund for the TIFA reinvestment zone. If the College participates in the TIFA reinvestment zone and enters into an abatement agreement with an owner of real property in the TIFA reinvestment zone, then the taxes that are abated under the abatement agreement are not considered taxes to be imposed or produced by the College in calculating the amount of the tax increment of the College of the College's deposit to the tax increment fund for the TIFA reinvestment zone.

**22. Severability.** If any provision of these Guidelines and Criteria is held invalid by a court of competent jurisdiction, the invalidity shall not affect the other provisions of these Guidelines and Criteria as Amended that can be given effect without the invalid provision, and to this end the provisions of these Guidelines and Criteria are severable. Additionally, for purposes of clarification, Section 312.209 of the Tax Code, titled "Application of Nonseverability Provision," pertains to the regulation and removal of outdoor signs and compensation thereof by municipalities, and the provisions amending the Property Redevelopment and Tax Abatement Act in Chapter 221, Acts of the 69<sup>th</sup> Legislature, Regular Session (1985) and currently codified within Chapter 216 of the Local Government Code, pertain to signage and the method of compensation when a sign is required to be relocated, reconstructed, or removed and do not prohibit or even pertain to the allowance of severability in construing these Guidelines and Criteria.