

**THE STATE OF TEXAS**

§

**A RESOLUTION ELECTING TO PARTICIPATE IN TAX ABATEMENT AGREEMENTS AND ADOPTING GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENT BY THE MCND#1 OF MATAGORDA COUNTY, TEXAS**

**COUNTY OF MATAGORDA**

§

ON THIS the 28<sup>th</sup> day of April, 2022 Matagorda County Navigation District No. One (MCND#1) Board of Commissioners of Matagorda County, Texas met in regular session and among other proceedings the following Resolution was passed:

WHEREAS, the future economic viability of MCND#1 of Matagorda County, Texas depends on the County's ability to attract new investment through the location of new industry and the expansion and modernization of existing businesses; and

WHEREAS, the creation and retention of job opportunities that result from new economic development is a high civic priority; and

WHEREAS, MCND#1 of Matagorda County, Texas must become and remain competitive with other local governments across the nation in the expansion of the existing industry base and the attraction of new commercial and industrial investment; and

WHEREAS, any tax incentives offered by MCND#1 of Matagorda County, Texas should be limited to those companies that create new wealth and new jobs within the county and its political subdivisions; and

WHEREAS, to assure a common, coordinated effort to promote the economic development of MCND#1 of Matagorda County, Texas, such guidelines and criteria should be adopted only through the cooperation of affected cities, special districts, and the County, and

WHEREAS, effective September 1, 1987, Texas law requires counties, municipalities and other taxing units that elect to establish and participate in tax abatement programs to establish guidelines and criteria governing the designation of Enterprise or Reinvestment Zones and a tax abatement program prior to granting any tax abatement; and

WHEREAS, State law provides that guidelines and criteria governing the establishment of tax abatement agreements are effective for a two (2) year period from the date adopted unless modified or amended; and

WHEREAS, these guidelines and criteria shall not be construed as implying or suggesting that the MCND#1 of Matagorda County, Texas is under an obligation to provide tax abatement or other incentive to any applicant, and all applicants shall be considered on a case-by-case basis.


NOW THEREFORE BE IT RESOLVED that MCND#1 of Matagorda County, Texas does hereby elect to participate in tax abatement agreements pursuant to Chapter 312 of the Texas Tax Code and does hereby adopt the attached "Guidelines and Criteria for Granting Tax Abatement by Matagorda County Navigation District No. One of Matagorda County, Texas."


PASSED AND APPROVED this 28<sup>th</sup> day of April, 2022.

[SEAL]



Attest:

  
Jimmy E. Neeley  
Chairman of the Board of  
Navigation & Canal Commissioners

  
Greg T. Seaman  
Secretary of the Board of  
Navigation & Canal Commissioners

GUIDELINES AND CRITERIA  
FOR GRANTING TAX ABATEMENT  
BY THE  
MATAGORDA COUNTY NAVIGATION DISTRICT  
NO. ONE OF MATAGORADA COUNTY, TEXAS

ADOPTED: April 28, 2022  
BY THE MATAGORDA COUNTY NAVIGATION  
DISTRICT NO. ONE BOARD OF COMMISSIONERS OF  
MATAGORDA COUNTY, TEXAS

## Table of Contents

Section 1 - Authority .....	3
Section 2 - Purpose and Intent.....	3
Section 3 - Definitions .....	3
Section 4 - Abatement Authorized.....	7
Section 5 - Application .....	10
Section 6 - Hearing .....	14
Section 7 - Agreement.....	14
Section 8 - Recapture .....	17
Section 9 - Administration .....	18
Section 10 - Assignment .....	19
Section 11 - Federal and State Compliance .....	20
Section 12 - Severability and Limitation.....	21
Section 13 - Sunset Provision .....	21

**GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENT  
IN REINVESTMENT AND/OR ENTERPRISE ZONES CREATED  
IN THE MATAGORDA COUNTY NAVIGATION DISTRICT NO. ONE OF  
MATAGORDA COUNTY, TEXAS**

**Section 1  
AUTHORITY**

The Matagorda County Navigation District No. One of Matagorda County, Texas (the "MCND#1") is authorized to provide tax abatement benefits in accordance with the Texas Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code, as amended ("The Act"). The Act requires the establishment of these Guidelines and Criteria for the governing of tax abatement agreements between the MCND#1 and eligible entities. The Act furthermore permits the designation of "reinvestment zones" in accordance with specific criteria.

**Section 2  
PURPOSE AND INTENT**

The purpose and intent of these Guidelines and Criteria is to set forth the general parameters in which the MCND#1 will operate a tax abatement program in accordance with the Act. The program is intended to be an economic development tool to assist and encourage investment to create, retain and expand full-time jobs while strengthening the tax base for Matagorda County and MCND#1.

All applications are considered on a case-by-case basis and the decision to approve or deny tax abatement shall be at the discretion of the MCND#1 Board of Commissioners. Nothing herein shall imply or suggest that the MCND#1 is under any obligation to provide tax abatement to any applicant.

**Section 3  
DEFINITIONS**

(a) **"Abatement"** means the temporary full or partial exemption from ad valorem taxes of certain taxable improvements to real property in a Reinvestment and/or Enterprise Zone designated for economic development purposes pursuant to The Act

(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) **"Alternative/Renewable Energy or Fuel Facility"** means buildings, structures or equipment that are used in growing, production or generating of power or fuel sources or any alternative to fossil fuels used for generating power that is provided by abundant, natural energy sources such as solar, wind, geothermal or biomass.

(d) **"Applicant"** means a current or potential owner of 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.

(e) **"Aquaculture/Agriculture Facility"** means buildings, structures, and major earth structure improvements, including fixed machinery and equipment, the primary purpose of which is the hatching, incubating, nursing, maturing and/or processing to marketable size of aquaculture products in commercially marketable quantities or the processing, refining, packaging, and distribution of food and/or fiber products in commercially marketable quantities.

(f) **"Agreement"** means a contractual agreement between a property owner and/or Lessee and an eligible jurisdiction for the purposes of tax abatement.

(g) **"Base Year Value"** means the assessed value of eligible property on January 1<sup>st</sup> preceding the execution of the agreement plus the agreed upon value of eligible property improvements made after January 1<sup>st</sup> but before the execution of the agreement.

(h) **"Business Retention and Expansion Programs"** are programs implemented to encourage economic development from within the existing businesses in the community. Includes, but not limited to, industrial, retail, agricultural and tourism.

(i) **"Deferred Maintenance"** means improvements necessary for continued operations which do not improve productivity or alter the process technology.

G) **"Economic Life"** means the number of years a property improvement is expected to be in service in a facility. Provided, however, that in no circumstance shall the number of years exceed the depreciation allowance specified in the United States Internal Revenue Code.

(k) **"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.

(l) **"Eligible Jurisdiction"** means Matagorda County and the City of Palacios, and any special district which is located in Matagorda County, and within the jurisdiction of the MCND#1 that levies ad valorem taxes upon and provides services to property located within a proposed or existing Reinvestment and/or Enterprise Zone.

(m) **"Enterprise Zone"** means a specific geographic area, a census block group that has a poverty level of 20 percent or greater as identified by the 2010 U.S. Census and is recognized as such by the Texas Office of the Comptroller. Designation of an area as an Enterprise Zone under the Texas Enterprise Zone Act (Chapter 2303, Government Code) constitutes designation of the area as a Reinvestment Zone under Chapter 312, Subchapter C, Section 312.401 of the Government code.

(n) **"Enterprise Project"** means a specific new or expanding business that can be located either in or outside of a designated Enterprise Zone that has been nominated by the Matagorda County Navigation District No. One Board of Commissioners or the City of Palacios, Texas to participate in the Enterprise Zone program and is therefore eligible to receive state and/or local incentives and benefits.

(o) **"Entertainment Project"** means a specific new or expanding business located in Matagorda County and is within the geographical boundaries of the MCND#1 from which a majority of revenues are generated by visual arts, sporting, musical, cinematic, theatrical, dance, recreational, arcades and/or other cultural endeavors, excluding all adult entertainment establishments.

(p) **"Expansion"** means the addition of buildings, structures, fixed machinery, or equipment for the purpose of increasing production capacity.

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

(r) **"Major Impact Project"** means

(i) any industrial, commercial, research and development, warehousing, distribution, transportation, energy generation, processing, mining, United States government or tourism enterprise together with all facilities required for construction, maintenance, and operation of the enterprise with an initial capital investment of not less than Three Hundred Million Dollars (\$300,000,000.00) from private or United States government sources; or

(ii) with an initial capital investment of not less than One Hundred Fifty Million Dollars (\$150,000,000.00) from private or United States government sources together with all buildings, and facilities, structures or improvements or whatever kind required or useful for construction, maintenance and operation of the enterprise and which creates at least five hundred (500) net new full-time jobs; or which creates at least two hundred fifty (250) net new full-time jobs which provides an average salary, excluding benefits which are not subject to federal income taxation, of at least one hundred fifteen percent (115%) of the most recently published average annual wage of the state as determined by the State of Texas;

(iii) "Project" shall also include any ancillary development or business resulting from the enterprise, of which the authority is notified, within three (3) years from the date that the enterprise entered into commercial production, that the project area has been selected as the site for the ancillary development or business.

(s) **"Manufacturing Facility"** means buildings, structures, fixed machinery or equipment, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.

(t) **"Modernization"** means the upgrading of existing facilities that 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 purposes of reconditioning, refurbishing, or repairing.

(u) **"New Facility"** means a property previously undeveloped which is placed in service by means other than or in conjunction with expansion or modernization.

(v) **"Other Basic Industry"** means buildings and structures including fixed machinery or equipment not elsewhere described, used or to be used for the production of products or services, from which a majority of revenues generated by activity at the facility are derived from outside Matagorda County.

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

(x) **"Recycling Facility"** means the buildings and structures used in the processing of used materials (waste or by-products) into new products to prevent waste of potentially useful materials, reduce the consumption of fresh raw materials, reduce energy usage, reduce air pollution (from incineration) and water pollution (from land filling) by reducing the need for "conventional" waste disposal, and lower greenhouse gas emissions as compared to virgin production.

(y) **"Regional Distribution Facility"** means buildings and structures including fixed machinery or equipment used or to be used primarily to receive, store, service or distribute goods or materials owned by the facility, from which a majority of revenues generated by activity at the facility are derived from outside Matagorda County.

(z) **"Regional Entertainment/Tourism Facility"** means buildings and structures, including fixed machinery or equipment used or to be used to provide entertainment and/or tourism related services, from which a majority of revenues generated by activity at the facility are derived from outside Matagorda County.

(aa) **"Regional Service Facility"** means buildings and structures, including fixed machinery or equipment used or to be used to provide a service, from which a majority of revenues generated by activity at the facility are derived from outside Matagorda County.

(bb) **"Reinvestment and/or Enterprise Zone-County Designated"** means any area of Matagorda County and which is within the geographic boundaries of MCND#1 which has been designated a Reinvestment and/or Enterprise Zone for tax abatement purposes and which is not within the tax jurisdiction of any incorporated municipality.

(cc) **"Reinvestment and/or Enterprise Zone-Municipality Designated"** means any area of Matagorda County and which is within the geographical boundaries of the MCND#1 which lies within the tax jurisdiction of a municipality and has been designated a Reinvestment and/or Enterprise Zone by that jurisdiction for tax abatement purposes.



(dd) **"Research Facility"** means buildings and structures, including fixed machinery or equipment used or to be used primarily for research and experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.

(ee) **"Tourism"** refers to the tourist industry encompassing the activity of travel to points of destination for business or leisure, through which tourist services are created and supplied either directly or through intermediaries. Types of tourist industry include but are not limited to tour organizing services, tourist information services, accommodation services, food services, entertainment, and other tourist services.

#### **Section 4 ABATEMENT AUTHORIZED**

(a) **Reinvestment Zone.** To be eligible for tax abatement the owner must own tangible personal property or 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 the County in accordance with the Property Redevelopment and Tax Abatement Act and be within the geographical boundaries of MCND#1 and must enter into a written agreement with MCND#1 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 MCND#1's tax abatement guidelines and criteria.

1. **Location.** Property may be located in a reinvestment zone designated by the County under this section and/or in a reinvestment zone designated by a municipality and be within the geographic boundaries of MCND#1.
2. **Prohibition.** MCND#1 shall not allow tax 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.

- (b) **Authorized Facility.** A facility may be eligible for abatement if it is a:
- Manufacturing facility,
  - Private company performing a governmental function,
  - Research facility,
  - Recycling facility,
  - Renewable or alternative energy or fuel facility
  - Aquaculture/agriculture facility,
  - Regional distribution facility,
  - Regional service facility,
  - Regional entertainment/tourism facility,
  - Other basic industry.

(c) **Authorized Date.** A facility shall be eligible for tax abatement if it has applied for such abatement prior to the commencement of construction, provided, that such facility meets the criteria granting tax abatement in Reinvestment and/or Enterprise Zones created in Matagorda County pursuant to the guidelines and criteria adopted by the Matagorda County Board of Commissioners, hereafter "MCND#1 Commissioners," or a Reinvestment Zone and/or

Enterprise zone created by the City of Palacios and meets all requirements for tax abatement established by MCND#1. Each application for tax abatement will be considered on a case-by-case basis.

(d) **Creation of New Value.** Abatement may only be granted for the additional taxable value of eligible property improvements made subsequent to and listed in an abatement agreement between the MCND#1 and the property owner and/or Lessee, subject to such limitations as the Commissioners of the MCND#1 may require.

(e) **New and Existing Facilities.** Abatement may be granted to new facilities and improvements to existing facilities for purposes of modernization and expansion of existing facilities and structures, unless the property is property described by Section 312.211(a) of the Texas Tax Code (in which it must conform with Section 312.211).

If a company requests an abatement without the creation of new jobs to remain competitive or reduce labor force, they shall submit a timeline of Worker Adjustment and Retraining Notification notices (WARN) will be issued. MCND#1 shall be provided copies of all WARN notices issued by a company under this section.

(f) **Eligible Property.** Abatement may be extended to the taxable value of buildings, structures, fixed machinery, equipment, site improvements plus that office space and related fixed improvements necessary to the operation and administration of the facility. The economic life of the property and improvements must exceed the life of the abatement agreement. The value of all property shall be the certified appraised value for each year, as finally determined by the Matagorda Central Appraisal District.

(g) **Ineligible Property.** The following classes of property shall be fully taxable and ineligible for abatement:

- Land,
- Inventories,
- Supplies,
- Furnishings or other forms of movable personal property,
- Vehicles, marine vessels, or aircraft,
- Deferred maintenance investments,
- Residential property,
- Property that is associated with any activity that is illegal under federal, state or local law.

(h) **Leased Facilities.** If an authorized facility eligible for tax abatement is leased, the agreement shall be executed with both the Lessor and the Lessee.

(i) **Disputing Assessed Value.** All companies that request or receive abatement agree that binding arbitration is the sole recourse for any protest, application, negotiation or other procedure available to taxpayers. If a company granted a tax abatement believes they have grounds to challenge or dispute the assessed value, they may present this information to the Commissioners of MCND#1 and request arbitration. The Commissioners of MCND#1 will/may initiate the process for the company to enter into binding arbitration with the Matagorda Central Appraisal District and the company shall comply.

(j) **Tax Abatement Not Applicable to Public or Non-Tax Paying Entities.** Public or non-taxpaying entities are not eligible to receive tax abatement from MCND#1.

(k) **Value and Term of Abatement.**

1. Effective Date of Abatement - Abatement shall be granted effective with the January 1<sup>st</sup> valuation date immediately following the date of execution of the agreement, unless another date is established by agreement between the applicant and MCND#1.

2. Term and Value of Abatement - The value and term of abatement on new eligible property shall be determined on a case-by-case basis. Table 1 provides a guideline for consideration by MCND#1 but from which it may vary the length and abatement percentage of any application on a case-by-case basis.

**TABLE 1**

<b>Years/Total Percentage Available</b>	<b>Possible Abatement Percentages Per Year</b>
5 years-380%	100%-85%-75%-65%-55%

(l) **Duration of Abatement** - The duration of an abatement agreement shall not exceed the maximum period of tax abatement allowed by state law of 10 years or one-half (1/2) the economic life of the eligible property, whichever is less. Furthermore, under no circumstances shall the value of the abatement exceed 100 percent (100%) of the eligible taxable property value in a single year.

(m) **Minimum Economic Qualification.** To be eligible to receive tax abatement, the planned new facility, or the planned expansion to or modernization of an existing enterprise must meet the following qualifications:

1. Must increase the appraised value of the taxable property in the amount of not less than one million dollars (\$1,000,000) after construction is completed or three years from the commencement of construction, whichever is less.

2. Must create new employment or prevent the loss of employment by job retention for not less than 10 persons associated with the production of goods and services at the authorized facility on a full-time, permanent basis in Matagorda County. Two or more part-time, permanent employees totaling an average of not less than 40 hours per week may be considered as one full-time, permanent employee. Employees must be employed by the tax abatement Applicant and cannot be paid by an on-site contractor, sub-contractor, or third party.

3. **WARN Notice** - If a company requests an abatement without the creation of new jobs to remain competitive or reduce labor force, they shall submit a timeline of Worker Adjustment and Retraining Notification notices (WARN) will be issued. The MCND#1 shall be provided copies of all WARN notices issued by a company under this section.

4. Companies seeking to qualify for tax abatement on the basis of job retention shall document that without the creation of a Reinvestment and/or Enterprise Zone and/or tax abatement the company will either reduce employment or cease operations.

5. New jobs shall not be construed as transferring employment from one part of Matagorda County to another.

(n) **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 4 (g), above, 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 4 (j)(2), above.

(o) **Conflict of Interest.** Property that is in a Reinvestment and/or Enterprise Zone and that is owned or leased by a member of the governing body of MCND#1 or any governmental entity within the geographical boundaries of MCND#1 shall be excluded from any property tax abatement.

(p) **Matagorda County Vendors.** The Applicant and the Applicant's contractors shall make every effort to utilize the services of Matagorda County vendors where applicable during construction and operations.

## **Section 5 APPLICATION**

(a) Any present or potential property owner of taxable property in Matagorda County may request the creation of a Reinvestment and/or Enterprise Zone and tax abatement by filing a written application with MCND#1. ***Nothing within these guidelines shall be construed to suggest that MCND#1 is under obligation to provide any abatement to any applicant even if certain criteria are met. MCND#1 Commissioners reserves the right to reject any application.*** MCND#1 may condition the amount or duration of tax abatement granted to achievement of investment amounts, new employment numbers or other requirements specified in a tax abatement agreement.

(b) The application shall consist of a completed application form accompanied by the following:

1. A cover letter clearly stating the abatement time frame sought, abatement percentages sought and any variances requested from these Guidelines and Criteria. The letter should also identify any considerations or proffers the Applicant may want to offer to MCND#1.
2. A non-refundable application fee of \$1,000 payable to MCND#1;
3. A general written description of the proposed use and the general nature and extent of the modernization, expansion or new improvements to be undertaken;
4. A descriptive list of the improvements that will be a part of the facility;
5. An estimate of the cost of improvements;
6. A map, metes and bounds, and legal property description;
7. A time schedule for undertaking and completing the planned improvements;
8. Such financial and other information as deemed appropriate by MCND#1 for purposes of evaluating the application;
9. An estimate of the number of employees during construction and thereafter to operate the facility;
10. 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;
11. A certification prepared by the County Tax Assessor-Collector stating that all of Applicant's tax accounts within the County are paid on a current basis or that the applicant does not have a tax account within the County;
12. If applicable, a schedule of WARN notices being issued to Texas Workforce Commission;
13. Information pertaining to the reasons that the requested tax abatement is necessary to ensure the proposed project is built in the geographical jurisdiction of MCND#1 (i.e., documentation supporting assertion that *"but for"* a tax abatement, the stated project could not be constructed in the jurisdiction of MCND#1);
14. For a leased facility, the Applicant shall provide with the application the name and address of the owner, 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 MCND#1 does not grant a tax abatement;

15. A narrative addressing the points raised in the description of narrative accompanying the Application for Tax Abatement form;

16. Applicant shall include its history of environmental compliance;

17. 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

18. For abatement of property located within Matagorda County or a municipality, Applicant shall provide a true and complete copy of the respective County or city ordinance, ordinances, or order 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 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) Upon receipt of a complete application, MCND#1 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 MCND#1, including requesting authorization from MCND#1 regarding scheduling the public hearing, creating the reinvestment zone, and negotiating the tax abatement agreement. If an Agreement is subsequently approved by MCND#1, then the Director of MCND#1 shall provide a fully executed copy of the Agreement to the Matagorda County Auditor and to the Matagorda County Tax Assessor-Collector.

(f) If MCND#1 intends to act favorably on the application and enter into an agreement with the Applicant, MCND#1 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 MCND#1. MCND#1 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.

(g) Before acting upon the application, MCND#1 shall, through a public hearing, afford the applicant and the general public opportunity to show cause why the abatement should or should not be granted. Notice of the public hearing shall be clearly identified on a MCND#1 agenda to be posted in accordance with the Texas Property Redevelopment and Tax Abatement Act and the Texas Open Meetings Act. The Applicant shall reimburse the MCND#1 the cost of publishing notices of the public hearing(s) in the local newspaper(s).

(h) After receipt of an application for creation of a Reinvestment and/or Enterprise Zone and application for tax abatement, MCND#1 may require an economic impact study setting out the impact of the proposed Reinvestment and/or Enterprise Zone and tax abatement and the expense of the study shall be the sole responsibility of the entity requesting the proposed abatement. The economic impact 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 to local entities and the cost/benefit to MCND#1 and other effected taxing jurisdictions. The economic impact study shall also include projections of the secondary jobs that may result from the applicant's proposed project. An economic impact study shall be required for all abatement agreements that grant 500% or more in tax abatement, unless waived by MCND#1 with a three-fourths (3/4) vote of MCND#1 Board of Commissioners.

(i) A request for a Reinvestment and/or Enterprise Zone for the purpose of tax abatement ***shall not be granted*** if MCND#1 finds that the request for abatement was filed ***after*** the commencement of construction, alteration, or installation of improvements related to proposed expansion, modernization or new facility authorized as eligible under these guidelines.

(j) When a large construction project requires a long lead-time for ordering fabrication of specialized equipment for the project before the scheduled start of construction, the year the tax abatement period begins will be subject to negotiations between the applicant and MCND#1, where such flexibility in the start period of the tax abatement is allowed by state law.

(k) Variances from parts of this policy may be considered by MCND#1. A request for variances from provisions of these guidelines shall be made in written form in the cover letter to the application. Such request shall include a complete description of the circumstances explaining why the applicant should be granted a variance or variances. Approval of a request for variance requires a three-fourths (3/4) vote of MCND#1.

(l) All projects will be weighted on their own merit and the MCND#1 reserves the right to adjust benefits based on the economic impact, infrastructure impact, average rate, and utilization of local labor

**Section 6  
PUBLIC HEARING**

(a) Should any affected jurisdiction or taxing entity be able to show cause in the public hearing why the grant of abatement will have a substantial adverse effect on its bonds, tax revenue, service capacity or the provision of services, that showing shall be reason for MCND#1 to deny the application for abatement.

(b) The abatement shall not be authorized if it is determined that:

1. There would be a substantial adverse effect on the provision of government services or on the tax base;

2. The applicant has insufficient financial capacity to make the proposed expenditures;

3. Planned or potential use of the property would constitute a hazard to public safety, health, or morals under existing local, state or federal laws, or

4. Planned or potential use of the property violates other codes or laws.

**Section 7  
AGREEMENT**

(a) After approval of an application, MCND#1 shall formally pass a resolution and execute a legal agreement with the owner of the facility and/or Lessee, which shall include the following:

1. Estimated total value(s) to be abated and the base year value;

2. Estimated percent of value to be abated each year as provided for in Section 2(i)(2), above.

3. The commencement and termination dates of the abatement;

4. The proposed use of the facility, nature of the construction, time schedule for construction and commencement of operations, map, property description as provided by the applicant, and improvements as listed in the application under Section 3(b), above,

5. Contractual obligations in the event of default, violation of terms and conditions, delinquent taxes, recapture, administration, and assignment as provided for in Sections 4(a) 1 and 2, (b), (c), (d), (e), (f), (g), (h), (i), (j), (k)1 and (k)2 or other provisions that may be required for uniformity or by state law, and

6. Amount of investment to be made in, and the required number of new positions or retained positions to be associated with the facility during the abatement period.



(b) **Prior written notice of tax abatement agreement to other taxing units.** Not later than the seventh (7<sup>th</sup>) day before the date on which MCND#1 enters into an Agreement, the attorney for MCND#1, and Port Director of MCND#1 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 MCND#1 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 MCND#1 is considered to have been delivered to the addressee. The address for the MCND#1 address is PO Box 551, Palacios, Texas 77465

(c) **Approval by the MCND#1/Resolution required.** To be effective, an agreement must be approved by the affirmative vote of a majority of the Commissioners of MCND#1 at a regularly scheduled meeting of MCND#1. After the public hearing, MCND#1 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.

(d) **Specific terms of tax abatement agreement - statutory mandatory requirements.** The execution, duration, and other terms of the Agreement are governed by the provisions of Sections 312.204, 312.2041, 312.205, and 312.211 of the Tax Code as applicable to a Navigation District with taxing authority. 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 MCND#1 employees or designees 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 MCND#1 may cancel or modify the Agreement if the property owner fails to comply with the Agreement.

**(e) 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 MCND#1 describing the Applicant's efforts towards local hires and using local vendors and subsequent to completion, progress on construction. This annual report to MCND#1 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 not, 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.

**(f) Mandatory terms in these Guidelines are not limitations on requiring additional terms for tax abatement.** MCND#1 retains the right to require additional terms and conditions for abatement and the listing of mandatory provisions specified in this Section 12 is not a limitation on the terms and conditions that may be required by MCND#1.

**(g)** Recapture provisions describe below.

## **Section 8 RECAPTURE**

(a) **Discontinuation/Significant Reduction of Production/Services.** In the event that the facility is completed and begins producing goods and/or services, but subsequently discontinues such production 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 automatically terminate and so shall the abatement of taxes for the calendar year during which the facility no longer produces. The taxes otherwise abated for the calendar year shall be paid to MCND#1 within sixty (60) days from the date of termination. If MCND#1 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

Any reduction of 50% or more from the estimated production/service in the application shall constitute a significant reduction in the production/service shall constitute a significant reduction in the production of product or service. The company or individual shall notify MCND#1 in writing at the address stated within the Agreement within (10) business days from any discontinuation or significant reduction, stating the reason for the discontinuation or significant reduction. If MCND#1 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. If MCND#1 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

(b) **Default under Terms and Conditions of Agreement.** Should MCND#1 determine that the company or individual is in default according to the terms and conditions of the abatement agreement, MCND#1 shall notify the company or individual, in writing, at the address stated in the agreement, and if such non-compliance is not resolved within sixty (60) days from the date of such notice, then the agreement shall be terminated and all taxes previously abated by the Agreement shall be recaptured and must be paid within sixty (60) calendar days. If MCND#1 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.** In the event that the company or individual:

1. Allows its ad valorem taxes owed MCND#1 or affected jurisdictions 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 resolve such violations within sixty (60) days from the date of written notice from the Port of Palacios or its designated agent of such violations, then the agreement may be terminated and all taxes previously abated by virtue of the tax abatement agreement will be recaptured and paid to MCND#1 by the company or individual within sixty (60) days of the termination. If MCND#1 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.

(d) **Sale to Non-Tax Paying Entity.** If a tax paying company receives a tax abatement from Matagorda County and then sells the facility or company to a public or non-tax paying entity, then the tax abatement agreement shall be declared in default by MCND#1 and all previously received tax abatements shall be recaptured and paid to the County by either the original recipient of the tax abatement or by the new purchasers of the facility or company within sixty (60) days of default of the tax abatement agreement. MCND#1 will notify the original tax abatement recipient and the new owners of the default and recapture requirement. If MCND#1 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.

(e) **Penalty and Interest.** If taxes previously abated are recaptured, the company or individual shall also be responsible for payment of a penalty or interest, or both, on that recaptured property tax revenue as specified in the tax abatement agreement.

## **Section 9 ADMINISTRATION**

(a) The Chief Appraiser of the County shall, as a normal consequence of his duties, annually determine an assessment of the real and personal property comprising the Reinvestment Zone, Enterprise Project, or tax abatement project. Each year, the company or individual receiving abatement shall furnish the Chief Appraiser and MCND#1 with such information as may be necessary for maintaining the abatement, including investments made in the facility. Once the value has been established, the Chief Appraiser shall notify the affected jurisdictions which levy taxes of the amount of the assessment. The applicant shall provide this information to the Chief Appraiser and to MCND#1 by March 15<sup>th</sup> of each year.

(b) The agreement shall stipulate that employees and/or designated representatives of MCND#1 will have access to the Reinvestment and/or Enterprise Zone during the term of the abatement agreement to inspect the facility to determine if the company or individual is in compliance with the terms and conditions of the abatement agreement. All inspections will be made only after notification of not less than twenty-four (24) hours and will only be conducted in such manner as not to unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the company or individual present and in accordance with the company's safety standards.

(c) Upon completion of construction, MCND#1 or the jurisdiction creating the Reinvestment and/or Enterprise Zone shall annually evaluate each facility receiving abatement to ensure compliance with the agreement and report possible violations to MCND#1 or to MCND#1's attorney.

(d) All proprietary information required by MCND#1 for purposes of monitoring compliance by a company with the terms and conditions of an abatement agreement shall be considered confidential to the extent permitted by law.

(e) The company must file an annual status report by March 15<sup>th</sup> of each year of the abatement. These reports will contain the amount of qualified taxable investment made, a total employee count that corresponds to employment counts reported in the Company's Quarterly Reports to the Texas Workforce Commission. It will also identify the number of employees

filling the new positions created for the tax abatement. The report will demonstrate whether the company has met the conditions of the abatement agreement. If the company is deemed not in compliance with the agreement, MCND#1 may cancel or modify the agreement at anytime.

(f) The agreement will be registered with both the Texas Department of Commerce and the State Comptroller. This report must contain a general description of the Reinvestment and/or Enterprise Zone as well as information about the specific agreement - the name of parties involved, the project, the portion of the property to be exempt, and duration of the agreement. *It is the responsibility of the property owner to annually certify to the Chief Appraiser and MCND#1 that the project is in compliance with the Reinvestment and/or Enterprise Zone creation agreement and tax abatement agreement.*

(g) MCND#1 may cancel the entire agreement if the property owner fails to comply with terms of the written agreement and obtain a recapture of all tax abatements previously given to the company or individual.

## **Section 10 ASSIGNMENT**

(a) 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 the MCND#1 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 MCND#1.

(b) The expiration date of the new contractual agreement shall not exceed the termination date of the abatement agreement with the original owner and/or Lessee.

(c) No assignment or transfer shall be approved if the parties to the existing agreement, the new owner or new Lessee are liable to MCND#1 or any affected taxing jurisdiction for outstanding taxes or other obligations.

(d) Approval of a transferred and assigned agreement shall not be unreasonably withheld.

## **Section 11 FEDERAL AND STATE COMPLIANCE**

(a) **Confidentiality of Proprietary Information/Public Information Act.** Applicant acknowledges that MCND#1 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 MCND#1 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.

**(b) Immigration Compliance/Use of E-Verify Required.**

1. **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.

2. **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 1-9 requirements. To be eligible for abatement, an Applicant shall comply with 1-9 requirements and shall utilize E-Verify to confirm the eligibility of its employees to work in the United States.

(c) **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), MCND#1 may enter into an Agreement with an owner of real property in the TIFA reinvestment zone regardless of whether MCND#1 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 MCND#1 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 MCND#1 in calculating the amount of the tax increment of MCND#1's deposit to the tax increment fund for the TIFA reinvestment zone.

**Section 12  
SEVERABILITY AND LIMITATION**

(a) In the event that any section, clause, sentence, paragraph or any part of these Guidelines and Criteria shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such invalidity shall not affect, impair, or invalidate the remainder of these Guidelines and Criteria.

(b) MCND#1 shall take no action which imposes an economic or financial hardship upon any other taxing unit in Matagorda County. Further, MCND#1 shall not enter into an abatement agreement which imposes penalty provisions, as provided in Section 312.206 and Section 312.402

of the Tax Code, upon any other taxing unit in Matagorda County for failing to enter into an abatement agreement.

**Section 13**  
**SUNSET PROVISION**

(a) The "Guidelines and Criteria" are effective upon the date of their adoption and will remain in force for two (2) years, at which time all tax abatement contracts created pursuant to these provisions will be reviewed by MCND#1 to determine whether the goals of the abatement program have been achieved. Based upon that review, the "Guidelines and Criteria" may be modified, renewed, or eliminated.

(b) Prior to the date for review, as defined above, the "Guidelines and Criteria" may be modified only by a vote of three-fourths of the members of MCND#1, as specified in Sec.312.002(c) of the Texas Property Redevelopment and Tax Abatement Act.