

RESOLUTION #060916-01

RESOLUTION ELECTING TO CONTINUE TO PARTICIPATE IN TAX ABATEMENT AGREEMENTS AND ADOPTING AMENDED AND RESTATED GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS IN DESIGNATED TAX ABATEMENT REINVESTMENT ZONES

WHEREAS, stimulation of business and commercial activity and the creation and retention of job opportunities within the City of Selma (the "City") is of the highest priority; and

WHEREAS, new business and commercial activity, new jobs, and new investments will benefit the City by bolstering the economy within the City, providing employment opportunities in the City, strengthening the real estate market within the City, and generating tax revenue to support City services; and

WHEREAS, the abatement of property taxes, as authorized by Chapter 312 of the Texas Tax Code, when offered to retain or expand primary employment or to attract investment, has proven to be an effective method of contributing to the economic development within a city; and

WHEREAS, Chapter 312 of the Texas Tax Code authorizes the City to abate taxes on property in a reinvestment zone; and

WHEREAS, Chapter 312 of the Texas Tax Code requires the City to establish Guidelines and Criteria governing tax abatement agreements by the City and to adopt a resolution stating that the City elects to become eligible to participate in tax abatements before designating Tax Abatement Reinvestment Zones or entering into any tax abatement agreement; and

WHEREAS, such Guidelines and Criteria are effective for a two-year period unless amended or repealed by a three-fourths vote of the members of the City Council; and

WHEREAS, the City adopted guidelines and criteria for tax abatements in 2006 which such 2006 guidelines and criteria were amended by action of the City Council on May 12, 2011 and were renewed by action of the City Council on September 11, 2014; and

WHEREAS, the City Council has determined that continuing to participate in tax abatement agreements is in the best interest of continued economic development in the City and that the amended Guidelines and Criteria for Granting Tax Abatements in Designated Tax Abatement Reinvestment Zones in the City of Selma as adopted on May 12, 2011 and renewed on September 11, 2014 should be amended and restated to allow a longer tax abatement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Selma that (1) the City of Selma elects to continue to participate in tax abatement agreements pursuant to Chapter 312 of the Texas Tax Code and (2) the Amended Guidelines and Criteria For Granting Tax Abatements in Designated Tax Abatement Reinvestment Zones adopted on May 12, 2011 be amended and restated as set out on the Amended and Restated Guidelines and Criteria for

Granting Tax Abatements in Designated Tax Abatement Reinvestment Zones (the “Amended and Restated Guidelines and Criteria”) attached as Exhibit “A” to this resolution, and said Amended and Restated Guidelines and Criteria are hereby adopted.

PASSED AND APPROVED this 9th day of June, 2016.

TOM DALY, Mayor

ATTEST:

Johnny Casias, City Secretary

EXHIBIT "A"

**AMENDED AND RESTATED
GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS IN
DESIGNATED TAX ABATEMENT REINVESTMENT ZONES IN
THE CITY OF SELMA**

ARTICLE I

Scope

1.01 These Amended Guidelines and Criteria apply to applications for tax abatements and to tax abatement agreements in Tax Abatement Reinvestment Zones designated by the City of Selma.

1.02. The City Council of the City of Selma hereby reserves the right and authority, however, to determine independently the suitability of such projects for tax abatement and whether the City elects to participate in any tax abatement projects pursuant to the procedures adopted by the City Council. The adoption of these Amended Guidelines and Criteria does not create any property, contract, or other legal right in any person to have the governing body consider or grant a specific application or request for tax abatement.

ARTICLE II

Definitions

2.01 a. "Abatement" means the full or partial exemption from ad valorem taxes of certain real and personal property in a reinvestment zone designated for economic development purposes.

b. "Agreement" means a contractual agreement between a property owner and a taxing unit for the purposes of tax abatement.

c. "Base Year Value" means the assessed value of eligible property on January 1 preceding the execution of an Agreement plus the agreed-upon value of taxable property improvements made after January 1 but before the execution of the Agreement.

d. "Expansion" means the addition of buildings, structures, and/or fixtures for purposes of increasing production or other capacity.

e. "Facility" means property improvement that has been completed or is in the process of construction and which comprises an integral whole.

f. "Modernization" means the replacement and upgrading of an existing Facility that is intended to increase the productive input or output, to update the technology, or to lower

substantially the unit cost of operation. Modernization may result from the construction, alteration, or installation of buildings, structures, or fixtures.

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

ARTICLE III **Authorized Abatement**

3.01 Eligible Property. The City may abate taxes for real and personal property located within a Tax Abatement Reinvestment Zone, but which zone is not an improvement project financed by tax increment bonds, on the condition that the owner of the property seeks to construct a New Facility upon the real property, or seeks to improve an existing Facility for purposes of Modernization or Expansion. Tangible personal property located on the real property subject to an abatement agreement may also be exempted from taxation, other than tangible personal property that was located on the real property within the City prior to the period covered by the tax abatement agreement, and other than inventory or supplies.

3.02 Extent of Abatement. Real property subject to a tax abatement agreement may only be exempted to the extent that its value under the period covered by the tax abatement agreement exceeds its base year value in the year in which the agreement is executed. The value of the tangible personal property eligible for abatement may only be exempted if the tangible personal property is located on the real property in the period covered by the tax abatement agreement, and the value of any tangible personal property located on the real property prior to the period covered by the abatement agreement may not be exempted from taxation.

ARTICLE IV **Designation of Reinvestment Zone**

4.01 The City Council may by ordinance designate specifically described areas of real property as Tax Abatement Reinvestment Zones for purposes of eligibility for property tax abatements. Prior to adoption of such ordinance, the City Council shall give notice of and conduct a public hearing as required by Chapter 312 of the Texas Tax Code.

4.02 Owners of property within a designated Tax Abatement Reinvestment Zone may file applications for property tax abatements.

4.03 Application for property tax abatements shall include all information required under Article V hereof.

ARTICLE V **Application**

5.01 Any present or potential owner of taxable property within the City may request tax abatement by filing a written request with the City.

5.02 The application shall include:

- a. the name, address, and telephone number of the applicant and of a principal contact person;
- b. the nature of the business or activity that will occupy the Facility during the abatement period;
- c. the form of the entity conducting the business or activity during the abatement period (e.g., partnership, corporation, joint venture, or individual);
- d. a description of the improvements or modifications to improvements for which abatement is requested;
- e. a projection of the benefits that the improvements or modifications to improvements will bring to the City, including, but not limited to, the number of new jobs that will be created, if any; the potential tax revenues that may be collected once abatement expires; and any other positive effects abatement would bring to the City;
- f. a legal description of the real property comprising the area within which tax abatement is requested;
- g. a time schedule estimating the beginning of the construction or modification of improvements and the time of completion of the construction or modification;
- h. an itemized statement setting forth the assessed or estimated value of any Facility or New Facility, and of any tangible personal property, existing on the real property as of the date of application and as of the date of expiration of any requested abatement;
- i. the statements required under Chapter 2264 of the Texas Government Code relating to employment practices; and
- j. any other information requested by the City Administrator or the City Council.

ARTICLE VI **Agreement**

6.01 The City of Selma may enter into an agreement, not to exceed ten (10) years of abatement, to exempt from taxation a portion of the value of the real property or eligible tangible personal property in a Tax Abatement Reinvestment Zone on the condition that the owner of the property makes specific improvements or repairs to the property. A tax abatement agreement must be approved by the affirmative vote of a majority of the members of the City Council at a regularly scheduled meeting of the City Council.

6.02 If the subject project is in a state approved enterprise zone and if the initial total project cost exceeds \$50,000,000, the City of Selma may enter into an agreement, not to exceed ten (10) years of abatement, to exempt from taxation a portion of the value of the real property or eligible tangible personal property in a Tax Abatement Reinvestment Zone on the condition that the owner of the property makes specific improvements or repairs to the property.

6.03 The following guidelines are adopted as to the amount of abatement which may be granted:

<u>Initial Total Project Capital Cost</u>	<u>Abatement Percentage</u>
0-\$2,000,000	-0-
\$2,000,001-\$3,400,000	50%
\$3,400,001-\$4,500,000	75%
\$4,500,001 or more	90%

6.04 Any agreement by the City to abate taxes must comply with the provisions of Chapter 312 of the Texas Tax Code and Chapter 2264 of the Texas Government Code.

6.05 The City may execute an agreement for property lying within the extraterritorial jurisdiction of the City of Selma that has been designated a Tax Abatement Reinvestment Zone by the City of Selma but which is not the subject of an abatement agreement provided the abatement agreement contains the following:

- a. those specifications set forth in Sections 6.01 through 6.04 hereof;
- b. those provisions set forth in Article III herein delineating the scope and extent of an authorized abatement;
- c. a list of the kind, number, and location of all proposed improvements on the property;
- d. provisions for access and authorization of inspection of the property by City of Selma employees to ensure that improvements and repairs are made according to specification, as well as authorization for City Council representatives or City employees to inspect the property to determine if the terms and conditions of the agreement are being met;
- e. if applicable, that the improvement or repair conforms to any City of Selma comprehensive municipal zoning ordinance;
- f. a limitation on the uses of the property consistent with the general purpose of encouraging redevelopment during the period tax abatement is in effect;
- g. provisions for recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the agreed upon improvements or repairs; and

h. any other provisions allowed under state law, should the City request inclusion of such provisions, or any provisions that may be required by state law or by the ordinances of the City, provided such City requirements are consistent with state law.

6.06 No abatement shall be granted if, in the opinion of the City Council, the planned improvement or refurbishment constitutes a public hazard or nuisance to the residents within the City.

6.07 An agreement to abate taxes shall provide for abatement to become effective as of the January 1 immediately following the date of execution of the agreement.

6.08 Property shall be taxable at its Base Year Value as defined in Article III above, and all property ineligible for tax abatement shall be fully taxable.

6.09 The City shall have the discretion to increase the amount of taxes abated during the abatement period if the development or redevelopment project that is the subject of the abatement agreement exceeds the projections set forth in the tax abatement application and/or agreement regarding benefits to the City and if the applicant certifies by sworn affidavit that the Initial Total Project Capital Cost would qualify the project for a greater abatement under the guidelines in Section 6.03 hereof. An increase in abatement shall not be automatic, but shall be subject to approval by the City Council, taking into account all relevant data concerning the project and the benefit to the City of Selma. The City Council shall also have the discretion to reduce the amount of abatement granted should the development or redevelopment project not fulfill the projections set forth in the abatement application and/or agreement or if the certified Initial Total Project Capital Cost is less than as set out in the application and as would qualify the project for a lower percentage of abatement under the guidelines in Section 5.03 hereof and the City shall have the right to recapture taxes pursuant to the provisions required under the Texas Tax Code and the Agreement.

6.10 At any time before the expiration of an abatement agreement, the Agreement may be modified by the parties to the Agreement to include other provisions that could have been included in the original agreement or to delete provisions that were not necessary to the original Agreement. The modification must be made by the same procedure by which the original Agreement was approved and executed. The original Agreement may not be modified to extend beyond six (6) years from the date of the original Agreement unless eligible for a ten (10) year abatement period pursuant to Section 6.02 hereof. An Agreement may be terminated by parties to the Agreement in the same manner that the Agreement was approved and executed.

ARTICLE VII

Recapture

7.01 Should a property owner fail to complete the repairs or improvements set forth in a tax abatement agreement or otherwise default under the terms of an abatement agreement, or should a Facility discontinue operation for a period of six (6) consecutive months during the abatement period, then the abatement agreement shall be suspended effective beginning with the

calendar year in which the cessation of operation occurs, and the City, by action of the City Council, may elect to recapture any taxes abated during the term of the Agreement. In the event the cessation of operations is due to fire, explosion, or other casualty or natural disaster, the City Council may allow the abatement to continue in effect as long as the property owner is pursuing the repair and restoration work with due diligence and business is reconvened on the property within twelve (12) months. The City may reinstitute the abatement agreement should operation of the Facility be reinitiated in substantially the same manner and to the same extent as is provided in the abatement agreement and the City may terminate the agreement if the Facility does not once again go into operation within twelve (12) months. The City shall give the property owner notice of such default under the abatement agreement and sixty (60) days within which to cure such default prior to termination of the agreement and recapturing abated taxes.

7.02 The provisions of Section 7.01 herein regarding termination of abatement and recapturing of previously abated taxes shall also apply should the property owner fail to pay any taxes owed to the City and fail to properly follow legal procedures for protest or contest of City taxes.

7.03 Recapture of abated taxes for reasons other than the property owner being convicted of a violation under 8 U.S.C. §1324a(f) shall be in accordance with the following schedule:

<u>Year of Abatement Period in which Default Occurs</u>	<u>Percent of Tax Revenue Abated to be Recaptured</u>
1 through 5	100%
6	80%
7	60%
8	40%
9	20%
10	10%

7.04 Recapture of abated taxes due to the property owner being convicted of a violation of 8 U.S.C. §1324a(f) shall be 100% of the tax revenue abated, plus interest at the rate stated in the abatement agreement, and shall be payable as stated in the abatement agreement.

ARTICLE VIII
Administration

8.01 Determination of the assessed value of the property subject to an agreement shall be made from the annual assessments of the City appraiser or, if no City appraiser, the Chief Tax Appraiser for the county in which the property is located, and the owner of the property subject to an agreement shall furnish the City with any information necessary to determine the appropriateness of the amount of abatement granted.

8.02 Employees or designated representatives of the City shall be allowed access to property subject to an abatement agreement to conduct inspections to determine compliance with

the abatement agreement, such inspections to be conducted at a time and in a manner so as not to interfere with the regular operations upon the property.

8.03 Before March 15 of the year following the year in which an Agreement is executed, the City's employees shall prepare a report setting forth the parties to the Agreement, a general description of the property, and the improvements or repairs to be made under the Agreement, the portion of the property to be exempted from taxation, and the duration of the Agreement, for submission to the Texas Department of Commerce for its central registry.

ARTICLE IX

Assignment

9.01 Tax abatement agreements may be assigned to the new owner of the property only with the written consent of the City. Any assignment of the agreement without the prior written consent of the City shall be void. The City Council may authorize the Mayor or any other City official to provide such prior written consent by resolution adopted at any regularly scheduled meeting of the City Council.

9.02 An assignment shall provide that the assignee shall unconditionally assume all the duties and obligations of the assignor under the terms of the Agreement.

9.03 No assignment shall be approved if the prospective assignor or assignee is delinquent in any way in payment of any City taxes or has been convicted of a violation of 8 U.S.C. §1324a(f).
