

**AGENDA REQUEST  
BUSINESS OF THE CITY COUNCIL  
CITY OF PEARLAND, TEXAS**

<b>AGENDA OF:</b> February 9, 2015	<b>ITEM NO.:</b> Resolution No. R2015-19
<b>DATE SUBMITTED:</b> 1-12-15	<b>DEPARTMENT OF ORIGIN:</b> Legal
<b>PREPARED BY:</b> Darrin Coker	<b>PRESENTOR:</b> Darrin Coker
<b>REVIEWED BY:</b> NA	<b>REVIEW DATE:</b> NA
<b>SUBJECT:</b> A Resolution of the City Council of the City of Pearland, Texas, updating and approving the City's Guidelines and Criteria for Granting Tax Abatement in a reinvestment zone created in the City of Pearland, Brazoria County, Fort Bend County, and Harris County, Texas; having a savings clause, a repealer clause, and a severability clause.	
<b>EXHIBITS:</b> R2015-19	
<b>EXPENDITURE REQUIRED:</b> <b>AMOUNT AVAILABLE:</b> <b>ACCOUNT NO.:</b>	<b>AMOUNT BUDGETED:</b> <b>PROJECT NO.:</b>
<b>ADDITIONAL APPROPRIATION REQUIRED:</b> <b>ACCOUNT NO.:</b> <b>PROJECT NO.:</b>	
<b>To be completed by Department:</b> <input type="checkbox"/> Finance <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Resolution	

**EXECUTIVE SUMMARY**

Chapter 312 of the Texas Tax Code; Property Redevelopment and Tax Abatement Act provides local governments the ability to grant property tax abatements, when appropriate, as an economic development tool. The law requires the City to develop the Guidelines and Criteria for tax abatements before entering into such agreements, and also stipulates that such Guidelines are effective for a period of 2 years. The Council last adopted the updated Guidelines and Criteria on January 28<sup>th</sup>, 2013. Staff does not propose any amendments to the current Guidelines and Criteria; however, they will expire on January 29<sup>th</sup>, 2015 unless the Council approves an updated set of Guidelines.

**RESOLUTION NO. R2015-19**

**A Resolution of the City Council of the City of Pearland, Texas, updating and approving the City's Guidelines and Criteria for Granting Tax Abatement in a reinvestment zone created in the City of Pearland, Brazoria County, Fort Bend County, and Harris County, Texas; having a savings clause, a repealer clause, and a severability clause.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS:**

Section 1. That Resolution No. R2015-19 ("Guidelines and Criteria for Granting Tax Abatement") is hereby adopted in compliance with state law and shall read as follows:

**"GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENT  
IN A REINVESTMENT ZONE CREATED IN THE CITY OF PEARLAND,  
BRAZORIA COUNTY, *FORT BEND COUNTY, AND HARRIS COUNTY, TEXAS***

WHEREAS, the creation and retention of job opportunities that bring economic growth is one of the highest civic priorities for the City of Pearland (the "City"); and

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

WHEREAS, the City must compete with other localities across the nation currently offering tax inducements to attract new Eligible Projects; and

WHEREAS, any tax incentives offered in the City may reduce needed tax revenue unless strictly limited in application to those new and existing industries that bring new wealth to the community; and

WHEREAS, any tax incentives should not adversely affect the competitive position of existing companies operating in the City; and

WHEREAS, the abatement of ad valorem property taxes levied by the City, when offered to attract primary jobs in industries which bring Job creation and capital

## **RESOLUTION NO. R2015-19**

investment from outside a community instead of merely circulating dollars within a community, has been shown to be an effective method of enhancing and diversifying an area's economy; and

WHEREAS, effective September 1, 1987, Texas law requires any eligible taxing jurisdiction to establish Guidelines and Criteria as to eligibility for tax Abatement Agreements prior to granting of any future tax abatement, said Guidelines and Criteria to be unchanged for a two year period unless amended by a three-quarters vote of the City Council;

Now, therefore, be it resolved that the City Council of the City does hereby propose for consideration and adoption these Guidelines and Criteria for granting tax abatement in reinvestment zones in the City, as amended.

### **DEFINITIONS Section 1**

- (a) "Abatement" means the full or partial exemption from ad valorem taxes of certain real property in a reinvestment zone designated by the City for economic development purposes.
- (b) "Abatement Agreement" and "Agreement" mean a contractual agreement between a property owner and/or lessee and the City for the purposes of permitting abatement of a portion of ad valorem property taxes assessed to the Premises and Improvements as defined herein and otherwise owed to the City.
- (c) "Base Value of Premises" means the assessed value of property located at the Premises at the time of execution of the Agreement, which shall consist of the assessed value of the Premises as of January 1 immediately preceding the execution of the agreement plus the agreed upon value of Improvements made thereafter, but before the execution of the Agreement.
- (d) "Deferred Maintenance" means labor and materials necessary for continued operations which are scheduled or periodic in nature.

**RESOLUTION NO. R2015-19**

- (e) "Distribution Center Premises" means buildings and structures, including machinery and equipment, used or to be used primarily to receive, store, service or distribute goods or materials owned by the Premises operator where a majority of the goods or services are distributed to points located outside of Pearland.
- (f) "Company" means the party receiving the benefit of the abatement of ad valorem property taxes levied by the City pursuant to an Abatement Agreement for which this Resolution shall govern and may include a corporation, limited liability company, partnership, limited partnership, sole proprietorship, joint venture, natural person(s) or any other form of business association that may be formed or is recognized by the State of Texas.
- (g) "Employment Positions" means new full-time equivalent employment positions of at least 2,000 hours per employee in the City with the Company at the Premises averaged over a (12) month period, with such hours also to include any vacation and sick leave, with a specified average annual gross compensation (excluding benefits) and for which medical benefits must be provided.
- (h) "Expansion" means the addition of buildings, structures, machinery or equipment for purposes of increasing production capacity.
- (i) "Headquarters Facility" means Premises used primarily as the executive offices for a Company the primary purpose of which is to provide support services to other entities affiliated through common ownership with the Company.
- (j) "Improvements" means Fixed Improvements and Fixed Machinery and Equipment.
- (k) "Fixed Improvements" means real property and/or leasehold improvements.
- (l) "Fixed Machinery and Equipment" means Tangible Personal Property excluding vehicles, vessels or aircraft.

**RESOLUTION NO. R2015-19**

- (m) "Funding Conditions" means capital Improvements and job creation conditions outlined in the Agreement. The capital improvements conditions shall specifically set forth value of the Improvements which must be made by the Improvement Completion Date. The job creation conditions shall specifically set forth the number and quality of Employment Positions.
- (n) "Hotel and Convention Premises" means buildings and structures, including machinery and equipment, the primary purpose of which is to provide a destination conference facility with 250 or more hotel rooms and more than 25,000 square feet of contiguous conference space. This shall also include facilities with 25,000 square feet or more of contiguous conference space without the requirement of a related hotel.
- (o) "Improvement Completion Date" means the date upon which the Fixed Improvements and Fixed Equipment shall be substantially completed by the Company.
- (p) "Manufacturing Premises" means buildings and structures, including machinery and equipment, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.
- (q) "Modernization" means the replacement and upgrading of existing facilities which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation. Modernization may result from the construction, alteration or installation of building, structures, fixed machinery or equipment. Modernization shall not be for the purpose of reconditioning, refurbishing or repairing including scheduled and periodic maintenance of real property or Tangible Personal Property.
- (r) "New Premises" means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion or Modernization.

**RESOLUTION NO. R2015-19**

- (s) "Office Premises" means one or more multi-level office buildings each one of which consists of 50,000 square feet of office space no more than 20% of which is dedicated to retail industry.
- (t) "Other Basic Industry" means buildings and structures including Tangible Personal Property machinery and equipment not elsewhere described, used or to be used for the production of products or services which serve a market primarily outside the City and result in the creation of new permanent jobs and create new wealth in the City.
- (u) "Premises" means property Improvements completed or in the process of construction which together comprises an integral whole and which are the subject of the Agreement and shall be designated in that Agreement by metes and bounds or other substantially similar description.
- (v) "Productive life" means the number of years a property improvement is expected to be in service.
- (w) "Regional Entertainment Premises" means buildings and structures, including 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 50 miles from its location in the City.
- (x) "Research Premises" means building 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.
- (y) "Regional Service Premises" 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 at least 50 miles from the Premises' location in the City.

**RESOLUTION NO. R2015-19**

- (z) "Tangible Personal Property" means (i) personal property that can be seen, weighed, measured, felt, or otherwise perceived by the senses, (ii) that is owned for its role in contributing directly to the business's ability to generate profit but does not include, office furniture and fixtures such as laptop computers, desktop computers, printers, chairs, desks, decorations, reprographics devices, and other similar office appurtenances which may indirectly contribute to the business' ability to generate a profit. Tangible Personal Property also does not include: intangibles which shall include a document or other perceptible object that constitutes evidence of a valuable interest, claim, or right and has negligible or no intrinsic value, inventory and/or supplies and Tangible Personal Property that was located in the reinvestment zone prior to execution of the Agreement with the City or located in the reinvestment zone subsequent to the execution of the Agreement with the City but not specifically identified in the Agreement.

**ABATEMENT AUTHORIZED Section 2**

- (a) Eligible Premises. Premises may be eligible for abatement if it is a: Hotel and Convention Premises, Manufacturing Premises , Office Premises, Research Premises , Distribution Center Premises, Headquarters Premises, Regional Service Premises , Regional Entertainment Premises or Other Basic Industry.
- (b) Creation of New Value. Abatement may only be granted for the additional value of eligible property and Improvements incorporated into the Premises subsequent to and specified in an Abatement Agreement between the City and the property owner, lessee or member of an affiliated group which includes the property owner and the lessee in which a controlling interest (more than 50%) is owned by a common owner, subject to such limitations as the City Council may require.
- (c) New and Existing Facilities at the Premises. Abatement may be granted for new facilities and improvements to existing facilities at the Premises for purposes of Modernization or Expansion.

**RESOLUTION NO. R2015-19**

- (d) Eligible Property. Abatement may be extended to all or a portion of the value of Fixed Improvements and Fixed Machinery and Equipment as defined herein, at the Premises.
- (e) Ineligible Property. The following types of property shall be ineligible for abatement: land; inventories; supplies; tools; furnishings, and other forms of movable personal property which do not meet the definition of Tangible Personal Property set forth above; vehicles; vessels; aircraft; housing and dwellings; retail facilities and Deferred Maintenance
- (f) Leased Facilities. Leasehold Interest: Abatement may be granted to the owner of a leasehold interest in real property, including tax-exempt real property, located in a reinvestment zone designated to exempt all or a portion of the value of the leasehold interest in the real property Tax Code, Section 312.402 (a-1).

Lessee Interest: Abatement may be granted to a lessee of taxable real property located in a reinvestment zone to exempt from taxation all or a portion of the value of Improvements that meet the criteria of Eligible Property set forth above owned by the lessee and located on the property that is subject to the lease.

- (g) Owned/Leased Facilities. If a leased facility is granted abatement, the agreement shall be executed with the lessor and the lessee. The Lessee shall be required to submit, with its abatement application, a copy of the executed lease agreement with the lessor demonstrating a minimum lease term of 5 years. Under no circumstance will the term of the abatement be longer than the term of the lease. Publicly owned land leased to private entities shall be eligible if otherwise qualified.
- (h) Value and Term of Abatement. Abatement from ad valorem property taxes levied by the City shall be granted effective with the January 1 valuation date immediately following the date of execution of the Agreement. Up to one hundred percent of the value of new eligible property may be abated for up to two years during the period of construction and for up to eight years thereafter. The abatement may be extended through an initial agreement and a subsequent agreement as may be required to comply with state law regarding the term of a



**RESOLUTION NO. R2015-19**

reinvestment zone. If the period of construction exceeds two years, the Premises shall be considered completed for purposes of abatement and in no case shall the period of abatement inclusive of construction and completion exceed ten years. If it is determined that the abatement period would better benefit the City and the applicant by deferring the commencement date beyond the January 1st following the City's authorization of the abatement, the City may defer the commencement date of the abatement period to a future date certain. The deferral of the commencement date will not allow the duration of the abatement period to extend beyond ten (10) years. Tax Code 312.00(b). If a project includes facility replacement, the abated value shall be the value of the new unit(s) less the value of the old unit(s).

- (i) Economic Qualification. In order to be eligible for designation as a reinvestment zone and receive tax abatement, the planned improvement:
  - (1) Must be reasonably expected to increase the value of the property in the amount of \$500,000 or more if the planned improvements are for the expansion of facilities already located in the City, or a minimum of \$1,000,000 for new facilities in the City; and
  - (2) Must be expected to retain or create employment positions for a minimum of 10 positions in the City if the planned improvements are for the expansion of facilities already located in the City, or for a minimum of 20 positions for new facilities in the City; and
  - (3) Must not be expected to solely or primarily have the effect of transferring employment from one part of the City to another part of the City; and
  - (4) Must be necessary because capacity cannot be provided efficiently utilizing existing improved property.
- (j) Taxability. From the execution of the Agreement until its termination, taxes shall be payable as follows;
  - (1) The value of ineligible property as provided herein shall be fully taxable;

**RESOLUTION NO. R2015-19**

- (2) The Base Value of Premises, as determined herein, shall be fully taxable; and,
- (3) Only the additional value of new eligible property specifically identified within the Agreement shall be subject to abatement under the Agreement.

**APPLICATION Section 3**

- (a) Any present or potential owner of taxable property in the City may request the creation of a reinvestment zone and tax abatement by filing a written request with the Pearland Economic Development Corporation.
- (b) The application shall consist of a completed application, provided by the Pearland Economic Development Corporation and shall be accompanied by: a general description of the proposed use and the general nature and extent of the Modernization, Expansion or new Improvements to be incorporated at the Premises; a descriptive list of the Improvements which will be a part of the Premises; a map and property description; and a time schedule for undertaking and completing the planned Improvements. In all cases a statement of the assessed value of the Premises, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The application form may require such financial and other information as the City Council deems appropriate for evaluating the financial capacity and other factors of the applicant.
- (c) Upon receipt of a completed application, the City Manager or his designee shall notify in writing the presiding officer of the legislative body of each affected jurisdiction of the application and give written notice of a public hearing, not less than 15 days prior to the hearing. Notice of the public hearing shall also be properly posted and published in the City's official newspaper not less than 15 days prior to the hearing. Before acting upon the application, the City shall, through public hearing, afford any interested party an opportunity to show cause why the abatement should, or should not, be granted.

## **RESOLUTION NO. R2015-19**

- (d) After receipt of an application for creation of a reinvestment zone and application for abatement, a feasibility study shall be prepared setting out the impact of the proposed reinvestment zone and tax abatement. The feasibility study shall include, but not be limited to, an estimate of the economic effect of the creation of the zone, the abatement of taxes, and the proposed benefit to the affected jurisdiction and the property to be included in the zone.
- (e) The City Council shall not establish a reinvestment zone for the purpose of abatement if it finds that the request for the abatement was filed after the announcement or the commencement of construction, alteration, or installation of Improvements related to a proposed Modernization, Expansion, or new Premises.
- (f) Variance. Requests for variance from the provisions of Section 2 must be made in writing to the City Manager of the City, or his designee, provided, however, the total duration of abatement shall in no instance exceed ten years. The applicant shall include in the variance request a complete description of the circumstances the applicant believes supports the requested variance. Approval of a request for variance requires a three-fourths (3/4) vote of the City Council.

### **PUBLIC HEARING Section 4**

- (a) Should any party be able to show cause in the public hearing why the granting of a tax abatement will have a substantial adverse effect on the City, that showing shall be reason for the City Council to deny designation of the reinvestment zone, the granting of Abatement, or both.
- (b) Neither a reinvestment zone nor Abatement Agreement shall be authorized if it is determined that:
  - (1) There would be a substantial adverse affect on the provision of government service or tax base;

**RESOLUTION NO. R2015-19**

- (2) The applicant has insufficient financial capacity to fulfill all of the terms and obligations of an Abatement Agreement;
  - (3) Planned or potential use of the property would, in the sole discretion of City Council, constitute a hazard to public safety, health, morals, and/or violation of other applicable codes or laws.
- (c) In order for the reinvestment zone to be created, the City must make the following findings:
- (1) find that the Improvements sought are feasible and would be of benefit to the zone after expiration of the Agreement;
  - (2) that the zone is reasonably likely to contribute to the retention or Expansion of primary employment or to attract major investment in the City; and

**AGREEMENT Section 5**

At least 7 days before the City Council grants a tax abatement, it must deliver written notice of its intent to enter into the tax Abatement Agreement to the presiding officer of the legislative body of each affected jurisdiction pursuant to Chapter 312 of the Texas Property Tax Code. Said notice must include a copy of the proposed tax Abatement Agreement.

- (a) After proper notice has been given to the affected jurisdictions, the City Council shall, at a regularly scheduled meeting, cast a vote concerning the adoption of the tax Abatement Agreement, which may be adopted only by a majority vote of the City Council and, if adopted, the City Council shall then authorize the City Manager to execute an Agreement with the owner of the Premises and/or lessee, as required. The Agreement may include any of the optional provisions allowed in accordance with Chapter 312 of the Tax Code. The Agreement shall:
  - (1) Include a list of the kind, number, and location of Improvements to the property;

**RESOLUTION NO. R2015-19**

- (2) Authorize inspection of the property to ensure compliance with the agreement;
  - (3) Limit the use of the property consistent with the City's development goals;
  - (4) Require the filing of an annual compliance report with the City containing all relevant information necessary for the City's evaluation of Applicant's compliance with the terms of the agreement; and
  - (5) Provide for recapturing property tax revenues that are lost if the owner fails to make the Improvements or comply with annual compliance reporting requirements.
- (b) If the City Council fails to adopt the Agreement, the City shall notify the applicant of the disapproval, such notification to be in writing and to be sent within 60 days of the City Council's decision.
- (c) An approved tax Abatement Agreement shall be executed by the City Manager within 60 days after the applicant has forwarded all necessary information and documentation to the City.
- (d) No later than 90 days after a reinvestment zone has been designated or a tax Abatement Agreement has been executed or July 1, whichever occurs first, the City shall notify the Comptroller of the State of Texas as required by law. Upon execution of an Abatement Agreement, a copy of the agreement shall be provided to the Chief Appraiser of Appraisal District with jurisdiction over the reinvestment zone.
- (e) The City Manager shall have administrative authority to extend the initial deadlines ("Extensions"), contained in an Abatement Agreement, for obtaining a Certificate of Occupancy, Operation of a Facility, and Job Creation/Retention, for a period not to exceed six (6) months. Any additional Extensions to an Abatement Agreement must be presented to the City Council for approval.

## **RESOLUTION NO. R2015-19**

- (f) Annual Abatement Filings. The Company is required to make additional filings with the appropriate County Appraisal District, or other state or local offices or agencies, annually or from time to time, in order for the Agreement to have full force, effect and applicability. These filings shall be the responsibility of the Company and in no way shall the City, its elected officials, officers, employees or assigns, including the Pearland Economic Development Corporation, be responsible for the timely filing of any form or documents, except those set forth by law, on behalf of the Company. These filings may include, but are not limited to, the "Application for Property Tax Abatement Exemption" Comptroller Form No. 50-116 which must be filed with the appropriate County Appraisal District between January 1st and April 30<sup>th</sup> for property owned as of January 1st of the year in which the abatement is to be applied. Failure of the Company to meet any filing obligation with the appropriate County Appraisal District, or other state or local offices or agencies shall not be grounds for extension of the term of the Agreement.

### RECAPTURE Section 6

In the event a Tax Abatement Agreement is approved by City Council, the Agreement shall include recapture provision substantially similar to the following:

If a Company fails to meet the capital improvements funding conditions of a Tax Abatement Agreement by the agreed upon improvement completion date, the City may, at its discretion, terminate the Agreement and require the Company to immediately repay the entirety of any amounts abated under the Agreement plus interest at the rate of 4% plus prime, as published in the Wall Street Journal, per year, compounded annually from January 1 of the year following the execution of the Agreement to the date of repayment.

**RESOLUTION NO. R2015-19**

- (a) If after the end of a calendar year a Company fails to provide any annual compliance reports related to a funding condition, to the City or the Pearland Economic Development Corporation, required under the Agreement by the deadline for that year, the abatement for the year for which verification was not timely provided according to the terms of the Agreement may be forfeited, at the discretion of the City, and the Company shall have thirty (30) days to pay the City any outstanding damages for failure to provide verification. If the Company does not make payment to the City during the thirty (30) day period this Agreement shall terminate.
  
- (b) If a Company fails to meet a funding condition required under the Agreement by the deadline for that year, the abatement for the year for which the funding condition was not met according to the terms of the Agreement may be forfeited, at the discretion of the City, and the Company shall have thirty (30) days to pay the City any outstanding damages for failure to meet the Funding Condition. If the Company does not make payment to the City during the Thirty (30) day period this Agreement shall terminate.
  
- (c) In the event a Company allows its ad valorem taxes owed to any taxing jurisdiction to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes then the Agreement shall be in default. In the event that the Company defaults in this manner and has not cured such default within sixty (60) days of said default. the abatement may be modified or terminated by the City. If ,at its discretion, the City modifies or terminates an Agreement because a Company allows its ad valorem taxes owed to any taxing jurisdiction to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes the City may, at its discretion require that the Company immediately repay the part or the entirety of any amounts abated under this Agreement plus interest, at the rate of 4% plus prime as published in the Wall Street Journal, per year, compounded annually from January 1of the year following the execution of the Agreement to the date of repayment.

**RESOLUTION NO. R2015-19**

- (d) In the event a Company shall move the Employment Positions or Improvements outlined in a Agreement from the Premises during the term of the Agreement then all abatements of tax previously earned under this Agreement may be refundable to the City by the Company and the Agreement may terminate at the discretion of the City. After notice, the Company shall have thirty (30) days to pay outstanding damages to the City for failure to meet any of the requirements in this Section. If the Company does not make payment to the City during the Thirty (30) day period this Agreement may terminate at the discretion of the City
- (e) No party shall be required to perform any obligation under an Agreement or be liable or responsible for any loss or damage resulting from its failure to perform so long as performance is delayed by force majeure or acts of God, including but not limited to strikes, lockouts or labor shortages, embargo, riot, war, revolution, terrorism, rebellion, insurrection, flood, natural disaster, or interruption of utilities from external causes.
- (f) Should the City determine that a Company is subject to any Recapture provision according to the terms and conditions of its Tax Abatement Agreement, the City Manager or his designee need not provide any written notice to the Company of the fact that it is subject to a Recapture provision. Any notice of Recapture provided by the City may be made via electronic mail.
- (g) All taxes abated shall be deemed due and owing to the City at any point that the Company cannot pay its bills as they come due. if after a Company is no longer able to pay its bills as they come due, it files for protection from its creditors by any chapter of the bankruptcy code the City may, at its discretion, pursue the abated taxes as a creditor in the bankruptcy for unpaid property taxes subject to any and all tax liens applicable thereto.

**ADMINISTRATION Section 7**

- (a) The Agreement shall stipulate that employees and/or designated representatives of the City will have access to the reinvestment zone during the term of the



RESOLUTION NO. R2015-19

abatement to inspect the Premises to determine if the terms and conditions of the Agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the Premises. All inspections will be made with one or more representatives of the Company and in accordance with its safety standards.

- (b) Upon completion of construction, the City, or its designee, shall annually evaluate each Premises and prepare a written report of possible violations to the Abatement Agreement to the City Council, the City Manager, and the City Attorney and provide written notice of the report to the applicant that such report has been submitted.

ASSIGNMENT Section 8

The terms and conditions of an Agreement are binding upon the successors and assigns of all parties hereto. An Agreement may be transferred or assigned by the Company only upon written permission by the City in accordance with Resolution R2013-14- , which permission shall not be unreasonably withheld. No assignment shall be approved if the assignor or assignee is indebted to the City for ad valorem taxes or other obligations. The Company, or any legal successor thereto or prior assignee thereof, may assign its rights and obligations under this Agreement, including by merger or operation of law, to any legal successor or any person or entity that acquires all or substantially all of its business and operations. In addition, with the prior written consent of the City, which consent shall not be unreasonably withheld or delayed, the Company, or any legal successor company thereto or prior assignee thereof, may assign its rights and obligations under this Agreement to any parent or wholly owned subsidiary that it currently has in place or later establishes, if it is constituted as a separate legally recognized business entity. Any such assignment will be made without additional consideration being payable to the City. An Agreement shall survive any sale, change of control or similar transaction involving the Company, any successor thereto or prior assignee thereof and no such transaction shall require the consent of the City. The Company shall provide the City written notice of any assignment, sale, change of control or similar transaction pursuant to this section as soon as possible and in no event not later than thirty (30) calendar days following such event.

**RESOLUTION NO. R2015-19**

SUNSET PROVISION Section 9

These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two (2) years, at which time all reinvestment zones and tax abatement contracts created pursuant to its provisions will be reviewed by the City Council to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria will be modified, renewed or eliminated providing that such actions shall not affect existing Abatement Agreements.

Section 2. Savings. All rights and remedies which have accrued in favor of the City hereunder and amendments thereto shall be and are preserved for the benefit of the City of the Pearland.

Section 3. Repealer. All resolutions or portions of resolutions heretofore passed in conflict with the terms hereof are specifically repealed.

Section 4. Severability. If any section, subsection, sentence, clause, phrase or portion of this Resolution is prohibited by, or unlawful or unenforceable under, any applicable law or jurisdiction is void without invalidating the remaining terms of this Resolution. However, where the provisions of any such applicable law may be waived, they are hereby waived by either party, as the case may be, to the fullest extent permitted by the law, and the affected terms are enforceable in accordance with the parties' original intent.

**RESOLUTION NO. R2015-19**

PASSED, APPROVED and ADOPTED this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2015.

\_\_\_\_\_  
TOM REID  
MAYOR

ATTEST:

\_\_\_\_\_  
YOUNG LORFING, TRMC  
CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
DARRIN M. COKER  
CITY ATTORNEY