

**City of Sulphur Springs, Texas
Chapter 380 Tax Rebate
Program Requirements**

Preamble

Pursuant to Chapter 380 of the Texas Local Government Code, the City Council of the City of Sulphur Springs, Texas, establishes a program for the rebating of property taxes to promote local economic development and primary job development to stimulate business and commercial activity in the City.

Policy Statement

The City Council chooses to extend business incentives as authorized by Texas law when such incentives improve the quality of life for all citizens through the creation and retention of primary job opportunities within the community. The program requirements provide the criteria for review and City Council consideration when exercising discretion to grant business incentives. This program neither requires nor binds the City Council to grant any business incentive.

Effective Date and Duration

These program requirements are effective upon the date of the City Council's adoption. The City Council may, at any time, eliminate the program or modify any provision.

Section 1. Definitions.

1.1 "Agreement" means a written contract authorized by resolution of the City Council and signed by the City Manager and the Business Prospect.

1.2 "Business Incentive" means any financial or non-financial inducement offered by the City to a Business Prospect.

1.3 "Business Incentive Period" means the commencement date and termination date of the Business Incentive. Maximum period of ten (10) years.

1.4 "Business Prospect" means a property owner, lessor, or lessee who proposes a project for consideration of a Business Incentive.

1.5 "City" or "Sulphur Springs" means the City of Sulphur Springs, Texas.

1.6 "City Council" means the City's elective Council as constituted by Sulphur Springs City Charter.

1.7 “Deferred Maintenance Improvements” means improvements necessary for continued operation that either do not improve productivity or do not alter the process technology.

1.8 “Eligible Project” means Eligible Property, Exceptional Project, Existing Facility, Expanded Facility, Facility Modernization, or New Facility which, as a direct result of granting a Business Incentive, is reasonably likely to cause (1) the retention or expansion of primary employment, (2) an increase in the City's property tax base, or (3) the attraction of a major investment that would contribute to new economic development within the City.

1.9 “Eligible Property” means buildings, structures, fixed machinery and equipment, site improvements, or related fixed improvements, made or added subsequent to and specified in an Agreement. “Eligible Property” does not include “Ineligible Property”.

1.10 “Exceptional Project” means a project that makes use of an underutilized asset, diversifies the local economic base, creates leverage with local economic interests, expands the local market for a good or service, or is located in a designated redevelopment or historical area or neighborhood.

1.11 “Expanded Facility” means the addition of buildings, structures, machinery, equipment or payroll to an Existing Facility for purposes of increasing production capacity.

1.12 “Existing Facility” means property improvements completed or in the process of construction which together comprise an integral whole.

1.13 “Facility Modernization” means replacing or upgrading an Existing Facility, through one or more combinations of construction, alteration, or installation of buildings, structures, machinery, or equipment, which increases the productive input or output, updates the technology, or substantially lowers the unit cost of an operation.

1.14 “Force Majeure” means an event, circumstance, or act of a third party that is beyond the control of either the City or the Business Prospect (e.g., “acts of God” as recognized by law; an act of the public enemy; an act of a government entity; acts of war; compliance with laws or regulations; strikes or other labor disturbances; hurricanes; earthquakes; fires; floods; epidemics; embargoes; war; and riots).

1.15 “Ineligible Property” means land, inventories, housing, supplies, tools, furnishings, other personal property, Deferred Maintenance Improvements, and property which has a Productive Life of less than ten (10) years.

1.16 “Leased Property” means the property associated with or related to an Eligible Project which is offered or intended to be offered for lease.

1.17 "New Facility" means a property previously undeveloped which is placed into service by means other than or in conjunction with an Expanded Facility or Facility Modernization

1.18 "Productive Life" means the number of years a property improvement is expected to be in service.

Section 2. Limited Availability, Exclusions, and Threshold Prerequisites

2.1 *Limited Availability.* Subject to Section 2.2, a Business Incentive shall be available only for an Eligible Project.

2.2 *Exclusions to Eligible Project.* A Business Incentive shall not be available to an otherwise Eligible Project in the event of any of the following:

2.2.1 Any proposed project activity (not including the Business Prospect's planning and due diligence) occurs prior to the filing of an application for a Business Incentive.

2.2.2 The Business Prospect, including any business or property owned or leased in whole or in part by the Business Prospect, has an outstanding tax lien owing to any governmental entity.

2.2.3 The Business Prospect, including any business or property owned or leased in whole or in part by the Business Prospect, within the five-year period preceding the date of filing the application, has been cited, noticed, or fined for noncompliance or violation of a federal law or regulation, a state law or regulation, or a City code, ordinance, or resolution.

2.2.4 The Business Prospect, including any business or property owned or leased in whole or in part by the Business Prospect, is a party to a claim or proceeding against the City or is implicated in a claim or proceeding against a third party that may hinder or interfere with the efficacy of the Business Incentive.

2.3 *Threshold Prerequisites.* As a condition for application filing and administrative evaluation, the project must:

2.3.1 Conform to the City's Comprehensive Zoning Ordinance;

2.3.2 Comply with all City ordinances and state and federal laws and regulations;

2.3.3 Meet at least one of the following:

2.3.3.1 The project value, including land, construction and fixed improvements, totals at least \$500,000 new taxable value;

2.3.3.2 The City deems the project an Exceptional Project;

2.3.3.3 The project contributes to the retention or expansion of employment;

2.3.3.4 The project contributes substantially to redevelopment efforts;

2.3.3.5 At least fifteen (15) jobs will be created or retained that meet or exceed the per capita income level in Hopkins County.

Section 3. Application Guidelines and Evaluation.

3.1 *Application.* Any Business Prospect may request the consideration of a Business Incentive by filing a completed Application for Business Incentives Application with the Sulphur Springs Hopkins County EDC.

3.1.1 *Map, Description, and Schedule.* The Business Prospect must include with the application submission a detailed map and property description together with a time schedule for undertaking and completing the project.

3.1.2 *Application materials.* The Business Incentive Prospect must submit detailed financial and other information to enable EDC to evaluate the proposed project with the evaluative criteria set forth in section 3.2. Any required appraisal or appraised value required in section 3.2 by shall be performed or otherwise secured from the Chief Appraiser of the Hopkins County Appraisal District.

3.1.3 *Administrative rejection of application.* The EDC shall reject any incomplete application or an application proposing a project that does not conform with the Section 2 requirements. The Business Prospect may submit a new application to cure any incomplete or deficient application rejected under this subsection.

3.2 *Administrative evaluation.* The EDC shall review each application on its individual merits utilizing the following criteria as applicable to the proposed project.

3.2.1 The Business Prospect's financial capacity and available resources to fund, develop, and complete the proposed project, excluding consideration of any Business Incentive.

3.2.2 The assessed, taxable value of land and existing improvements, if any, associated with the project, separately stated for real and personal property, for the tax year immediately preceding the year of application.

3.2.3 Type, value, and Productive Life of proposed project improvements.

3.2.4 Number of existing jobs that meet or exceed the per capita income level for Hopkins County to be retained by the proposed project.

3.2.5 Number and type of new jobs that meet or exceed the per capita income level for Hopkins County to be created by the proposed project.

3.2.6 Amount of payroll within the City's territorial jurisdiction to be created or retained by the proposed project.

3.2.7. Amount of local sales tax to be generated directly by the proposed project.

3.2.8 Amount of property tax base valuation that will be increased during and after the Business Incentive Period

3.2.9. City costs to be incurred to provide facilities or services directly resulting from the proposed project

3.2.10. The amount of ad valorem taxes to be paid to the City during the Business Incentive Period, taking into consideration the pre-application values, the amount and type of the Business Incentive, the Business Incentive Period, and the value after expiration of the Business Incentive Period

3.2.11. The population growth of the City that occurs directly as a result of the proposed project.

3.2.12 The types and values of public improvements, if any, to be made by the Business Prospect.

3.2.13 Whether the proposed project restricts or enhances the business opportunities of existing businesses within the City

3.2.14. Whether the proposed project attracts other new business or new economic development to the area

3.2.15. Whether the project is environmentally compatible with the City as it exists prior to receipt of the application.

3.2.16 Whether the proposed project will generate a negative impact on the quality of life within the City, constitute a nuisance, or constitute a hazard to public safety, health, and welfare.

3.2.17 Whether and to what extent the proposed project makes a substantial contribution to redevelopment efforts or special area plans by enhancing either functional or visual characteristics (examples include historical structures, traffic circulation, parking, facades, signs, materials, and urban design).

3.2.18 Whether the location of the proposed project furthers the City's development goals.

3.2.19 Whether the proposed project or requested Business Incentive would result in an adverse effect on government services or the local tax base.

3.3 *City Council consideration.* EDC shall prepare a recommendation on the application and submit the recommendation to the City Council for consideration.

3.3.1. A Business Incentive shall only be approved by formal resolution of the City Council authorizing an Agreement.

Section 4. Required Agreement Provisions.

Any Agreement authorized by the City Council shall include the following provisions:

4.1 Business Incentive specific provisions

4.1.1. The Business Incentive Period, including provisions for City recovery of any Business Incentive, as applicable, in the event the Business Prospect relocates, sells, closes, or discontinues the business relating to the proposed project

4.1.2 The proposed project and intended use of project features (including such particulars, as identifying the nature of construction and project improvements, time schedule for construction and completion, City remedies for project delay, size of investment and number of new jobs specific to the proposed project, and description and map of affected property).

4.1.3 Reasonable access by City to the areas of the proposed project and access to current financial documentation to evaluate performance of the Agreement.

4.1.4. City obligations under the Agreement, including the payment of the property tax rebate.

4.1.5 Compliance with Third Quarter TWC Report and investment report.

4.1.6 Business Prospect shall represent that it has not previously been, nor to its present knowledge, is not now in violation of or noncompliant with any City codes, ordinances, or resolutions, or any state or federal laws or regulations, including environmental laws or environmental permits.

4.1.7 City, through its designated agents or auditors, shall have the right at all reasonable times to audit, review and examine by any means, including electronically through the use of telecommunications devices or otherwise, at City's expense, the books, records, accounts and tax returns of Business Prospect to ensure compliance with the terms of the Agreement

4.2 Termination and Default provisions

4.2.1 Grounds for termination of the Agreement and a reasonable period for the Business Incentive Prospect to cure a default or breach of the Agreement.

4.2.2 Suspension of Business Incentive during any cure period, dispute resolution period, or Force Majeure.

4.2.3 City recapture or recovery of Business Incentive with interest as provided under Chapter 2264 of the Texas Government Code in the event of the Business Incentive Prospect's default or breach of the Agreement, violation of state or federal law, or delinquency on payment of ad valorem taxes owed to City.

4.3 Dispute resolution provisions

4.3.1 Initial resolution process requiring the party raising a dispute to provide written notice to the other party with sufficient detail describing the provision of the Agreement alleged to be breached, the underlying facts of the dispute, a proposed solution consistent with the terms of the Agreement, and the relief sought.

4.3.2 A required meeting of the designated representatives of the parties within thirty (30) days following receipt of the written notice to discuss the dispute.

4.4 Indemnity / Hold Harmless provisions

4.4.1 Business Prospect shall indemnify, defend, and hold harmless City from and against any and all suits, actions, losses, damages, claims or liability of any character, type or description, including all reasonable expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury or loss to any property, received or sustained by any person or persons, including the Business Incentive Prospect, relating to, occasioned by, or arising from the performance of the Agreement.

4.4.2 With regard to the proposed project property, Business Prospect shall indemnify and hold harmless City from and against, and shall reimburse City for any and all losses arising out of, based on or in any way relating to any environmental claim arising under federal or state environmental laws or regulations, or relating to any remedial action arising pursuant to any federal or state environmental laws or regulations. Such claims or actions may include, but shall not be limited to, investigation, remediation, treatment, or cleanup of any hazardous substance which has been or is present, released, or disposed of on the proposed project property, or which has migrated or has been discharged or transported from the proposed project property in violation of environmental laws. Business Prospect shall also agree to indemnify, defend, and hold harmless City from and against any and all suits, actions, losses, damages, claims or liability of any character, type or description, including all reasonable expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury or

loss to any property, received or sustained by any person or persons, including the Business Incentive Prospect, relating to, occasioned by, or arising from any environmental claim with regard to the proposed project property; any such defense of the City shall be made by legal counsel, acceptable to City, who is retained and paid for by the Business Prospect.

4.4.3 The indemnity and hold harmless provisions shall be solely for the benefit of the City and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity

4.4.4 The indemnity and hold harmless provisions shall be extended by the Business Prospect to indemnify and protect the City from the negligent, reckless, or intentional acts of the Business Incentive Prospect, its officers, employees, agents, contractors, and privies, regardless of whether such acts are the sole or partial cause of any such injury, death, or damage

4.5 General Provisions:

4.5.1 *No Third Party Beneficiaries.* Nothing in the Agreement should be construed to benefit any person or entity not a signatory to the Agreement.

4.5.2 *Governing Law and Venue.* The Agreement shall be governed exclusively by the laws of the State of Texas with venue fixed in Hopkins County, Texas.

4.6 *Construction.* In construing the Agreement, none of the parties shall have any term or provision, or any uncertainty or ambiguity as to any provisions, construed against such party solely by reason of such party having drafted the same.

4.7: *Independent Contractors.* The parties to the Agreement shall be independent contractors. No party shall exercise control over either the performance of the other party or the employees of the other party; and no party shall be deemed to be the agent, employee, or representative of the other party

4.8 *No Liability of City Officials.* No City councilmember, officer, agent, employee, or independent contractor shall be personally responsible for any liability arising under or growing out of the Agreement

4.9 *No Creation of Debt.* Any Business Incentive extended under the Agreement shall not be construed nor deemed to create a debt under Texas law.

4.10 *Execution of Agreement.* The Agreement shall be approved by all applicable and requisite corporate or company actions of the Business Prospect, with a representation that the signatory on behalf of the Business Prospect has legal authority to enter into the Agreement.

4.11 *Not Conflict with Business Prospect's Other Agreements.* Business Prospect shall represent and warrant that the Agreement, the consummation of the transactions contemplated in the Agreement, and the fulfillment of and compliance with the terms and conditions in the Agreement, do not and will not result in either a breach or default of any agreement or instrument to which Business Prospect is a party or beneficiary, or a right of the Business Prospect to cancel any agreement or instrument to which Business Prospect is a party.

4.12 The Agreement shall bind, and the benefits thereof shall inure, to the respective parties to the Agreement and their representatives, executors, administrators, successors and assigns.

4.13 The Agreement constitutes the entire agreement between the parties. Any and all negotiations and oral understandings between the parties shall be merged into the Agreement and superseded by the Agreement. The Agreement may only be amended or changed by a written document executed by all contracting parties.