SOUTH TEXAS COLLEGE
GUIDELINES AND CRITERIA
FOR GRANTING TAX ABATEMENT

WHEREAS, South Texas College (the "College") has considered playing a limited, but significant, role in the development of substantial renewable energy and scientific investment in South Texas;

WHEREAS, Chapter 312 of the Texas Tax Code, popularly known as the Property Redevelopment and Tax Abatement Act (the "Act"), authorizes junior college districts to join a municipality or a county in offering a temporary personal property tax abatement for limited periods of time as an inducement for financial investment in the development or redevelopment of certain taxable property; and

WHEREAS, the Act grants the College great discretion to adopt guidelines and criteria identifying the types of development or redevelopment suitable to the educational and financial goals of the College;

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of South Texas College that the following Guidelines and Criteria for granting tax abatements be adopted:

Section 1. **Definitions.**

(a) "Abatement" means the temporary, full or partial exemption from ad valorem taxes of certain added value to real and personal property in a zone designated for economic development purposes pursuant to the Act by the Counties of Hidalgo and Starr.

(b) "Added Value" means the increase in the Appraised Value of an Eligible Property as a result of "Expansion" or "Modernization" of an existing facility or construction of a "New Facility." Added Value does not mean or include "Deferred Maintenance."

(c) "Appraised Value" means the appraised value for property tax purposes as determined by the a County Appraisal District, subject to the appeal procedures set forth in the Texas Tax Code.

(d) "Agreement" means a contractual agreement between a property owner and/or lessee in an Eligible Jurisdiction for the purposes of tax abatement. Any Agreement shall be in conformity with these Guidelines and Criteria, including any variance granted under Section 3(f) set out herein. Upon the adoption of a resolution authorizing an Agreement and the execution of same by the parties, the Agreement shall be deemed to embody all of the terms of the Abatement, and no provision of these Guidelines and Criteria shall be deemed to supersede any terms of the Agreement.

(e) "Base Year Value" means the Appraised Value of Eligible Property as of the date specified in the Agreement.

(f) "Construction Phase" means the period during which a material and substantial improvement of the property occurs which represents a separate and distinct construction operation undertaken for the purpose of erecting the improvements. The Construction Phase ends upon the earliest to occur of the following events:

(1) when a certificate of occupancy is issued for the Facility or the engineer/architect supervising construction issues a certificate of final completion that certifies that the capital investment exceeds the minimum capital investment threshold, or

(2) when the Facility has achieved commercial production of a product; provision of a service or start up for production of electrical power.

The determination of the end of the Construction Phase shall be made by the College, in its sole and absolute discretion, based upon the above criteria and such other factors as the College may deem relevant. The determination of the completion of the Construction Phase shall be conclusive, and any judicial review of such determination shall be governed by the substantial evidence rule.

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

(h) "Economic Life" means the number of years a property improvement is expected to be in service in a Facility which will be determined in reliance on engineering and depreciation schedules.

(i) "Eligible Property" means improvements to real property, including buildings, structures, fixed machinery and equipment, and site improvements, plus that office space and related fixed improvements necessary to the operation and administration of the Facility which satisfies the Eligibility Criteria and used or to be used for the production of renewable energy.

(j) "Expansion" means the addition of buildings, structures, fixed machinery or equipment for the purposes of increasing capacity.

(k) "Facility" means property improvements completed or in the process of construction which together compromise an integral whole comprising the project as described in the agreement for temporary tax abatement.

(l) "Force Majeure" means circumstances beyond the control of Owner which shall include casualty losses, national economic factors, shutdowns due to governmental regulations, strikes, acts of war, and the like.

(m) "Ineligible Property" The following types of property shall be fully taxable and ineligible for Abatement: land; inventories; supplies; tools; furnishings and other forms of movable personal property; vehicles; vessels; aircraft; housing; hotel accommodations; Deferred Maintenance investments; property to be rented or leased; improvements for the transmission of electrical energy not wholly consumed by a New Facility or Expansion; any improvements, including those to produce, store or distribute natural gas, fluids or gases, which are not integral to the operation of the Facility; improvements to real property which have an economic life of less than 20 years; property owned or used by the State of Texas or its political subdivisions or by any organization owned, operated or directed by a political subdivision of the State of Texas.

(n) "Modernization" means the replacement and upgrading of existing facilities which increase the productive input or output, updates the technology or substantially lowers the unit cost of the operation, and extends the economic life of the facilities. Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing, repairing or completion of Deferred Maintenance.

(o) "New Capital Investment" means the total value of expenditures capitalized for the Facility on the Owner's books, prior to depreciation, whether relating to exempt or non-exempt property, including all buildings, structures, site improvements, fixed equipment, intangibles, and pollution control equipment.

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

(q) "Owner" means the owner of a Facility subject to Abatement. If the Facility is constructed on a leased property, the owner shall be the party which owns the property subject to Abatement. The other party to the lease shall join in the execution of Agreement but shall not be obligated to assure performance of the party receiving Abatement.

(r) [add as need]

Section 2. **Abatement Authorized.**

(a) Authorized Facilities. A Facility may be eligible for tax incentives offered by the College in the form of a tax abatement if it is substantially designed and constructed or manufactured for construction or installation and operated exclusively for the production, of renewable energy, including solar, geothermal, wind and hydro. Abatement may be granted for New Facilities and improvements to existing facilities for the purpose of Modernization or Expansion. Only the value of facilities exclusively dedicated for the production of renewable energy shall be included in determining the amount of the New Capital Investment.

(b) Creation of New Value. Abatement may only be granted for the Added Value of Eligible Property improvements made subject to and listed in an Agreement between the College and the property Owner and lessee (if required), subject to such limitations as the College may require. The economic life of the improvements must exceed the term of the Agreement by at least ten years.

(c) Period of Abatement. Abatement shall be granted effective with the January 1 valuation date specified in the Agreement following the years of completion of the Construction Phase. Abatement shall be allowed for a period of up to seven years following the Construction Phase; provided that, in no event shall the period of Abatement, inclusive of the Construction Phase exceed ten (10) years.

(d) Abatement Percentage. The Abatement Percentage shall be the percentage of the tax abatement (1% to 100%).

(e) Estimated Added Value Requirement. At the time of execution of the Agreement, the Owner shall reasonably estimate the Added Value upon completion of construction of any improvements to real property in connection with the Facility. This "Estimated Added Value" shall be stated in the Agreement. In the event that upon completion of construction of the improvements, the Added Value, as determined by the Hidalgo or Starr County Appraisal District, shall at any time thereafter during the term of the Agreement be less than eight-five percent (85%) of the Estimated Added Value, not due to a Force Majeure condition, the Owner agrees to pay an amount equal to the then current tax rate of the College applied to the difference between the actual Added Value from eighty-five percent (85%) of the Estimated Added Value, multiplied by 100% minus Abatement Percentages provided under the Agreement. The formula for calculating such additional tax is outlined as follows:

[Tax Rate] x [(85% of Est. Added Value - Actual AV) x (100% - Abatement %)] = Additional Tax

(f) Economic Qualification. In order to be eligible for Abatement, the planned improvement must create no later than the January 1 following the completion of Construction Phase and monitor throughout the remainder of the term of the Agreement the minimum required number of permanent jobs in the District;

(g) Taxability. From the commencement of the Abatement period to the end of the Abatement period, taxes shall be payable as follows:

(1) The value of Ineligible Property as provided in Section 1(m) shall be fully taxable.

(2) The Base Year Value of existing Eligible Property as determined each year shall be fully taxable; and

(3) The Added Value of new Eligible Property shall be taxable subject to the abatement.

(h) Environmental and Worker Safety Qualifications. In determining whether to grant a Abatement, consideration will be given to compliance with all state and federal laws designed to protect human health, welfare and the environment ("environmental laws") that are applicable to all facilities in the State of Texas owned or operated by the owner of the Facility or lessee, its parent, subsidiaries and, if a joint venture or partnership, every member of the joint venture or partnership ("applicants"). Consideration shall also be given to compliance with environmental and worker safety laws by applicants at other facilities within the United States.

Section 3. **Application.**

(a) Written Application. Any present or potential owner of taxable property may request Abatement by filing a written application with the President of the College.

(b) Contents of Application. The application shall consist of a completed application form accompanied by: a general description of the new improvements to be undertaken; a descriptive list of the improvements for which Abatement is requested; a list of the kind, number and location of all proposed improvements of the property; a map and property description; and a time schedule for undertaking and completing the proposed improvements; and all otherwise information required relating to environmental and regulatory standards, review and licensing. In the case of a Modernization or Expansion Project, a statement of the Appraised Value of the Facility, 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 College deems appropriate for evaluating the financial capacity and other relevant factors of the applicant.

(c) Local Employment and Procurement. Owner shall, as part of the Application, provide: (i) a list and description of all component parts and equipment which are included in the construction and/or installation of the Facility, (ii) a list of maintenance and operations personal or professional services anticipated or required for the operation and maintenance of the Facility on an on-going basis; and a (iii) the identify of all persons or firms in Starr and Hidalgo County, or within 100 files thereof, with the capability of providing these services (Schedule I).

(d) Written Notification to Governing Bodies. Upon receipt of a completed application, the President shall evaluate the application for a determination of the proposed Facility's compliance with the these Guidelines.

(e) Feasibility. After receipt of an application for Abatement, the College shall consider the projected life of the Facility and the impact of the proposed Abatement in inducing the development and production of renewable energy in the District. The study shall include, but not be limited to, an estimate of the economic effect of the Abatement of taxes to the College and the property to be covered by such Abatement and the economic impact to the Community.

(f) Variance. A request for a variance from any of the provisions contained herein shall be made in written form; provided, however, that no variance may extend the term of Abatement beyond and of the Abatement period unless the Abatement requested is for Added value beyond the initial value of the Eligible Property. Such requests shall include a complete description of the circumstances explaining why the applicant should be granted a variance. Approval of a request for variance requires a three-fourths (3/4ths) vote of the governing body of College board of trustees.

Section 4. **County Approval.**

(a) Designation of Zone. An Abatement shall be granted only for Facilities in a zone designated for Abatement under the Act by a County.

(b) Required Findings. The College must adopt findings terms of the proposed Agreement meet the College Guidelines and Criteria.

(c) Reservation of Rights. Nothing shall be construed to limit the authority of the College to examine each application for Abatement on a case-by-case basis and determine in its sole and absolute discretion whether or not the proposed Facility should be granted Abatement and whether or not it complies with these Guidelines and Criteria, is feasible, and whether or not the proposed Abatement of taxes will inure to the long-term benefit of the College.

Section 5. **Agreement.**

(a) Contents of Tax Abatement Agreement. The Agreement with the Owner shall include:

(1) the estimated value to be subject to Abatement and the Base Year Value;

(2) the Abatement Percentage applicable to each year of the agreement;

(3) the commencement date and termination date of Abatement;

(4) the proposed use of the Facility, time schedule, map, property description and improvements list as provided in the application as required;

(5) the contractual obligations in the event of default, delinquent taxes, recapture, administration and assignment as provided in these Guidelines or other provisions that may be required for uniformity or by state law;

(6) the amount of Added Value and required number and type of permanent jobs;

(7) a requirement that Owner shall certify to the board of trustees of the College on or before April 1 each year that the Owner is in compliance with each applicable term of the agreement;

(8) a requirement that Owner provide to the board of trustees on or before April 1st a copy of the Appraisal District's _____.

(9) a requirement that the owner or lessee will obtain and maintain all required permits and other authorizations from all local, state and federal agencies with jurisdiction over the licensing or permitting, the design, construction, manufacture and operation of the Facility and for the storage, transport and disposal of waste, if any;

(10) a limitation that the uses of the property must be consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect;

(11) provision of access to and authorization to inspect the property by employees or authorized agents of the College to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement; and

(12) a provision that the board of trustees of the College may cancel or modify the Agreement if the Owner fails to comply with the Agreement.

(13) a provision that Owner annually provide the board of trustees of the College update reporting required by all local, state and federal jurisdiction;

(b) Time of Execution. The Agreement shall be executed within 30 days after the board of trustees shall be approved the Agreement.

(c) Attorney's Fees. In the event any attorney's fees are incurred by the College in the preparation of an Agreement, said fees shall be paid by the applicant upon execution of the Agreement.

Section 6. **Recapture**.

(a) Failure to Commence Operation During Term of Agreement. In the event that the Facility is not completed and does not begin operation as provided in the Agreement, no Abatement shall be given for that tax year, and the full amount of taxes assessed against the property shall be due and payable for that tax year. In the event that the Owner of such a Facility fails to begin operation with the minimum required number of permanent jobs by the next January 1, then the Agreement shall be subject to termination and all abated taxes during the period of construction shall be recaptured and paid within 60 days of such termination. Notwithstanding the foregoing, in the event that the above defaults are due to a Force Majeure condition, the College may grant extensions if the Owner is diligently proceeding to cure such defaults.

(b) Discontinuance of Operations During Term of Agreement. In the event the Facility is completed and begins operation but subsequently discontinues operations during any four (4) consecutive weeks during the term of the Agreement, for any reason except on a temporary basis due to a Force Majeure condition, the Agreement may be terminated by the College, and all taxes previously abated by virtue of the Agreement during the preceding four years shall be recaptured and paid within 60 days of such termination.

(c) Delinquent Taxes. In the event that the Owner allows its ad valorem taxes to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, the Agreement shall be subject to termination and so shall the Abatement of the taxes for the tax year of

the delinquency. The total taxes assessed without Abatement, for that tax year shall be paid within 60 days from the date of termination.

(d) Notice of Default. Should the College determine that the Owner is in default according to the terms and conditions of its Agreement, it shall notify the Owner in writing at the address stated in the Agreement that if such is not cured within 60 days from the date of such notice (the "Cure Period"), then the Agreement may be terminated. In the event the Owner fails to cure said default during the Cure Period and the Agreement is terminated, the taxes abated by virtue of the Agreement will be recaptured and paid as provided herein.

(e) Actual Capital Investment. Should the College determine that the total level of New Capital Investment is lower than provided in the Agreement, the difference between the tax abated and the tax which should have been abated based upon the actual New Capital Investment as determined shall be paid to the College within 60 days of notification to the Owner of such determination.

(f) Reduction in Rollback Tax Rate. If during any year of the period of Abatement with respect to any property any portion of the abated value for the Eligible Property which is added to the current total value of the College is not treated as "new property value" (as defined in Section 26.012(17) of the Texas Tax Code) for the purpose of establishing the "effective maintenance and operations rate" (as defined in Section 26.012(16) of the Texas Tax Code) in calculating the "rollback tax rate" in accord with Section 26.04(c)(2) of the Texas Tax Code and if the College's budget calculations indicate that a tax rate in excess of the "rollback tax rate" is required to fund the operations of the College for the succeeding year, then the College shall recapture from the taxpayer a tax in an amount equal to the lesser of the following:

(1) The amount of the taxes abated for that year by the College with respect to such property.

(2) The amount obtained by subtracting the rollback tax rate computed without the abated property value being treated as new property value from the rollback tax rate computed with the abated property value being treated as new property value and multiplying the difference by the total Appraised Value of the College.

If the College has granted an Abatement of taxes to more than one taxpayer, then the amount of the recapture calculated in accord with subparagraph (2) above shall be prorated on the basis of the amount of the Abatement with respect to each taxpayer.

All recaptured taxes must be paid within thirty (30) days after notice thereof has been given to the affected taxpayer. Penalty and interest shall not begin to accrue upon such sum until the first day of the month following such thirty (30) day notice, at which time penalty and interest shall accrue in accord with the laws of the State of Texas.

(g) Statutory Tax Lien. The amount of tax abated each year under the terms of these Guidelines and the Agreement shall continue to be secured by the statutory tax lien pursuant to Section 32.01 of the Texas Tax Code which shall continue in existence from year to year throughout the entire term of the Agreement or until all taxes, whether assessed or recaptured, are paid in full.

(h) Automatic Termination. The Agreement shall automatically terminate on and as of the date any of the following events occur: the filing of a petition in bankruptcy by the Owner; or the making by the Owner of an assignment for the benefit of creditors; or if any involuntary petition in bankruptcy or petition for an arrangement pursuant to the federal bankruptcy code is filed against the Owner; or if a receiver is appointed for the business of the Owner. In the event of automatic termination for

any of the above reasons, the prior notice of default provisions in subsection (d) above shall not apply.

Section 7. **Administration.**

(a) Annual Assessment. The Starr County Appraisal District and the Hidalgo County Appraisal District shall annually determine the Appraised Value of the real and personal property subject to an Agreement. Each year, the Owner shall furnish the Appraisal District with such information as may be necessary for the Abatement. Once value has been established, the Appraisal District shall notify the affected jurisdictions which levy taxes of the amount of the Appraised Value and the Abatement.

(b) Access to Facility. The Agreement shall stipulate that employees and/or designated representatives of the College will have access to the Facility during the term of the Agreement to inspect the Facility to determine if the terms and conditions of the Agreement are being met. All inspections will be made only after giving 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 Facility. All inspections will be made with one or more representatives of the Owner and in accordance with all applicable safety standards.

(c) Annual Evaluation. Upon completion of construction, the College, individually or in conjunction with other affected jurisdictions, shall annually evaluate each Facility receiving Abatement to ensure compliance with the Agreement and report possible violations of the Agreement.

(d) Annual Reports. Owner shall certify to the governing body of the College on or before April 1 each year that Owner is in compliance with each applicable term of the Agreement. Additionally, during the initial four years of the term of Abatement, the Owner shall provide to the College approving the Abatement an annual report covering those items listed on Schedule 1 in order to document its efforts to acquire goods and services on a local basis. Such annual report shall be prepared on a calendar year basis and shall be submitted to the College no later than ninety (90) days following the end of each such calendar year. The annual report shall be accompanied by an audit letter prepared by an independent accounting firm which has reviewed the report.

(e) "Buy Local" Provision. Each recipient of Abatement shall additionally agree to give preference and priority to local manufacturers, suppliers, contractors and labor for the materials, equipment and labor described on Schedule 1, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency. In any such exceptional cases involving purchases over $10,000 a justification for such purchase shall be included in the annual report. Each such recipient shall further acknowledge that it is a legal and moral obligation of persons receiving Abatement to favor local manufacturers, suppliers, contractors and labor, all other factors being equal. For the purposes of this provision, the terms "materials" and "labor" shall have the meaning set out in Schedule 1. For the purposes of this provision, the term "local" as used to describe manufacturers, suppliers, contractors and labor shall include firms, businesses, and persons who reside in or maintain an office in either Starr County or Hidalgo County. In the event of a breach of the buy-local provision, the percentage of Abatement shall be proportionately reduced equal to the amount the disqualified contract bears to the total construction cost (materials and labor) for the Facility. In the event that Owner contracts the supply and construction of the Facility to an affiliate or other non-local contractor, Owner shall ensure compliance with this Section by including in such contract a flow-through provision requiring such compliance.

(f) Transition Rule. For any Facility which obtained an Agreement within the twelve months prior to adoption of these Guidelines, such Facility may, upon the agreement of the Owner and the Eligible Jurisdiction, obtain an amendment to its Agreement to incorporate the terms and conditions of these Guidelines.

SCHEDULE 1

"Buy Local" Annual Reports

The following information shall be reported to the College on a calendar-year basis during the first four years of the tax abatement program:

1. Dollar amount spent for materials* (local).
2. Dollar amount spent for materials* (total).
3. Dollar amount spent for labor** (local).
4. Dollar amount spent for labor** (total).
5. Number of jobs created in the construction of the Facility (local).
6. Number of jobs created in the construction of the Facility (total).
7. Number of jobs created on a permanent basis (local).
8. Number of jobs created on a permanent basis (total).

* The term "materials" is defined to include all materials used in excavation, site improvement, demolition, concrete, structural steel, fire proofing, piping, electrical, instruments, paintings and scaffolding, insulation, temporary construction facilities, supplies, equipment rental in construction, small tools and consumables. This term does not include major items of machinery and equipment not readily-available locally.

** The term "labor" is defined to include all labor in connection with the excavation, site improvement, demolition, concrete construction, structural steel, fire proofing, equipment placement, piping, electrical, instruments, painting and scaffolding, insulation, construction services, craft benefits, payroll burdens, and related labor expenses. This term does not include engineering services in connection with the design of the Facility.

The term "local" as used to describe manufacturers, suppliers, contractors and labor shall include firms, businesses, and persons who reside in or maintain an office in either Starr County or Hidalgo County.