

RESOLUTION NO. 3349

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELLER, TEXAS AMENDING RESOLUTION NO. 2993, DATED SEPTEMBER 21, 2010, BY AMENDING THE COMPREHENSIVE POLICY OF GUIDELINES AND CRITERIA FOR ECONOMIC DEVELOPMENT INCENTIVES, IN ACCORDANCE WITH CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE; CHAPTER 311 OF THE TEXAS TAX CODE; AND CHAPTER 312 OF THE TEXAS PROPERTY TAX CODE.

WHEREAS, additions have been implemented in the Comprehensive Policy of Guidelines and Criteria for Economic Development Incentives, as adopted by Resolution No. 2993, on September 21, 2010; and

WHEREAS, the governing body of the City of Keller, Texas is committed to the promotion of quality development and expansion of its existing business base, and hereby determines it to be in the best interest of the citizens of the City of Keller in order to create business, retain jobs, improve the commercial tax base, and general sales tax revenue; and

WHEREAS, Article 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code provides that a governing body of a municipality may establish and provide for the administration of one (1) or more programs, including the programs for the making of loans and grants of public money and providing personnel and services of the municipality, to promote State or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, said readoption of the guidelines and criteria for economic development incentives and tax abatement are required by State law prior to the establishment of a reinvestment zone in which said incentives are to be applied; and

1 WHEREAS, in accordance with State law, the City  
2 Council of the City of Keller, Texas,  
3 declared its eligibility to participate in  
4 offering tax abatement in accordance with  
5 the Property Redevelopment and Tax  
6 Abatement Act, as amended, by Resolution  
7 No. 787, on November 5, 1996.

8  
9 NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF  
10 THE CITY OF KELLER, TEXAS:

11 Section 1: THAT, the above findings are hereby found  
12 to be true and correct and are  
13 incorporated herein in their entirety.

14 Section 2: THAT, the City Council of the City of  
15 Keller, Texas hereby amends Resolution No.  
16 2993, dated September 21, 2010, by  
17 amending the Comprehensive Policy of  
18 Guidelines and Criteria for Economic  
19 Development Incentives, attached hereto as  
20 Exhibit "A", in accordance with Chapter  
21 380 of the Texas Local Government Code;  
22 Chapter 311 of the Texas Tax Code; and  
23 Chapter 312 of the Texas Property Tax  
24 Code.

25 Section 3: THAT, this resolution was passed on the  
26 date shown below the City Council of the  
27 City of Keller, Texas.  
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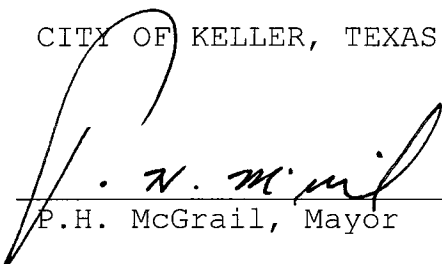
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AND IT IS SO RESOLVED.

Passed by a vote of 6 to 0 on this the 2nd day of  
April, 2013.

CITY OF KELLER, TEXAS

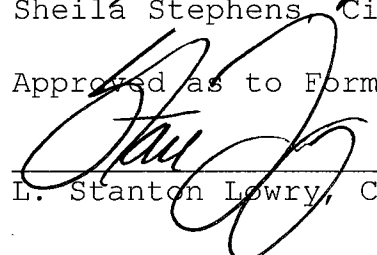
BY:

  
P.H. McGrail, Mayor

ATTEST:

  
Sheila Stephens, City Secretary

Approved as to Form and Legality:

  
L. Stanton Lowry, City Attorney

## Exhibit "A"



### City of Keller, Texas

## **Comprehensive Policy of Guidelines and Criteria for Economic Development Incentives**

The City of Keller (the "City") is committed to the promotion of quality development in all areas of the City and to an ongoing improvement in the quality of life for its citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, the City will, on a case-by-case basis, give consideration to providing incentives as a stimulus for economic development. It is the policy of the City that said consideration will be provided in accordance with the procedures and criteria outlined in this document; however, nothing herein shall imply or suggest that the City is under obligation to provide any incentive to any applicant. All applications shall be considered on a case-by-case basis by the Keller City Council.

As authorized by the Texas Constitution, Chapters 311 (Texas Tax Code), 312 (Texas Tax Code) and 380 (Texas Local Government Code), and other applicable laws, the City has established this incentives policy so as to work in concert with other taxing authorities as part of an overall publicly supported incentive program designed to create economic tax base and job opportunities which bring new economic advantages to and strengthen the current and future economic base of the City.

All incentives requests will be reviewed by the Keller City Council, who will either approve incentives with modifications, as is, or denial. All incentive approvals will be memorialized in a economic development agreement between the City and recipient.

### **Overview of Incentives**

#### **Tax Abatement**

Tax abatements may be offered for improvements to real property and/or for business personal property, and do not apply to land. Tax abatements for improvements to real property may be offered to an applicant that constructs a new or expanded facility to house the applicable project. The tax abatement will apply to the taxable value of the new or expanded improvements. Tax abatements for business personal property may be offered to an applicant that purchases or long-term leases existing or new facilities, and will apply to the taxable value or the business personal property added to the facility after the execution of the tax abatement agreement. In order to qualify for the city tax abatement, the project must meet all the criteria set forth in the City policy statement for Tax Abatements Exhibit "A."

#### **Sales Tax Rebates**

The City collects 2% sales tax on any taxable retail sale made in the city limits and is divided as follows: 1% is allocated to the city's general fund, 0.500% is allocated to the Keller Development Corporation, 0.250% is allocated to street maintenance, and the remaining 0.250% is allocated to the Keller Crime Control Prevention District. An applicant may apply for a rebate all or a portion of the city's (1%) local option sales tax for a maximum of three (3) years collected by the Grantee's business pursuant to the following schedule:

- Annual sales over \$4 million- up to 100% rebate for a maximum of three years.
- Annual sales between \$2 million-\$3,999,999— up to 90% rebate for Year 1, up to 70% for Year 2, and up to 50% for Year 3.
- Annual sales less than \$2 million- up to 50% rebate for Year 1, up to 30% for Year 2, and up to 10% for Year 3.

**Note: The City will pay any rebates based upon receipt of actual sales taxes and the confidential sales report received from the State of Texas Comptroller's Office, and shall be solely responsible for determining the amount of the rebate.**

### **Building Permit, Development, Connection and Impact Fees**

The City may approve a waiver, deferral, grant or rebate of all or a portion of related fees, including but not necessarily limited to; building permit fees, development fees, connection fees and impact fees.

### **Cost Participation in Infrastructure**

The City may agree to participate in the cost of the extension, construction, or reconstruction of public infrastructure necessary for the development of a project. Participation by the city is considered on a case-by-case basis and shall be limited to infrastructure improvements within municipal right-of-ways or easements.

### **Hotel/Motel Occupancy Tax**

The City is committed to attracting lodging and conference center space to the community. A 6% hotel occupancy tax is levied by the State of Texas and the City levies a 6% hotel occupancy tax, for a total of 12%. These taxes may be used for purposes as allowed by law.

### **Tax Increment Financing (TIF) or Tax Increment Reinvestment Zone (TIRZ)**

- Chapter 311 of the Texas Tax Code allows political subdivisions to create TIF Zones in order to use the increased tax value of land from development toward financing of the public improvements in the reinvestment zone.
- TIF Districts may assist in financing development of unimproved or blighted land by dedicating the real estate property taxes to be generated by the built project to a TIF Fund for payment of the principal and interest on TIF Bonds.
- Under a TIF, the property owner pays taxes on the full value of the property, and the taxing entities pay into the TIF Fund the taxes attributed to the added value of the property due to the new development.
- TIF Bonds may be issued for a maximum of 20 years and may be used to pay for public improvements associated with a development (i.e. parking, infrastructure, land acquisition, utilities, etc).
- A TIF Reinvestment Zone must meet set criteria as defined by law.
- The municipality establishes the TIF Reinvestment Zone and other taxing entities approve agreements to participate in the TIF District and set forth the percentage of tax increment they are willing to dedicate to the TIF Fund, up to a maximum of 100%.
- A TIF Board, consisting of 9 to 15 members, is established with representatives from the participating taxing entities and other representatives as set forth in the state law.

## **Public Improvement District**

A Public Improvement District is a public financing vehicle (Chapter 372 of the Texas Local Code) that can be used to finance the cost of public infrastructure related to his project. Under a Public Improvement District:

- A Public Improvement District is formed over property that will benefit from public improvement projects to be constructed
- Assessments are levied in a manner that apportions costs according to the benefits received from the public improvements
- Bonds are issued to fund the improvements. Bond proceeds are deposited to a construction fund
- As eligible projects are completed, the proceeds in the construction fund are used to acquire facilities from the developer
- Assessments are paid by the property owners (usually over a period of years, although assessments may be prepaid in full or in part at any time). Assessments transfer along with title to the property. Therefore, end users typically pay the bulk of assessments. This is fitting, as the public improvements benefit the end users' property.

## **Neighborhood Empowerment Zone**

A Neighborhood Empowerment Zone is a tool for cities that would promote at least one of the following: (1) the creation of affordable housing, including manufactured housing, in the zone; (2) an increase in economic development in the zone; (3) an increase in the quality of social services, education, or public safety provided to residents in the zone; or (4) the rehabilitation of affordable housing in the zone. Tax Code § 378.002.

A city may offer the following incentives within a neighborhood empowerment zone: (1) waive building, inspection, or impact fees; (2) enter into sales tax rebate agreements lasting up to ten years; (3) enter into property tax abatement agreements lasting up to ten years; and (4) set baseline performance standards to encourage alternative building materials that address environmental or energy consumption concerns. Tax Code § 378.004.

## **Fast Track Permitting**

At the request of the applicant, permitting time can be shortened if the project needs and justifies the reduced time frame through the Keller Fast Track program.

## **Old Town Keller Facade Improvement Matching Grant Program**

The Old Town Keller Facade Improvement offers matching grants to eligible property owners in Old Town Keller to renovate and enhance building facades. Eligible businesses can receive up to 50% reimbursement of their project up to \$5,000 for their enhancements. This program is a part of the City's ongoing effort to revitalize and promote the Old Town Keller District.

# **City of Keller Tax Abatement Policy**

## **I. PURPOSE AND OBJECTIVE**

The City is committed to the promotion of quality development in all areas of the City and to an ongoing improvement in the quality of life for its citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, the City will, on a case-by-case basis, give consideration to providing incentives as a stimulus for economic development. It is the policy of the City that said consideration will be provided in accordance with the procedures and criteria outlined in this document; however, nothing herein shall imply or suggest that the City is under obligation to provide any incentive to any applicant. All applications shall be considered on a case-by-case basis by the Keller City Council.

As authorized under Chapter 312 of the Texas Tax Code, the City has established this incentives policy so as to work in concert with other taxing authorities as part of an overall publicly supported incentive program designed to create economic tax base and job opportunities which bring new economic advantages to and strengthen the current and future economic base of the City.

## **II. CRITERIA FOR ECONOMIC DEVELOPMENT INCENTIVES**

- A. In order to be eligible for designation as a reinvestment zone and receive tax abatement, the consideration for application must meet the following:
1. Must be reasonably expected to increase the appraised value of the property in the amount specified in the agreement as per Appendix A after the period of abatement has expired.
  2. Must be expected to produce a minimum capital investment of \$3 million dollars (unless located in the Old Town Keller Overlay District—see Chart).
  3. Must not be expected to solely or primarily have the effect of transferring employment from one part of Tarrant County to another; and
  4. Must be necessary for expansion and/or modernization because the capacity cannot be provided efficiently utilizing existing improved property when reasonable allowance is made for necessary improvements.
  5. The following classes of property shall be fully taxable and ineligible for abatement: land, inventories, supplies, vehicles, vessels, aircraft, deferred maintenance investments, residential property, property that is associated with any activity that is illegal under federal, state, or local law, property owned or used by the State of Texas or its political subdivisions, and property owned by any organization which is owned, operated, or directed by a political subdivision of the State of Texas.

## **III. APPLICATION PROCEDURES**

- A. Any present or potential owner of taxable property in the City may request the creation of a reinvestment zone or tax abatement by filing a written request with the City Manager.
- B. The application shall consist of a completed application form, presented by City Staff, accompanied by: an incentive objective worksheet, including a general description of the new improvements to be

undertaken; a descriptive list of the improvements for which an abatement is requested; a list of the kind, number and location of all proposed improvements; number of jobs created by the project and average salary; a map and legal property description; and a time schedule for undertaking and completing the proposed improvements. The application must include adequate information for the City to conduct an economic impact analysis.

In the case of modernization, an official statement of the assessed 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 Committee deems appropriate for evaluating the financial capacity and the other factors of the applicant.

If a leased facility is granted tax abatements, the agreement shall be executed with both the lessor and lessee.

- C. Upon receipt of a completed application, the Mayor of the City shall notify in writing the presiding officer of the governing body of each affected taxing jurisdiction.
- D. After receipt of said application, all information in the application package will be reviewed for completeness and initial comment by the Keller Economic Development Dept.
- E. Copies of the complete application package, including staff comments, will be provided to the Committee.
- F. Pursuant to the recommendation from the Committee, the City shall prepare an economic feasibility study, including, but not limited to, an estimate of the economic effect of the creation of the reinvestment zone and the abatement of taxes; economic benefits to the eligible jurisdiction; and property to be included in the reinvestment zone.
- G. The recommendations of the Committee will be forwarded with all relevant information to the Chief Administrative Officer of each taxing jurisdiction for action by their governing bodies.
- H. The Keller City Council shall not establish a reinvestment zone or enter into a tax abatement agreement if it finds that the request for the abatement was filed after the commencement of construction, alteration or installation of improvements related to a proposed modernization, expansion or new facility.
- I. If an application finds it necessary to request a variance from provisions of Section II, Paragraphs A, F, H, and J, it must be made in written form and then submitted to the City Manager.
- J. The City reserves the right to perform an economic impact analysis for any project to determine the impact on the city. This analysis will be made before an incentive is offered to the applicant.

#### **IV. PUBLIC HEARING AND APPROVAL**

- A. The Keller City Council may not adopt an ordinance designating a reinvestment zone until it has held a public hearing (conducted in accordance with state law) at which interested persons are entitled to speak and present evidence for or against designation. Notice of the public hearing shall be published in a newspaper having general circulation in the municipality at least seven (7) days prior to the public hearing and clearly posted and identified on the City Council's agenda. The presiding officer of each

affected jurisdiction shall be delivered in writing said notice at least seven days prior to the public hearing.

- B. Prior to entering into a tax abatement agreement, the Keller City Council may, at its option, hold a public hearing at which interested persons shall be entitled to speak and present written materials for or against the approval of the proposed tax abatement agreement.
- C. In order to enter into a tax abatement agreement pursuant to Section 312.204, Texas Tax Code, the Keller City Council must find that the terms of the proposed agreement meet the Guidelines and Criteria set forth herein and that:
  - 1. There will be no substantial adverse affect on the City's ability to provide public services or on its tax base; and
  - 2. The planned use of the property will not constitute a hazard to the public's safety, health or morals.
- D. Any applicant requesting a variance under Section IV-I shall be approved by a vote of at least three-fourths (3/4) of the Keller City Council. No application which deviates from the requirements of these Guidelines and Criteria shall be approved unless accompanied by a written request for variance as provided under Section IV-I.

V. **AGREEMENT**

- A. Should the Keller City Council determine that it is in the best interest of the City to provide tax abatement to a particular applicant, a resolution shall be adopted declaring that under the guidelines and criteria established herein, the application is eligible for tax abatement and that the Mayor is authorized to execute a contract with the applicant enumerating the type of incentives and governing the conditions applicable to them. An agreement so adopted must at least include the following specific items;
  - 1. A description of the type of incentive(s) to be provided and its duration;
  - 2. A legal description of the property to be designated as a reinvestment zone;
  - 3. Detailed information regarding the type, number, location and costs of all proposed improvements to the property;
  - 4. A provision specifically granting access to and the right of inspection of the property by designated City personnel to ensure that the improvements or repairs are made according to specifications and conditions of the agreement;
  - 5. A statement limiting the uses of property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect;
  - 6. A statement providing for recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement;
  - 7. Contain each term agreed to by the owner of the property;

8. A statement acknowledging that it shall be the responsibility of the owner of the property to certify annually to the governing body of each taxing unit that the owner is in compliance with each applicable term of the agreement; and
  9. A provision that the Keller City Council may cancel or modify that agreement if the property owner fails to comply with the agreement.
- B. Following the creation of a reinvestment zone, the Keller City Council shall adopt a resolution approving a tax abatement agreement with the owner (and/or lessee) of the facility, as required, which shall include:
1. Estimated value to be abated and the base year value;
  2. Percent of value to be abated each year;
  3. Abatement term, including commencement and termination date of said abatement;
  4. The proposed use of the facility, nature of construction, time schedule, map, property description and improvements list, as provided in the Application;
  5. Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in Sections II-C, IV-B Subparagraph 3, VII, VIII, and IX, or any other provisions that may be required for uniformity or State law, and;
  6. Amount of capital investment and the average number of jobs retained or created.
- C. Such agreement shall normally be executed within sixty (60) days after the applicant has forwarded all necessary information and documentation to the City Manager.

## **VII. RECAPTURE**

- A. The City reserves the right to review compliance for full or partial recapture of the costs of the economic development incentives granted in the event that the applicant fails to perform in "good faith".
1. If a project is not completed as specified in the tax abatement agreement, the City has the right to cancel the abatement agreement and the abate taxes shall become due to the City and other affected taxing units as provided by law.
  2. If any other of the provisions contained in the tax abatement agreement, i.e., employment, amount of investment, etc., are not met, the City shall have the right to reduce or cancel the abatement agreement, or
  3. If a project granted a tax abatement ceases to operate or is no longer in conformance with the tax abatement agreement, the agreement shall not be in effect for the period of time during which the project is not operating or is not in conformance.

## **VIII. ADMINISTRATION**

- A. The Chief Appraiser of Tarrant County shall annually determine an assessment of the real and personal property comprising the reinvestment zone. Each year, the company or individual receiving the abatement shall furnish the assessor with such information as may be necessary for the abatement. Once value has been established, the Chief Appraiser shall notify the affected jurisdictions, which levies taxes of the amount of the assessment.
- B. 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 abatement to inspect the facility 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 facility. All inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.
- C. Upon completion of construction, the City creating the reinvestment zone shall annually (or at such other times as deemed appropriate by the City Council) evaluate each facility receiving the abatement to ensure compliance with the agreement and report possible violations of the contract or agreement to the City Council and City Attorney. On or before April 30<sup>th</sup> of every year during the life of the abatement agreement, the company or individual receiving the abatement shall complete and file a Tax Abatement Evaluation Report, along with other required written documentation, detailing and certifying the abatement recipient's compliance with the terms of the abatement agreement. Failure to provide information requested in the compliance evaluation by the prescribed deadline may result in taxes abated in the prior year being due and payable. The company or individual receiving a tax abatement shall provide information to the City for the evaluation which shall include, but not be limited to, the following:
  - 1. The number and dollar amounts of all construction contracts and subcontracts awarded on the project;
  - 2. The total number of employees of the company.
  - 3. Should the dollars, percentages, or actions not meet the original or modified requirements of the abatement agreement, a statement shall be provided explaining the reason for the failure to meet the requirements and a recommended course of rectification.

## **IX. ASSIGNMENT**

Tax abatement agreements may be assigned to a new owner or lessee of the facility with the written consent of the Keller City Council, which shall not be unreasonably withheld. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor in accordance with the same terms and conditions as set out in the agreement. The assignment shall be to an assignee that contemplates the same improvements or repairs to the property, except to the extent such improvements or repairs have been completed. No assignment shall be approved if the assignor or the assignee are indebted to the City for ad valorem taxes.

## **X. SUNSET PROVISION**

These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for four years, at which time its provisions will be renewed by the Keller City Council to determine whether or not the economic development goals have been achieved. Based on that review, the Guidelines and Criteria will be modified, renewed or eliminated.

This policy is mutually exclusive of existing industrial district contracts and owners of real property in areas deserving of special attention, as agreed by the City. Provided, however, nothing in this Article shall affect the terms of a Tax Abatement Agreement entered into during the applicable term of this Policy.

## **XI. SEVERABILITY**

In the event any section, subsection, paragraph, sentence, phrase or word is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand and shall remain enforceable.

## **XII. ESTOPPEL CERTIFICATE**

Any party hereto may request an estoppel certificate from another party hereto so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested will be addressed to a subsequent purchaser or assignee or Owner, shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default (or if default exists the nature of default and curative action, which should be undertaken to cure same), the remaining term of this Agreement, the levels of Abatement in effect, and such other matters reasonable requested by the party (ies) to receive the certificate.

## **XIII. APPLICABLE LAW**

This Agreement shall be construed under the laws of the State of Texas Venue for any action under this Agreement shall be the State's District Courts of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

## **IX. DEFINITIONS**

- A. **"Abatement"** means the full or partial exemption from ad valorem taxes of certain real property in a reinvestment zone designated for economic development purposes.
- B. **"Agreement"** means a contractual agreement between a property owner and/or lessee and an eligible jurisdiction for the purpose of tax abatement
- C. **"Authorized Facility"** means a facility may be eligible for abatement if it is a Manufacturing Facility, Research Facility, Regional Distribution Center Facility, Regional Service Facility, Regional Entertainment Facility, Non-Manufacturing Facility, Downtown Overlay District Business, Targeted Business and Industry, Existing Business and Industry, High Impact Business and Industry, or other basic industry. The economic life of a facility and any improvements must exceed the life of the abatement agreement.
- D. **"Base Year Value"** means the assessed value of eligible property on January 1 preceding the execution of the agreement plus the agreed upon value of eligible property improvements made after January 1 but before the execution of the agreement.

- E. **“Deferred Maintenance”** means improvements necessary to continued operations which do not improve productivity or alter the process technology.
- F. **“Downtown Overlay District Businesses”** means businesses located in the Keller downtown overlay district and covered within the Old Town Redevelopment Plan.
- G. **“Economic Life”** means the number of years eligible property is expected to be in service.
- H. **“Eligible Jurisdiction”** means Tarrant County and any municipality, school district, hospital district, college district, or other entity, the majority of which is located in Tarrant County, that levies ad valorem taxes upon and provides services to property located within a proposed or existing reinvestment zone.
- I. **“Eligible Property”** means an abatement may be extended to the value of the buildings, structures, fixed machinery and equipment, site improvements including office space and related fixed improvements necessary to the operation and administration of the facility.
- J. **“Existing Keller Businesses”** is an existing Keller business already having taxable capital investments in Keller.
- K. **“Expansion”** means the addition of buildings, structure, fixed machinery or equipment for purposes of increasing production capacity.
- L. **“Facility”** means property improvements completed or in the process of construction which together comprise an integral whole.
- M. **“Fixed Machinery and Equipment”** means tangible machinery and equipment that is securely placed or fastened and is stationary within a building or structure, or which is movable but remains at and is used solely at a project site.
- N. **“High Impact Business”** means businesses bringing new capital investments into Keller in excess of \$30 million per project.
- O. **“Ineligible Property”** The following types of property shall be fully taxable thus 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, except as provided in Section IV-B, Sub-paragraph 3; improvements for the generation or 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; property which has an economic life of less than ten years; property owned or used by the State of Texas or any political subdivision of the State of Texas.
- P. **“Joint Committee on Tax Abatement”** means the committee consisting of the Keller City Council. Said board shall be hereinafter referred to as “the Committee” for purposes of this document.
- Q. **“Manufacturing Facility”** means buildings and structure, including fixed machinery and equipment, the primary purpose of which is or will be the manufacture of tangible foods or materials or the processing of such goods or materials through a physical or chemical change.

- R. **“Modernization”** means that the replacement and upgrading of existing facilities which increases the productive input or output, updates the technology, or substantially lowers the unit of cost of the operation. Modernization may result from the construction, alteration, or installation of buildings, structure, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing or repairing.
- S. **“New Facility”** means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.
- T. **“Non-Manufacturing Facility”** means buildings and structures, used to service and/or house individuals on a permanent basis.
- U. **“Other Basic Industry”** means buildings and structures, including fixed machinery and equipment not elsewhere described, used or to be used for the production of products or services which primarily serve a market outside Tarrant County and which will result in the creation of new permanent jobs and new wealth.
- V. **“Regional Distribution Center”** means buildings and structures, included fixed machinery and equipment not elsewhere described, used or to be used primarily to receive, store, service or distribute goods or materials owned by the facility operator where a majority of the goods or services are distributed to points at least 30 miles from any part of Tarrant County.
- W. **“Regional Entertainment Facility”** means buildings and structures, including fixed 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 30 miles from any part of Tarrant County.
- X. **“Regional Service Facility”** means buildings and structures including fixed machinery and equipment, used or to be used to service goods where a majority of the goods being serviced originate at least 30 miles from any part of Tarrant County.
- Y. **“Reinvestment Zone”** is an area designated as such for the purpose of tax abatement as authorized by Chapter 312 of the Texas Tax Code.
- Z. **“Research Facility”** means buildings and structures, including fixed 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 process thereto.
- AA. **“Targeted Business and Industry”** means businesses targeted for inclusion in the Keller Business List and recommendation to the City Council for approval and inclusion in the listing.

CHART I

## OLD TOWN KELLER ("OTK")

MINIMUM CAPITAL INVESTMENT	ABATEMENT DURATION	PERCENT OF ABATEMENT	AMOUNT OF CREDITED FEES
Eligible projects creating \$100,000 or more in new/renovation business construction	1 <sup>st</sup> year 2 <sup>nd</sup> year 3 <sup>rd</sup> year 4 <sup>th</sup> year 5 <sup>th</sup> year	Up to 50% Up to 40% Up to 30% Up to 20% Up to 10%	Up to 50%
City can participate in water or sewer oversizing; not to exceed 10% of total.			

CHART II

## TARGETED BUSINESS AND INDUSTRY (ANY ZONING)

NEW BUSINESS AND NEW CONSTRUCTION	ABATEMENT DURATION	PERCENT OF ABATEMENT	AMOUNT OF CREDITED FEES
\$3,000,000 to \$4,999,999	Up to 5 years	Up to 100%	Up to 100%
\$5,000,000 to 9,999,999	Up to 6 years	Up to 100%	Up to 100%
\$10,000,000 to \$29,999,999	Up to 7 years	Up to 100%	Up to 100%

CHART III

**EXISTING BUSINESSES**

<b>EXISTING BUSINESS CAPITAL INVESTMENT</b>	<b>ABATEMENT DURATION</b>	<b>PERCENT OF ABATEMENT</b>	<b>AMOUNT OF CREDITED FEES</b>
\$3,000,000 to \$4,999,999	Up to 5 years	Up to 30%	Up to 30%
\$5,000,000 to \$9,999,999	Up to 6 years	Up to 40%	Up to 40%
\$10,000,000 Plus	Up to 7 years	Up to 50%	Up to 50%

CHART IV

**HIGH IMPACT**

<b>MINIMUM CAPITAL INVESTMENT</b>	<b>ABATEMENT DURATION</b>	<b>PERCENT OF ABATEMENT</b>	<b>AMOUNT OF CREDITED FEES</b>
\$30,000,000 to \$39,999,999	Up to 10 years	Up to 100%	Up to 100%
\$40,000,000 to \$59,999,999	Up to 10 years	Up to 100%	Up to 100%
\$60,000,000 and Greater	Up to 10 years	Up to 100%	Up to 100%

**CHAPTER 380 GRANT**  
(Texas Local Government Code)

**CITY OF KELLER, TEXAS POLICY ON LOCAL  
ECONOMIC DEVELOPMENT AND BUSINESS INCENTIVES  
FOR THE KELLER TAX INCREMENT REINVESTMENT  
ZONE NO. 1**

**GENERAL PURPOSE.**

The City is committed to the promotion of quality development and the possible expansion of the Keller Tax Increment Reinvestment Zone No. 1, hereinafter referred to as Town Center. The Keller City Council, by City Ordinance No. 934, on December 1, 1998, created the Keller Tax Increment Reinvestment Zone No. 1, hereinafter referred to as "Town Center", for the specific purpose of significantly enhancing the value of all taxable real property within the Town Center through quality retail and commercial development. It is the intent and purpose of this policy to create incentives to stimulate non-residential development in Town Center, to enhance leasing opportunities for potential tenants within Town Center as well as to better compete in the commercial marketplace in Northeast Tarrant County. In accordance with this Policy, the City will, on a case-by-case basis, give consideration to providing development incentives to those non-residential businesses meeting the guidelines contained in this document. It is the policy of the City that said consideration will be provided in accordance with the guidelines, criteria and procedures outlined in this document. Nothing herein shall imply that the City is under any obligation to provide economic incentives to any requestor. Nothing herein, shall prohibit the Keller City Council from waiving the criteria to further the objectives of this policy.

**A. Town Center Developer Incentives:** This paragraph is intended to address economic incentives that may be available to the developer and/or investor of the actual capital improvements, buildings or structures constructed within Town Center.

**1. Incentives**

- a. The City may approve a waiver, deferral, grant or rebate of all or a portion of related fees, including but not necessarily limited to building permit fees, development fees, connection fees and impact fees.

**2. Conditions and Requirements**

- a. The developer incentives shall only apply to new construction or the expansion of existing building area (square footage) within Town Center. The incentive is intended to apply new construction or existing building expansions permitted by the City after the effective date of this Policy.
- b. Any request for developer incentives shall be considered by the Keller City Council.
- c. Nothing herein shall imply that the City is under any obligation to provide the aforementioned incentives to any requestor.

**B. Retail Incentives:** This paragraph is intended to address economic incentives that may be available to retail and commercial business owners and tenants of new or expanded facilities located in Town Center permitted after the effective date of this Policy that create or generate taxable retail sales as described by the State Comptroller.

**1. Incentives**

- a. Rebate of the City's one percent (1%) local option sales tax collected by the Grantee's business as described in the Grant Agreement pursuant to the following schedule of:

- Annual sales over \$4 million- 100% rebate for three years.
- Annual sales between \$2 million-\$3,999,999—90% rebate for Year 1, 70% for Year 2, and 50% for Year 3.
- Annual sales less than \$2 million- 50% rebate for Year 1, 30% for Year 2, and 10% for Year 3.

## 2. Conditions and Requirements

- a. Any request for retail sales tax rebates shall be considered by the Keller City Council.
- b. Rebate applies only to the one percent (1%) local option sales tax payable to the City on the Grantee's annual taxable retail sales for the business located specifically in Town Center and described the said Grant Agreement.
- c. Rebate amounts and term set forth in accordance with Section B.1.a. shall be granted (paid to Grantee) consecutively without deviation.
- d. Rebate amount requested and taxable retail sales information submitted by Grantee is subject to verification by the City and confirmed by the State Comptroller. (State Comptroller monthly reporting and annual accounting period is based on the calendar year; therefore, confirmation of Grantee's taxable retail sales information will be available following the end of the preceding calendar (sales tax reporting) year.)
- e. Rebate, if approved, will be paid annually, based on the date of the City's issuance of the Certificate of Occupancy for Grantee's business; however, said rebate shall be made within thirty (30) days following the receipt by the City of confirmation of the Grantee's taxable retail sales by the State Comptroller pursuant to Section B.2.d. and following the preceding calendar year and continuing annually hereafter in accordance with the Grant Agreement and Section B.1.
- f. If the business granted a sales tax rebate under Section B.1. or B.2. and ceases operation during any calendar year, no sales tax rebate associated with the Grantee's business operation will be paid by the City, and the Grant shall terminate immediately upon notification of the business ceasing operation.

## **C. Procedural Guidelines:**

1. A requestor must submit a written request for incentives provided by this Policy to the Office of Economic Development, Keller Town Hall, 1100 Bear Creek Parkway, Keller, Texas.
2. Upon receipt of said written request, the requestor shall be required to complete the Economic Development Department's Application for a Chapter 380 Grant.
3. The City shall have the right, if it deems necessary, to request and examine the owner's/developer's business plan and financial information that may be applicable to the requestor's project.
4. Any economic incentive granted by the City must be contained in contract form by the execution of an Economic Development Agreement which must be approved by the Keller City Council, executed by the City Manager, and approved and executed by the grantee and the grantee's authorized representative.

Approved by Resolution No. 2993 on September 21, 2010

Exhibit A.2  
Resolution No. 2993

RESOLUTION NO. 2993

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELLER, TEXAS AMENDING RESOLUTION NO. 2842, DATED JUNE 16, 2009, BY AMENDING THE COMPREHENSIVE POLICY OF GUIDELINES AND CRITERIA FOR ECONOMIC DEVELOPMENT INCENTIVES, IN ACCORDANCE WITH CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE; CHAPTER 311 OF THE TEXAS TAX CODE; AND CHAPTER 312 OF THE TEXAS PROPERTY TAX CODE.

WHEREAS, the Comprehensive Policy of Guidelines and Criteria for Economic Development Incentives, as adopted by Resolution No. 2347, on September 6, 2005 has expired; and

WHEREAS, the governing body of the City of Keller, Texas is committed to the promotion of quality development and expansion of its existing business base, and hereby determines it to be in the best interest of the citizens of the City of Keller in order to create business, retain jobs, improve the commercial tax base, and general sales tax revenue; and

WHEREAS, Article 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code provides that a governing body of a municipality may establish and provide for the administration of one (1) or more programs, including the programs for the making of loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, said readoption of the guidelines and criteria for economic development incentives and tax abatement are required by State law prior to the establishment of a reinvestment zone in which said incentives are to be applied; and

1 WHEREAS, in accordance with State law, the City  
2 Council of the City of Keller, Texas,  
3 declared its eligibility to participate in  
4 offering tax abatement in accordance with  
5 the Property Redevelopment and Tax  
6 Abatement Act, as amended, by Resolution  
7 No. 787, on November 5, 1996.

8 NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF  
9 THE CITY OF KELLER, TEXAS:

10 Section 1: THAT, the above findings are hereby found  
11 to be true and correct and are  
12 incorporated herein in their entirety.

13 Section 2: THAT, the City Council of the City of  
14 Keller, Texas hereby amends Resolution No.  
15 2842, dated June 16, 2009, by amending the  
16 Comprehensive Policy of Guidelines and  
17 Criteria for Economic Development  
18 Incentives, attached hereto as Exhibit  
19 "A", in accordance with Chapter 380 of the  
20 Texas Local Government Code; Chapter 311  
21 of the Texas Tax Code; and Chapter 312 of  
22 the Texas Property Tax Code.

23 Section 3: THAT, said guidelines and criteria shall  
24 be effective for four (4) years from the  
25 date of said amendment.

26 Section 4: THAT, this resolution was passed on the  
27 date shown below by at least a  
28 three-fourths vote of the City Council of  
the City of Keller, Texas.

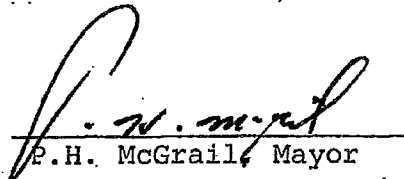
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AND IT IS SO RESOLVED.

Passed by a vote of 5 to 0 on this the 21st day of  
September, 2010.

CITY OF KELLER, TEXAS

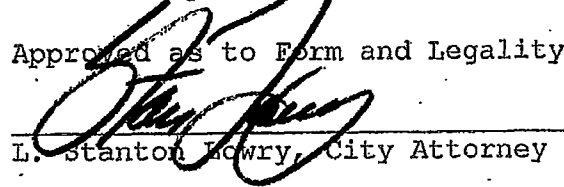
BY:

  
P.H. McGrail, Mayor

ATTEST:

  
Sheila Stephens, City Secretary

Approved as to Form and Legality:

  
L. Stanton Lowry, City Attorney



## **City of Keller, Texas**

# **Comprehensive Policy of Guidelines and Criteria for Economic Development Incentives**

The City of Keller (the "City") is committed to the promotion of quality development in all areas of the City and to an ongoing improvement in the quality of life for its citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, the City will, on a case-by-case basis, give consideration to providing incentives as a stimulus for economic development. It is the policy of the City that said consideration will be provided in accordance with the procedures and criteria outlined in this document; however, nothing herein shall imply or suggest that the City is under obligation to provide any incentive to any applicant. All applications shall be considered on a case-by-case basis by the Keller City Council.

As authorized by the Texas Constitution, Chapters 311 (Texas Tax Code), 312 (Texas Tax Code) and 380 (Texas Local Government Code), and other applicable laws, the City has established this incentives policy so as to work in concert with other taxing authorities as part of an overall publicly supported incentive program designed to create economic tax base and job opportunities which bring new economic advantages to and strengthen the current and future economic base of the City.

All incentives requests will be reviewed by the Keller City Council, who will either approve incentives with modifications, as is, or denial. All incentive approvals will be memorialized in a economic development agreement between the City and recipient.

## **Overview of Incentives**

### **Tax Abatement**

Tax abatements may be offered for improvements to real property and/or for business personal property, and do not apply to land. Tax abatements for improvements to real property may be offered to an applicant that constructs a new or expanded facility to house the applicable project. The tax abatement will apply to the taxable value of the new or expanded improvements. Tax abatements for business personal property may be offered to an applicant that purchases or long-term leases existing or new facilities, and will apply to the taxable value or the business personal property added to the facility after the execution of the tax abatement agreement. In order to qualify for the city tax abatement, the project must meet all the criteria set forth in the City policy statement for Tax Abatements Exhibit "A."

### **Sales Tax Rebates**

The City collects 2% sales tax on any taxable retail sale made in the city limits and is divided as follows: 1% is allocated to the city's general fund, 0.500% is allocated to the Keller Development Corporation, 0.250% is allocated to street maintenance, and the remaining 0.250% is allocated to the Keller Crime Control Prevention District. An applicant may apply for a rebate all or a portion of the city's (1%) local option sales tax for a maximum of three (3) years collected by the Grantee's business pursuant to the following schedule:

- Annual sales over \$4 million- up to 100% rebate for a maximum of three years.
- Annual sales between \$2 million-\$3,999,999— up to 90% rebate for Year 1, up to 70% for Year 2, and up to 50% for Year 3.
- Annual sales less than \$2 million- up to 50% rebate for Year 1, up to 30% for Year 2, and up to 10% for Year 3.

**Note:** The City will pay any rebates based upon receipt of actual sales taxes and the confidential sales report received from the State of Texas Comptroller's Office, and shall be solely responsible for determining the amount of the rebate.

### **Building Permit, Development, Connection and Impact Fees**

The City may approve a waiver, deferral, grant or rebate of all or a portion of related fees, including but not necessarily limited to; building permit fees, development fees, connection fees and impact fees.

### **Cost Participation in Infrastructure**

The City may agree to participate in the cost of the extension, construction, or reconstruction of public infrastructure necessary for the development of a project. Participation by the city is considered on a case-by-case basis and shall be limited to infrastructure improvements within municipal right-of-ways or easements.

### **Hotel/Motel Occupancy Tax**

The City is committed to attracting lodging and conference center space to the community. A 6% hotel occupancy tax is levied by the State of Texas and the City levies a 6% hotel occupancy tax, for a total of 12%. These taxes may be used for purposes as allowed by law.

### **Tax Increment Financing (TIF) or Tax Increment Reinvestment Zone (TIRZ)**

- Chapter 311 of the Texas Tax Code allows political subdivisions to create TIF Zones in order to use the increased tax value of land from development toward financing of the public improvements in the reinvestment zone.
- TIF Districts may assist in financing development of unimproved or blighted land by dedicating the real estate property taxes to be generated by the built project to a TIF Fund for payment of the principal and interest on TIF Bonds.
- Under a TIF, the property owner pays taxes on the full value of the property, and the taxing entities pay into the TIF Fund the taxes attributed to the added value of the property due to the new development.
- TIF Bonds may be issued for a maximum of 20 years and may be used to pay for public improvements associated with a development (i.e. parking, infrastructure, land acquisition, utilities, etc).
- A TIF Reinvestment Zone must meet set criteria as defined by law.
- The municipality establishes the TIF Reinvestment Zone and other taxing entities approve agreements to participate in the TIF District and set forth the percentage of tax increment they are willing to dedicate to the TIF Fund, up to a maximum of 100%.
- A TIF Board, consisting of 9 to 15 members, is established with representatives from the participating taxing entities and other representatives as set forth in the state law.

## **Public Improvement District**

A Public Improvement District is a public financing vehicle (Chapter 372 of the Texas Local Code) that can be used to finance the cost of public infrastructure related to his project. Under a Public Improvement District:

- A Public Improvement District is formed over property that will benefit from public improvement projects to be constructed
- Assessments are levied in a manner that apportions costs according to the benefits received from the public improvements
- Bonds are issued to fund the improvements. Bond proceeds are deposited to a construction fund
- As eligible projects are completed, the proceeds in the construction fund are used to acquire facilities from the developer
- Assessments are paid by the property owners (usually over a period of years, although assessments may be prepaid in full or in part at any time). Assessments transfer along with title to the property. Therefore, end users typically pay the bulk of assessments. This is fitting, as the public improvements benefit the end users' property.

## **Neighborhood Empowerment Zone**

A Neighborhood Empowerment Zone is a tool for cities that would promote at least one of the following: (1) the creation of affordable housing, including manufactured housing, in the zone; (2) an increase in economic development in the zone; (3) an increase in the quality of social services, education, or public safety provided to residents in the zone; or (4) the rehabilitation of affordable housing in the zone. Tax Code § 378.002.

A city may offer the following incentives within a neighborhood empowerment zone: (1) waive building, inspection, or impact fees; (2) enter into sales tax rebate agreements lasting up to ten years; (3) enter into property tax abatement agreements lasting up to ten years; and (4) set baseline performance standards to encourage alternative building materials that address environmental or energy consumption concerns. Tax Code § 378.004.

## **Fast Track Permitting**

At the request of the applicant, permitting time can be shortened if the project needs and justifies the reduced time frame through the Keller Fast Track program.

## **Old Town Keller Facade Improvement Matching Grant Program**

The Old Town Keller Facade Improvement offers matching grants to eligible property owners in Old Town Keller to renovate and enhance building facades. Eligible businesses can receive up to 50% reimbursement of their project up to \$5,000 for their enhancements. This program is a part of the City's ongoing effort to revitalize and promote the Old Town Keller District.

# **City of Keller Tax Abatement Policy**

## **I. PURPOSE AND OBJECTIVE**

The City is committed to the promotion of quality development in all areas of the City and to an ongoing improvement in the quality of life for its citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, the City will, on a case-by-case basis, give consideration to providing incentives as a stimulus for economic development. It is the policy of the City that said consideration will be provided in accordance with the procedures and criteria outlined in this document; however, nothing herein shall imply or suggest that the City is under obligation to provide any incentive to any applicant. All applications shall be considered on a case-by-case basis by the Keller City Council.

As authorized under Chapter 312 of the Texas Tax Code, the City has established this incentives policy so as to work in concert with other taxing authorities as part of an overall publicly supported incentive program designed to create economic tax base and job opportunities which bring new economic advantages to and strengthen the current and future economic base of the City.

## **II. CRITERIA FOR ECONOMIC DEVELOPMENT INCENTIVES**

- A. In order to be eligible for designation as a reinvestment zone and receive tax abatement, the consideration for application must meet the following:
1. Must be reasonably expected to increase the appraised value of the property in the amount specified in the agreement as per Appendix A after the period of abatement has expired.
  2. Must be expected to produce a minimum capital investment of \$3 million dollars (unless located in the Old Town Keller Overlay District—see Chart).
  3. Must not be expected to solely or primarily have the effect of transferring employment from one part of Tarrant County to another; and
  4. Must be necessary for expansion and/or modernization because the capacity cannot be provided efficiently utilizing existing improved property when reasonable allowance is made for necessary improvements.
  5. The following classes of property shall be fully taxable and ineligible for abatement: land, inventories, supplies, vehicles, vessels, aircraft, deferred maintenance investments, residential property, property that is associated with any activity that is illegal under federal, state, or local law, property owned or used by the State of Texas or its political subdivisions, and property owned by any organization which is owned, operated, or directed by a political subdivision of the State of Texas.

## **III. APPLICATION PROCEDURES**

- A. Any present or potential owner of taxable property in the City may request the creation of a reinvestment zone or tax abatement by filing a written request with the City Manager.
- B. The application shall consist of a completed application form, presented by City Staff, accompanied by: an incentive objective worksheet, including a general description of the new improvements to be

undertaken; a descriptive list of the improvements for which an abatement is requested; a list of the kind, number and location of all proposed improvements; number of jobs created by the project and average salary; a map and legal property description; and a time schedule for undertaking and completing the proposed improvements. The application must include adequate information for the City to conduct an economic impact analysis.

In the case of modernization, an official statement of the assessed 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 Committee deems appropriate for evaluating the financial capacity and the other factors of the applicant.

If a leased facility is granted tax abatements, the agreement shall be executed with both the lessor and lessee.

- C. Upon receipt of a completed application, the Mayor of the City shall notify in writing the presiding officer of the governing body of each affected taxing jurisdiction.
- D. After receipt of said application, all information in the application package will be reviewed for completeness and initial comment by the Keller Economic Development Dept.
- E. Copies of the complete application package, including staff comments, will be provided to the Committee.
- F. Pursuant to the recommendation from the Committee, the City shall prepare an economic feasibility study, including, but not limited to, an estimate of the economic effect of the creation of the reinvestment zone and the abatement of taxes; economic benefits to the eligible jurisdiction; and property to be included in the reinvestment zone.
- G. The recommendations of the Committee will be forwarded with all relevant information to the Chief Administrative Officer of each taxing jurisdiction for action by their governing bodies.
- H. The Keller City Council shall not establish a reinvestment zone or enter into a tax abatement agreement if it finds that the request for the abatement was filed after the commencement of construction, alteration or installation of improvements related to a proposed modernization, expansion or new facility.
- I. If an application finds it necessary to request a variance from provisions of Section II, Paragraphs A, F, H, and J, it must be made in written form and then submitted to the City Manager.
- J. The City reserves the right to perform an economic impact analysis for any project to determine the impact on the city. This analysis will be made before an incentive is offered to the applicant.

#### **IV. PUBLIC HEARING AND APPROVAL**

- A. The Keller City Council may not adopt an ordinance designating a reinvestment zone until it has held a public hearing (conducted in accordance with state law) at which interested persons are entitled to speak and present evidence for or against designation. Notice of the public hearing shall be published in a newspaper having general circulation in the municipality at least seven (7) days prior to the public hearing and clearly posted and identified on the City Council's agenda. The presiding officer of each

affected jurisdiction shall be delivered in writing said notice at least seven days prior to the public hearing.

- B. Prior to entering into a tax abatement agreement, the Keller City Council may, at its option, hold a public hearing at which interested persons shall be entitled to speak and present written materials for or against the approval of the proposed tax abatement agreement.
- C. In order to enter into a tax abatement agreement pursuant to Section 312.204, Texas Tax Code, the Keller City Council must find that the terms of the proposed agreement meet the Guidelines and Criteria set forth herein and that:
  - 1. There will be no substantial adverse affect on the City's ability to provide public services or on its tax base; and
  - 2. The planned use of the property will not constitute a hazard to the public's safety, health or morals.
- D. Any applicant requesting a variance under Section IV-I shall be approved by a vote of at least three-fourths (3/4) of the Keller City Council. No application which deviates from the requirements of these Guidelines and Criteria shall be approved unless accompanied by a written request for variance as provided under Section IV-I.

V. **AGREEMENT**

- A. Should the Keller City Council determine that it is in the best interest of the City to provide tax abatement to a particular applicant, a resolution shall be adopted declaring that under the guidelines and criteria established herein, the application is eligible for tax abatement and that the Mayor is authorized to execute a contract with the applicant enumerating the type of incentives and governing the conditions applicable to them. An agreement so adopted must at least include the following specific items;
  - 1. A description of the type of incentive(s) to be provided and its duration;
  - 2. A legal description of the property to be designated as a reinvestment zone;
  - 3. Detailed information regarding the type, number, location and costs of all proposed improvements to the property;
  - 4. A provision specifically granting access to and the right of inspection of the property by designated City personnel to ensure that the improvements or repairs are made according to specifications and conditions of the agreement;
  - 5. A statement limiting the uses of property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect;
  - 6. A statement providing for recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement;
  - 7. Contain each term agreed to by the owner of the property;

8. A statement acknowledging that it shall be the responsibility of the owner of the property to certify annually to the governing body of each taxing unit that the owner is in compliance with each applicable term of the agreement; and
  9. A provision that the Keller City Council may cancel or modify that agreement if the property owner fails to comply with the agreement.
- B. Following the creation of a reinvestment zone, the Keller City Council shall adopt a resolution approving a tax abatement agreement with the owner (and/or lessee) of the facility, as required, which shall include:
1. Estimated value to be abated and the base year value;
  2. Percent of value to be abated each year;
  3. Abatement term, including commencement and termination date of said abatement;
  4. The proposed use of the facility, nature of construction, time schedule, map, property description and improvements list, as provided in the Application;
  5. Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in Sections II-C, IV-B Subparagraph 3, VII, VIII, and IX, or any other provisions that may be required for uniformity or State law, and;
  6. Amount of capital investment and the average number of jobs retained or created.
- C. Such agreement shall normally be executed within sixty (60) days after the applicant has forwarded all necessary information and documentation to the City Manager.

## **VII. RECAPTURE**

- A. The City reserves the right to review compliance for full or partial recapture of the costs of the economic development incentives granted in the event that the applicant fails to perform in "good faith".
1. If a project is not completed as specified in the tax abatement agreement, the City has the right to cancel the abatement agreement and the abate taxes shall become due to the City and other affected taxing units as provided by law.
  2. If any other of the provisions contained in the tax abatement agreement, i.e., employment, amount of investment, etc., are not met, the City shall have the right to reduce or cancel the abatement agreement, or
  3. If a project granted a tax abatement ceases to operate or is no longer in conformance with the tax abatement agreement, the agreement shall not be in effect for the period of time during which the project is not operating or is not in conformance.

## **VIII. ADMINISTRATION**

- A. The Chief Appraiser of Tarrant County shall annually determine an assessment of the real and personal property comprising the reinvestment zone. Each year, the company or individual receiving the abatement shall furnish the assessor with such information as may be necessary for the abatement. Once value has been established, the Chief Appraiser shall notify the affected jurisdictions, which levies taxes of the amount of the assessment.
- B. 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 abatement to inspect the facility 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 facility. All inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.
- C. Upon completion of construction, the City creating the reinvestment zone shall annually (or at such other times as deemed appropriate by the City Council) evaluate each facility receiving the abatement to ensure compliance with the agreement and report possible violations of the contract or agreement to the City Council and City Attorney. On or before April 30<sup>th</sup> of every year during the life of the abatement agreement, the company or individual receiving the abatement shall complete and file a Tax Abatement Evaluation Report, along with other required written documentation, detailing and certifying the abatement recipient's compliance with the terms of the abatement agreement. Failure to provide information requested in the compliance evaluation by the prescribed deadline may result in taxes abated in the prior year being due and payable. The company or individual receiving a tax abatement shall provide information to the City for the evaluation which shall include, but not be limited to, the following:
  - 1. The number and dollar amounts of all construction contracts and subcontracts awarded on the project;
  - 2. The total number of employees of the company.
  - 3. Should the dollars, percentages, or actions not meet the original or modified requirements of the abatement agreement, a statement shall be provided explaining the reason for the failure to meet the requirements and a recommended course of rectification.

## **IX. ASSIGNMENT**

Tax abatement agreements may be assigned to a new owner or lessee of the facility with the written consent of the Keller City Council, which shall not be unreasonably withheld. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor in accordance with the same terms and conditions as set out in the agreement. The assignment shall be to an assignee that contemplates the same improvements or repairs to the property, except to the extent such improvements or repairs have been completed. No assignment shall be approved if the assignor or the assignee are indebted to the City for ad valorem taxes.

## **X. SUNSET PROVISION**

These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for four years, at which time its provisions will be renewed by the Keller City Council to determine whether or not the economic development goals have been achieved. Based on that review, the Guidelines and Criteria will be modified, renewed or eliminated.

This policy is mutually exclusive of existing industrial district contracts and owners of real property in areas deserving of special attention, as agreed by the City. Provided, however, nothing in this Article shall affect the terms of a Tax Abatement Agreement entered into during the applicable term of this Policy.

## **XI. SEVERABILITY**

In the event any section, subsection, paragraph, sentence, phrase or word is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand and shall remain enforceable.

## **XII. ESTOPPEL CERTIFICATE**

Any party hereto may request an estoppel certificate from another party hereto so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested will be addressed to a subsequent purchaser or assignee or Owner, shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default (or if default exists the nature of default and curative action, which should be undertaken to cure same), the remaining term of this Agreement, the levels of Abatement in effect, and such other matters reasonable requested by the party (ies) to receive the certificate.

## **XIII. APPLICABLE LAW**

This Agreement shall be construed under the laws of the State of Texas Venue for any action under this Agreement shall be the State's District Courts of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

## **IX. DEFINITIONS**

- A. **"Abatement"** means the full or partial exemption from ad valorem taxes of certain real property in a reinvestment zone designated for economic development purposes.
- B. **"Agreement"** means a contractual agreement between a property owner and/or lessee and an eligible jurisdiction for the purpose of tax abatement
- C. **"Authorized Facility"** means a facility may be eligible for abatement if it is a Manufacturing Facility, Research Facility, Regional Distribution Center Facility, Regional Service Facility, Regional Entertainment Facility, Non-Manufacturing Facility, Downtown Overlay District Business, Targeted Business and Industry, Existing Business and Industry, High Impact Business and Industry, or other basic industry. The economic life of a facility and any improvements must exceed the life of the abatement agreement.
- D. **"Base Year Value"** means the assessed value of eligible property on January 1 preceding the execution of the agreement plus the agreed upon value of eligible property improvements made after January 1 but before the execution of the agreement.

- E. **“Deferred Maintenance”** means improvements necessary to continued operations which do not improve productivity or alter the process technology.
- F. **“Downtown Overlay District Businesses”** means businesses located in the Keller downtown overlay district and covered within the Old Town Redevelopment Plan.
- G. **“Economic Life”** means the number of years eligible property is expected to be in service.
- H. **“Eligible Jurisdiction”** means Tarrant County and any municipality, school district, hospital district, college district, or other entity, the majority of which is located in Tarrant County, that levies ad valorem taxes upon and provides services to property located within a proposed or existing reinvestment zone.
- I. **“Eligible Property”** means an abatement may be extended to the value of the buildings, structures, fixed machinery and equipment, site improvements including office space and related fixed improvements necessary to the operation and administration of the facility.
- J. **“Existing Keller Businesses”** is an existing Keller business already having taxable capital investments in Keller.
- K. **“Expansion”** means the addition of buildings, structure, fixed machinery or equipment for purposes of increasing production capacity.
- L. **“Facility”** means property improvements completed or in the process of construction which together comprise an integral whole.
- M. **“Fixed Machinery and Equipment”** means tangible machinery and equipment that is securely placed or fastened and is stationary within a building or structure, or which is movable but remains at and is used solely at a project site.
- N. **“High Impact Business”** means businesses bringing new capital investments into Keller in excess of \$30 million per project.
- O. **“Ineligible Property”** The following types of property shall be fully taxable thus 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, except as provided in Section IV-B, Sub-paragraph 3; improvements for the generation or 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; property which has an economic life of less than ten years; property owned or used by the State of Texas or any political subdivision of the State of Texas.
- P. **“Joint Committee on Tax Abatement”** means the committee consisting of the Keller City Council. Said board shall be hereinafter referred to as “the Committee” for purposes of this document.
- Q. **“Manufacturing Facility”** means buildings and structure, including fixed machinery and equipment, the primary purpose of which is or will be the manufacture of tangible foods or materials or the processing of such goods or materials through a physical or chemical change.

- R. **“Modernization”** means that the replacement and upgrading of existing facilities which increases the productive input or output, updates the technology, or substantially lowers the unit of cost of the operation. Modernization may result from the construction, alteration, or installation of buildings, structure, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing or repairing.
- S. **“New Facility”** means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.
- T. **“Non-Manufacturing Facility”** means buildings and structures, used to service and/or house individuals on a permanent basis.
- U. **“Other Basic Industry”** means buildings and structures, including fixed machinery and equipment not elsewhere described, used or to be used for the production of products or services which primarily serve a market outside Tarrant County and which will result in the creation of new permanent jobs and new wealth.
- V. **“Regional Distribution Center”** means buildings and structures, included fixed machinery and equipment not elsewhere described, used or to be used primarily to receive, store, service or distribute goods or materials owned by the facility operator where a majority of the goods or services are distributed to points at least 30 miles from any part of Tarrant County.
- W. **“Regional Entertainment Facility”** means buildings and structures, including fixed 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 30 miles from any part of Tarrant County.
- X. **“Regional Service Facility”** means buildings and structures including fixed machinery and equipment, used or to be used to service goods where a majority of the goods being serviced originate at least 30 miles from any part of Tarrant County.
- Y. **“Reinvestment Zone”** is an area designated as such for the purpose of tax abatement as authorized by Chapter 312 of the Texas Tax Code.
- Z. **“Research Facility”** means buildings and structures, including fixed 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 process thereto.
- AA. **“Targeted Business and Industry”** means businesses targeted for inclusion in the Keller Business List and recommendation to the City Council for approval and inclusion in the listing.

CHART I

OLD TOWN KELLER ("OTK")

MINIMUM CAPITAL INVESTMENT	ABATEMENT DURATION	PERCENT OF ABATEMENT	AMOUNT OF CREDITED FEES
Eligible projects creating \$100,000 or more in new/renovation business construction	1 <sup>st</sup> year 2 <sup>nd</sup> year 3 <sup>rd</sup> year 4 <sup>th</sup> year 5 <sup>th</sup> year	Up to 50% Up to 40% Up to 30% Up to 20% Up to 10%	Up to 50%
City can participate in water or sewer oversizing, not to exceed 10% of total.			

CHART II

TARGETED BUSINESS AND INDUSTRY (ANY ZONING)

NEW BUSINESS AND NEW CONSTRUCTION	ABATEMENT DURATION	PERCENT OF ABATEMENT	AMOUNT OF CREDITED FEES
\$3,000,000 to \$4,999,999	Up to 5 years	Up to 50%	Up to 100%
\$5,000,000 to 9,999,999	Up to 6 years	Up to 60%	Up to 100%
\$10,000,000 to \$29,999,999	Up to 7 years	Up to 70%	Up to 100%

CHART III

**EXISTING BUSINESSES**

<b>EXISTING BUSINESS CAPITAL INVESTMENT</b>	<b>ABATEMENT DURATION</b>	<b>PERCENT OF ABATEMENT</b>	<b>AMOUNT OF CREDITED FEES</b>
\$3,000,000 to \$4,999,999	Up to 5 years	Up to 30%	Up to 30%
\$5,000,000 to \$9,999,999	Up to 6 years	Up to 40%	Up to 40%
\$10,000,000 Plus	Up to 7 years	Up to 50%	Up to 50%

CHART IV

**HIGH IMPACT**

<b>MINIMUM CAPITAL INVESTMENT</b>	<b>ABATEMENT DURATION</b>	<b>PERCENT OF ABATEMENT</b>	<b>AMOUNT OF CREDITED FEES</b>
\$30,000,000 to \$39,999,999	Up to 10 years	Up to 80%	Up to 100%
\$40,000,000 to \$59,999,999	Up to 10 years	Up to 90%	Up to 100%
\$60,000,000 and Greater	Up to 10 years	Up to 100%	Up to 100%

**CHAPTER 380 GRANT**  
(Texas Local Government Code)

**CITY OF KELLER, TEXAS POLICY ON LOCAL  
ECONOMIC DEVELOPMENT AND BUSINESS INCENTIVES  
FOR THE KELLER TAX INCREMENT REINVESTMENT  
ZONE NO. 1**

**GENERAL PURPOSE.**

The City is committed to the promotion of quality development and the possible expansion of the Keller Tax Increment Reinvestment Zone No. 1, hereinafter referred to as Town Center. The Keller City Council, by City Ordinance No. 934, on December 1, 1998, created the Keller Tax Increment Reinvestment Zone No. 1, hereinafter referred to as "Town Center", for the specific purpose of significantly enhancing the value of all taxable real property within the Town Center through quality retail and commercial development. It is the intent and purpose of this policy to create incentives to stimulate non-residential development in Town Center, to enhance leasing opportunities for potential tenants within Town Center as well as to better compete in the commercial marketplace in Northeast Tarrant County. In accordance with this Policy, the City will, on a case-by-case basis, give consideration to providing development incentives to those non-residential businesses meeting the guidelines contained in this document. It is the policy of the City that said consideration will be provided in accordance with the guidelines, criteria and procedures outlined in this document. Nothing herein shall imply that the City is under any obligation to provide economic incentives to any requestor. Nothing herein, shall prohibit the Keller City Council from waiving the criteria to further the objectives of this policy.

**A. Town Center Developer Incentives:** This paragraph is intended to address economic incentives that may be available to the developer and/or investor of the actual capital improvements, buildings or structures constructed within Town Center.

1. Incentives

- a. The City may approve a waiver, deferral, grant or rebate of all or a portion of related fees, including but not necessarily limited to building permit fees, development fees, connection fees and impact fees.

2. Conditions and Requirements

- a. The developer incentives shall only apply to new construction or the expansion of existing building area (square footage) within Town Center. The incentive is intended to apply new construction or existing building expansions permitted by the City after the effective date of this Policy.
- b. Any request for developer incentives shall be considered by the Keller City Council.
- c. Nothing herein shall imply that the City is under any obligation to provide the aforementioned incentives to any requestor.

**B. Retail Incentives:** This paragraph is intended to address economic incentives that may be available to retail and commercial business owners and tenants of new or expanded facilities located in Town Center permitted after the effective date of this Policy that create or generate taxable retail sales as described by the State Comptroller.

1. Incentives

- a. Rebate of the City's one percent (1%) local option sales tax collected by the Grantee's business as described in the Grant Agreement pursuant to the following schedule of:

- Annual sales over \$4 million- 100% rebate for three years.
- Annual sales between \$2 million-\$3,999,999—90% rebate for Year 1, 70% for Year 2, and 50% for Year 3.
- Annual sales less than \$2 million- 50% rebate for Year 1, 30% for Year 2, and 10% for Year 3.

## 2. Conditions and Requirements

- a. Any request for retail sales tax rebates shall be considered by the Keller City Council.
- b. Rebate applies only to the one percent (1%) local option sales tax payable to the City on the Grantee's annual taxable retail sales for the business located specifically in Town Center and described the said Grant Agreement.
- c. Rebate amounts and term set forth in accordance with Section B.1.a. shall be granted (paid to Grantee) consecutively without deviation.
- d. Rebate amount requested and taxable retail sales information submitted by Grantee is subject to verification by the City and confirmed by the State Comptroller. (State Comptroller monthly reporting and annual accounting period is based on the calendar year; therefore, confirmation of Grantee's taxable retail sales information will be available following the end of the preceding calendar (sales tax reporting) year.)
- e. Rebate, if approved, will be paid annually, based on the date of the City's issuance of the Certificate of Occupancy for Grantee's business; however, said rebate shall be made within thirty (30) days following the receipt by the City of confirmation of the Grantee's taxable retail sales by the State Comptroller pursuant to Section B.2.d. and following the preceding calendar year and continuing annually hereafter in accordance with the Grant Agreement and Section B.1.
- f. If the business granted a sales tax rebate under Section B.1. or B.2. and ceases operation during any calendar year, no sales tax rebate associated with the Grantee's business operation will be paid by the City, and the Grant shall terminate immediately upon notification of the business ceasing operation.

## **C. Procedural Guidelines:**

1. A requestor must submit a written request for incentives provided by this Policy to the Office of Economic Development, Keller Town Hall, 1100 Bear Creek Parkway, Keller, Texas.
2. Upon receipt of said written request, the requestor shall be required to complete the Economic Development Department's Application for a Chapter 380 Grant.
3. The City shall have the right, if it deems necessary, to request and examine the owner's/developer's business plan and financial information that may be applicable to the requestor's project.
4. Any economic incentive granted by the City must be contained in contract form by the execution of an Economic Development Agreement which must be approved by the Keller City Council, executed by the City Manager, and approved and executed by the grantee and the grantee's authorized representative.

Approved by Resolution No. 2993 on September 21, 2010