



RESOLUTION NO. 20210223-04

**A RESOLUTION APPROVING A FIRST AMENDMENT TO A PAYMENT IN LIEU OF TAXES (PILOT)
POLICY FOR TENANTS LEASING PROPERTY FROM TEXAMERICAS CENTER**

WHEREAS, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and

WHEREAS, the Texas Legislature has exempted property owned by TexAmericas Center from real property ad valorem taxes customarily assessed by the taxing entities in Bowie County, Texas in which property of TexAmericas Center is located; and

WHEREAS, the special Legislation as approved by the Texas Legislature was passed upon the representation by TexAmericas Center that it would institute a Payment in Lieu of Tax (PILOT) Program to protect the taxing jurisdictions, especially the School Districts, which would ordinarily levy and collect taxes upon the properties leased by TexAmericas Center to third parties; and

WHEREAS, the Legislation exempting TexAmericas' Properties was effective as of January 1, 2020 and TexAmericas Center worked with the local taxing jurisdictions regarding the institution of a Payment in Lieu of Tax (PILOT) Program and adopted a PILOT program and policy by Resolution No. 20200225-10 on February 25, 2020; and

WHEREAS, TexAmericas Center now finds it necessary to reserve the right not to require a PILOT payment upon short-term leases (leases less than one year or temporary leases where TAC is constructing a new building for the temporary Lessee) which will have a minimum term and will require a PILOT payment. Whether or not a PILOT payment is required in a short term lease shall be at the sole discretion of TAC based upon factors including but not limited to length of term, number of jobs created, rental rate and required improvements to the leased premises by TAC.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of TexAmericas Center that the First Amendment to the Payment in Lieu of Tax (PILOT) Program and Policy this date submitted to the Board of Directors, a copy of which is attached to this Resolution, shall be and it is hereby approved; and

BE IT FURTHER RESOLVED, that, the Policy shall be reviewed periodically and a report submitted to the Board of Directors as to the operation of the Policy and any recommendations regarding revision of the Policy to more readily advance the objectives of the Policy and the efforts of TexAmericas Center to build the economic development upon its properties.

PASSED and APPROVED this 23rd day of February, 2021.

A handwritten signature in blue ink, appearing to read "Jim Roberts", is written above a horizontal line.

Jim Roberts, Chairman of the Board

ATTEST:

A handwritten signature in blue ink, appearing to read "Denis Washington", is written above a horizontal line.

Denis Washington, Secretary

Attachment: First Amended PILOT Policy Document

**TEXAMERICAS CENTER
FIRST AMENDED
PAYMENT-IN-LIEU-OF-TAX (PILOT) PROGRAM AND POLICY**

SECTION 1. General Purpose and Objectives

TexAmericas Center (hereinafter referred to as "TAC") is committed to the promotion of economic development upon its property in Bowie County, Texas, and to the ongoing improvement in the quality of life and the creation of jobs for citizens of Bowie County, Texas, and the surrounding area. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, TAC has sought and received special legislation from the Texas Legislature to exempt its property (land and buildings) from real property ad valorem taxes customarily assessed by the taxing entities in Bowie County, Texas upon the leasehold interest of TAC's Tenants. The special legislation was approved by the Texas Legislature based upon the representation by TAC that it would institute a payment in lieu of tax (PILOT) program to protect the taxing jurisdictions, especially the school districts, which would ordinarily levy and collect taxes upon the properties leased by TexAmericas Center to third parties.

SECTION 2. Maximum and Minimum PILOT Payments

The maximum amount of the PILOT payment required of each tenant of TAC is an amount equal to 90% of the ad valorem real estate taxes which would otherwise be due each year if the leasehold interest held by the Tenant were not exempt from ad valorem real estate taxation. The minimum PILOT payment each year shall be an amount equal to 50% of the ad valorem real estate taxes which would otherwise be due if the leasehold interest were not exempt from ad valorem real estate taxation; provided, however, TAC reserves the right to not require a PILOT payment upon short-term leases (leases of less than one year or temporary leases of any term where TAC is constructing a new building for the temporary Lessee which will have a minimum term of not less than ____ years and will require a PILOT payment). Whether or not a PILOT payment is required in a short term lease shall be at the sole discretion of TAC based upon factors including but not limited to length of term, number of jobs created, rental rate and required improvements to the leased premises by TAC.

SECTION 3. PILOT Payment for Tenants having Leases in place prior to January 1, 2019

The PILOT payment due and payable by the Tenant to TAC by a Tenant having a lease in place prior to January 1, 2019, shall be an amount equal to 90% of the ad valorem real estate taxes which would otherwise be due for each year if the leasehold interest were not exempt from ad valorem real estate taxation.

The payment in lieu of taxes percentage of 90% shall remain in full force and effect throughout the term of the lease.

**SECTION 4. PILOT incentives for Tenants having Leases commencing on or after
January 1, 2019**

Subject to the provisions of Section 2,

- A. Unless discounted by agreement entered into and signed by TAC and the Tenant, the payment amount shall be 90% of the ad valorem real estate taxes which would otherwise be due for the year if the leasehold interest were not exempt from ad valorem real estate taxation.
- B. The payment in lieu of taxes may be discounted and reduced to an amount not less than 50% of the ad valorem real estate taxes which would otherwise be due each year if the leasehold interest were not exempt from ad valorem real estate taxation.
- C. The criteria for determining the discount of the PILOT payment will be based upon the following performance standards:
1. Number of jobs created.
 2. Wages paid; and
 - 3.. Capital investment by the Tenant
- D. The minimum required job creation by a Primary User for a discount is 10 full time equivalent jobs. The payment in lieu of taxes may be discounted by one percentage point for each one full time equivalent job created in excess of the minimum job creation requirement. The number of full-time equivalent jobs shall be determined by an annual employee census of the Tenant (the "Annual Census") as of July 1 of each year during the lease term.
- E. The maximum duration of the discount shall be the shorter of the lease term or five years; however, new job creation of ten (10) or more qualified full-time equivalent jobs will reset the commencement of discount thereby extending the term of the discount. A significant capital investment shall reset the term of the discount and minimum capital investment amount required for that reset will be specified in the PILOT Agreement between TAC and the Tenant.
- F. Notwithstanding the provisions of the first paragraph of this Section 4, TAC reserves the right to grant additional discounts in situations where a Tenant creates more than 100 full time equivalent jobs and/or has a capital investment in excess of Ten Million Dollars. The terms and length of those discounts shall be negotiated by and between TAC and the Tenant.

SECTION 5. Revocation or Loss of Incentive Discounts

If, based on the Annual Census, a Tenant fails to maintain the number of full-time equivalent jobs upon which the discount is based, the incentive discount shall be reduced to a level equal to which the actual number of jobs on the Annual Census date meets the requirements for a discount. If the Annual Census indicates that the full-time equivalent jobs of the Tenant is less than 10, the maximum PILOT payment of 90% shall apply without any discount.

SECTION 6. Miscellaneous Provisions

To qualify for a discount of the PILOT payment, a Tenant must agree to participate in the Annual Census which occurs as of July 1 of each year, by providing the information as follows:

- A. Maximum number of full-time equivalent jobs;
- B. Minimum number of full-time equivalent jobs;
- C. Number of full-time equivalent jobs on the first day of July;
- D. Total payroll for jobs on the premises;
- E. An employee census by position (no names);
- F. Number of employees making an amount equal to or above the average wage for the Texarkana Metropolitan Statistical Area as determined by the Texas Workforce Commission;
- G. Average wage for all employees (the Ramp Up Period may be excluded in this calculation);
- H. Such other information as Landlord may reasonably request to support its redevelopment efforts, including but not limited to information required by authorities issuing grants for which Landlord may apply.

The incentive discount for job creation is limited to and based only upon jobs that are located upon property owned by TAC and leased directly to Tenant.

TAC and Tenant shall enter into a written Payment in Lieu of Taxes Agreement (PILOT Agreement) to put into effect the PILOT terms applicable to the Tenant.

SECTION 7. Payment of PILOT by Tenants.

The amount of the PILOT for each Tenant shall be determined by TAC on or about October 1 of each year but not later than November 15 of each year. TAC shall submit a statement of the amount due not later than December 1 of each year. Tenant shall pay the PILOT due to TAC at TAC's business office not later than January 31 (the due date) thereafter. If payment is not paid by January 31, a ten percent (10%) penalty shall be added to the PILOT amount due. If a PILOT is not paid within 60 days after the due date, TAC may at its option cancel any discounts available to the Tenant and/or pursue its legal remedies including but not limited to cancellation of the Tenant's lease.

A Tenant occupying the leased premises on January 1 of the year shall be responsible for paying the PILOT for that year regardless of whether or not the Tenant occupies the same premises for the full year unless the premises are leased to another Tenant prior to the end of the year. A Tenant who first occupies a leased property after January 1 shall be responsible for a proportionate part of the PILOT for the year based upon the initial date of occupancy through the end of the year.

SECTION 8. TAC Remission of Payment in Lieu of Tax Payments to Taxing Jurisdictions; Use of Retained funds by TAC

For leases in effect prior to January 1, 2019, TAC shall remit the full 90% of payments in lieu of taxes collected to the taxing jurisdictions in which the leased premises are located.

With regard to PILOTS collected based upon leases commencing on or after January 1, 2019, TAC shall remit 10% of the collected PILOTS to the taxing jurisdictions in which the leased premises are located. TAC shall retain 90% of the collected PILOTS for its use in developing its property including but not limited to the construction, enhancement, and expansion of the infrastructure of TAC property, such as but not limited to roads, bridges, water and sewer utility lines, fiber optic lines, electric lines, natural gas lines, telecommunication services and lines, demolition of unusable facilities, other construction necessary to successfully develop said property, professional fees for architectural, engineering, planning and legal services, and to provide other incentives for private redevelopment of TAC property and job creation thereon.

The distributions to the taxing entities shall be an amount in proportion to each taxing entity's assessed tax rate as compared to the total combined tax rates of all taxing jurisdictions in which the leased premises are located.

SECTION 9. Definitions

"Annual Average Wage" for the Texarkana Metropolitan Statistical Area (TMSA) is the annual average wage for all businesses and industries operating in said area as calculated and reported by the Texas Workforce Commission in the Quarterly Census of Employment and Wages-Annual Average. The Annual Average Wage as reported by the Commission includes regular wages, overtime, paid holidays, and paid vacation.

The PILOT evaluation will compare the Tenant's annual average wage to the TMSA Annual Average Wage, so the Tenant annual average wage is likewise to include regular wages, overtime, paid vacation, and paid holidays.

"Contract Employee" means a person employed by a party other than the primary user of a facility who will directly benefit from the PILOT incentive, but who is assigned to work for the primary user of the facility as a full-time equivalent and is considered a necessary member of the workforce responsible for duties and assignments required to meet production levels of the primary user. All contract employees are subject to the PILOT criteria for determining net new jobs, including but not limited to wages and benefits.

"Full-Time Equivalent Jobs" means full time jobs located upon TAC owned property which provide full time employment of 32 hours per week, and permanent part time jobs, which when combined, total 32 hours of employment per week. For example, if an employer had one full-time employee working 38 hours per week and two part-time employees working 20 hours per week each, that employer would be providing employment of two full-time equivalent jobs.

"Lease Agreement" means the formal contract between the Tenant and TAC containing all the conditions with which all parties of said contract must be in compliance.

"Net New Jobs" means the number of new full-time equivalent jobs created by the Tenant's initial operations and Expansion of Tenant's facilities, and located at the site that is the subject of the PILOT lease Agreement. Net New Jobs shall not include any jobs moved or replaced

from any other site(s) in Bowie County, Texas. Net new jobs shall include Contract Employees as defined in this document.

“Primary User” means corporation or other business entity, or a group of individual entities that jointly operate a facility located upon TAC owned property under a lease, and who in total contribute to the total number of jobs and the capital investment of project.

“Ramp-Up Period” means the initial time period in which the Tenant is provided in order to meet its job, wage, and/or capital investment, and comply with special circumstance commitments in applicable cases. The Ramp-Up Period shall be specified in the PILOT Agreement between TAC and the Tenant.

SECTION 10. Reservation of Right to Amend or Terminate PILOT Program

TAC reserves the right to review, revise or discontinue this Policy at any time; provided, however, incentive discounts granted prior to the amendment or termination of the Policy will continue for a period of at least five (5) years after the original commencement date of the Tenant’s lease, or until expiration of the Tenant’s lease, whichever first occurs.

END OF POLICY