

## Section VI. Recapture of Agency Benefits

A. Information to be Provided by Companies. Each Company agrees that to receive benefits from the Agency it must, whenever requested by the Agency or required under applicable statutes or project documents, provide and certify or cause to be provided and certified such information concerning the Company, its finances, its employees and other topics which shall, from time to time, be necessary or appropriate, including but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.

B. Recapture of Benefits. It is the policy of the Agency to recapture the value of a PILOT, any sales and use tax exemption, and mortgage recording tax exemption in accordance with the Laws of the State and the provisions contained herein. Before receiving benefits, the Company must attest in writing to its understanding of, and agreement to, the recapture provisions contained in State Law and herein. To the extent permitted by State law, the recapture provisions contained herein may be modified from time to time by the Agency at its sole discretion.

C. Recapture of PILOT, Sales and Use Tax and Mortgage Recording Tax Exemption Benefits

1. Jobs. If the number of full time equivalent jobs to be maintained or created in connection with a project falls below 75% of the number projected in the Company's application to the Agency, or if there are material violations of the project agreements, then the value of the property tax, sales and use tax and mortgage recording tax benefits extended to the project by the Agency may be subject to recapture. When deciding whether or not to recapture benefits and the amount of such recapture, the Agency may consider the potential future benefit of the business to the community.

2. Recapture Payment. The recapture payment paid by the Company to the Agency shall be determined (1) by the difference between any PILOT payments made by the Company and the property taxes that would have been paid by the Company if the property were not under the supervision, jurisdiction or control of the Agency, (2) the value of any mortgage recording tax exemption, if awarded to the Company and (3) the amount of sales and use tax that would have been paid if an exemption was not granted.

3. Recapture of the PILOT, Sales and Use Tax or Mortgage Recording Tax. The Recapture Schedule for a Payment in Lieu of Tax Agreement, Sales and Use Tax or the Mortgage Recording Tax is as follows:

Time from Project Completion	Tax Savings Recaptured
1 Year	80%
2 Years	60%
3 Years	40%
4 Years	20%
5 Years	10%

D. Distribution of the Recapture Payment. Any funds recaptured as a result of the recapture payment shall be distributed to the affected taxing jurisdictions in the same proportion as if the payments were paid or owed by the Company on the date of recapture.

E. A “Full Time Permanent Employee” shall mean

1. A full time, permanent, private sector employee on the Company’s payroll, who has worked at the project location for a minimum of thirty hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Company to other employees with comparable rank, duties and hours; or

2. Up to three part time, permanent, private-sector employees on Company’s payroll, who have worked at the project location for a combined minimum of thirty hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Company to other employees with comparable rank, duties and hours.

F. Additional Conditions Applicable to the Recapture of Sales and Use Tax Exemption Benefits.

1. Recapture Events. As of April 1, 2013, State law requires industrial development agencies to recapture sales and use tax benefits where:

- i. A project is not entitled to receive the benefits;
- ii. Exemptions received exceed the amount authorized by the Agency;
- iii. Exemptions are claimed by the project for unauthorized property or services; or
- iv. A project fails to use the property in the manner required by its Agency agreements.

2. Distribution of Sales and Use Tax. Project operators must cooperate with the Agency in its effort to recapture all sales and use tax benefits received by the Company by promptly paying the recapture amount as determined by the Agency. The amount to be recaptured will be dictated by State Law or this UTEP Policy, whichever may be applicable. The Agency shall remit the recaptured sales and use tax benefits to the State within 30 days of receipt.

3. Compliance Report. Annually, the Agency will file an annual compliance report with the State detailing its recapture terms and its activities to recapture benefits, including the any attempt to recapture benefits from an Agency project.