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# PILOT STYLED ABATEMENT AGREEMENT

This Tax Abatement Agreement hereinafter referred to as "Agreement," is executed by and between FORT BEND COUNTY, TEXAS (a taxing entity, hereinafter referred to as "County,") acting by and through its Commissioners' Court and **Stargazer BESS LLC** a current Owner of Eligible Property (as hereinafter defined) located in Fort Bend County Precinct 2 within the boundaries of Fort Bend County Reinvestment Zone NO. 32

## I. Authorization and Findings:

- A. Fort Bend County is authorized to provide Tax Abatement benefits in accordance with the State of Texas Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code.
- B. Fort Bend County has adopted GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS IN FORT BEND COUNTY, TEXAS and determined that this Owner's request for Tax Abatement conforms with those current Guidelines and Criteria;
- C. Owner first made Application for Abatement with County on or about March 22, 2024, for which the current Guidelines and Criteria specify such Application shall be controlled by the Guidelines and Criteria adopted on May 9, 2023 (which is incorporated by reference), except as may otherwise be noted;
- D. Fort Bend County Reinvestment Zone No. 32 was created on April 23, 2024, in accordance with Texas Tax Code, Chapter 312, and the Property subject to Tax Abatement under this Agreement is located within said Zone;
- E. Fort Bend County is authorized under Section 312.402 to execute a Tax Abatement agreement with the owner of Eligible Property located on real property in a county created reinvestment zone;
- F. No official of County has an interest in the property subject to this Agreement;
- G. That the public notice required by Texas Tax Code Section 312.207 has been satisfied prior to the submission of this Agreement for consideration by this taxing entity and is attached as Exhibit 1 to this Agreement;
- H. Proper notice of the County's intent to enter into this Agreement has been provided to the presiding officers of each of the other taxing units levying taxes

in the Reinvestment Zone not less than 7 days prior to the date on which this Agreement was approved by the Commissioners Court; and

- I. Though this Agreement abates County ad valorem taxes on property, during the Term of this Agreement, the following benefits will result, and which would not be secured without this Agreement:
  1. Owner will locate this substantial capital investment in Fort Bend County, rather than another County;
  2. Current <sup>1</sup> and (and any future) taxing units levying taxes in the Reinvestment Zone (namely Wharton County Junior College, Fort Bend ESD 9 and Needville ISD) will receive new tax revenue that would not be available if Owner chose another location for this Project;
  3. The facility will remain operational for a minimum of 15 years in Fort Bend County, for which County will assess taxes beginning with the first year following the end of the Abatement Period;
  4. County's receipt of a Payment In Lieu of Taxes from Owner results in a stable revenue stream for County that is not subject to appeal by Owner; and
  5. At the end of the Project's life, Owner will be required to ensure that the Real Property is returned to its original state.

## **II. Definitions:**

As used in this Agreement, the following terms shall have the meanings set forth below:

- A. "Abatement" means the full or partial exemption from ad valorem taxes of certain property located in a reinvestment zone designated for economic development purposes.
- B. "Abatement Period" means the 10-year period beginning on the earlier of (1) January 1 of the first Calendar Year after the Owner certifies that the Project has achieved Commercial Operations under Section V(B)(1)(c) or (2) if Owner elects for the Abatement Period to begin sooner, January 1 of the Calendar Year identified in a notice delivered by Owner to Fort Bend County that recites "Owner elects for the Abatement Period to begin on January 1, 20\_\_." The Abatement Period shall end upon the conclusion of 10 full Calendar Years thereafter and in no case shall exceed the statutory limits stated in Texas Tax Code Chapter 312.
- C. "Base Year" means the Calendar Year in which the Effective Date occurs.
- D. "Commissioners Court" means the Commissioners Court of Fort Bend County, Texas.

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<sup>1</sup> Namely Wharton County Jr College, Fort Bend ESD 9 and Needville ISD

- E. "Commercial Operations" means that the facility has become commercially operational and placed into service for the purpose of storing electricity for sale in one or more commercial markets.
- F. "County Property Taxes" means any and all current and future ad valorem taxes on property imposed by County that are eligible for abatement under Texas Tax Code Chapter 312.
- G. "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.
- H. "Force Majeure" includes events not reasonably within Owner's control, including the following causes and events: acts of God and the public enemy, strikes, lockouts or other industrial disturbances, inability to obtain material or equipment or labor due to an event that meets the definition of Force Majeure, wars, blockades, insurrections, riots, epidemics, pandemics, endemics, landslides, lightning, earthquakes, fires, storms, floods, high water washouts, inclement weather, arrests and restraints of rulers and people, interruptions by government or court orders, present or future orders of any regulatory body, civil disturbances, explosions, breakage or accident to machinery or lines, freezing of lines, any laws, orders, acts or restraint of government or governmental body or court, or the partial or entire failure of electricity supply or any other event that is beyond Owner's reasonable control.
- I. "Improvements" are as identified in the Texas Tax Code Chapter One.
- J. "Lender" means any entity or person providing, directly or indirectly, with respect to the Project and Improvements any (a) senior or subordinated construction, interim or long-term debt financing or refinancing, whether that financing or refinancing takes the form of private debt, public debt, or any other form of debt (including debt financing or refinancing), or (b) tax equity financing. There may be more than one Lender. Owner, at its election, may send written notice to the County with the name and notice information for any Lender.
- K. "Owner" means the owner of Real Property on which an Eligible Facility is or will be located, who may also be the Lessor. Where the context requires, "Owner" means the owner of the Eligible Facility, who is the Lessee of Real Property on which the Eligible Facility is or will be located; provided that a specific definition or other provision to the contrary in an Agreement controls over this sentence. Owner includes Owner's successors and assigns; however, this definition does not supersede the assignment requirements of Section XIII(A).
- L. "Personal Property" means property that is not Real Property and consists of intangible and tangible personal property. Intangible Personal Property means a claim, interest (other than an interest in tangible property), right, or

other thing that has value but cannot be seen, felt, weighed, measured, or otherwise perceived by the senses, although its existence may be evidenced by a document. It includes a stock, bond, note or account receivable, certificate of deposit, share, account, share certificate account, share deposit account, insurance policy, annuity, pension, cause of action, contract, and goodwill. Tangible Personal Property means Personal Property that can be seen, weighed, measured, felt, or otherwise perceived by the senses, but does not include a document or other perceptible object that constitutes evidence of a valuable interest, claim, or right and has negligible or no intrinsic value.

- M. "Payment In Lieu of Taxes" or "PILOT" means the ten-year series of payments by Owner which is intended to replace a portion of the of the ad valorem tax that County would have received had County Property Taxes not been abated pursuant to this Agreement and is a negotiated value between the Parties based on financial contribution and consideration of Owner's substantial investment in the County.
- N. "Project and Improvements" means Eligible Property meeting the definition for improvements provided by Chapter I of the Texas Tax Code and includes, but is not limited to, electric power generation, battery storage equipment, transmission equipment, and any building, structure, or fixture erected on or affixed to the land.
- O. "Real Property" means land or an improvement, or both, or other property classified as such under-state law.
- P. "Reinvestment Zone" means a geographic area of the County designated as such for the purpose of Tax Abatement as authorized by Chapter 312 of the Texas Tax Code for purposes of this Agreement, the Reinvestment Zone shall be Fort Bend County Reinvestment Zone No. 32, attached as Exhibit 2.

### **III. Project and Improvements in Reinvestment Zone**

- A. Owner is proposing to construct a battery energy storage Facility, on a portion of an approximate 1,000-acre tract of land located within the boundaries of Fort Bend County Reinvestment Zone No. 32 described in Exhibit 2, attached hereto and incorporated herein for all purposes. The facility is expected to have a total capacity of up to approximately 100MW upon completion of construction. The facility may include some or all of the following components: safety equipment, substations, wiring, batteries, roads, fencing, and other improvements.
- B. The Eligible Property to be Abated under this Agreement shall mean and refer to the improvements, fixtures and equipment which are more particularly described in Owner's detailed application for abatement which is attached to



this Agreement as Exhibit 3 that are installed in the County. The kind, number and location of all contemplated Improvements are described in Exhibit 3.

- C. The Project and Improvements will also include any other property in the Reinvestment Zone(s) owned or leased by Owner meeting the definition of "Eligible Property" that is used to store electricity and perform other functions related to the storage, generation, distribution, or transmission of electrical power, or that is otherwise related to the facility or its operations, including specifically the equipment listed in Exhibit 3 to this Agreement.
- D. Eligible Property must all meet the following General Requirements:
  - 1. Property must be located within the Reinvestment Zone
  - 2. Property must be eligible for Tax Abatement pursuant to Chapter 312 of the Texas Tax Code; and
  - 3. Property must be constructed or installed after the date this Agreement is approved by the Commissioners Court.

#### **IV. Term and Portion of Tax Abatement; Taxability of Property**

- A. This Agreement is effective as of the date of execution hereof and shall continue through December 31 of the Calendar Year that is five (5) years after the Abatement Period ends, unless terminated earlier, as provided elsewhere herein. In no event shall this term of the abatement exceed 10 years.
- B. Notwithstanding the foregoing, the Owner's obligations upon default to pay County any taxes abated under this Agreement, and penalty and interest thereon, as herein provided shall not terminate until the abated taxes, plus penalty and interest, are paid.
- C. The FBCAD has established the base year values for all the proposed Eligible Property as of 2024 ("Base Year") which the Parties agree to be zero.
- D. The County and Owner specifically agree and acknowledge that Owner's property in the Reinvestment Zone(s) shall be taxable in the following ways before, during, and after the Term of this Agreement:
  - 1. Property not eligible for Abatement, if any, shall be fully taxable at all times, unless otherwise exempt or excluded from tax;
  - 2. The Certified Appraised Value of property existing in the Reinvestment Zones prior to execution of this Agreement shall be fully taxable at all times, unless otherwise exempt or excluded from tax;
  - 3. Prior to commencement of the Abatement Period, the Certified Appraised Value of real and personal property owned by Owner and already located in the Reinvestment Zones (if any) shall be fully taxable at all times, unless otherwise exempt or excluded from tax;

4. During the Abatement Period, 100% of County Property Taxes on the Certified Appraised Value of the Eligible Property shall be abated in accordance with this Agreement; and
5. After expiration of the Abatement Period, 100% the Certified Appraised Value of real and personal property owned by Owner located in the Reinvestment Zones shall be fully taxable at all times, including during the performance of any post Abatement Period obligations, unless otherwise exempt or excluded from tax.

**V. Responsibilities:**

- A. The Tax Abatement granted by this Agreement is expressly conditioned upon the following requirements, which must be satisfied throughout the entire term of this Agreement and with which Owner agrees to comply with at all times, subject, however, to the notice and cure rights of Owner as set forth herein. For the avoidance of doubt, Owner is not required to maintain a minimum number of jobs.
- B. Performance Criteria
  1. Construction and Completion
    - a. Owner shall commence construction of the Project no later than June 30, 2025, complete the construction and commence Commercial Operations not later than June 30, 2027.
    - b. Owner can request an automatic extension of 1 year of the deadlines described above in Section V(B)(1)(a) (through June 30, 2026, for the construction commencement deadline and through June 30, 2028 for the construction completion and Commercial Operations commencement deadline) in writing for which the Director of Economic Opportunity and Development is authorized to grant for good cause shown.
    - c. Owner shall provide a letter to the Director of Economic Opportunity and Development certifying the date that the Project has achieved Commercial Operations.
  2. Minimum capital investment
    - a. Owner shall make a minimum capital investment with respect to the Eligible Property at completion of construction of not less than \$46,800,000.00.
    - b. Owner shall provide the Director of Economic Opportunity and Development a certified statement for the total project costs with respect to the Eligible Property (excluding the cost of the Real Property) within thirty (30) days after the Project achieves Commercial Operations.

- c. The certification of minimal capital costs is subject to audit by the County, its agents or consultants, and Owner agrees to cooperate with such an audit.
- 3. Payment In Lieu Of Taxes (PILOT)
  - a. Owner agrees to issue 10 annual payment in lieu of taxes (the “Annual PILOT”) to the County for each year during the Abatement Period in the amounts shown in the table below:

PILOT TABLE

<b>Tax Year</b>	<b>Amount of PILOT</b>
Year 1	\$74,424
Year 2	\$74,424
Year 3	\$74,424
Year 4	\$74,424
Year 5	\$74,424
Year 6	\$74,424
Year 7	\$74,424
Year 8	\$74,424
Year 9	\$74,424
Year 10	\$74,424

- b. Owner shall issue the PILOT to the County Treasurer not later than December 1 of the year for which abatement is granted. By way of illustration only, if the Abatement Period begins January 1, 2025, then the PILOT for the first year of the Abatement Period must be paid not later than December 1, 2025.
- c. The Director of Economic Opportunity and Development will issue an invoice to Owner for the PILOT on or around October 1 prior to the date the PILOT is due. However, failure to invoice is not a breach of this Agreement and will not relieve Owner from the PILOT obligation due.
- d. Annual PILOT remittances shall be made payable to Fort Bend County and shall note the Project's name and corresponding PILOT year, and be mailed as follows:

Fort Bend County  
Attn: Treasurer  
301 Jackson Street, Suite 514  
Richmond, TX 77469

**C. General Requirements**

1. Owner shall ensure that construction on or at the Property is in conformity with all applicable Regulations, Ordinances, Restriction and Permits. Failure to comply or cure non-compliance with those requirements shall be a breach of this Agreement.
2. Owner shall ensure that use of the property is limited to that which is consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect; namely that the use will be as described in Exhibit 2.
3. OWNER SHALL BE RESPONSIBLE FOR NOTIFYING THE FBCAD OF THE ABATEMENT, INCLUDING FILING WITH THE FBCAD ANY APPLICATION OR OTHER FORMS NECESSARY TO QUALIFY FOR OR RECEIVE THE ABATEMENT GRANTED.
4. On or before September 1 of each year of this Agreement during the Abatement Period only, Owner shall certify in writing to the Fort Bend County Economic Development Office compliance with each term of this Agreement by submission of the Annual Compliance Statement attached as Exhibit 4.
5. Owner shall ensure that taxes on all property owned by it in Fort Bend County are current. Delinquent taxes for any Fort Bend County property of Owner is a default of Owner and Owner's obligations hereunder and will be grounds for termination of this Agreement, regardless of whether the delinquent property is subject to an abatement under this Agreement. Notwithstanding the foregoing, Owner shall have the right to contest and protest its property taxes and appraisals of its property, including any portion thereof.
6. Owner shall annually furnish during the Abatement Period only information necessary for Fort Bend County's evaluation of Applicant's compliance with the terms and conditions of the Tax Abatement Agreement and these guidelines and criteria (in the form of an annual report/statement of compliance).

**D. Owner Obligations after Abatement Period**

1. Continued Operations following Abatement. Owner and its successors or

assigns agree to continue routine commercial operation of the facility, including all outages for repair, maintenance and refurbishment, for a total period of fifteen (15) years after the Project achieves Commercial Operations. In addition to any other remedies available to the County pursuant to this Agreement or applicable law, upon any breach of this covenant as determined by a final judgment by a court of competent jurisdiction, the County shall be entitled to recapture the ad valorem taxes abated under the terms of this Agreement as provided herein.

2. Company agrees to follow the provisions of Section 302.0004 of the Texas Utilities Code in removing the Facilities from the Project location at the end of the Project's useful life and to perform removal in such a manner that will not result in the imposition of costs upon the County.

## **VI. Administration**

- A. This Agreement shall be administered in accordance with the GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS IN FORT BEND COUNTY, TEXAS.
- B. Fort Bend Central Appraisal District annually determines an assessment of the real and personal property comprising the reinvestment zone. Each year, Owner shall furnish the FBCAD with such information as may be necessary for the Abatement. After value has been established, Fort Bend County receives the certified appraised value from the FBCAD.
- C. During the Abatement Period, County shall request that the County Appraisal District annually determine both (i) the Certified Appraised Value of the Eligible Property owned by Owner in the Reinvestment Zone(s) and (ii) the taxable value (taking into account the terms of the Abatement in this Agreement) of the Eligible Property owned by Owner in the Reinvestment Zone(s). The County Appraisal District shall record both the Certified Appraised Value and the abated taxable value of the Eligible Property in the County appraisal records. The Certified Appraised Value listed in the County appraisal records shall be the standard used for calculating the amount of taxes to be recaptured by the County in the event that the County is entitled to recapture abated taxes under this Agreement.
- D. Owner shall furnish the Chief Appraiser annually such information as provided for under Chapter 22 of the Texas Tax Code as may be necessary for the administration of this Agreement. Such information shall also be provided annually during the Abatement Period only to the Director of Economic Opportunity and Development in preparation of its annual evaluation for compliance with the terms and provisions of this Agreement

- E. Upon completion of the construction, placement and/or installation of the Eligible Property, County shall annually evaluate the Eligible Property to ensure compliance with the terms and provisions of this Agreement and shall report potential defaults to the Owner.
- F. Owner shall allow employees or other representatives of County who have been designated by Commissioner's Court to have reasonable access to the Real Property to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement.
  - i. Inspection shall be conducted in such a manner as to not unreasonably interfere with the construction and/or operation of the facility and in accordance with its safety standards;
  - ii. Twenty-four (24) hours prior notice shall be given; and
  - iii. One or more representatives of the Owner or individual is present.

## **VII. Recapture/Default**

- A. The County may declare a default if the Owner violates any material term of this Agreement. If the County declares a default of this Agreement, this Agreement shall terminate, after notice and opportunity to cure as provided below, in accordance with the following provisions and Section V(D)(A), as applicable, or the Parties may modify the Agreement upon mutual agreement.
- B. Failure to Commence Operation During Term of Agreement: In the event that the facility is not completed and does not begin operation by the January 1st following the completion of construction, no Tax Abatement shall be given for that tax year, and the full amount of taxes assessed against the property shall be due and payable for that tax year. In the event that the owner of such a facility fails to begin operation by the next January 1st, then the Tax Abatement Agreement shall terminate and all abated taxes shall be recaptured and paid within sixty (60) days of such termination. If the County does not receive full payment within said 60 days, a penalty may be added, equal to 15% of the total amount abated.
- C. Discontinuance of Operations During Term of Agreement: In the event the facility is completed and begins operation, but subsequently discontinues operations on any January 1st during the term of the Agreement after the completion of construction, the Agreement may be terminated by the Fort Bend County and all taxes previously abated by virtue of the Agreement shall be recaptured and paid within sixty (60) days from the date of termination. If the County does not receive full payment within said 60 days, a penalty may be added, equal to 15% of the total amount abated.

- D. Delinquent Taxes: In the event that the owner allows any ad valorem taxes to become delinquent on any property in Fort Bend County (whether abated or not) and fails to timely and properly follow the legal procedures for their protest and/or contest, the Tax Abatement Agreement shall terminate and so shall the Abatement of the taxes for the tax year of the delinquency. The total taxes assessed without Abatement for that tax year, shall be paid within sixty (60) days from the date of the termination. If the County does not receive full payment within said 60 days, a penalty may be added, equal to 15% of the total amount abated.
- E. Performance Criteria: In the event that the owner fails to meet any other performance criteria provided by the Tax Abatement Agreement, the Tax Abatement Agreement may terminate and so shall the Abatement of the taxes for the tax year of the non-performance. The total taxes assessed without Abatement for that tax year, shall be paid within sixty (60) days from the date of the termination. If the County does not receive full payment within said 60 days, a penalty may be added, equal to 15% of the total amount abated.
- F. Actual Capital Investment: If the total level of capital investment in the Eligible Property is lower than required by Section V(B)(2)(a), the County, at its sole discretion, reserves the right to adjust the Tax Abatement percentage to reflect the actual capital investment.
- G. Undocumented Workers. This paragraph is required by Chapter 2264, Texas Government Code and governs over any conflicting provisions of this Agreement. Owner is prohibited from knowingly employing undocumented workers as that term is defined in Section 2264.001, Texas Government Code. If Owner is convicted of a violation under 8 U.S.C. Section 1324a(f), the conviction shall be considered default of this Agreement, from which no cure provisions shall apply. In such event, County shall provide written notice to Owner of the default and this Agreement shall automatically terminate on the 30th day after the date of the notice of default from County to Owner. In the event of termination under this paragraph (G), Owner shall repay to County the amount of all property taxes abated under this Agreement, plus interest on the abated amount at the rate provided for in the Texas Tax Code for delinquent taxes.
- H. Procedure for default:
  - 1. For a default described in C, D, or E of this Section VII or a default of any other requirement of this Agreement not specifically identified in this Section "Recapture and Default" County will notify Owner of the default in writing specifying the default. Owner shall have sixty (60) days from the date of the notice to cure the default prior to the County being permitted to exercise any of its remedies in this Agreement.

2. If Owner fails to cure the default. County may terminate this Agreement by written notice. Any default notice issued in accordance this Agreement shall prominently state the following at the top of the notice:

NOTICE OF DEFAULT UNDER TAX ABATEMENT  
AGREEMENT

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING  
DEFAULT UNDER YOUR TAX ABATEMENT  
AGREEMENT WITH THE COUNTY. FAILURE TO CURE  
THIS DEFAULT WITHIN THE TIME PERIODS  
PROVIDED BY THE AGREEMENT SHALL RESULT IN  
CANCELLATION OF THE TAX ABATEMENT  
AGREEMENT AND ACTION TO RECAPTURE OF TAXES  
ABATED PURSUANT TO THE AGREEMENT.

- I. Owner's obligations upon termination to pay County monies owed for taxes abated, interest and penalties thereon shall survive termination of this Agreement, and the County shall have a lien against the Owner's Property and any improvements or tangible personal property located thereon for the monies owed until paid.
- J. Notwithstanding any other provision of this Agreement to the contrary, in the event Owner is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement, Owner's obligations, so far as they are affected by such Force Majeure, shall be suspended during the continuance of any condition or event of Force Majeure, and failure to perform such obligations shall not be a breach or default. Owner shall give prompt notice and a description of such event to the County and shall take all reasonable actions within its powers to remove the basis for nonperformance and, after doing so, shall resume performance as soon as possible, provided that Owner shall not be required to settle any strike, lockout, or disturbance when such course is inadvisable in Owner's reasonably exercised discretion.
- K. Notwithstanding any other provision in this Agreement to the contrary, in the event Owner is required to pay County Property Taxes with respect to one or more tax years in the Abatement Period as a result of breach, default, or any other reason, the amount of such taxes shall be less any and all PILOTs paid by Owner for such tax year or years.

**VIII. Notice**



- A. Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been hand delivered, deposited with a nationally recognized overnight courier, or deposited, enclosed in a wrapper with the proper postage prepaid thereon, and certified, return receipt requested, in a United States Post Office, addressed to County and Owner and at the mailing address as hereinafter set out. If mailed, any notice of communication shall be deemed to be received three (3) business days after the date of deposit in the United States Mail.
- B. Notwithstanding anything to the contrary contained herein, the parties acknowledge and agree that any notice required to be given under the provisions of this Agreement may be made by e-mail, alone or in addition to other methods for giving notice provided for herein.
- C. Unless otherwise provided in this Agreement, all notices shall be delivered to Owner or County at the following addresses:

County: Fort Bend County  
Attn: County Judge  
401 Jackson  
Richmond, Texas 77469

With a copy to: Fort Bend County  
Attn: Director of Economic  
Opportunity & Development  
301 Jackson  
Richmond, Texas 77469

Owner: Stargazer BESS LLC  
11801 Domain Blvd. Suite 450  
Austin, TX 78758  
stargazersolar@aypa.com

With a Copy to: Legal@aypa.com

- D. Any party may designate a different physical mailing or e-mail address by giving the other parties sixty (60) days prior written notice thereof.

## **XI. Indemnity**

- A. IT IS UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT OWNER IN PERFORMING OBLIGATIONS HEREUNDER, IS ACTING INDEPENDENTLY, AND COUNTY ASSUMES NO RESPONSIBILITIES OR LIABILITIES IN CONNECTION THEREWITH TO THIRD PARTIES. OWNER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS COUNTY AND THE FBCAD FROM ANY AND ALL NON-OWNER CLAIMS, SUITS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER ARISING OUT OF OWNER'S BREACH OF ITS OBLIGATIONS HEREUNDER. OWNER'S INDEMNIFICATION OBLIGATIONS INCLUDE THE PAYMENT OF REASONABLE ATTORNEYS FEES AND EXPENSES INCURRED IN THE DEFENSE OF ANY SUCH CLAIMS, SUITS, AND CAUSES OF ACTION. OWNER SHALL BE RESPONSIBLE FOR ALL FEES INCURRED BY COUNTY IN THE DEFENSE OF ANY SUCH CLAIMS, SUITS, OR CAUSES OF ACTION.**
- B. The Parties expressly acknowledge that the County's authority to indemnify and hold harmless any third party is governed by Article XI, Section 7 of the Texas Constitution, and any provision that purports to require indemnification by the County is invalid. Nothing in this Agreement requires that the County incur debt, assess or collect funds, or create a sinking fund.

## **XII. Representations**

- A. The County hereby warrants and represents that (i) this Agreement was authorized by an order of the Commissioners Court adopted on the date recited above authorizing the County Judge to execute this Agreement on behalf of the County, and (ii) The County has made and will continue to make all required filing with the Office of the Comptroller of Public Accounts and other governmental entities concerning the Reinvestment Zone and this Agreement.
- B. Owner hereby warrants and represents to the County:
1. That Owner is a limited liability company in good standing under the laws of its state of organization and authorized to do business in the State of Texas; or in the case of a permitted assignee of this Agreement, that such assignee is authorized to do business in the State of Texas.
  2. That Owner is not in default in the payment of any taxes owing to the federal, state or any local governmental units.
  3. That the officer of Owner signing this Agreement is properly authorized to enter into this Agreement and bind Owner to the terms thereof and Owner is thereby authorized to perform all covenants undertaken by Owner pursuant to this Agreement.

4. That there is no operating agreement, certificate of formation provision, or agreement between Owner and any third party which in any way limits Owner's authority to enter into this Agreement and perform all covenants and agreements set forth herein.
5. That none of the tangible personal property that is intended to be a part of the Improvements located within the Reinvestment Zone is located within the Reinvestment Zone as of the effective date of this Agreement.

### **XIII. General Provisions:**

#### **A. Assignments**

- a. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement may be transferred or assigned by Owner only by an agreed, written amendment to this Agreement after written permission by County, which permission shall not be unreasonably withheld. No assignment shall be approved if the assignor or assignee is indebted to the City for ad valorem taxes or other obligations.
- b. Owner may, without obtaining the County's consent, mortgage, pledge, or otherwise encumber its interest in this Agreement or the Project and Improvements to a Lender for the purpose of financing the operations of the Project and Improvements or constructing the Project and Improvements or acquiring additional equipment following any initial phase of construction. Owner's encumbering its interest in this Agreement may include an assignment of Owner's rights and obligations under this Agreement for purposes of granting a security interest in this Agreement. In the event Owner takes any of the actions permitted by this subparagraph, it may provide written notice of such action to the County with such notice to include the name and notice information of the Lender. If Owner provides the name and contact information of a Lender to the County, then the County shall be required to provide a copy to such Lender of all Notices delivered to Owner at the same time that the Notice is delivered to Owner. If Owner does not provide the name and contact information of a Lender to the County, then such Lender shall not have the notice rights or other rights of a Lender under this Agreement. Any assignment of the Agreement by Lender shall comply with the assignment provision outlined in Section XIII.

- B. Changes in Tax Laws. The Tax Abatement provided in this Agreement is conditioned upon and subject to any changes in the state tax laws during the term of this Agreement.
- C. Compliance with State and Local Regulations. Nothing in this Agreement shall be construed to alter or affect the obligations of Owner to comply with any ordinance, rule, or regulation or law.
- D. Public Information. This Agreement is public information. To the extent, if any, that any provision of this Agreement is in conflict with the Texas Government Code Chapter 552, as amended (the "Texas Public Information Act"), such provision shall be void and have no force or effect.
- E. Severability and Reformation.
  - 1. Unless the court applies subsection (2), if any provision of this Agreement or the application thereof to any person or circumstance is ever judicially declared invalid, such provision shall be deemed severed from this Agreement, and the remaining portions of this Agreement shall remain in effect.
  - 2. If any provision of this Agreement or the application thereof to any person or circumstance is prohibited by or invalid under applicable law, it shall be deemed modified to conform with the minimum requirements of such law, or, if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any such other provision being prohibited or invalid.
- F. Venue: This Agreement and the rights and obligations of each party shall be construed and enforced under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County, Texas.
- G. Expenses of Negotiation and Compliance. Upon full execution of this Agreement, Owner agrees to pay the County's reasonable expenses incurred as a result of the negotiation, including all costs of publication or other required procedures under applicable statutes, of this Agreement including all reasonable and necessary attorney fees incurred during the negotiation and preparation of this Agreement. Payment is to be made within 60 days of receipt by Owner of invoice from Fort Bend County, with supporting documentation sufficient to enable the Owner to verify such expenses. Notwithstanding anything in this paragraph, the maximum reimbursement to be paid by Owner is \$7,500.00.

**XIV. Entire Agreement.**

This executed instrument is understood and intended to be the final expression of the parties' agreement and is a complete and exclusive statement of the terms and conditions with respect thereto, superseding all prior agreements or representations, oral or written, and all other communication between the parties relating to the subject matter of this agreement. Any oral representations or modifications concerning this instrument shall be of no force or effect excepting a subsequent modification in writing signed by all the parties hereto.

Attached hereto are:

Exhibit 1	Required Notice
Exhibit 2	RZ ORDER and legal description of Real Property (land) comprising the Reinvestment Zone (including Attachment A to this Exhibit)
Exhibit 3	Application
Exhibit 4	The Annual Compliance Certificate

All of which are made part of this Agreement.

#### **XV. Conflict**

Conflicts among documents shall be resolved in favor of:

First	Exhibit 2	RZ ORDER and legal description of Real Property (land) comprising the Reinvestment Zone (including Attachment A to this Exhibit)
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Second	N/A	This document titled TAX ABATEMENT AGREEMENT between FORT BEND COUNTY and STARGAZER BESS LLC Fort Bend County Reinvestment Zone No. 32
Third	Exhibit 3	Application
Reference Only	Exhibit 1	Required Notice
Reference Only	Exhibit 4	Annual Compliance Certificate (attached as form document)

**XVI. Execution**

**IN TESTIMONY OF WHICH, THIS AGREEMENT** has been executed by County and Owner as of the dates below stated. Owner warrants and represents that the individuals executing this agreement on behalf of Owner have full authority to execute this Agreement and bind Owner to the same.

COUNTY  
**FORT BEND COUNTY, TEXAS**

By: \_\_\_\_\_  
KP George, County Judge

**ATTEST:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Laura Richard, County Clerk

OWNER  
**STARGAZER BESS LLC**

By:  \_\_\_\_\_

Printed Name: **Sam Littlefield** \_\_\_\_\_

Title: EVP Development

Date: May 16, 2024

APPROVED AS TO LEGAL FORM:

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Michelle L. Turner  
First Assistant County Attorney  
County Attorney Office\*

\*By law, the County Attorney's Office may only advise or approve contracts or legal documents on behalf of the County. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of the County. Our approval of this document was offered solely for the benefit of the County. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney.

County's Original executed document  
to be returned to:

Economic Development Office  
ATTN: Director of Economic Opportunity and Development  
Address:

i:\michelle\econ develop office\abatements\2024\stargazer bess - fort bend county pilot final - gf.docx

GF-24-EDC-100495



**EXHIBIT 1**  
**PUBLIC NOTICE**

**PUBLIC NOTICE OF A MEETING AT WHICH THE FORT BEND COUNTY COMMISSIONERS COURT WILL  
CONSIDER THE APPROVAL OF A TAX ABATEMENT AGREEMENT OR MODIFICATION OF AN AGREEMENT  
WITH A PROPERTY OWNER**

NOTICE IS HEREBY GIVEN THAT A TAX ABATEMENT AGREEMENT WILL BE PRESENTED TO THE FORT BEND COUNTY COMMISSIONERS COURT FOR APPROVAL AT AN UPCOMING REGULAR MEETING OF THE FORT BEND COUNTY COMMISSIONERS COURT WHICH WILL BE HELD NO SOONER THAN 30 DAYS FROM THE DATE THIS NOTICE WAS FILED WITH COUNTY CLERK.

THE MEETING LOCATION WILL BE AS FOLLOWS: FORT BEND COUNTY COMMISSIONERS COURT SECOND FLOOR, FORT BEND COUNTY COURTHOUSE 401 JACKSON STREET, RICHMOND, TEXAS

**INFORMATION REQUIRED PER TEXAS TAX CODE SECTION 312.207 (C) (1) – (4):  
FOR THE TAX ABATEMENT AGREEMENT TO BE PRESENTED APPEARS BELOW:**

The name of the property owner and the name of the applicant for the new or modified tax abatement agreement:	Applicant: Stargazer BESS LLC Landowners: U. & C. Middya; K. Webb; E Hart, LLC; A.B. Shaner; Texas Infrastructure Capital Partners, LLC; Mikel Brothers Partnership
Agreement Type (Original or Amended)	Original
The name and location of the reinvestment zone in which the property subject to the agreement is located:	Fort Bend County Reinvestment Zone No. 32 located in Precinct 2. Near FM 1462 and Rycade School Rd., Fort Bend County, Texas.
A general description of the nature of the improvements or repairs included in the agreement:	A battery electric storage system (BESS) is made up of control equipment and several battery units. Improvements include safety equipment, wiring, batteries, roads, fencing, and other improvements on an approximate 15-acre site.
The estimated cost of the improvements or repairs:	\$5,200,000
<sup>1</sup> Additional significant Project Details or Values/Costs:	\$46,800,000 of Equipment & Machinery

This public notice is being posted at least 30 days before the scheduled time of the meeting. The actual date and time the Abatement will be considered will be posted on the Commissioners Court Agenda in the manner required by Chapter 551, Government Code. This 30-Day notice does not replace any notice required for Open Meetings under Texas Government Code Section 551 but is in addition to any other notice required by law. If further information is needed, please contact the County Economic Opportunity & Development office at 346-481-6911.

Notice of meeting/agenda was filed with the County Clerk on \_\_\_\_\_, by \_\_\_\_\_ at least 30 days prior to the regular notice required by Texas Government Code 551. An electronic version of this notice is also posted in the Fort Bend County website:

<https://www.fortbendcountytexas.gov/government/departments/county-clerk/legalnotices>



Company Name	Reviewer Name	Date Reviewed
Stargazer BESS LLC	[REDACTED]	3/22/2024

This information is being provided in addition to the Information required by Section 312.207, but it is not required by the notice statute.

RECEIVED  
TIME 12:24 PM, 3/22/2024  
April 24, 2024  
*Janice Richard*  
County Clerk Fort Bend Co. Texas

## EXHIBIT 2

RZ ORDER AND LEGAL DESCRIPTION OF REAL PROPERTY  
(LAND)  
COMPRIZING THE REINVESTMENT ZONE  
(INCLUDING ATTACHMENT A TO THIS EXHIBIT)

THE STATE OF TEXAS           §  
    §  
 COUNTY OF FORT BEND       §

The Commissioners Court of Fort Bend County, Texas (the “Commissioners Court”), acting for and on behalf of Fort Bend County, Texas, convened in regular session at a regular term of said Court, open to the public, on the 23<sup>rd</sup> day of April 2024.

**WHEREUPON**, among other business, the following was transacted at said meeting:

**ORDER DESIGNATING FORT BEND COUNTY REINVESTMENT ZONE NO. 32**

The Order was duly introduced for the consideration of the Commissioners Court and reviewed in full. It was then duly moved and seconded that the Order be adopted; and, after due discussion, the motion, carrying with it the adoption of the Order, prevailed and carried by the following vote:

AYES:     5

NAYES:   0

The County Judge thereupon announced that the Motion had duly and lawfully carried and that the Order had been duly and lawfully adopted. The Order thus adopted follows:

**ORDER DESIGNATING FORT BEND COUNTY REINVESTMENT ZONE NO. 32**

**WHEREAS**, the County Commissioners Court passed and approved Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zones created in Fort Bend County, Texas, on May 9, 2023.

**WHEREAS**, pursuant to the Guidelines, the County has received a request for designation of a Reinvestment Zone and Tax Abatement;

**WHEREAS**, notice was given to all taxing entities where the proposed zone is to be located;

**WHEREAS**, after proper notice had been given in the April 14, 2024, edition of the Fort Bend Herald (Attached as Exhibit A), the County has held a public hearing on April 23, 2024, where all interested persons were given an opportunity to speak, and evidence for and against the designation of Fort Bend County Reinvestment Zone No. 32 (“Reinvestment Zone No. 32”) was gathered.

**WHEREAS**, the County Commissioners Court has determined, based on evidence gathered, that the improvements sought to be located in proposed Reinvestment Zone No. 32 are feasible and practical and would be a benefit to the land to be included in Reinvestment Zone No. 32 and to the County after the expiration of the Tax Abatement Agreement; and

**WHEREAS**, the designation of Reinvestment Zone No. 32 will reasonably likely contribute to the retention or expansion of primary employment, increase business opportunities in Fort Bend County and contribute to the economic development of both the property in Reinvestment Zone No. 32 and to Fort Bend County;

**NOW THEREFORE, BE IT ORDERED BY THE COUNTY COMMISSIONERS COURT OF FORT BEND COUNTY:**

**SECTION ONE**

That the findings and provisions set out in the preamble of this Order are hereby found to be true and correct and are made a part of this Order for all purposes.

**SECTION TWO**

That Fort Bend County Reinvestment Zone No. 32 is hereby designated pursuant to the Guidelines for the purpose of encouraging economic development in Fort Bend County through tax abatement.

**SECTION THREE**

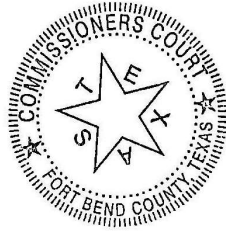
This designation shall be effective for five (5) years from the date of passage of this Order and may be renewed for five (5) year periods thereafter.

**SECTION FOUR**

The attached Exhibit A described tract(s) are to be combined and designated as Reinvestment Zone No. 32.

**PASSED AND APPROVED** this the 23<sup>rd</sup> day of April.

**FORT BEND COUNTY, TEXAS**



By: \_\_\_\_\_

*KP George*

KP George County Judge

**ATTEST:**

*Laura Richard*

Laura Richard, County Clerk

Attachments:

Exhibit A – Newspaper Notice

Exhibit B –Metes & Bounds Descriptions and map of Reinvestment Zone

Exhibit A  
Newspaper Notice

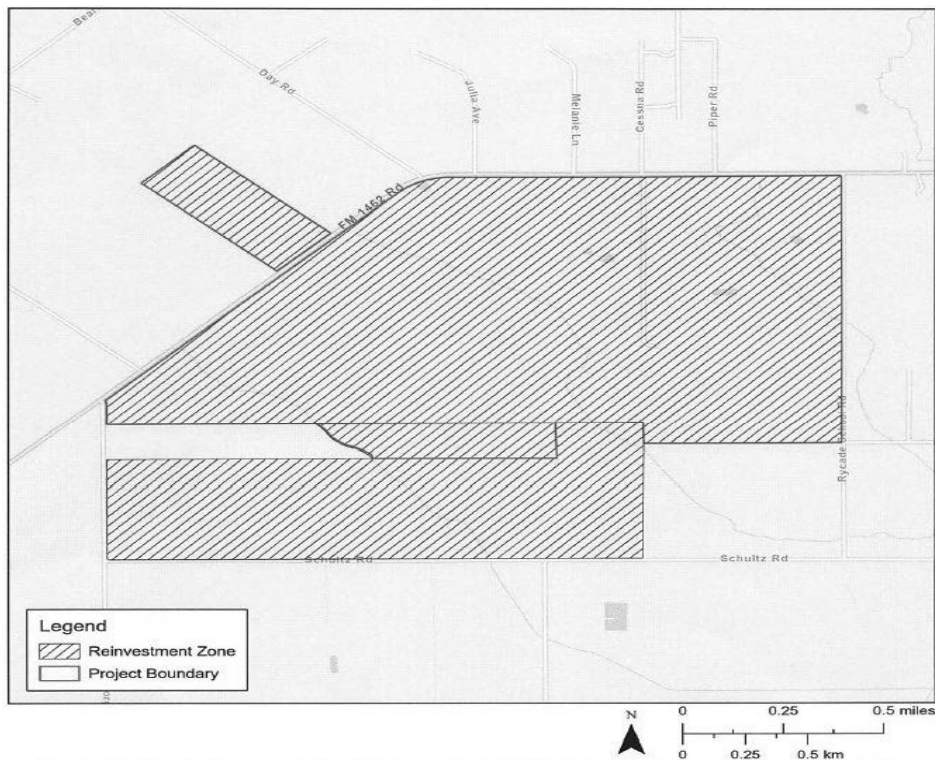
## Notice of Public Hearing

Pursuant to Sections 312.201 and 312.401 of the Texas Tax Code, notice is hereby given that the Commissioners Court of Fort Bend County, Texas, will conduct a hearing at its regular meeting on Tuesday, April 23, 2024, at 1:00 p.m. in the Commissioners Courtroom, 2nd floor, 401 Jackson St., Richmond, Texas.

The public hearing is being held for the purpose of establishing a reinvestment zone which will enable the County to abate taxes on personal property and real property improvements within this reinvestment zone. All interested persons are invited to participate in this meeting and offer any comments on the designation of this zone. All comments will be considered by the Commissioners Court.

Laura Richard  
Fort Bend County Clerk

Fort Bend County Reinvestment Zone No. 32 is proposed to be located with approximately 1,332.1 acres, located near the intersection of FM 1462 Rd and Rycade School Rd in Fort Bend County, Precinct 2.



OWNER	PARCEL #	ACRES	LEGAL DESCRIPTION
Usuf & Chand Middya	R48187	59.3	0496 S A BEARD, ACRES 59.261
Lawson Land Company & Anne Brackett	R47476	143	0446 DAY LAND AND CATTLE, ACRES 143.04
McNatt Trust	R47478	210.9	0446 DAY LAND AND CATTLE, ACRES 210.9
McNatt Trust	R47479	215.1	0446 DAY LAND AND CATTLE, ACRES 215.07
E Hart LLC	R32209	209	0022 K W DAVIS, ACRES 209
E Hart LLC	R32210	1	0022 K W DAVIS, TRACT 19, ACRES 1
E Hart LLC	R32119	1	0022 K W DAVIS, ACRES 1.00
E Hart LLC	R32118	109	0022 K W DAVIS, ACRES 109.00
Mikel Brothers Partnership	R47482	383.8	0446 DAY LAND AND CATTLE, ACRES 383.77



## Exhibit B

Metes & Bounds Descriptions and map of Reinvestment Zone

Being a tract of land containing 59.261 acres (2,581,427 square feet) situated in The H. & T. C. Railroad

Company Survey, section 120, Abstract 496, Fort Bend County, Texas, being all of Tract's B, C and D described in deed conveyed unto James Michael Brumbelow, recorded under county Clerk's File No. 2009007177 of the Official Public Records of Fort Bend County, Texas. Said 59.261-acre tract being more particularly described by metes and bounds as follows;

COMMENCING at the intersection of the centerline of Beard Road (80.00 feet wide, as occupied) with the centerline of Day Road (80.00 feet wide, as occupied). Said point being the north corner of said Section 120 and the west corner of Day Land and Cattle Company Survey "J", Abstract No. 447 and the North Corner of the Shirley Beard 106.66-acre tract by deed recorded under Volume 309, Page 574, of the Deed Records of Fort Bend County, Texas.

THENCE South 45°00'00" East, along the centerline of Day Road, a distance of 5,280.00 feet to a point in the centerline of F.M. 1462 (100.00 feet wide);

THENCE South 44°49'00" West along the centerline of F.M. 1462, a distance of 1,618.45 feet to a point in said centerline for the east corner and POINT OF BEGINNING of said tract herein described;

THENCE continuing South 44° 49'00" West, along said centerline of F.M. 1462, a distance of 1,022.62 feet to a point in said centerline for the south corner of said tract herein described;

THENCE North 44° 56' 12" West, passing at 50.00 feet a found 1/2- inch iron rod in the northwest right of-way line of F.M. 1462, and continuing for a total distance of 2,525.57 feet to a found 5/8- inch iron rod for the west corner of said tract herein described;

THENCE North 44°34'02" East, a distance of 1,019.86 feet to a set 1/2-inch iron rod with cap marked Survey-1 for the north corner of said tract herein described;

THENCE South 45°00'00" East, passing at 2,480.00 feet a set 1/2- inch iron rod with cap marked Survey-1 in the northwest right-of-way line of F.M. 1462, and continuing for a total distance of 2,530.00 feet to the POINT OF BEGINNING and containing 59.261 acres {2,581,427 square feet}, more or less.

**Parcel R47476 / 0446-00-000-1190-906 – Brackett/Lawson**

A tract or parcel of land being all of that property conveyed to Robert M. Atkinson by Deed recorded in Volume 523, Page 598 of the Deed Records of Fort Bend County, Texas, and described in said Deed as follows:

Part of the Knolle 1301.23-acre tract of land in the Day Land and Cattle Company Survey, Abst. #446, Fort Bend County, Texas, more particularly described as follows:

COMMENCING at the southeast corner of said survey in the centerline of Schulz Road, said corner being also the southwest corner of the K.W. Davis League, Abst. #22, and in the north line of Horation N. Cleveland League, Abst. #150;

THENCE N. 0° 53' 30" W. along the east line of said Knolle 1301.23 acres tract and the common line of the Day Land and Cattle Company Survey and the K.W. Davis League, a distance of 5797.3 feet to the southeast corner of the tract herein described, and the PLACE OF BEGINNING.

THENCE continuing N. 0° 53' 30" W. along the east line of said Knolle Tract and the east line of said Day Land and Cattle Company Survey, at 1681 feet passing the south line of F.M. Highway No. 762, and continuing in all 1731 feet to the centerline of F.M. Highway No. 762;

THENCE S. 89° 13' W. 2916.6 feet along the centerline of F.M. Highway No. 762 and its projection to a point of intersection with a northeasterly projection of the centerline of F.M. Highway No. 762 at a curve in said highway;

THENCE S. 42° 51' W. 2414.8 feet along the centerline of F.M. Highway No. 762, and its projection to the southwest corner of the tract herein described;

THENCE N. 89° 01' E. at 69.31 feet passing the southeast line of Highway No. 762 and continuing in all 4587.2 feet to the PLACE OF BEGINNING and containing 149.69 acres of land including 6.65 acres of land in the right of way for F.M. Highway No. 762.

**Parcel R47478 / 0446-00-000-1790-906 – McNatt Trust**

Tract "D", being a part of the Knolle 1301.23 acres in the Day Land and Cattle Company Survey in Fort Bend County, Texas, and being more particularly described by metes and bounds follows, to wit:

BEGINNING at the Southeast corner of the Day Land and Cattle Company Survey, Abstract 448, Fort Bend County, Texas, in the centerline of Schulz Road, same being the Southeast corner of the Knolle 1301.23-acre tract, and the Southwest corner of the K.W. David League, Abstract 22, and in the North line of the H.N. Cleveland League, Abstract 150;

THENCE North 0° 53'30" West, along the East line of the Knolle 1301.23-acre tract and the common line of the Day Land and CATTLE Company Survey and K.W. Davis League 4,054.5 feet to the Northeast corner of Tract "C" the Point and Place of Beginning herein described Tract "D";

THENCE continuing North 0° 53'30" West, along the East line of the Knolle 1301.23-acre tract, a distance of 1742.8 feet to a point for a corner;

THENCE South 89° 01' West 4587.2 feet to a point in the centerline of State F.M. Road No 762, same being a Westerly line of Knolle 1301.23-acre tract for a corner;

THENCE South 42° 51' West along the centerline of FM Road No. 762 a distance of 2,415.4 feet to the Northwest corner of Tract "C" for a corner;

THENCE North 89° 01' East along the North line of Tract "C" a distance of 6,257.9 feet to the Point and Place of Beginning and containing 216.87 acres of land.

**Parcel R47479 / 0446-00-000-2410-906 – McNatt Trust**

Tract "C", being a part of the Knolle 1301.23 acres in the Day Land and Cattle Company Survey, in Fort Bend County, Texas, and being more particularly described by metes and bounds as follows, to-wit: BEGINNING at the Southeast corner of the Day Land and Cattle Company Survey, Abstract 448, Fort Bend County, Texas, in the centerline of Schulz Road, same being the Southeast corner of the Knolle 1301.23-acre tract, and the Southwest corner of the K.W. David League, Abstract 22, and in the North line of the H.N. Cleveland League, Abstract 150, THENCE North 0°53'30" West, along the East line of the Knolle 1301.23 acre tract, and the common line of the Day Land and Cattle Company Survey and the K.W. Davis League, 2670 Feet to the Northeast corner of Tract "B", the Point and Place of Beginning of the herein described Tract "C"; THENCE continuing North 0°53'30" West along the East line of the Knolle 1301.23-acre tract, a distance of 1384.5 feet to a Point for corner; /THENCE South 89° 01' West a distance of 6257.9 feet to a point in the centerline of F.M. Road No. 762 same being in a Westerly line of the Knolle 1301.23 acre tract for a corner, THENCE South 41°51' West along the centerline of F.M. Road No. 762, a distance of 1,187.6 feet to the point of intersection of the centerline of F.M. Road No. 762 and the G. Duty Road for a corner; THENCE South 0°56' East along the centerline of the G. Duty Road a distance of 527.9 feet to a point the Northwest corner of tract "B" for a corner THENCE North 89° 01' East along the North line of Tract "B" at 30 feet pass the East right-of-way of the G. Duty road and continuing a total distance of 7,077.9 feet to the point and Place of Beginning and containing 216.87 acres of land.

**Parcel R32209 / 0022-00-000-7790-906 – E Hart LLC**

All of Lot Nineteen (19) according to J.C. Tolman's Subdivision of the K.W. Davis League in Fort Bend County, Texas, and being the same land described in Deed from Mrs. F. Wangemann to Chas. Meyer, which Deed appears of record in Vol. 89, Page 54 and 55, of the Deed Records of Fort Bend County, Texas, which see for a more particular description, and being part of the same property described in the Deed dated February 13, 1924, from Chas. Meyer and wife Helene Meyer to Earnest Meyer, recorded in Vol. 101, Page 160, Deed Records of Fort Bend County, Texas. All of Lot Nineteen (19)

according to J.C. Tolman's Subdivision of the K.W. Davis League in Fort Bend County, Texas, and being the same land described in Deed from Mrs. F. Wangemann to Chas. Meyer, which Deed appears of record in Vol. 89, Page 54 and 55, of the Deed Records of Fort Bend County, Texas, which see

for a more particular description and being part of the same property described in the Deed dated February 13, 1924, from Chas. Meyer and wife Helene Meyer to Earnest Meyer, recorded in Vol. 101, Page 160, Deed Records of Fort Bend County, Texas.

and

All that certain tract or parcel of land, lying and being situated in the County of Fort Bend, in the State of Texas, being part of the K.W. Davis League and being fifty (50) acres of land of uniform width off of the West side of Lot No. 20 of the J.C. Tolman Subdivision of said League and more particularly described as follows:

BEGINNING at an iron pipe, the west corner of said Lot No. 20 and the south corner of said Lot No. 19 in the W. line of said K.W. Davis League;

THENCE with said line south one deg.W. 2640 feet to an iron pipe, the common corner of Lots 20 & 29 of said Subdivision;

THENCE South 89 1/2 degs. E. along the dividing line between Lots 20 & 29, 825 feet to an iron stake;  
THENCE North 1 deg. E. 2640 feet to boundary line of Lots 19 & 20 to an iron pipe for corner;

THENCE North 89 1/2 degs. W. 825 feet with boundary line of said Lots 19 & 20 to iron pipe in the west line of K.W. Davis League to the place of beginning. **Parcel R32210 / 0022-00-000-7791-906 – E Hart LLC**

Being 1 Acre out of the below described parcel:

All that certain tract or parcel of land, lying and being situated in the County of Fort Bend, in the State of Texas, being part of the K.W. Davis League and being fifty (50) acres of land of uniform width off of the West side of Lot No. 20 of the J.C. Tolman Subdivision of said League and more particularly described as follows:

BEGINNING at an iron pipe, the west corner of said Lot No. 20 and the south corner of said Lot No. 19 in the W. line of said K.W. Davis League;

THENCE with said line south one deg.W. 2640 feet to an iron pipe, the common corner of Lots 20 & 29 of said Subdivision;

THENCE South 89 1/2 degs. E. along the dividing line between Lots 20 & 29, 825 feet to an iron stake;

THENCE North 1 deg. E. 2640 feet to boundary line of Lots 19 & 20 to an iron pipe for corner;

THENCE North 89 1/2 degs. W. 825 feet with boundary line of said Lots 19 & 20 to iron pipe in the west line of K.W. Davis League to the place of beginning.

**Parcel R32119 / 0022-00-000-0011-906 – E Hart LLC**

Being 1 Acre out of the below described parcel:

Being all of Lot No. 20 as shown by J.C. Tolman's Survey of the K.W. Davis League, Fort Bend County, Texas, recorded in Volume 2 of the Plat Records of Fort Bend County, Texas, LESS AND EXCEPT a tract of land containing 50 acres and being of uniform width off of the West side thereof, more particularly described in Deed dated September 1, 1925, from Gustav Hartfiel, et ux to Ernest Meyer, recorded in Volume 109, Page 406 of the Deed Records of Fort Bend County, Texas, to which reference is hereby made, the property hereby conveyed being more particularly described by metes and bounds as follows:

BEGINNING at a point in the North boundary line of Lot 20, said point being 825 feet from the Northwest corner of said Lot No. 20;

THENCE in a-Southerly direction parallel to the West boundary line of said Lot 20 (said line also being the East boundary line of the 50-acre tract heretofore conveyed to Ernest Meyer, above mentioned) a distance of 2,640 feet, more or less, to a point in the South boundary line of said Lot 20;

THENCE in an Easterly direction along the South line of said Lot 20 a distance of 1,815 feet, more or less, to the

Southeast corner of said Lot 20;

THENCE in a Northerly direction along the East boundary line of said Lot 20 a distance of 2,640 feet, more or less, to the Northeast corner of said Lot 20 (said point also being the Southeast corner of Lot 19 as shown by J.C. Tolman's Survey of the K.W. Davis League);

THENCE in a Westerly direction along the North boundary line of said Lot 20 (said line also being the South boundary line of said Lot 19) a distance of 1,815 feet, more or less, to the PLACE OF BEGINNING: containing 110 acres of land, more or less. **Parcel R32118 / 0022-00-000-0010-906 – E Hart LLC**

Being 109 Acres out of the below described parcel:

Being all of Lot No. 20 as shown by J.C. Tolman's Survey of the K.W. Davis League, Fort Bend County, Texas, recorded in Volume 2 of the Plat Records of Fort Bend County, Texas, LESS AND EXCEPT a tract of land containing 50 acres and being of uniform width off of the West side thereof, more particularly described in Deed dated September 1, 1925, from Gustav Hartfiel, et ux to Ernest Meyer, recorded in Volume 109, Page 406 of the Deed Records of Fort Bend County, Texas, to which reference is hereby made, the property hereby conveyed being more particularly described by metes and bounds as follows:

BEGINNING at a point in the North boundary line of Lot 20, said point being 825 feet from the Northwest corner of said Lot No. 20;

THENCE in a Southerly direction parallel to the West boundary line of said Lot 20 (said line also being the East boundary line of the 50-acre tract heretofore conveyed to Ernest Meyer, above mentioned) a distance of 2,640 feet, more or less, to a point in the South boundary line of said Lot 20;

THENCE in an Easterly direction along the South line of said Lot 20 a distance of 1,815 feet, more or less, to the Southeast corner of said Lot 20;

THENCE in a Northerly direction along the East boundary line of said Lot 20 a distance of 2,640 feet, more or less, to the Northeast corner of said Lot 20 (said point also being the Southeast corner of Lot 19 as shown by

J.C. Tolman's Survey of the K.W. Davis League);

THENCE in a Westerly direction along the North boundary line of said Lot 20 (said line also being the South boundary line of said Lot 19) a distance of 1,815 feet, more or less, to the PLACE OF BEGINNING: containing 110 acres of land, more or less.

**Parcel R47482 / 0446-00-000-3670-906 – Mikel Brothers Partnership**



A **METES & BOUNDS** description of a 433.76 acre tract of land, more or less, in the Day Land & Cattle Company Survey, Abstract 446, Fort Bend County, Texas, being those certain tracts comprising a called 433.77 acre tract in instrument recorded under County Clerk's File Number 2010127637, Official Public Records, Fort Bend County, Texas, and described in instrument recorded in Volume 700, Page 125, Deed Records, Fort Bend County, Texas, with all bearings based upon the Texas Coordinate System, South Central Zone, NAD83, based upon GPS observations.

**Beginning** at a Mag nail set with shiner at the intersection of the centerline of George Duty Road and Schultz Road for the southwest corner of said called 433.77 acre tract, same being the northwest corner of an adjoining called 100 acre tract (Tract 1) recorded under County Clerk's File Number 9780631, Official Public Records, Fort Bend County, Texas, for the southwest corner and **Place of Beginning** of the herein described tract, said point being in the south line of said Day Land & Cattle Company Survey, Abstract 446, same being the northwest corner of the adjoining Horatio Cleveland League, Abstract 150, and the northeast corner of the adjoining G. C. & S. F. Railroad Company Survey, Abstract 688, and being in the east line of an adjoining called 436.323 acre tract recorded in Volume 2704, Page 771, Official Records, Fort Bend County, Texas, from which point a 1/2 inch iron rod found in the apparent occupied west right-of-way line of George Duty Road bears South 85 degrees 13 minutes 31 seconds West, 38.13 feet, and a 3/4 inch iron pipe found at the intersection of the apparent occupied east right-of-way line of George Duty Road and the apparent occupied north right-of-way line of Schultz Road bears North 40 degrees 59 minutes 21 seconds East, 39.02 feet;

**Thence** North 01 degree 56 minutes 05 seconds West (called North 00 degrees 56 minutes West) along the west line of the herein described tract and said called 433.77 acre tract, same being the east line of said adjoining called 436.323 acre tract, as located in George Duty Road, 2,670.00 feet (called 2,670.0 feet) to a Mag nail set with shiner for the northwest corner of the herein described tract and said called 433.77 acre tract, same being the southwest corner of an adjoining called 216.87 acre tract (Tract "C") recorded under County Clerk's File Number 2012146319, Official Public Records, Fort Bend County, Texas;

**Thence** North 88 degrees 02 minutes 48 seconds East (called North 89 degrees 01 minute East) along the north line of the herein described tract and said called 433.77 acre tract, same being the south line of said adjoining called 216.87 acre tract, at 27.73 feet (called 30.6 feet) pass a 3/4 inch iron pipe found on said line at its intersection with the apparent occupied east right-of-way line of George Duty Road, and continuing for a total distance of 7,077.39 feet (called 7,077.9 feet) to a 3/4 inch iron pipe found for the northeast corner of the herein described tract and said called 433.77 acre tract, same being the southeast corner of said adjoining called 216.87 acre tract, said point being in the east line of said Day Land & Cattle Company Survey, Abstract 446, same being the west line of the adjoining K. W. Davis League, Abstract 22, and the west line of an adjoining called 50 acre tract (Tract 3) recorded under County Clerk's File Number 2003173907, Official Public Records, Fort Bend County, Texas;

**Thence** South 01 degree 54 minutes 18 seconds East (called South 00 degrees 53 minutes 30 seconds East) along the east line of the herein described tract, the east line of said called 433.77 acre tract, and the east line of said Day Land & Cattle Company Survey, Abstract 446, same being the west line of said adjoining K. W. Davis League, Abstract 22, the west line of said 433.76 Acres Day Land & Cattle Company Survey, Abstract 446 adjoining called 50 acre tract, and the west line of an adjoining called 136.04 acre tract recorded in Volume 1848, Page 2091, Official Records, Fort Bend County, Texas, at 429.18 feet pass a 3/4 inch iron pipe found 1.4 feet left of said line, at 2,640.00 feet pass a 1/2 inch iron pipe with cap marked "Kalkomey Surveying" set on said line at its intersection with the apparent occupied north right-of-way line of Schultz Road, from which point a 3/4 inch iron pipe found destroyed bears South 37 degrees 38 minutes 41 seconds West, 7.4 feet, and continuing for a total distance of 2,670.00 feet (called 2670.0 feet) to a Mag nail set with shiner for the southeast corner of the herein described tract and said called 433.77 acre tract, same being the southwest corner of said adjoining called 136.04 acre tract, said point also being the southeast corner of said Day Land & Cattle Company Survey, Abstract 446, same being the southwest corner of said adjoining K. W. Davis League, Abstract 22, and being in the north line of the aforementioned adjoining Horatio Cleveland League, Abstract 150;

**Thence** South 88 degrees 02 minutes 48 seconds West (called South 89 degrees 01 minute West) along the south line of the herein described tract, the south line of said called 433.77 acre tract, and the south line of said Day Land & Cattle Company Survey, Abstract 446, same being the north line of said adjoining Horatio Cleveland League, Abstract 150, as located in Schultz Road, and along the north line of an adjoining called 21.80 acre tract recorded under County Clerk's File Number 2010016432, Official Public Records, Fort Bend County, Texas, the north line of an adjoining called 98.163 acre tract recorded in Volume 263, Page 225, Deed Records, Fort Bend County, Texas, crossing a called 1.387 acre tract recorded under County Clerk's File Number 2016048612, Official Public Records, Fort Bend County, Texas, and along the north line of an adjoining called 100 acre tract recorded in Volume 271, Page 265, Deed Records, Fort Bend County, Texas, the north line of an adjoining called 100 acre tract (Tract 2) recorded under County Clerk's File Number 9780631, Official Public Records, Fort Bend County, Texas, and the north line of the aforementioned adjoining called 100 acre tract (Tract 1), 7,076.00 feet (called 7,076.0 feet) to the **Place of Beginning** and containing 433.76 acres of land, with 6.40 acres within occupied margins of George Duty Road and Schultz Road, for a net acreage of 427.36 acres of land, more or less.

# EXHIBIT 3

## APPLICATION



Fort Bend County &  
Fort Bend County Drainage District Tax Abatement  
Joint Application

Fort Bend County and Fort Bend County Drainage District are separate taxing entities under Texas Law, and each are eligible to enter into Tax Abatement Agreements under **Tax Code Chapter 312**. The Commissioners Court is the governing body of each entity, therefore Application for Tax Abatement for both entities is allowed by submission of a Single Joint Application.

1. Applicant's Business Name and Structure (LLC, LP, Corporation, etc.) that will be operating in Fort Bend County:

[Stargazer BESS LLC](#)

2. Name of any Parent Company, Controlling Affiliate or if applicant company is a Subsidiary of another entity that would be responsible for performance of any proposed tax abatement agreement:

[Aypa Power](#)

3. Please provide a brief history and description of the company:

[Aypa Power was founded in 2018 and opened its Texas headquarters in 2021. We have over 32 battery energy storage projects in operation or construction across North America. We presently have another project in Fort Bend County \(Bypass BESS\) estimated to invest over \\$127 million into the County over the next 10 years.](#)

4. Contact Person and Info for Abatement Process:

Name: [Sarah Murphy](#)

Title: [Project Developer](#)

Direct Phone Number: [713-254-0687](#)

Email Address: [smurphy@aypa.com](mailto:smurphy@aypa.com)

Mailing Address: [Attn: Sarah Murphy 11801 Domain Blvd. Suite 450 Austin, TX 78758](#)

Website: <https://www.aypa.com/>

5. Company officer name who would execute any potential tax abatement agreement:

Name: Sam Littlefield

Title: EVP of Development

Entity Name: Aypa Power Development LLC

Phone: 503-277-9240

Email: [slittlefield@aypa.com](mailto:slittlefield@aypa.com)

Address: 11801 Domain Blvd. Suite 450

City: Austin

State: TX

Zip: 78758

Website: <https://www.aypa.com/>

6. Headquarters Location (where the company's officers direct, control and coordinate the entity's activities)

City: Austin

State: TX

7. State of registration or incorporation:

[Incorporated in Delaware](#)

8. Does the company currently have operations elsewhere in the State of Texas? If so, please state the name of communities.

[Webb County, Borden County, Fort Bend County, Freestone County, Nacogdoches County, & Comanche County](#)

## PROJECT DETAILS:

1. List other communities (outside of Fort Bend County) that are being considered for the project. If no communities outside of Fort Bend County are being considered, please describe how without an incentive the project would not occur or would be otherwise substantially altered:

[All Texas counties are under consideration for our developments.](#)

2. Indicate any incentives sought or received from other Fort Bend County taxing entities in connection with this project.

[Only the County general fund and drainage district. This project location is not within a City or ETJ.](#)

3. Describe the project, including size and scope of Improvements and Real Property to be undertaken, the facility's use, and the product or service to be produced.

The project has approximately 100 MW battery storage capacity with 2-hour duration. The project entire will be approximately 950-1000 acres of land on which the solar panels, wiring, batteries, roads, fencing, and other improvements will be constructed to comprise a renewable energy generation facility. The storage facilities will be on approximately 20 acres of this land. This energy generation facility will provide cheap, clean power to the ERCOT grid system and the battery storage facilities will help improve grid reliability.

4. Classification and NASIC CODE I.E. (Aviation/Aerospace & Advanced Manufacturing, Bioscience/Healthcare, Information Technology and Cyber-Security, Corporate and Regional Headquarters, Creative Industries, Environmental/Clean/Green Technology, Finance, Logistics and Distribution, Manufacturing):

Other Electric Power Generation (221118); Electric Power Distribution (221122); Power and Communication Line and Related Structures Construction (237130)

5. Physical address of Proposed Project:

City: N/A

County Precinct: 2

City Council District: N/A

School District: Needville Independent School District

Land Size of Project: 950-1000 acres

6. Proposed Cost of New Improvement: \$ Minimal if any
7. Proposed Cost of New Fixed Equipment and Machinery: \$ 46,800,000
8. Cost of other Personal Property excluding Inventory: \$ 5,200,000

9. Proposed Cost of Initial Inventory:  
N/A

10. Estimated Time Schedule of Investment including proposed start of construction date and completion of construction date for each phase. (In the case of modernizations, a 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.)

Start of construction: 2Q 2025

Commercial operations date: 4Q 2026

11. Does/will the applicant own or lease the project's proposed Real Property Improvements?

☒ Own New construction at Current Location ☐ Own Expansion at Diff Location

☐ Lease Existing Facility ☐ Lease Proposed Facility

If to be leased, provide the name of the landlord/owner.

Real estate will be leased. Real property improvements to be owned by applicant entity.  
Leased properties from Lawson Land Company Ltd./Ann Brackett, Usuf & Chand Middya, & E Hart, LLC.

If to be leased, indicate lease term.

Years: 50 years

Beginning Date: 1Q 2024\*

Expiration date: 1Q 2074\*

\*Exact dates vary by landowner.

If Applicant owns any other property in Fort Bend County, list existing Fort Bend Central Appraisal District tax account numbers associated with this project. (If Applicable)

Real property:

Aypa Power's affiliate company Bypass BESS LLC recently purchased properties in Fort Bend County between November 2023 – January 2024. These properties are still awaiting platting approval and subsequent tax account numbers as of the time of this application. Aypa can provide further details as soon as available.

Personal property:

Note same situation above. Currently owned parcels do not have personal property or equipment as of the time of this application.

12. For expansion projects only. Minimum number of new full-time jobs to be created and schedule of placement. (Note: FBC Tax Abatement Guidelines require jobs to pay at least \$18 per hour to be eligible for an incentive calculation. (If Project has jobs that pay below \$18 per hour, please list separately).

N/A

13. For retention projects only. Number of new and retained full-time jobs at the proposed project site and a schedule of placement. (Note: FBC Tax Abatement Guidelines require jobs to pay at least \$18 per hour to be eligible for an incentive calculation. (If Project has jobs that pay below \$18 per hour, please list separately).

Full-time: 0

Part-time: 0

Seasonal: 0

The Project will utilize local workforce through the construction phase, and this will bring 50-100 temporary jobs. Aypa anticipates it will hire part-time/temporary positions for repair and maintenance while the project is operational. The Applicant and Applicant's contractors will be present in the community throughout the construction and operation of the project, supporting local businesses (lodging, restaurants/food, supplies, etc.) during this time.

14. Base Hourly Wage at project site (Excluding Benefits and Bonuses):

N/A

15. Average Annual Salary of Existing Jobs (If Applicable):

\$ N/A

16. Average Annual Salary of Retained Jobs at Proposed New Site:

\$ N/A

17. Does the company offer health care benefits?

☐ Yes ☐ No

N/A

18. Is the company delinquent in the payment of ad valorem taxes to any taxing unit located in Fort Bend County?

☐ Yes ☒ No

If yes, explain: N/A

19. Has the applying company or any of its affiliates been cited, currently under investigation, or have litigation pending for any violations of federal, state, county and/or municipal laws, codes, or ordinances?

☐ Yes ☒ No



If yes, indicate the nature/status of the violation(s):

N/A

20. Has the company previously received an incentive from the County? ☒ Yes ☐ No

Bypass BESS project

Where is the property located: Thompsons, TX

If yes, indicate the time period (MM/YY): Approximately October 2025 – October 2035

If yes, explain:

We executed two abatement agreements (General Fund and Drainage District) with the County on 8/8/2023 for a property tax abatement for 10 years. The Company is to pay the County a series of payments in lieu of taxes (PILOT) for 10 years.

If yes, is/was the company in compliance with all terms and conditions:

☒ Yes ☐ No

21. Is any interest in this project presently held by an elected, appointed or employed member of any taxing entity?

☐ Yes ☒ No

22. Is any interest in this project presently held by a member of the Fort Bend County Commissioners Court or other County official or employee?

☐ Yes ☒ No

If yes, explain:

N/A

23. Describe any goodwill benefits and involvement that the applicant has previously provided and/or is committed to providing in the future to the Fort Bend County community.

Aypa Power develops projects for long term ownership and operation, therefore we are committed to establishing sustainable relationships with our community partners and being an engaged member of the community. The Project will utilize local workforce through parts of the construction phase. The Applicant and Applicant's contractors will be present in the community throughout the construction and initial operation of the Project, supporting local businesses (lodging, restaurants/food, supplies, etc.) during this time. Furthermore, the Project will enhance the local power grid's stability and provide cheaper energy for consumers.

24. Provide an assessment of the project's environmental impact, and any remediation and/or compliance plan associated with the project, which would have the effect of minimizing the negative impact of the project on the environment.

Aypa Power has already conducted a wetland delineation, ESA Phase 1, and critical issues analysis to determine all prospective environmental impacts for the site. Aypa will design and construct facilities in compliance with Federal and State environmental law and seek any and all necessary permits.

ATTACHMENTS:

- A. A map and legal description (metes and bounds) of the facility site.
- B. CAD data or a shape file with the boundaries of the proposed facility site, and if the Reinvestment Zone and facility site are not the same, then also include CAD data or a shape file with the boundaries of the proposed Reinvestment Zone.
- C. Any financial information the applicant deems appropriate for evaluating the financial capacity and other factors of the Applicant.
- D. Any additional information the Applicant deems helpful to the evaluation of the application.

While the initial tax abatement is for 10 years, the prospective operation period of the facilities is 25-50 years during which time the Company will continue to contribute to the Fort Bend County tax base.

**Note: FBC reserves the right to request additional financial and other information appropriate for evaluating the financial capacity and other non-financial factors.**

**Companies must submit a non-refundable application fee of \$1,000.00 with their application, made payable to Fort Bend County. Projects that require an assignment or amendment are also required to pay the same application fee in accordance with the adopted *Tax Abatement Guidelines*.**

**CERTIFICATION:**

I understand and certify that I have read the County of Fort Bend 's and County of Fort Bend Drainage District's current *Tax Abatement Guidelines*. I am familiar with the provisions contained therein, and that the information provided in this application may become a part of an incentive agreement with the County of Fort Bend. I also certify that I am authorized to sign this application, that the information provided herein is true and correct, and that knowingly providing false information will result in voiding the application and termination of any incentive agreement.

Signature: *Sarah Murphy*

Date: 3/22/2024

Printed Name: Sarah Murphy

Title: Project Developer

Company Name: Stargazer Solar LLC c/o Aypa Power Development LLC

Mailing Address: 11801 Domain Blvd. Suite 450

City: Austin

State: TX

Zip: 78758

Telephone: 737-270-8978

Mobile: 713-254-0687

E-mail address: smurphy@aypa.com

**Applications shall be returned as follows:**

[smurphy@aypa.com](mailto:smurphy@aypa.com)

[jtinsley@aypa.com](mailto:jtinsley@aypa.com)

[joefinger@aypa.com](mailto:joefinger@aypa.com)

[fforster@aypa.com](mailto:fforster@aypa.com)

**Return Original Executed Application to:**

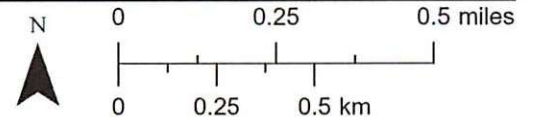
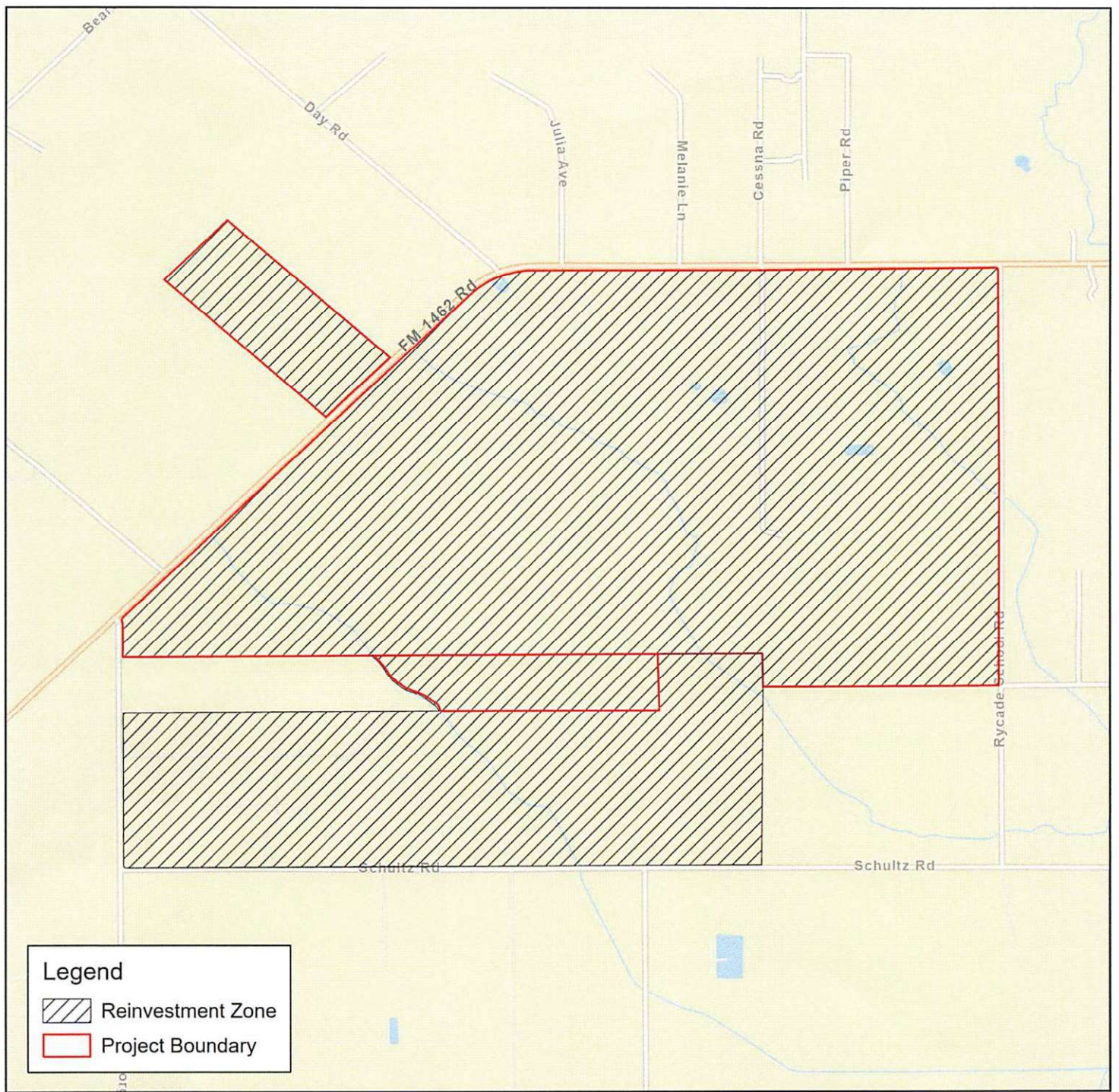
**Fort Bend County Economic Opportunity & Development**

**Attn: Director of Economic Opportunity & Development**

**Address: 245 Commerce Green Blvd. Suite 125, Sugar Land, TX 77469**

**Telephone: 346-481-6911**





OWNER	PARCEL #	ACRES	LEGAL DESCRIPTION
Usuf & Chand Middya	R48187	59.3	0496 S A BEARD, ACRES 59.261
Lawson Land Company & Anne Brackett	R47476	143	0446 DAY LAND AND CATTLE, ACRES 143.04
McNatt Trust	R47478	210.9	0446 DAY LAND AND CATTLE, ACRES 210.9
McNatt Trust	R47479	215.1	0446 DAY LAND AND CATTLE, ACRES 215.07
E Hart LLC	R32209	209	0022 K W DAVIS, ACRES 209
E Hart LLC	R32210	1	0022 K W DAVIS, TRACT 19, ACRES 1
E Hart LLC	R32119	1	0022 K W DAVIS, ACRES 1.00
E Hart LLC	R32118	109	0022 K W DAVIS, ACRES 109.00
Mikel Brothers Partnership	R47482	383.8	0446 DAY LAND AND CATTLE, ACRES 383.77

**EXHIBIT 4**  
**ANNUAL COMPLIANCE CERTIFICATE**

# **FORT BEND COUNTY TAX ABATEMENT ANNUAL COMPLIANCE CERTIFICATE**

**Due by September 1 of current tax year**

**Current Tax Year** \_\_\_\_\_

**This certification is being made on behalf of the OWNER / LESSEE (circle one)  
Each must prepare a separate report**

Per the terms of the tax abatement agreement between Fort Bend County, Fort Bend County  
Drainage District and

Owner \_\_\_\_\_ and

Lessee (if applicable) \_\_\_\_\_

dated \_\_\_\_\_ we are in compliance  
with the following terms of the agreement:

1. Construction of the improvements was completed on: \_\_\_\_\_
2. Certified statement regarding project costs was provided to the Fort Bend County  
Economic Opportunity & Development office on: \_\_\_\_\_ (date)
3. Certificate of Occupancy was provided to the Fort Bend County Economic Opportunity &  
Development on: \_\_\_\_\_ (date)
4. Certified appraised value of the improvements as of January 1 \_\_\_\_\_ (current tax  
year) was \$\_\_\_\_\_ which meets the required minimum value  
requirement of \$\_\_\_\_\_. (If included in abatement  
agreement)
5. Certified appraised value of the eligible property (if included in abatement agreement) as  
of January 1 \_\_\_\_\_ (current tax year) was \$\_\_\_\_\_ which  
meets the required minimum value requirement of \$\_\_\_\_\_.
6. Are the property tax payments current and in compliance with the required obligations?
7. Total number of employees employed at the improvement for current tax year (if  
applicable) is \_\_\_\_\_ which meets the required minimum value requirement of  
\_\_\_\_\_. (Please provide supporting documentation (i.e., payroll record, TWC  
quarterly report, etc.)
8. Owner / lessee (circle one) filed the annual Application(s) for Property Tax Abatement  
Exemption (Form 50-116) with Fort Bend Central Appraisal District on \_\_\_\_\_(date).

9. If there are additional requirements under the specific abatement agreement(s) by and between Fort Bend County, Fort Bend County Drainage District, Owner / Lessee noted above, please list requirement(s) and certify compliance here:

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At this time, Owner/Lessee (circle one) wishes to designate a different mailing address for notices under the terms of this abatement agreement.

NEW NOTIFICATION ADDRESS:

To Owner / Lessee:  
(circle one)

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Please indicate the basis for your authority to represent the property owner in filing this certificate:

\_\_\_\_\_ Officer of the company \_\_\_\_\_ General Partner of the company

\_\_\_\_\_ Attorney for property owner

\_\_\_\_\_ Agent for tax matters appointed under Tax Code Section 1.111 (copy of completed Form 50-162 filed with Fort Bend Central Appraisal District)

I \_\_\_\_\_, swear or affirm the following:  
(print name)

- To the best of Company's knowledge and belief, each fact contained in this certificate is true and correct, and that Company is in compliance with the terms of the Agreement.
- Company understands that this Certificate is being relied upon by the County in connection with the tax abatement provided for in the Agreement.
- Company understands the consequences for noncompliance with the abatement agreement.



- The undersigned signatory has the legal and express authority to sign this Certificate on behalf of Company.

Signature of Authorized Representative: \_\_\_\_\_

Title of Authorized Representative: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SWORN TO and SUBSCRIBED before me on this the \_\_\_\_\_ day

of \_\_\_\_\_ A.D. \_\_\_\_\_

NOTARY PUBLIC \_\_\_\_\_

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_

MY COMMISSION EXPIRES \_\_\_\_\_

SEAL  
OR  
STAMP

# EXHIBIT 5

## GUIDELINES AND CRITERIA



**FORT BEND COUNTY COMMISSIONERS COURT  
2023 TAX ABATEMENT GUIDELINES AND CRITERIA  
FOR GRANTING TAX ABATEMENTS  
Fort Bend County General Fund**

WHEREAS, taxing entities in the State of Texas are authorized to provide tax Abatements for historic preservation and economic development, pursuant to Chapter 312 of the Property Tax Code;

WHEREAS, the purpose and intent of these Guidelines and Criteria is to set forth the parameters under which Fort Bend County will generally operate a tax Abatement program in accordance with the Act;

WHEREAS, the Tax Abatement Program is intended to be an economic development tool to assist and encourage certain types of real and personal property investment within qualified Reinvestment Zones to benefit the residents of Fort Bend County;

WHEREAS, such investment is expected to result in the creation, retention and expansion of new full-time jobs while strengthening the tax base of Fort Bend County;

WHEREAS, all applications for tax Abatement will be considered on a case-by-case basis, and the decision to approve or deny tax Abatement shall be at the discretion of the Fort Bend County Commissioners Court;

WHEREAS the adoption of these Guidelines and Criteria does not imply or suggest that Fort Bend County is under any obligation to provide tax Abatement to any Applicant;

WHEREAS, before these GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS IN FORT BEND COUNTY, TEXAS were submitted to Commissioners Court, a public hearing was held in accordance with Texas Tax Code 312.002 (c-1);

NOW, THEREFORE BE IT RESOLVED, that Fort Bend County elects to become eligible to participate in tax Abatement as described in Texas Tax Code 3(a) and does hereby adopt these GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS IN FORT BEND COUNTY, TEXAS to be effective as of the date executed.

## **I. DEFINITIONS**

- A. "Abatement" means the full or partial exemption from ad valorem taxes of certain real property and/or Tangible Personal Property in a Reinvestment Zone designated by the County for economic development purposes.
- B. "Abatee" means a company or individual receiving a tax Abatement from Fort Bend County.
- C. "Applicant" means company or individual who has made application for tax Abatement with Fort Bend County.
- D. "Act" means the Property Redevelopment and Tax Abatement Act enacted as Chapter 312 of the Texas Tax Code, as amended.
- E. "Agreement" means a contractual Agreement between a property owner and/or Lessee and the County.
- F. "Base Year Value" means the appraised value in the Reinvestment Zone on January 1 preceding the effective date of the tax abatement agreement, plus the agreed upon value of eligible property improvements made after January 1 but before the effective date of the agreement, or the sales price, if the property was conveyed subsequent to January 1, whichever is greater.
- G. "Commercial Building" means a new facility, a new addition to an existing facility or build-out of unoccupied space within an existing facility.
- H. "Commissioners Court" means the Commissioners Court of Fort Bend County, Texas.
- I. "Deferred Maintenance" means improvements necessary for continued operation which do not improve productivity, or alter the process technology, reduce pollution or conserve resources.
- J. "Employee" means a person whose employment is both permanent and full-time, who works for and is an employee of the Owner or an employee of a contract provider to the Owner, who works a minimum of 1,750 hours per year and whose employment is reflected in the Owner's (and/or contract provider's, as applicable) quarterly report filed with the Texas Workforce Commission (TWC); but excluding any direct contract (seasonal, part-time, and full-time equivalent).
- K. "Expansion" means the addition of buildings, structures, machinery, tangible personal property, equipment or payroll for purposes of increasing production or regional capacity.
- L. "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.
- M. "Improvements" are as identified in the Texas Tax Code Chapter One.
- N. "Office of Economic Opportunity and Development" (EOD) means the Department of Economic Development and Opportunity, an internal County Department whose Director is an Executive Manager appointed by the Fort Bend County Commissioners Court.

- O. "Lessee" means the tenant who is occupying and operating or will occupy and operate an Eligible Facility under a legally binding lease Agreement with a Lessor. A Lessee of Real Property on which the Eligible Facility exists or is constructed may also own the Facility. "Lessee" means the tenant who is occupying and operating or will occupy and operate an Eligible Facility under a legally binding lease Agreement with a Lessor. A Lessee of Real Property on which the Eligible Facility exists or is constructed may also own the Facility.
- P. "Lessor" means the owner of an Eligible Facility or of the Real property on which an Eligible Facility is located that has a binding lease with a Lessee who will occupy and operate the Facility.
- Q. "Modernization" means a complete or partial demolition of facilities and the complete or partial reconstruction or installation of a facility of similar or expanded production capacity. Modernization may result from the construction, alteration, or installation of buildings, structures, machinery, equipment, pollution control devices or resource conservation equipment.
- R. "New Facility" means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion or Modernization.
- S. "Owner" means the owner of Real Property on which an Eligible Facility is or will be located, who may also be the Lessor. Where the context requires, "Owner" means the owner of the Eligible Facility, who is the Lessee of Real Property on which the Eligible Facility is or will be located; provided that a specific definition or other provision to the contrary in an Agreement controls over this sentence.
- T. "Personal Property" means property that is not Real Property and consists of intangible and tangible personal property. Intangible Personal Property means a claim, interest (other than an interest in tangible property), right, or other thing that has value but cannot be seen, felt, weighed, measured, or otherwise perceived by the senses, although its existence may be evidenced by a document. It includes a stock, bond, note or account receivable, certificate of deposit, share, account, share certificate account, share deposit account, insurance policy, annuity, pension, cause of action, contract, and goodwill. Tangible Personal Property means Personal Property that can be seen, weighed, measured, felt, or otherwise perceived by the senses, but does not include a document or other perceptible object that constitutes evidence of a valuable interest, claim, or right and has negligible or no intrinsic value.
- U. "Real Property" means land or an improvement, or other property classified as such under state law.
- V. "Reinvestment Zone" means a geographic area of the County designated as such for the purpose of tax Abatement as authorized by Chapter 312 of the Texas Tax Code.
- W. "Tangible Personal Property" means tangible personal property classified as such under state law, but excluding inventory and/or supplies and tangible personal property that was located in the investment zone at any time before the period covered by the Agreement with the County.

"Taxing Unit" means same as Texas Code Section 1.04 (12), for these Guidelines and



Criteria Taxing Unit shall refer to Fort Bend County authorized to impose and is imposing ad valorem taxes on property; governing body is the Fort Bend Commissioners Court.

## **II. GENERAL REQUIREMENTS/CONSIDERATIONS**

- A. Fort Bend County is authorized to provide Tax Abatement benefits in accordance with the State of Texas Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code, as amended (the "Act"). Said Act requires the establishment of these Guidelines and Criteria for the governing of tax Abatement Agreements between Fort Bend County and eligible entities.
- B. The Act furthermore permits the designation of "reinvestment zones" in accordance with specific criteria which the County may create for property not located within a municipality.
- C. Creation of New Value: An Abatement may only be granted for the additional value of eligible Improvements made subsequent to and specified in an Abatement Agreement between the County and the property owner or lessee, subject to such limitations as the County may require. The term of the Abatement shall not extend past ten (10) years.
- D. Projects seeking economic incentives must provide written assurance that 'but for' the incentive sought, the proposed project will not occur, or would otherwise be substantially altered so that the economic returns or other associated public purpose secured by the County's incentive would be reduced.
- E. Standards for Tax Abatement: It is within the sole discretion of Commissioners Court to grant an Abatement to an Applicant. The below standards will be considered in determining the percentage of value to be abated and the duration of the Agreement, unless otherwise required by Reinvestment Zone.
  - 1. Size, scope, and location of the capital investment.
  - 2. Creation of new jobs or prevention of job loss; as well as improved working conditions for employees without simply transferring employment from one part of the County to another.
  - 3. Impact on existing business and the local economy.
  - 4. Whether the business will provide a long-term source of revenue to local government when Abatement ends, and the business is subject to full taxation.
  - 5. Whether granting the Abatement will be an economic development tool anticipated to encourage infrastructure improvements or other building ventures in the area.
  - 6. How the area may benefit from community benefit programs that are identified by Commissioners Court for participant contribution under the Abatement program; and/or
  - 7. Any factor determined by Commissioners Court (collectively or by Precinct) to be relevant to economic development in Fort Bend County.

**F. Eligible Property:**

1. Abatement may be extended to the value of buildings, structures, tangible personal property as defined in the Texas Tax Code including fixed machinery and equipment, site improvements, and related fixed improvements necessary to the operation and administration of the facility.
2. New and Existing Facilities: An Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.

**G. Ineligible Property: Property that is fully Taxable and ineligible for Tax Abatement such as:**

1. Land, existing improvements, tangible personal property that the Fort Bend central Appraisal District (FBCAD) classifies as inventory or supplies, real property used primarily to provide retail sales or services to the public, real property used for residential purposes, tangible personal property classified as furnishings, tangible personal property located in the Reinvestment Zone prior to the effective date of the tax Abatement Agreement, real property with a productive life of less than 10 years, or any other property for which Abatement is not allowed by state law; and
2. Property located on real property that owes or come to owe delinquent taxes. Otherwise, eligible property will be deemed ineligible if located on real property that is delinquent even if the Real Property Owner is not the Owner of the property for which the Abatement is requested.

**H. Basic Qualifications: A planned improvement shall meet the following minimum requirements to be considered for Tax Abatement:**

1. The company must offer a health benefit plan to its full-time employees which allows access to the plan by the employees' dependents; and Meet at Least One of the below business values:
    - a. Must have a minimum combined investment of \$10,000,000 in real and/or business personal property improvements (new projects) or \$5,000,000 (expansions). Or
    - b. Create and/or retain employment for at least 20 positions on a full-time equivalent in Fort Bend County for the duration of the Abatement period where the abated property is or will be located. These full-time jobs are required to pay at least \$18 per hour to be eligible.
  2. The intent of the planned improvement must not solely or primarily lead to the transferring of employment from one part of the County to another part of the County
- I. An Applicant may seek a variance from a Basic Qualification by submitting a request in written form along with the required standard application. Such requests shall include a complete description of the circumstances explaining why the Applicant**

should be granted a variance. Approval of a request for variance requires a four-fifths vote of the Commissioners Court.

### **III. APPLICATION PROCESS**

- A. The Application for Tax Abatement may be obtained online via the County Office of Economic Opportunity and Development website and will include instructions for submission of the completed application package.
- B. Applications shall include all supporting documentation and a \$1,000.00 non-refundable application fee made payable to Fort Bend County.
- C. Supporting documentation shall include:
  - 1. A map and legal description (metes and bounds) of the facility site.
  - 2. CAD data or a shape file with the boundaries of the proposed facility site, and if the Reinvestment Zone and facility site are not the same, then also include CAD data or a shape file with the boundaries of the proposed Reinvestment Zone.
  - 3. A general description of the improvements for which the Abatement is sought and the extent of the modernization, expansion, or new improvement which will be part of the facility. In the case of modernization, a 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.
  - 4. Financial and other information as Fort Bend County deems appropriate for evaluating the financial capacity and other factors of the Applicant.
  - 5. A time schedule for undertaking and completing the planned improvements; and
  - 6. Any additional information the Applicant deems helpful to the evaluation of the application.
  - 7. Written assurances why the requested Tax Abatement is necessary to ensure that the proposed project be located in Fort Bend County and that 'but for' the incentive sought, the proposed project would not occur, or would otherwise be substantially altered so that the economic returns (or other associated public purpose) secured by the County's incentive would be reduced.
- D. The application will become part of the Tax Abatement Agreement and kept on file as a record of the County. If granted, the Tax Abatement Agreement may be rescinded upon finding any representation made in the application and/or supporting documentation was incorrect or false.
- E. The Office of Economic Opportunity & Development shall confirm that the Applicant has submitted all required documents and confirm that the fee has been tendered by the Applicant before conducting an initial review of the Application.
- F. Submission of an Application is acknowledgement by the Applicant of familiarity and



assumed compliance with GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS IN FORT BEND COUNTY, TEXAS.

- G. If a proposed project's investment, job creation, wages or construction schedule change significantly following the submittal of a completed application and payment of the fee, or if an Agreement has not been finalized by the 364th day after application submission, Fort Bend County may close the pending application. Any submission of a new or subsequent application following such a closing will require another accompanying application fee.
- H. To the extent allowed by law, information that is provided in connection with an application or request for Tax Abatement that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property for which tax Abatement is sought is confidential and not subject to public disclosure until the tax Abatement Agreement is executed. After execution of the Agreement, the information is not confidential.

#### **IV. REINVESTMENT ZONES**

- A. Tax Abatement Agreements may be executed regarding Eligible Property in a Reinvestment Zone located within the boundaries of:
  - 1. A single city or county zone;
  - 2. Contiguous county and/or city zones; or
  - 3. Overlapping city/county zones; but not overlapping county zones.
- B. Commissioners Court must designate a Reinvestment Zone as a required part of the Tax Abatement process for property not already located in a Reinvestment Zone and in the unincorporated areas of the County.
- C. Inquiries regarding Reinvestment Zones should be referred to the Office of Fort Bend County Economic Opportunity & Development. Creation of Zones will require coordination with other County Offices for public notice, hearings, and orders for submission to Commissioners Court. At a minimum, the Applicant shall provide copies of the map and legal description (metes and bounds) of the property and the CAD data or a shape file with the boundaries of the proposed zone.
- D. Value Abated in the Reinvestment Zone:
  - 1. Base Value: Once a Reinvestment Zone is established, the portion of value abated for property and the duration of the exemption shall be the same for each owner that executes an Abatement Agreement in the same zone thereafter. However, the County may assign different percentages of Abatement per project by the same Owner within the Zone.
  - 2. Incremental Incentives: Any owner of property applying for Tax Abatement in a County created Reinvestment Zone may negotiate up to three additional percentage points to be added to the base Abatement percentage established for the Zone as a condition of agreeing to following business practices that have been determined to be of significant social value to the area in which the project will be located.

Such an incentive must be clearly articulated in the Agreement and state with specificity the requirements that must be met in order to capture the incremental incentive as well as articulate what documentation will be required to verify compliance.

- E. Reinvestment Zone Creation Orders shall comply with the requirements of the Tax Code and shall set out the abatement percentage established for the Zone. In the event that a Property Owner receives abatement on additional projects in the Zone, the Order shall be appended to reflect a schedule of percentages that will likewise be available to other Abatees in the Zone.
- F. Having property located in a Reinvestment Zone does not result in a Tax Abatement unless and until a property owner has executed an Abatement Agreement with the County.

## **V. AMENDMENTS TO AGREEMENTS**

- A. Amendments to Executed Agreements (which includes any modification of Terms) may only be made by written request to the Director of Economic Opportunity and Development. Such requests shall include a complete and detailed description explaining why the amendment is necessary.
- B. An Abatee seeking Amendment to an Executed Agreement shall attend the meeting in which the item will be considered and be available to address the Court. Amendments will be approved only by a four-fifths vote of the Commissioners Court.
- C. A request for an Amendment to an Executed Agreement is considered a separate application from the original application seeking tax Abatement. The required application fee and notice requirements of Texas Tax Code Section 312.207 will apply to the Amendment request.
- D. The following apply to Assignments, which are a specific type of Amendment: The Abatement may be transferred and assigned by the holder to a new owner or lessee of the same facility upon the approval by the Commissioners Court; subject to the financial capacity of the assignee and provided that all conditions and obligations in the Abatement Agreement are guaranteed by the execution of the new contractual Agreement with the County, which is an amendment to the Agreement. No assignment or transfer shall be approved if the parties to the existing Agreement, the new owner or new lessee are liable to any jurisdiction for outstanding taxes or other obligations. Approval shall not be unreasonably withheld. Assignee must swear and affirm in the Amendment that they are not in default with any taxing jurisdiction in the State of Texas.

## **VI. RECAPTURE**

- A. Failure to Commence Operation During Term of Agreement: In the event that the facility is not completed and does not begin operation with the minimum number of



permanent jobs by the January 1st following the completion of construction, no Tax Abatement shall be given for that tax year, and the full amount of taxes assessed against the property shall be due and payable for that tax year. In the event that the owner of such a facility fails to begin operation with the minimum number of permanent jobs by the next January 1st, the County may terminate the tax Abatement Agreement. If the County sends Abatee notice of cancellation, all abated taxes must be recaptured and paid within sixty (60) days of such termination. If the County does not receive full payment within said 60 days, a penalty may be added, equal to 15% of the total amount abated.

- B. Discontinuance of Operations During Term of Agreement: In the event the facility is completed and begins operation with the required minimum number of permanent jobs, but subsequently discontinues operations and/or the minimum number of permanent jobs is not maintained as of any January 1st during the term of the Agreement the County may terminate the tax Abatement Agreement. County may terminate under this Provision regardless of the reason Discontinuance of Operations or non-compliance with jobs; except when County has determined that such non-compliance was on a temporary basis due to fire, explosion or other casualty or accident or natural disaster, If the County sends Abatee notice of cancellation, all abated taxes shall be recaptured and paid within sixty (60) days of such termination. If the County does not receive full payment within said 60 days, a penalty may be added, equal to 15% of the total amount abated.
- C. Delinquent Taxes: In the event that the owner allows any ad valorem taxes to become delinquent on any property in Fort Bend County (whether on abated property or not) and fails to timely and properly follow the legal procedures for their protest and/or contest the tax Abatement Agreement, the County may terminate the tax Abatement Agreement. If the County sends Abatee notice of cancellation, all abated taxes shall be recaptured and paid within sixty (60) days of such termination. If the County does not receive full payment within said 60 days, a penalty may be added, equal to 15% of the total amount abated. The total taxes assessed without Abatement for that tax year, shall be paid within sixty (60) days from the date of the termination. If the County does not receive full payment within said 60 days, a penalty may be added, equal to 15% of the total amount abated.
- D. Performance Criteria: In the event that the owner fails to meet any other performance criteria provided by the Tax Abatement Agreement, County may terminate the tax Abatement Agreement. If County sends Abatee notice of cancellation, all abated taxes and paid within sixty (60) days of such termination. If the County does not receive full payment within said 60 days, a penalty may be added, equal to 15% of the total amount abated.
- E. Actual Capital Investment: Should Fort bend County determine that the total level of capital investment in the eligible property is lower than provided in the Agreement, the County, at its sole discretion, reserves the right to adjust the tax Abatement percentage to reflect the actual capital investment as determined or to terminate the Agreement. If County sends Abatee notice of cancellation, shall be recaptured

and paid within sixty (60) days of such termination. If the County does not receive full payment within said 60 days, a penalty may be added, equal to 15% of the total amount abated.

- F. Notice of Default: Should Fort Bend County determine that the owner is in default, according to any other terms or conditions of its Agreement, it shall notify the owner in writing at the address stated in the Agreement that, if such default is not cured within sixty (60) days from the date of such notice (the "Cure Period"), then the Agreement may be terminated and the taxes abated by virtue of the Agreement may be recaptured and paid as provided herein.

## **VII. ADOPTION AND EXPIRATION OF GUIDELINES AND CRITERIA**

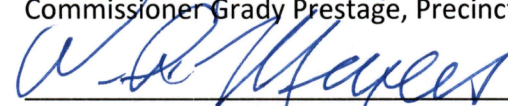
- A. These Guidelines and Criteria shall apply upon adoption by Order of the Fort Bend County Commissioners Court and shall remain in effect with applicable amendments from time to time, for two years from the date adopted.
- B. During this period, these Guidelines and Criteria may be amended or repealed in accordance with state law. No extension of these Guidelines and Criteria is authorized except by amendment consistent with Chapter 312 of the Texas Tax Code.
- C. No Reinvestment Zone and/or Tax Abatement Agreement may be authorized in reliance upon these Guidelines and Criteria beyond May 11, 2025.
- D. Applications dated prior to the Adoption of these Guidelines and Criteria shall be governed by the Guidelines approved as of the date of the Application, subject to the limitation of time governing the time an application may be left pending and the requirements of law.
- E. The Adoption of these Guidelines and Criteria by the County does not:
  - 1. Limit the discretion of the County to decide whether to enter into a specific tax Abatement Agreement; or
  - 2. Limit the discretion of the County to delegate to its employees the authority to determine whether or not the County should consider a particular application or request for tax Abatement; or
  - 3. Create any property, contract, or other legal rights in any person to have the County consider or grant a specific application or request for tax Abatement.
  - 4. Limit the ability to deviate from these guidelines and criteria for good cause.
- F. An executed copy of these approved guidelines and criteria governing tax abatement agreements for Fort Bend County General Fund shall be posted on the County Office of Economic Opportunity and Development website in compliance with Fort Bend County requirements of taxing units stated in Tax Code Section 312.002 (c-2).

PASSED AND APPROVED BY COMMISSIONERS COURT this \_\_\_\_\_ this 9<sup>th</sup> day of May 2023.

  
\_\_\_\_\_  
County Judge KP George

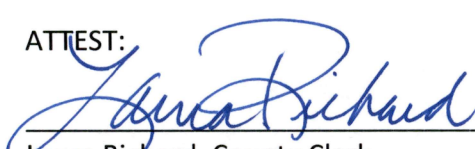
  
\_\_\_\_\_  
Commissioner Vincent Morales, Precinct 1

  
\_\_\_\_\_  
Commissioner Grady Prestage, Precinct 2

  
\_\_\_\_\_  
Commissioner Andy Meyers, Precinct 3

  
\_\_\_\_\_  
Commissioner Dexter McCoy, Precinct 4

ATTEST:

  
\_\_\_\_\_  
Laura Richard, County Clerk



Reviewed: 

\_\_\_\_\_  
Carlos Guzman  
Economic Opportunity and Development Director