

This Tax Abatement Agreement hereinafter referred to as "Agreement," is executed by and between FORT BEND COUNTY DRAINAGE DISTRICT (a taxing entity, hereinafter referred to as "District,") acting by and through its Board of Directors and **BYPASS BESS III LLC** a current Owner of Eligible Property (as hereinafter defined) located in Fort Bend County Precinct 2 within the boundaries of Town of Thompsons Reinvestment Zone No. 3

- A. Fort Bend County Drainage District 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 Drainage District has adopted GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS IN FORT BEND COUNTY DRAINAGE DISTRICT 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 Drainage District on or about June 19, 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. Town of Thompsons Reinvestment Zone No. 3 was created on June 20, 2024, by the Town of Thompsons 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 Drainage District is authorized under Chapter 312 of the Texas Tax Code to execute a Tax Abatement agreement with the owner of Eligible Property located on real property in a municipal created reinvestment zone;
- F. No official of Drainage District 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 Drainage District'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 Drainage District; and

- I. Though Drainage District Taxes will be abated 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 Drainage District, rather than another County;
  2. Current and (and any future) taxing units levying taxes in the Reinvestment Zone (namely Lamar CISD ) will receive new tax revenue beginning the first year of the Agreement that would not be available if Owner chose another location for this Project;
  3. Owner will remain operational for a minimum of 15 years in Fort Bend County Drainage District, for which Drainage District will assess taxes beginning the 11<sup>th</sup> year;
  4. Drainage District's receipt of a Payment In Lieu of Taxes from Owner results in a stable revenue stream for Drainage District and for which depreciation of the Project is controlled; and
  5. At the end of the Project's life, Owner will properly decommission the facilities, which the Drainage District could not require without executing this Agreement.

**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 Drainage District 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. "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.
- E. "County Property Taxes" means any and all current and future ad valorem taxes on property imposed by Drainage District that are eligible for abatement under Texas Tax Code Chapter 312.
- F. "District" means the Board of Directors of Fort Bend County Drainage District.
- G. "Facility" or "Facilities" 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 Drainage District 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 control 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 ad valorem tax that Drainage District 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 Drainage District.

- 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 Drainage District 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 Town of Thompsons Reinvestment Zone No. 3, attached as Exhibit 2.

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

- A. Owner is proposing to construct a Battery Energy Storage Facility, on an approximate 15-acre tract of land located within the boundaries of Town of Thompsons Reinvestment Zone NO. 3 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 200MW upon completion of construction. The facility may include some or all of the following components: concrete foundations, roads, fencing, safety equipment, battery containers, transformers, inverters, and cabling.
- 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 2 that are installed in the Drainage District. 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 or generate 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 ("Term"), unless terminated earlier, as provided elsewhere herein. In no



event shall the term of the Abatement exceed 10 years.

- B. Notwithstanding the foregoing, the Owner's obligations upon default to pay Drainage District 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 Fort Bend County Appraisal District (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 Drainage District 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 Drainage District 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 December 31, 2025, complete the construction and commence Commercial Operations not later than December 31, 2027.
    - b. Owner can request an automatic extension of 1 year of the deadlines described above in Section V(B)(1)(a) (through December 31, 2026, for

the construction commencement deadline and through December 31, 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 \$100,000,000.
    - 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 Drainage District, 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 payments in lieu of taxes (the “Annual PILOT”) to the Drainage District 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	\$5,264
Year 2	\$5,264
Year 3	\$5,264
Year 4	\$5,264
Year 5	\$5,264
Year 6	\$5,264
Year 7	\$5,264
Year 8	\$5,264
Year 9	\$5,264
Year 10	\$5,264

- 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, 2028, then the PILOT for the first year of the Abatement Period must be paid not later than December 1, 2028.
- 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 Drainage District and shall note the Project's name and corresponding PILOT year, and be mailed as follows:

Fort Bend County  
Attn.: Treasurer  
Address: 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 3.
- 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 Drainage District are current. Delinquent taxes for any Fort Bend County Drainage District 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 Drainage District evaluation of Owner'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 Facilities, 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 Drainage District 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 Drainage District shall be entitled to recapture the ad valorem taxes abated under the terms of this Agreement as provided herein.
2. Owner shall return and restore the Real Property to its previous state. Remediation of the property to its former state is anticipated, and such remediation will not result in the imposition of recovery costs upon the Drainage District or underlying landowners where the project is based upon a leasehold interest. To the extent practicable for this Project, the provisions of Section 301.0003 of the Texas Utilities Code will be followed regarding remediation of the property at the end of the project's useful life.

#### **VI. Administration**

- A. This Agreement shall be administered in accordance with the GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS IN FORT BEND COUNTY DRAINAGE DISTRICT.
- B. Fort Bend Central Appraisal District (FBCAD) 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 Drainage District receives the certified appraised value from the FBCAD.
- C. During the Abatement Period, Drainage District 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 Drainage District appraisal records. The Certified Appraised Value listed in the Drainage District appraisal records shall be the standard used for calculating the amount of taxes to be recaptured by the

Drainage District in the event that the Drainage District 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, Drainage District 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 Drainage District 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;
  - i. Twenty-four (24) hours prior notice shall be given; and
  - ii. One or more representatives of the Owner or individual is present.

## **VII. Recapture/Default**

- A. The Drainage District may declare a default if the Owner violates any material term of this Agreement. If the Drainage District 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)(1), 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 Owner fails to commence Commercial Operations by January 1<sup>st</sup> of the first calendar year that begins no earlier than thirteen (13) months after completion of construction, 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 Drainage District 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 commences Commercial Operations, but subsequently discontinues operations during the Term of the Agreement after the completion of construction, , the Agreement may be terminated by the Fort Bend County Drainage District 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 Drainage District 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 Drainage District (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 Drainage District 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 Drainage District 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 Drainage District, 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, Drainage District 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 Drainage District to Owner. In the event of termination under this paragraph (G), Owner shall repay to Drainage District 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:
  - i. 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" Drainage District 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 Drainage District being permitted to exercise any of its remedies in this Agreement.
  - ii. If Owner fails to cure the default. Drainage District 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 DRAINAGE DISTRICT. 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 Drainage District monies owed for taxes abated, interest and penalties thereon shall survive termination of this Agreement, and the Drainage District 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 Drainage District 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 Drainage District 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 Drainage District 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 Drainage District 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: Bypass BESS III LLC  
Attn: ERCOT Development  
11801 Domain Blvd. Suite 450  
Austin, TX 78758  
[BypassBESS@aypa.com](mailto:BypassBESS@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 Drainage District'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 Drainage District is invalid. Nothing in this Agreement requires that the Drainage District incur debt, assess or collect funds, or create a sinking fund.

**XII. Representations**

- A. The Drainage District 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 Drainage District, and (ii) The Drainage District 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 Drainage District:
  - 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 on 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 Drainage District, 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 Drainage District'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 Drainage District 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 Drainage District, then the Drainage District 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 Drainage District, 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 Drainage District.
- G. Expenses of Negotiation and Compliance. Upon full execution of this Agreement, Owner agrees to pay the Drainage District '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 Drainage District, 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.**

- A. 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.
- B. The Parties understand and agree that the County Attorney's legal review of this Agreement was conducted solely from the legal perspective of the County. Any other Party should seek review and approval by their own respective attorney, for the benefit of their own company and/or organization.

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);
Second	N/A	this document titled TAX ABATEMENT AGREEMENT between FORT BEND COUNTY DRAIANGE DISTRICT and Bypass BESS III LLC Town of Thompsons Reinvestment Zone NO. 3
Third	Exhibit 3	Application
Reference Only	Exhibit 1	Required Notice

Reference Only	Exhibit 4	Annual Compliance Certificate (attached as form document)
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**XVI. Execution**

**IN TESTIMONY OF WHICH, THIS AGREEMENT** has been executed by Drainage District 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

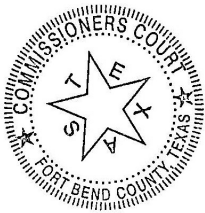
**FORT BEND COUNTY DRAINAGE DISTRICT**

By: KP George  
KP George, County Judge

Date: August 27, 2024

**ATTEST:**

Laura Richard  
Laura Richard, County Clerk



OWNER

**BYPASS BESS III LLC**

By: Sam Littlefield

Printed Name: Sam Littlefield

Title: EVP Development

Date: August 14, 2024

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

**PUBLIC NOTICE OF A MEETING AT WHICH THE FORT BEND COUNTY DRAINAGE DISTRICT 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 DRAINAGE DISTRICT FOR APPROVAL AT AN UPCOMING REGULAR MEETING OF THE FORT BEND COUNTY DRAINAGE DISTRICT 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: Bypass BESS III LLC Landowners: S. Knoepfel & M. Stone
Agreement Type (Original or Amended)	Original
The name and location of the reinvestment zone in which the property subject to the agreement is located:	Town of Thompsons Reinvestment Zone No. 3 in Precinct 2, Fort Bend County
A general description of the nature of the improvements or repairs included in the agreement:	Battery Energy Storage System Facility located on all or a portion of approximately 17.5 acres of land which will include the battery unit containers, wiring, roads, fencing and other improvements.
The estimated cost of the improvements or repairs:	\$12,740,000
<sup>1</sup> Additional significant Project Details or Values/Costs:	\$114,660,000 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
Bypass BESS III LLC	[REDACTED]	6/28/2024

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

**RECEIVED**

**TIME** 8:56 AM  
July 1, 2024

*Laura 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)

**ORDINANCE NO. 185**

**AN ORDINANCE OF THE BOARD OF ALDERMEN OF THE TOWN OF THOMPSONS, TEXAS, CREATING AND DESIGNATING A REINVESTMENT ZONE TO BE NAMED THE "TOWN OF THOMPSONS REINVESTMENT ZONE NUMBER 3" PURSUANT TO CHAPTER 312 OF THE TEXAS TAX CODE; MAKING CERTAIN FINDINGS RELATED TO THE REINVESTMENT ZONE; DIRECTING THE CITY SECRETARY TO FILE ALL REQUIRED DOCUMENTS RELATED TO THE REINVESTMENT ZONE WITH THE TEXAS COMPTROLLER'S OFFICE; PROVIDING FOR SEVERABILITY; AND, PROVIDING AN EFFECTIVE DATE.**

\* \* \* \* \*

**WHEREAS**, the Board of Aldermen (the "Board") of the Town of Thompsons, Texas (the "Town") desires to promote commercial-industrial development within the municipal boundaries of the Town; and

**WHEREAS**, on June 15, 2023, the Board adopted "Guidelines & Criteria for Tax Abatement Agreements"; and

**WHEREAS**, according to Chapter 312 of the Texas Tax Code, the Board desires create a reinvestment zone over a certain area in the taxing jurisdiction of the municipality, with such area being more specifically described and depicted in "Exhibit A" attached to this Ordinance (the "Area"); and

**WHEREAS**, after publishing notice in a newspaper having general circulation in the Town and after delivering in writing to the presiding officer of the governing body of each taxing unit that includes within its boundaries real property that is to be included in the proposed reinvestment zone, the Board held a public hearing on June 20, 2024 and allowed interested persons to speak and present evidence for or against the designation of the reinvestment zone; and

**WHEREAS**, it is the belief of the Board that the improvements sought for the Area are feasible and practical and would be a benefit to the land to be included in the reinvestment zone and to the Town after the expiration of any tax abatement agreement that might relate to the Area; and

**WHEREAS**, it is the belief of the Board that designating a reinvestment zone over the Area would be reasonably likely to contribute to the retention or expansion of primary employment or to attract major investment in the reinvestment zone that would be a benefit to the property and that would contribute to the economic development of the Town; and **NOW, THEREFORE:**

**IT IS HEREBY ORDAINED BY THE TOWN OF THOMPSONS, TEXAS:**

**THAT**, the statements contained in the preceding caption and recitals are true and correct and are incorporated into this Ordinance for all intents and purposes.

**THAT**, after publishing notice in a newspaper having general circulation in the Town of Thompsons, Texas (the "Town") and after delivering in writing to the presiding officer of the governing body of each taxing unit that includes within its boundaries real property that is to be included in the proposed reinvestment zone, the Board of Alderman of the Town (the "Board")



held a public hearing on June 20, 2024 and allowed interested persons to speak and present evidence for or against the designation of the reinvestment zone.

**THAT**, the Board hereby finds that that certain area of land located within the Town that consists of approximately twenty-one (21) acres of primarily undeveloped land generally located on the northwest corner of the intersection of Lockwood Bypass Road and Lou Edwards Road, with such area being more specifically described and depicted in "Exhibit A" attached to this Ordinance (the "Area"), would be reasonably likely, as a result of the designation of the reinvestment zone, to contribute to the retention or expansion of primary employment or to attract major investment in the reinvestment zone that would be a benefit to the property and that would contribute to the economic development of the Town.

**THAT**, the Board hereby finds that the reinvestment zone proposed for the Area satisfies the requirements of Section 312.201 of the Texas Tax Code.

**THAT**, the Board hereby finds that the improvements sought for the Area are feasible and practical and would be a benefit to the land to be included in the reinvestment zone and to the Town after the expiration of any tax abatement agreement entered into under Section 312.204 or 312.211 of the Texas Tax Code that might relate to the Area.

**THAT**, pursuant to Chapter 312 of the Texas Tax Code, the Board hereby creates and designates a reinvestment zone for commercial-industrial tax abatement over the Area, and the reinvestment zone is hereby designated and shall hereafter be designated as the "Town of Thompsons Reinvestment Zone Number 3".

**THAT**, the Board hereby declares that, upon designation of the reinvestment zone, the Town may provide, on a case-by-case basis, tax abatement incentives in accordance with Chapter 312 of the Texas Tax Code and the Town's "Guidelines & Criteria for Tax Abatement Agreements".

**THAT**, the Board directs the Town Secretary to file all required documents regarding the reinvestment zone with the Texas Comptroller's Office and with any other entity required to be notified by law.

**THAT**, it is the intention of the Board that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, then such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance, since the same would have been enacted by the Board without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

**THAT**, this Ordinance shall become effective upon its passage by the Board, and the reinvestment zone shall be created on the effective date of this Ordinance and shall remain in effect for five (5) years from that date, unless a longer period is authorized by law.

**PASSED, APPROVED, and ORDAINED on this 20<sup>th</sup> day of June, 2024.**

*[SIGNATURES AND EXHIBITS ON FOLLOWING PAGES]*

**SIGNATURES**

**FOR THE TOWN OF THOMPSONS, TEXAS:**

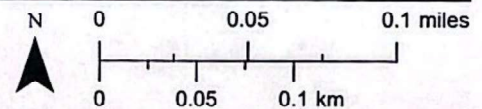
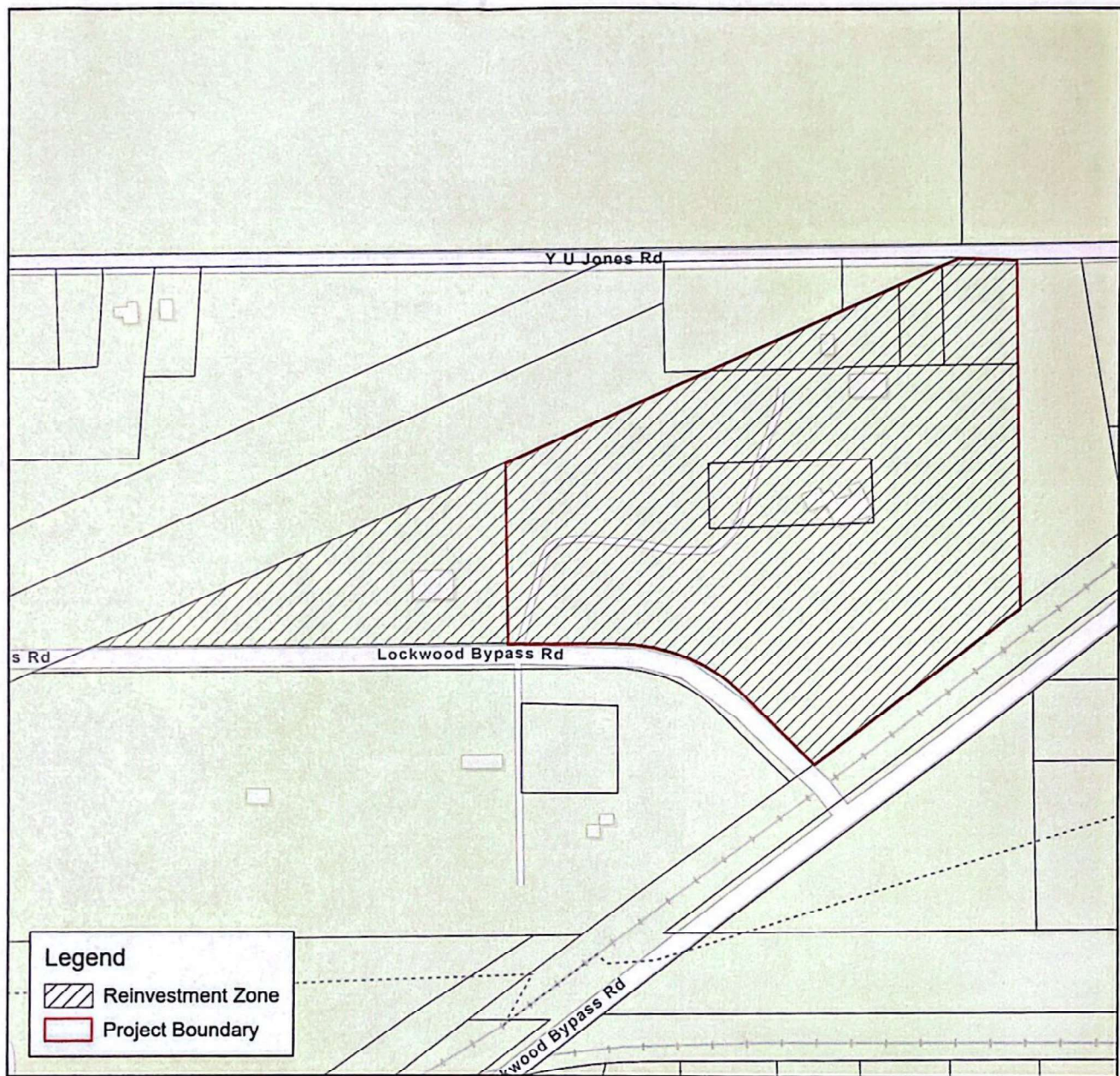
  
FREDDIE NEWSOME, JR., MAYOR

**ATTEST:**

  
Mary Ann Manna, Town Secretary

**EXHIBIT A**  
**DESCRIPTION AND DEPICTION OF THE**  
**TOWN OF THOMPSONS REINVESTMENT ZONE NUMBER 3**





OWNER	PARCEL #	ACRES	LEGAL DESCRIPTION
Stone Michael E & Sherrie K Knoepfel	R347724	3.95	0044 S Kennedy, ACRES 3.947
Knoepfel Sherrie K & Michael Stone	R165506	14.34	0044 S Kennedy, ACRES 14.335
Knoepfel Sherrie	R33936	1.00	0044 S KENNEDY, TRACT 52 (PT), ACRES 1.00
Knoepfel Sherrie	R411929	0.83	0044 S Kennedy, ACRES 0.831, Remainder Tract
Knoepfel Sherrie K & Michael E Stone	R478893	0.41	0044 S Kennedy, TRACT 1, ACRES 0.412
Knoepfel Sherrie K & Michael E Stone	R33933	0.81	0044 S Kennedy, TRACT 2, ACRES 0.805

# 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:

[Bypass BESS III 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  
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 200 MW battery storage capacity with 2-hour duration. The project will be approximately 17.5 acres of land on which the BESS containers, wiring, roads, fencing, and other improvements will be constructed to comprise a Battery Energy Storage Facility. This facility will increase electric grid reliability, as well as store energy and shift it to times when end-users need it the most. This is phase II of project Bypass BESS.

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)

4. Physical address of Proposed Project:

City: [Thompson](#)

County Precinct: [2](#)

City Council District: [Town of Thompsons officials](#)

School District: [Lamar CISD](#)

Land Size of Project: [17.5](#)

5. Proposed Cost of New Improvement: \$ [Minimal if any](#)
6. Proposed Cost of New Fixed Equipment and Machinery: \$ 114,660,000
7. Cost of other Personal Property excluding Inventory: \$ 12,740,000
8. Proposed Cost of Initial Inventory:  
[N/A](#)
9. 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: Q1 2025](#)

[Commercial operations date: Q3 2026](#)

10. 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.

If to be leased, indicate lease term.

Beginning Date: N / A

Expiration date: N / A

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:

Owner entity: Bypass BESS LLC

Owner ID: 00898840

Personal property:

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

11. 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

12. 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.

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

N/A

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

\$ N/A

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

\$ N/A

16. Does the company offer health care benefits?

☐ Yes ☐ No

N/A

17. 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

18. 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

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

Bypass BESS project, Stargazer BESS project, and Stargazer Solar project

Where is the property located: Thompsons, TX; Fort Bend County non-incorporated

If yes, indicate the time period (MM/YY):

Bypass BESS: Approximately October 2025 – October 2035

Stargazer Solar & BESS: Approximately May 2027 – May 2037

If yes, explain:

Bypass BESS: 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.

Stargazer Solar & BESS: We executed two abatement agreements (General Fund and Drainage District) with the County on 5/28/2024 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

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

☐ Yes ☒ No

21. 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

22. 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.

23. 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 will conduct 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 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.

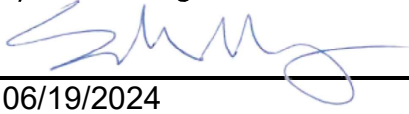
While the initial tax abatement is for 10 years, the prospective operation period of the facilities is 25-35 years during which time the Company will continue to contribute to the Fort Bend County tax base.

**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:   
Date: 06/19/2024

Printed Name: Sarah Murphy

Title: Project Developer

Company Name: 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](mailto:smurphy@aypa.com)

**Applications shall be returned as follows:**

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

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

[jofinger@aypa.com](mailto:jofinger@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**



**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 DRAINAGE DISTRICT BOARD  
2023 TAX ABATEMENT GUIDELINES AND CRITERIA  
FOR GRANTING TAX ABATEMENTS**

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 Drainage District Board;

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 the Fort Bend County Drainage District Board, a public hearing was held in accordance with Texas Tax Code 312.002 (c-1).

NOW, THEREFORE BE IT RESOLVED, that Fort Bend County Drainage District Board 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 Drainage District 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 Drainage District .
- 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. "Drainage District Board" means The Drainage District Board of Fort Bend County, Texas.
- J. "Deferred Maintenance" means improvements necessary for continued operation which do not improve productivity, or alter the process technology, reduce pollution, or conserve resources.
- K. "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).
- L. "Expansion" means the addition of buildings, structures, machinery, tangible personal property, equipment, or payroll for purposes of increasing production or regional capacity.
- M. "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.
- N. "Improvements" are as identified in the Texas Tax Code Chapter One.
- O. "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.

- P. "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.
- Q. "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.
- R. "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.
- S. "New Facility" means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion or Modernization.
- T. "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.
- U. "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.
- V. "Real Property" means land or an improvement, or other property classified as such under state law.
- W. "Reinvestment Zone" means a geographic area of Drainage District designated as such for the purpose of tax Abatement as authorized by Chapter 312 of the Texas Tax Code.
- X. "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 Drainage District .
- Y. "Taxing Unit" means the same as Texas Code Section 1.04 (12), for these Guidelines



and Criteria Taxing Unit shall refer to Fort Bend County Drainage District a special; district created by statute authorized to impose and is imposing ad valorem taxes on property; governing body is the Fort Bend Drainage District Board.

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

- A. Fort Bend County Drainage District 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 Drainage District and eligible entities.
- B. 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 Drainage District and the property owner or lessee, subject to such limitations as the Drainage District may require the term of the Abatement shall not extend past ten (10) years.
- C. 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 Drainage District's incentive would be reduced.
- D. Standards for Tax Abatement: It is within the sole discretion of Drainage District Board 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 Drainage District 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 Drainage District Board for participant contribution under the Abatement program; and/or
  - 7. Any factor determined by the Drainage District (collectively or by Precinct) to be relevant to economic development in the Drainage District.

**E. 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.

**F. 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.

**G. 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 Drainage District to another part of Drainage District .

**H. 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 Fort Bend Drainage District Board.**

### **III. APPLICATION PROCESS**

- A. The Application for Tax Abatement may be obtained online via Drainage District 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. There will be no additional application fee if Applicant has paid the \$1,000.00 non- refundable application fee for the County General
- 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 Drainage District 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 Drainage District'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 Drainage District. 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 DRAINAGE DISTRICT, 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. The 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. The Drainage District does not create Reinvestment Zones.
- 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 the 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, Drainage District 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 Drainage District .

## **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 Drainage District.
- 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 Drainage District Board; 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 Drainage District 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, Drainage District may terminate the tax Abatement Agreement. If Drainage District sends Abatee notice of cancellation, all abated taxes must be recaptured and paid within sixty (60) days of such termination. If Drainage District 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 Drainage District 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 Drainage District sends Abatee notice of cancellation, all abated taxes shall be recaptured and paid within sixty (60) days of such termination. If Drainage District 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, Drainage District may terminate the tax Abatement Agreement. If Drainage District sends Abatee notice of cancellation, all abated taxes shall be recaptured and paid within sixty (60) days of such termination. If Drainage District 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 Drainage District 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 Drainage District 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, Drainage District , 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 Drainage District 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 Drainage District does not:
  - 1. Limit the discretion of Drainage District to decide whether to enter into a specific tax Abatement Agreement; or
  - 2. Limit the discretion of Drainage District to delegate to its employees the authority to determine whether or not Drainage District 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 Drainage District 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 Drainage District shall be posted on the Office of Economic Opportunity and Development website in compliance with the 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.

K. George  
County Judge KP George

Vincent Morales  
Commissioner Vincent Morales, Precinct 1

Grady Prestage  
Commissioner Grady Prestage, Precinct 2

Andy Meyers  
Commissioner Andy Meyers, Precinct 3

Dexter McCoy  
Commissioner Dexter McCoy, Precinct 4

ATTEST:

Laura Richard  
Laura Richard, County Clerk



Reviewed:

CAJ  
Carlos Guzman  
Economic Opportunity and Development Director



# CERTIFICATE OF INTERESTED PARTIES

**FORM 1295**

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY  
CERTIFICATION OF FILING****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Bypass BESS III LLC  
Austin, TX United States

**Certificate Number:**  
2024-1195105

**Date Filed:**  
08/01/2024

**Date Acknowledged:**  
08/28/2024

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

Fort Bend County Drainage District

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

Bypass BESS III LLC  
Tax Abatement (PILOT)

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Hajabed, Moe	Austin, TX United States	X	
	Jammalamadaka, Swaraj	Austin, TX United States	X	
	Littlefield, Sam	Austin, TX United States	X	
	Kneteman, Christie	Austin, TX United States	X	
	Atlas, Marc	Austin, TX United States	X	
	Santelli, Dan	Austin, TX United States	X	
	Cedar Holdco LLC	Austin, TX United States	X	
	K&L Gates LLP	Dallas, TX United States		X

**5 Check only if there is NO Interested Party.**

☐**6 UNSWORN DECLARATION**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)