

**BELL COUNTY
COMMISSIONERS' COURT
MEETING NOTICE
101 E. Central Avenue Belton, Texas 76513**

In accordance with the Americans with Disabilities Act, we invite all attendees to advise us of any special accommodations due to disability. The Bell County Commissioners' Court meeting room is accessible to persons with disabilities. If assistance is needed to participate, please call the office of the County Judge at (254) 933-5105. Please submit your request as far as possible in advance of the meeting you wish to attend.

January 9th, 2023 at 9:00 am

NOTE: The Commissioners' Court of Bell County may discuss, deliberate and take all appropriate action on any matter listed on this Agenda. Items on this Agenda may be taken out of the order indicated. Testimony before the Bell County Commissioners' Court may be taken under oath pursuant to §81.030 of the Local Government Code.

The Bell County Commissioners Court shall hold a regular meeting on January 9th, 2023 and the following agenda item will be considered:

“Consider and take appropriate action on a resolution and order authorizing the County to enter a tax abatement agreement pursuant to the County’s Guidelines and Criteria under the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code as requested by Big Elm Storage, LLC for approximately \$89,000,000 in improvements related to the storage of renewable energy utilizing batteries. The property subject to the abatement agreement is located on land within the Big Elm Solar Reinvestment Zone Number 1 located in Precinct 3. The draft abatement agreement and a list of corresponding property owners, parcels, and legal descriptions will be available at the meeting or in advance in Judge David Blackburn’s office at the Bell County Courthouse located at 101 E. Central Avenue, Suite 200, Belton, Texas.”


**JUDGE DAVID BLACKBURN
BELL COUNTY TEXAS**

**DECEMBER 8, 2022
Time: 2:15 p.m.**

2022 DEC -8 P 2:15

Tax Abatement Agreement between Bell County, Texas and Big Elm Storage, LLC

State of Texas

County of Bell

This Tax Abatement Agreement (the “**Agreement**”) is made and entered into by and between Bell County, Texas (the “**County**”), acting through its duly elected officers, and Big Elm Storage, LLC, a Delaware limited liability company, owner of Eligible Property (as hereinafter defined) to be located on real property located in the Reinvestment Zone(s) described in this Agreement. This Agreement shall become effective upon final signature by both parties (which date shall be the “**Effective Date**”) and shall remain in effect until fulfillment of the obligations described in Paragraph IV(D), unless terminated earlier as provided herein.

I. Authorization

This Agreement is authorized and governed by Chapter 312 of the Texas Tax Code, as amended, and by the Guidelines and Criteria (as defined below).

II. Definitions

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

- A. “Abatement” means the full or partial exemption from the County’s Maintenance and Operations (“M&O”) and Interest and Sinking (“I&S”) ad valorem taxes on property in a Reinvestment Zone(s) as provided herein. Abatement shall not apply to the County’s Road District (“RD”) Fund tax rate.
- B. “Abatement Period” means the ten-year period described in Paragraph IV(B)(1) of this Agreement during which the Abatement will apply.
- C. “Base Year” means the Calendar Year in which the Effective Date occurs.
- D. “Calendar Year” means each year beginning on January 1 and ending on December 31.
- E. “Certificate” means a letter, provided by the Owner (as defined below) to the County that certifies that the Project and Improvements have achieved Commercial Operations, outlines the Project and Improvements (including those that are still under construction), and states the overall Nameplate Capacity of all components of the Project and Improvements.
- F. “Certified Appraised Value,” means the appraised value, for property tax purposes, of Owner’s Eligible Property (including the Project and Improvements) within the Reinvestment Zone(s) as certified by the Bell County Appraisal District (“County Appraisal District”) for each tax year.

- G. "COD" means the date that the Project and Improvements commence Commercial Operations.
- H. "Commercial Operations" means that the Project and Improvements have become commercially operational and placed into service for the purpose of generating and storing electricity for sale on one or more commercial markets.
- I. "County Property Tax" means any and all current or future property taxes imposed by the County and limited to Maintenance and Operations ("M&O") and Interest and Sinking ("I&S") ad valorem taxes. County Property Tax does not include the County's Road District ("RD") Fund ad valorem taxes.
- J. "Default Notice" means a written notice delivered by one party to the other under Paragraph IX(A) of this Agreement. Default Notices must be delivered in accordance with the requirements of Paragraph XII of this Agreement.
- K. "Eligible Property" means property eligible for Abatement under the Guidelines and Criteria, including: new, expanded, or modernized buildings and structures; fixed machinery and equipment; power generation, storage, and transmission facilities; site improvements; office space; other related fixed improvements; other tangible items necessary to the operation and administration of a project or facility; and all other real and tangible personal property permitted to receive tax abatement by Chapter 312 of the Texas Tax Code and the Guidelines and Criteria. Taxes on Eligible Property may be abated only to the extent the property's value for a given year exceeds its value for the Base Year. Tangible personal property located in the Reinvestment Zone(s) at any time before the date the Agreement is signed is not eligible for Abatement. Tangible personal property eligible for Abatement shall not include inventory or supplies.
- L. "Force Majeure" includes events not reasonably within the control of the party whose performance is sought to be excused thereby, 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 a Force Majeure, wars, blockades, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, storms, floods, high water wash-outs, inclement weather, arrests and restraint 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, rules, orders, acts or restraint of government or governmental body or court, or the partial or entire failure of fuel supply or any other event that is beyond the reasonable control of the party claiming Force Majeure.
- M. "Guidelines and Criteria" means the *Guidelines and Criteria for Granting Tax Abatements in Reinvestment Zone(s)*, originally adopted by the Bell County Commissioners Court on November 11, 2019 and reauthorized on November 15, 2021 (the "Guidelines and Criteria"), a copy of which is attached hereto as Attachment B to this Agreement.

- N. "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), (b) a leasing transaction, including a sale leaseback, inverted lease, or leveraged leasing structure, (c) tax equity financing, (d) any interest rate protection agreements to hedge any of the foregoing obligations, and/or (e) any energy hedge provider. There may be more than one Lender. Owner, at its election, may send written notice to the County with the name and notice information for any Lender.
- O. "Local Outreach Plan" means the plan attached to this Agreement as Attachment D.
- P. "Nameplate Capacity of Generation" means the total or overall generating capacity of the photovoltaic solar panels included in the Project and Improvements on the Site (as designated in AC units).
- Q. "Nameplate Capacity of Storage" means the total or overall storage capacity of the energy storage system included in the Project and Improvements on the Site (as designated in AC units per hour).
- R. "Notice of Abatement Commencement" has the meaning assigned in Paragraph IV(B)(6) of this Agreement.
- S. "Notices" means all notices, demands, or other communications of any type in accordance with Paragraph XII, including Default Notices.
- T. "Owner," on the Effective Date, means Big Elm Storage, LLC, a Delaware limited liability company, the entity that owns the Eligible Property for which the Abatement is being granted, and also includes any assignee or successor-in-interest of such party. An "Affiliate" of an Owner means any entity that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such Owner. For purposes of this definition, "control" of an entity means (I) the ownership, directly or indirectly, of fifty percent (50%) or more of the voting rights in a company or other legal entity or (ii) the right to direct the management or operation of such entity whether by ownership (directly or indirectly) of securities, by contract or otherwise.
- U. "Payment In Lieu of Taxes" or "PILOT" means a payment made by Owner to the County described in Paragraph IV(F) of this Agreement.
- V. "Project and Improvements" means Eligible Property meeting the definition for improvements provided by Chapter 1 of the Texas Tax Code and includes, but is not limited to, electricity storage, power generation, transmission equipment, and any building, structure, or fixture erected on or affixed to the land.
- W. "Reinvestment Zone(s)" means 1) the reinvestment zone(s), as that term is defined in Chapter 312 of the Texas Tax Code, created by Bell County to be known as the "Big Elm Solar Reinvestment Zone Number 1" by that certain Resolution Adopting and

Designating a Reinvestment Zone in the Jurisdiction of Bell County, Texas, adopted and approved by the Bell County Commissioners' Court on June 8, 2020, a copy of which resolution is attached as Attachment A to this Agreement.

- X. "Site" means the portion of the Reinvestment Zone(s) leased or owned by Owner and on which Owner makes the Project and Improvements and installs and constructs the Eligible Property for which the Abatement is granted hereunder. The site is described on Attachment C to this Agreement.
- Y. "Term" means the period commencing on the Effective Date of this Agreement and ending on December 31 of the fifteenth Calendar Year after the commencement of the Abatement Period.

III. Project and Improvements in Reinvestment Zone(s)

Owner anticipates constructing the following Project and Improvements on the Site:

- A. Owner anticipates constructing Improvements on the Site consisting of an electric energy storage facility (the "Project and Improvements"). The Project and Improvements are anticipated to consist of lithium-ion batteries organized in modules and installed rack towers with a total Nameplate Capacity of approximately 200 megawatt hours, AC, all to be located in the Reinvestment Zone(s). The total Nameplate Capacity of Storage will vary but shall at a minimum equal 180 megawatt hours, AC. The Certified Appraised Value will depend upon annual appraisals by the Bell County Appraisal District.
- B. 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 generate and store electricity and perform other functions related to the generation, storage, distribution, and transmission of electrical power, or that is otherwise related to the storage and sale of electricity.
- C. Owner anticipates that the Project and Improvements will achieve Commercial Operations on or about June 30, 2023.

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

- A. The County and Owner specifically agree and acknowledge that Owner's property in the Reinvestment Zone(s) shall be taxable in the following ways before, during, and after the Term of this Agreement:
 - 1. Property not eligible for Abatement, if any, shall be fully taxable at all times;
 - 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;

3. Prior to commencement of the Abatement Period, the Certified Appraised Value of real and personal property owned by Owner located in the Reinvestment Zones shall be fully taxable at all times;
 4. During the Abatement Period, 100% of Bell County's County Property Taxes on the Certified Appraised Value of the Eligible Property shall be abated for the periods and in the amounts as provided for by Paragraph IV(B) below; 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 remainder of the Term.
- B. The County and Owner specifically agree and acknowledge that this Agreement shall provide for tax Abatement, under the conditions set forth herein, of Bell County Property Taxes assessed on the Eligible Property in the Reinvestment Zone(s) as follows:
1. Beginning on the earlier of (a) January 1 of the first Calendar Year after the COD or (b) January 1 of the Calendar Year identified in a Notice of Abatement Commencement (as defined below) delivered by Owner (with such Calendar Year being "Year 1" of the Abatement Period) and ending upon the conclusion of ten full Calendar Years thereafter (which 10-year period shall constitute the Abatement Period), the Abatement percentage shall be 100% of County Property Taxes;
 2. The foregoing percentage of property taxes on the Certified Appraised Value of all eligible Project and Improvements described in the Certificate (and actually in place in the Reinvestment Zones) shall be abated for the entire Abatement Period, and shall be replaced by a ten year series of Payments in Lieu of Taxes (PILOT), as further defined herein;
 3. The Base Year value for the proposed Project and Improvements is agreed to be zero.
 4. Owner shall provide the Certificate to the County and to the County Appraisal District within sixty (60) days after the COD. The Certificate shall describe any ancillary facilities not required for Commercial Operations that are still under construction on the date that the Certificate is delivered, and if the Certificate indicates any such facilities exist, Owner will deliver an amended Certificate to the County within thirty (30) days after all Project and Improvement construction is complete. If they meet the definition of "Eligible Property," such ancillary facilities, once completed, shall become part of the Project and Improvements eligible for the Abatement under this Agreement.
 5. If Owner, at its sole election, desires that the Abatement Period begin prior to January 1 of the first Calendar Year after the COD, then Owner may deliver a notice to the County and County Appraisal District stating such desire (such

notice being referred to herein as a “Notice of Abatement Commencement”). If delivered by Owner, the Notice of Abatement Commencement shall contain the following statement: “Owner elects for the Abatement Period to begin on January 1, ____”; the year stated in the Notice of Abatement Commencement shall be the first year of the Abatement Period, and the Abatement Period shall extend for 10 years beyond such date. Owner shall only be permitted to deliver a Notice of Abatement Commencement if it anticipates achieving COD during the next Calendar Year. Owner shall still be required to deliver the Certificate on or before the date required in the preceding paragraph.

6. Notwithstanding any statement or implication in this Agreement to the contrary, the parties agree that the Abatement granted in this Agreement shall in no event extend beyond 10 years.
- C. All or a portion of the Project and Improvements may be eligible for complete or partial exemption from ad valorem taxes as a result of existing law or future legislation. This Agreement is not to be construed as evidence that no such exemptions shall apply to the Project and Improvements.
 - D. Owner agrees that the Project and Improvements, once constructed, will remain in place for at least the remainder of the Term; provided that nothing herein prevents Owner from replacing equipment or fixtures comprising the Project and Improvements prior to that date. IN THE EVENT OF A BREACH OF THIS PARAGRAPH IV(D), THE SOLE REMEDY OF THE COUNTY, AND OWNER’S SOLE LIABILITY, WILL BE FOR OWNER TO PAY TO THE COUNTY THE FULL AMOUNT OF ACTUAL TAXES ABATED AT ANY TIME UNDER THIS AGREEMENT ON THE REMOVED PROJECT AND IMPROVEMENTS, LESS ANY PAYMENTS IN LIEU OF TAXES MADE AT ANY TIME TO THE COUNTY FOR THE REMOVED PROJECT AND IMPROVEMENTS. IN THE EVENT OF A BREACH OF THIS PARAGRAPH IV(D), ANY TAXES DUE BY OWNER SHALL BE SUBJECT TO ANY AND ALL STATUTORY RIGHTS FOR THE PAYMENT AND COLLECTION OF TAXES IN ACCORDANCE WITH THE TEXAS TAX CODE.
 - E. During the Abatement Period, County shall request that the County Appraisal District annually determine both (i) the Certified Appraised Value of Owner’s Eligible Property in the Reinvestment Zone(s) and (ii) the taxable value (taking into account the terms of the Abatement in this Agreement) of Owner’s Eligible Property in the Reinvestment Zone(s). The County Appraisal District shall record both the Certified Appraised Value and the abated taxable value of the Eligible Property in the County appraisal records. The Certified Appraised Value listed in the County appraisal records shall be the standard used for calculating the amount of taxes to be recaptured by the County in the event that the County is entitled to recapture abated taxes under this Agreement. Notwithstanding any of the foregoing, Owner at all times shall have the right to appeal, challenge, or protest appraisals of the Site, Improvements, and Eligible Property, including any portion thereof. Owner acknowledges that the outcome of any appeal, challenge, or protest appraisals on the Project and Improvements will have no

effect on the annual PILOT payments as identified in Paragraph IV(F) of this agreement

- F. If the Project and Improvements are constructed and the COD is achieved, Owner agrees to make an annual PILOT to the County in the amounts set forth in the tables below for each year of the Abatement Period. Each PILOT described in this Paragraph IV(F) shall be due on January 31 of the Calendar Year following the Calendar Year for which the Abatement applies. By way of illustration, if Year 1 of the Abatement Period is 2023, then the PILOT owed for 2023 shall be due and payable on January 31, 2024. There shall be a total of ten (10) PILOTs under this Agreement.

<u>Year of Abatement Period</u>	<u>Storage PILOT Amount - (Per MWh of Nameplate Storage Capacity)</u>
Year 1	\$572
Year 2	\$572
Year 3	\$572
Year 4	\$572
Year 5	\$572
Year 6	\$572
Year 7	\$572
Year 8	\$572
Year 9	\$572
Year 10	\$572

- G. Prior to September 26, 2022, Owner shall remit to County a fee of \$15,000.00 which shall be used to offset soft costs incurred by County related to the project.

V. Decommissioning

The County and Owner agree that the intent and purpose of Section V is to return and restore the land to its previous state. The County acknowledges that Owner has purchased the property to be utilized by the Project and Improvements within the Reinvestment Zone and that Owner plans to decommission the Project and Improvements, including restoring, through soil stabilization and revegetation of native and/or non-native species, pollinators preferred, at least the first three feet of depth of the soil on any land disturbed by the Project and Improvements.

VI. Covenants

During the term of this Agreement, Owner shall:

- A. Separately identify labor and materials in any contracts for construction of the Project and Improvements in the taxable amount of \$50,000 or more for the purposes of determining sales and use tax pursuant to Section 151.056(b) of the Texas Tax Code resulting in the value of the materials being separately identified from other costs and state that the situs of any sales and use tax paid and related thereto will be to Bell County, Texas.
- B. Make a good faith effort to require all contractors and vendors of materials to be used in the construction of the Project and Improvements to make Bell County, Texas the situs of sales and use taxes; provided, however, Owner's commitments related to the selection of contractors and vendors is governed solely by the Local Outreach Plan.
- C. Deliver to County:
 1. Forty-five (45) days prior to the commencement of construction of the project and improvements;
 - i. Engineering drawings illustrating pre and post development topographic information.
 - ii. Hydrology studies listing required drainage structures that provide protection against excessive erosion damage.
 - iii. Internal site-road layouts and relevant site road construction drawings that document Owner's plans to construct all-weather access to accommodate the provision of emergency services, including fire protection.
 - iv. Project's Geotechnical Report.
 - v. Project's Phase 1 Environmental Site Assessment.
 - vi. Project's Stormwater Pollution Prevention Plan.
 - vii. Manufacturer information on batteries to be installed to include battery chemistry and list of materials used in the battery modules to include

Material Safety Data Sheets (“MSDS”) or warnings that are relevant to the handling, installation, or maintenance of the equipment.

- viii. List of livestock species allowed for potential agricultural production along with related provisions
- ix. List of vegetation control methods to include chemicals planned for application, if applicable.
- x. Assessments from local, state and federal historical entities as to the impact the project will have on the site and surrounding area, if applicable.
- xi. Documentation illustrating compliance with the requirements of the Endangered Species Act, if applicable.
- xii. Affidavits executed by the Clearwater Underground Conservation District and the Elm Creek Watershed Authority regarding the project’s impact on natural resources.
- xiii. Assessment of the impact to local landfills of damaged and end of life equipment.
- xiv. Documentation illustrating Owner’s plan to promote the recycling of solar panel components and battery storage equipment and fluids.
- xv. In the event water is to be utilized as the primary fire suppression method, provide minimum water requirements along with a letter from

the water supplier stating that sufficient water capacity is available for fire suppression purposes.

- xvi. In the event water is to be utilized as the primary fire suppression method, provide the chemical composition of wastewater that hazardous material first responders will be required to remove.
- xvii. Secondary containment drawings for battery storage containers.
- xviii. Internal fire suppression systems and all associated emergency action plans for upset conditions, to include thermal runaway parameters.
- xix. Documentation evidencing battery storage equipment meets or exceeds all TCEQ and EPA requirements for operation and upset conditions.
- xx. List of hazardous chemicals or fumes emitted during an upset condition and modeled exposure limits for a one-hundred-foot radius around the battery containers in the event of venting.

VII. Representations

The County and Owner make the following respective representations:

- A. Owner represents and agrees that (i) Owner, its successors and/or assigns, will have a taxable interest with respect to Project and Improvements to be placed on the Site; (ii) construction of the proposed Project and Improvements will be performed by Owner, its successors and/or assigns and/or their contractors or subcontractors; (iii) Owner's and its successors' and assigns' use of the Site will be limited to the use described in this Agreement (and ancillary uses) during the Abatement Period; (iv) all representations made in this Agreement are true and correct in all material respects to the best of Owner's knowledge; (v) Owner will make any filings with the Office of the Comptroller of Public Accounts and other governmental entities concerning this Agreement that may be required now or in the future; (vi) Owner agrees to conduct an environmental study for the Project and Improvements in accordance with state and federal law and meet or exceed the permit requirements identified by the environmental study; (vii) Owner agrees to observe all state and federal law restricting the diversion and impoundment of the natural flow of surface water across the Project and Improvements; (viii) Owner shall make best efforts to utilize processes, products and materials that minimize the risk of environmental toxicity emitted by the Project and Improvements ; and (ix) Owner agrees that in the event of any assignment of this agreement, said assignment shall include a commitment by the successor and/or assignee to and be bound the terms and conditions of this agreement.
- B. The County represents that (i) the County has formally elected to be eligible to grant property tax abatements under Chapter 312 of the Tax Code; (ii) the Reinvestment

Zone(s) has been designated and this Agreement has been approved in accordance with Chapter 312 of the Texas Tax Code and the Guidelines and Criteria as both exist on the effective date of this Agreement; (iii) no interest in the Project and Improvements is held, leased, or subleased by a member of the County Commissioners Court, (iv) that the property within the Reinvestment Zone(s) and the Site is located within the legal boundaries of the County and outside the boundaries of all municipalities located in the County, and (v) the County has made and will continue to make all required filings with the Office of the Comptroller of Public Accounts and other governmental entities concerning the Reinvestment Zone(s) and this Agreement.

VIII. Maintenance of County Infrastructure, Access to and Inspection of Property by County Employees, and Periodic Statement of Compliance

A. Owner shall, by contract, cause its prime contractor and major equipment suppliers to restrict their travel to and from the Project and Improvements site to the County roads depicted on Attachment E (the "County Roads"). The County acknowledges and approves that (i) the Owner will need to cross the County Roads with heavy construction equipment during the construction, operation, maintenance, and decommissioning of the Project, and (ii) Owner may need to place certain electrical cables for the Project and Improvements across certain County Roads for the collection, distribution, and transmission of electricity to and from various parts of the Project and Improvements, in which case Owner and County agree to negotiate in good faith a crossing agreement for such cables. Owner shall use commercially reasonable efforts to require its prime contractor to restrict all subcontractor travel to and from the Project and Improvements to the County Roads. Owner will be wholly responsible for damage (normal wear and tear excluded) to the County Roads and rights-of-way (including bridges, culverts, ditches, etc.), if damage is caused directly thereto as a result of the construction of the Project and Improvements, or directly as a result of operations and maintenance activity conducted on the Project and Improvements (normal wear and tear excluded), including:

1. Actual costs incurred by the County to maintain County Roads and right-of-ways, if needed, utilized for construction of the Project and Improvements in an effort to keep the road safe for the traveling public will be tracked by Bell County and damage caused by Owner shall be reasonably documented by Bell County, discussed with Owner, and invoiced to Owner, who shall remit payment within thirty days of receipt of billing;

2. Charges to Owner shall be based on a methodology designed to evaluate the isolated impact of the Owner's use of the County roads and rights-of-way, and will be limited to actual repair costs incurred by the County and reasonably documented and invoiced to Owner. These costs will include all construction costs as well as all related professional services for the repair work, not to exceed 110% of a cost estimate delivered to Owner by a qualified third-party road construction contractor. Owner shall remit payment within thirty days of receipt of billing; and

3. Costs associated with the issuance of a County driveway permit, which shall be required in the event the Project and Improvements are accessed directly by a County Road, shall be paid by Owner within thirty days of receipt of billing. Owners agrees to promptly submit a completed County driveway permit application to the precinct Commissioner.
 4. Subject to County approval, Owner may conduct dust control and grading activities on County Roads utilized for the Project and Improvements.
 5. Notwithstanding the foregoing, the County hereby preserves all rights and remedies provided under Chapter 251 of the Texas Transportation Code.
- B. Owner shall allow the County's employees and consultants access to the Site for the purpose of inspecting the Project and Improvements erected to ensure that the same are conforming to the minimum specifications of this Agreement and to ensure that all terms and conditions of this Agreement are being met. All such inspections shall be made only after giving Owner twenty-four (24) hours' notice and shall be conducted in such a manner as to avoid any unreasonable interference with the construction and/or operation of the Project and Improvements. All such inspections shall be made with one (1) or more representatives of Owner in accordance with all applicable safety standards.
- C. Owner shall, on or before May 1 of each Calendar Year after COD certify annually to the County its compliance with this Agreement by providing a written statement of compliance to the County Judge.

IX. Default, Remedies and Limitation of Liability

- A. No party may terminate this Agreement unless (i) such party provides a written Default Notice to the other party specifying a material default in the performance of a material covenant or obligation under this Agreement and (ii) such failure is not (x) excused by the occurrence an event of Force Majeure or (y) cured by the other party within sixty (60) days after the delivery of the Default Notice, or if such failure cannot be cured within such sixty (60)-day period, the other party shall have such additional time, up to 365 days, to cure such default as is reasonably necessary as long as such party has commenced remedial action to cure such failure and continues to diligently and timely pursue the completion of such remedial action before the expiration of the maximum 365-day cure period. Notwithstanding the preceding portions of this paragraph, if any default arises from a violation of law resulting from a change in law or a change in the interpretation or enforcement of law by a governmental entity, then such default shall not give rise to the termination of this Agreement so long as the defaulting party acts in accordance with a commercially reasonable plan of action to minimize the effect of such default prepared by the defaulting party and delivered to the other party. If Owner believes that any alleged termination is improper, Owner may file suit in the proper court challenging such termination. OWNER'S SOLE REMEDY WILL BE REINSTATEMENT OF THIS AGREEMENT AND SPECIFIC PERFORMANCE BY

THE COUNTY. In the event of default which remains uncured after all applicable notice and cure periods, the County may pursue the remedies provided for in Paragraph IX(D) and (E) below or the preceding Paragraph IV(D), as applicable.

- B. The County shall not declare a default, and no default will be deemed to have occurred, when the circumstances giving rise to such declaration are the result of Force Majeure. Notwithstanding any other provision of this Agreement to the contrary, in the event a party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement (other than any obligation to make payment of any amount when due and payable hereunder), the obligation of such party, so far as it is affected by such Force Majeure, shall be suspended during the continuance of any condition or event of Force Majeure, but for no longer period, and such condition or event shall so far as possible be remedied with all reasonable dispatch. The party prevented or hindered from performing shall give prompt (but in no event later than twenty business days after the occurrence of such event) notice and reasonably full particulars of such event to the other party and shall take all reasonable actions within its power to remove the basis for nonperformance (including securing alternative supply sources) and after doing so shall resume performance as soon as possible. The settlement of strikes or lockouts or resolution of differences with workers shall be entirely within the discretion of the affected party, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts or differences by acceding to the demands of the opposing party in such strike, lockout or difference when such course is inadvisable in the reasonably exercised discretion of the affected party.
- C. The County shall notify Owner and any Lender (but only if the County has been provided with the name and notice information of the Lender) of any default by delivery of a Default Notice in the manner prescribed herein. The Default Notice shall specify the basis for the declaration of default, and Owner shall have the periods of time specified in Paragraph IX(A) above to cure any default. If Owner provides notice to the County of the existence of a Lender under Paragraph XI(E) and includes the Lender's contact information, then the County shall be required to deliver a copy of any Default Notice to the Lender at the same time that it delivers the Default Notice to Owner. Such Lender shall have the right to cure any Owner default on Owner's behalf and shall be entitled to the same cure periods provided for Owner under this Agreement.
- D. As required by section 312.205 of the Texas Tax Code, if an Owner default remains uncured after all applicable notice and cure periods, the County shall be entitled to cancel the Agreement and recover the property tax revenue abated under this Agreement through the cancellation date, less any and all PILOTs made by Owner to County under this Agreement. Owner agrees to pay such amounts within sixty (60) days after the cancellation of this Agreement.
- E. LIMITATION OF LIABILITY: CANCELLATION OF THE AGREEMENT (RESULTING IN A FORFEITURE OF ANY RIGHT TO ABATEMENT HEREUNDER BEYOND THE CANCELLATION DATE) AND RECAPTURE OF PROPERTY TAXES ABATED ONLY AS PROVIDED FOR AND ONLY UNDER

THE CIRCUMSTANCES DEFINED IN PARAGRAPH IX(D) OF THIS AGREEMENT OR PARAGRAPH IV(D) OF THIS AGREEMENT (BUT LESS ANY AND ALL PILOTS MADE BY OWNER PRIOR TO CANCELLATION), ALONG WITH ANY REASONABLY INCURRED COURT COSTS AND ATTORNEYS' FEES, SHALL BE THE COUNTY'S SOLE REMEDY, AND OWNER'S SOLE LIABILITY, IN THE EVENT OWNER FAILS TO TAKE ANY ACTION REQUIRED BY THIS AGREEMENT, INCLUDING ANY FAILURE TO PAY AMOUNTS OWED UNDER THIS AGREEMENT. OWNER AND COUNTY AGREE THAT THE LIMITATIONS CONTAINED IN THIS PARAGRAPH ARE REASONABLE AND REFLECT THE BARGAINED FOR RISK ALLOCATION AGREED TO BY THE PARTIES. IN THE EVENT OF A BREACH OF THIS AGREEMENT, ANY TAXES DUE BY OWNER SHALL BE SUBJECT TO ANY AND ALL STATUTORY RIGHTS FOR THE PAYMENT AND COLLECTION OF TAXES IN ACCORDANCE WITH THE TEXAS TAX CODE.

- F. Any Default Notice delivered to Owner and any Lender under this Agreement shall prominently state the following at the top of the notice:

NOTICE OF DEFAULT UNDER TAX ABATEMENT AGREEMENT

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

X. 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 order, rule, statute, or regulation of the County or the State of Texas.

XI. Assignment of Agreement

- A. The rights and responsibilities of Owner hereunder may be assigned, in whole or in part, only after obtaining the County's prior consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Any assignment by Owner under this paragraph without first obtaining the consent of the County shall be a default under this Agreement subject to the notice provisions, cure provisions, remedies, and other terms and conditions of Article VIII above. Owner shall give forty-five (45) days' written notice of any such intended assignment to the County, and the County shall respond with its consent or refusal within thirty-five (35) days after receipt of Owner's notice of assignment. If the County responds to Owner's notice of assignment with a refusal, the parties agree to work together in good faith to resolve the County's objections to the assignment. Owner's assignment of the Agreement shall be final only after the execution of a formal assignment document between Owner and the assignee and the

delivery of notice of the execution of such assignment agreement to the County. Neither Owner's notice of an intended assignment nor the County's formal consent to an intended assignment shall constitute an assignment of the Agreement, and Owner's request for a consent to assignment shall not obligate Owner to assign the Agreement.

- B. No assignment under Paragraph XI(A) shall be allowed if (a) the County has declared a default hereunder that has not been cured within all applicable notice and cure periods, or (b) the assignee is delinquent in the payment of ad valorem taxes owed to the County or any other taxing jurisdiction in the County.
- C. The parties agree that a transfer of all or a portion of the ownership interests in Owner to a third party shall not be considered an assignment under the terms of this Agreement and shall not require any consent of the County.
- D. Upon any assignment and assumption under Paragraph XI(A) of Owner's entire interest in the Agreement, Owner shall have no further rights, duties or obligations under the Agreement. Upon any assignment and assumption under Paragraph XI(A) of only a portion of Owner's interest in the Agreement (for example, if only portion of the Project and Improvements is transferred by Owner to a third party), then (i) each of Owner and each assignee of a portion of this Agreement shall be considered an Owner party under this Agreement, (ii) the County shall cause the property taxes owned by each of the Owner parties to be separately assessed, and (iii) neither of the Owner parties shall have any further rights, duties, or obligations under the Agreement as to the portion of the Project and Improvements owned by another Owner party.
- E. In addition to its rights under Paragraph XI(A), Owner may, without obtaining the County's consent, mortgage, pledge, or otherwise encumber its interest in this Agreement or the Project and Improvements to a Lender for the purpose of financing the operations of the Project and Improvements or constructing the Project and Improvements or acquiring additional equipment following any initial phase of construction. Owner's encumbering its interest in this Agreement may include an assignment of Owner's rights and obligations under this Agreement for purposes of granting a security interest in this Agreement. In the event Owner takes any of the actions permitted by this subparagraph, it may provide written notice of such action to the County with such notice to include the name and notice information of the Lender. If Owner provides the name and contact information of a Lender to the County, then the County shall be required to provide a copy to such Lender of all Notices delivered to Owner at the same time that the Notice is delivered to Owner. If Owner does not provide the name and contact information of a Lender to the County, then such Lender shall not have the notice rights or other rights of a Lender under this Agreement.

XII. Notice

All Notices (including Default Notices) shall be given in accordance with this Section. All Notices shall be in writing and delivered, by commercial delivery service to the office of the person to whom the Notice is directed (provided that that delivery is confirmed by the courier

delivery service); by United States Postal Service (USPS), postage prepaid, as a registered or certified item, return receipt requested in a proper wrapper and with proper postage; by recognized overnight delivery service as evidenced by a bill of lading, by facsimile transmission, or by email. Notices delivered by commercial delivery service shall be deemed delivered on receipt or refusal; notices delivered by USPS shall be deemed to have been given upon deposit with the same; facsimile and email notices shall be effective upon receipt by the sender of an electronic confirmation. All Default Notices shall be given by at least two (2) methods of delivery and in a manner consistent with Section IX(F). All Notices (including Default Notices) shall be mailed or delivered to the following addresses:

To the Owner: Apex Clean Energy
c/o Big Elm Storage, LLC
120 Garrett Street, Suite 700
Charlottesville, VA 22902
Attention: General Counsel
Telephone: (434) 220-3712
legal@apexcleanenergy.com

To the County: County Judge
Bell County Historic Courthouse
101 E. Central Avenue
Belton, Texas 76513
Phone: 254-933-5105
Fax: (254) 933-5179
Email: David.Blackburn@bellcounty.texas.gov

Any party may designate a different address by giving the other party at least ten (10) days written notice in the manner prescribed above.

XIII. Severability

In the event any section or other part of this Agreement is held invalid, illegal, factually insufficient, or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid sections or other part. In the event that (i) the term of the Abatement with respect to any property is longer than allowed by law, or (ii) the Abatement applies to a broader classification of property than is allowed by law, then the Abatement shall be valid with respect to the classification of property not deemed overly broad, and for the portion of the term of the Abatement not deemed excessive. Any provision required by the Tax Code to be contained herein that does not appear herein is incorporated herein by reference.

XIV. Applicable Law

This Agreement shall be construed under the laws of the State of Texas. Venue for any dispute hereunder shall be exclusively in the courts of the County.

XV. Amendment

Except as otherwise provided, this Agreement may be modified by the parties hereto upon mutual written consent to include other provisions which could have originally been included in this Agreement or to delete provisions that were not originally necessary to this Agreement pursuant to the procedures set forth in Chapter 312 of the Texas Tax Code.

XVI. Guidelines and Criteria

This Agreement is entered into by the parties consistent with the Guidelines and Criteria. To the extent this Agreement modifies any requirement or procedure set forth in the Guidelines and Criteria or is inconsistent with any provision of the Guidelines and Criteria, the Guidelines and Criteria are deemed amended for purposes of this Agreement only.

XVII. Entire Agreement

This Agreement contains the entire and integrated Tax Abatement Agreement between the County and Owner, and supersedes any and all other negotiations and agreements, whether written or oral, between the parties. This Agreement has not been executed in reliance upon any representation or promise, except those contained herein.

XVIII. Relationship of the Parties

Owner enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Owner, or any of Owner's employees, look to Bell County as his/her employer, or as a partner, agent or principal. Neither Owner nor any of Owner's employees shall be entitled to any benefits accorded to Bell County's employees, including without limitation worker's compensation, disability insurance, vacation or sick pay. Owner shall be responsible for providing, at Owner's expense and election, and in Owner's name, unemployment, disability, worker's compensation and other insurance that Owner elects to provide, as well as all licenses and permits that are usual or necessary in connection with the Project and Improvements.

XIX. Local Outreach Plan

Owner shall comply with the provisions of the Local Outreach Plan.

XX. Counterparts

This Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original but such counterparts together shall constitute one and the same instrument.

[remainder of this page intentionally blank]

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the County as authorized by the County Commissioners Court and executed by the Owner on the respective dates shown below.

BELL COUNTY, TEXAS

By: _____
David Blackburn, County Judge

Date: _____

Attest: Shelley Coston
County Clerk

[Signatures continue next page]

OWNER:

Big Elm Storage, LLC, a Delaware limited liability company

By: _____

Date: _____

By: Apex GCL, LLC, its Sole Member

By: Apex Clean Energy Holdings, LLC, Sole Member

Print Name:

Print Title:

Attachment A

Attached is the Order Designating the Big Elm Solar Reinvestment Zone Number 1

COMMISSIONERS COURT OF BELL COUNTY
COMMISSIONERS COURT ROOM
BELL COUNTY HISTORIC COURTHOUSE
101 E. CENTRAL AVENUE, BELTON, TEXAS

RESOLUTION AND ORDER

DESIGNATING THE REINVESTMENT ZONE TO BE KNOWN AS THE
BIG ELM SOLAR REINVESTMENT ZONE #1
IN THE JURISDICTION OF BELL COUNTY, TEXAS

The Commissioners Court of Bell County, Texas, meeting in regular session on June 8, 2020, considered the following resolution:

WHEREAS, the Commissioners Court of Bell County, Texas (the "County") has elected to become eligible to participate in tax abatement agreements under the provisions of the Texas Property Redevelopment and Tax Abatement Act (Chapter 312 of the Texas Tax Code) (the "Act"); and,

WHEREAS, the County adopted guidelines and criteria governing tax abatement agreements in a resolution dated on November 4, 2019 (the "Guidelines and Criteria"); and,

WHEREAS, a public hearing is required by Chapter 312 of the Texas Tax Code prior to approval of a reinvestment zone; and

WHEREAS, the County (a) timely published or posted all applicable notices of public hearing regarding the designation of the real estate described in the attached Exhibit A as a reinvestment zone for tax abatement purposes, and (b) timely notified all applicable presiding officers of the governing body of each taxing unit that includes in its boundaries real property that may be included in the proposed reinvestment zone;

WHEREAS, the improvements proposed for the reinvestment zone are feasible and of benefit to the reinvestment zone after expiration of an abatement agreement; and

WHEREAS, the property described in Exhibit A meets the criteria established in the Guidelines and Criteria for a reinvestment zone; and

WHEREAS, the designation of the reinvestment zone would contribute to the retention or expansion of primary employment or would attract major investment in the reinvestment zone that would be of benefit to the property described on Exhibit A and would contribute to the economic development of the County; and

WHEREAS, all interested members of the public were given an opportunity to make comment at the public hearing.

NOW, THEREFORE, BE IT ORDERED, by the Commissioners Court of Bell County, that:

1. The County hereby designates the property located in Bell County, Texas, having the property description in Exhibit A attached to this Order as a reinvestment zone under the County's Guidelines and Criteria, having determined that (a) the property described on Exhibit A meets the criteria established in the Guidelines and Criteria, and (b) the designation of such reinvestment zone would contribute to the retention or expansion of primary employment or would attract major investment in the reinvestment zone that would be of benefit to the property described on Exhibit A and that would contribute to the economic development of the County.
2. The reinvestment zone created by this Order to include the real property described in Exhibit A shall be known as "Big Elm Solar Reinvestment Zone #1."

The foregoing Resolution and Order was lawfully moved by Bill Schumann, duly seconded by Bobby Whitson, and duly adopted by the Commissioners Court of Bell County, Texas, on June 8, 2020.



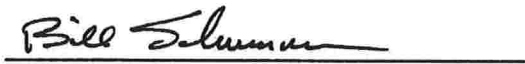
Judge David Blackburn



Commissioner Russell Schneider, Pct. 1



Commissioner Bobby Whitson, Pct. 2



Commissioner Bill Schumann, Pct. 3



Commissioner John Driver, Pct. 4

The foregoing Resolution and Order is a true and correct copy of the Resolution and Order passed by the Commissioners Court in open and regular session on June 8, 2020.



Shelley Coston
County Clerk, Bell County, Texas

Attachment B

Attached is a copy of the Guidelines and Criteria for Granting Tax Abatements.



Tax Abatement Economic Development Incentive Policy

Examined and Approved in open Commissioners Court Bell County, Texas

Date: 15 November 2021

Judge David Blackburn

Attested by
Shelley Coston
County Clerk

November 15, 2021
Revision D

Revision History

Version	Date	Author	Description
Rev A	20 Oct 09	P. Goodwill	Added comments from meeting with Municipalities
Rev B	28 Dec 2009	Commissioners Court	Examined and approved
Draft	17 Nov 2014	P. Goodwill	Revision of Dec 2009 Document
Draft	29 Nov 2017	Commissioners Court	Document reviewed – corrections made
Draft	4 Dec 2017	Commissioners Court	Correction review and approval to distribute for comment
Draft	19 Jan 2018	P. Goodwill	City comments/additions
Draft	22 Apr 2019	P. Goodwill	Revisions following City Meetings
Draft	23 Sept 2019	P. Goodwill	Revisions for HB 3143
Draft	4 Oct 2019	P.; Goodwill	Added Commissioners Courts corrections
Rev C	18 Nov 2019	Commissioners Court	Revision of Dec 2009 document – approved by Commissioners Court
Rev D	8 Nov 2021	Commissioners Court	Added language to address adjacent Property owner notification

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1 Definitions

- (a) "**Abatement**" means the full or partial exemption from ad valorem taxes of certain real property (including fixed-in-place machinery and equipment) in a reinvestment zone designated for economic development purposes.
- (b) "**Agreement**" means a contractual agreement between a property owner and/or lessee and an eligible jurisdiction for the purposes of tax abatement.
- (c) "**Deferred Maintenance**" means improvements necessary for continued operations which do not improve productivity or alter the process technology.
- (d) "**Eligible Jurisdiction**" means Bell County and any municipality, or other entity, which is located in Bell County, which levies ad valorem taxes upon and provides services to property located within the proposed or existing reinvestment zone.
- (e) "**Economic Life**" means the number of years a property improvement is expected to be in service in a facility.
- (f) "**Employee**" means a person whose employment is both permanent and fulltime, who works for and is an employee of the Owner, who works a minimum of 1,750 hours per year exclusively at the site being abated, who receives industry-standard benefits and whose employment is reflected in the Owner's quarterly report filed with the Texas Workforce Commission.
- (g) "**Expansion**" means the addition of buildings and structures for the purposes of increasing production capacity.
- (h) "**Facility**" means property improvements completed or in the process of construction which together comprise an integral whole.
- (i) "**Manufacturing Facility**" means buildings and structures, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.
- (j) "**Modernization**" means the replacement and upgrading of existing facilities which increases the productive input or output, updates the technology, or substantially lowers the unit cost of the operation, and extends the economic life of the facility. Modernization may result from the construction, alteration or installation of buildings and structures. It shall not be for the purpose of reconditioning, refurbishing, repairing, or completion of deferred maintenance.
- (k) "**New Facility**" means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.
- (l) "**Business Personal Property**" means any tangible personal property other than

inventory and supplies that (i) is subject to ad valorem taxation by the taxing entity; (ii) is located on the property subject to Abatement; (iii) is owned or leased by the party to the Tax Abatement Agreement; (iv) was not located in the abatement zone prior to the effective date of the Tax Abatement Agreement and (v) has an economic life of greater than 15 years.

2 General Purpose

Chapter 312 of the Texas Tax Code allows, but does not obligate or require, the County to grant a Tax Abatement on the value added to a particular property on account of a specific development project that meets the eligibility requirements set forth in this Policy. For the County to participate in Tax Abatement, the County is required to establish guidelines and criteria governing Tax Abatement agreements. This Policy is intended to set forth those guidelines and criteria for persons or entities interested in receiving a Tax Abatement from the City. This Policy shall expire on November 13, 2023.

Bell County is committed to the attraction of high-quality development in all parts of the County to expand and diversify the tax base. Success in economic development ensures Bell County's long-term financial ability to provide quality services and infrastructure to provide for ongoing improvement in the quality of life for its residential and corporate citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, the County will, on a case-by-case basis, consider providing financial incentives as a stimulus for economic development in Bell County. It shall be the policy of the County that said consideration will be provided in accordance with the procedures and criteria outlined in this policy. However, for instances involving strategic investment projects, specific terms and criteria, apart from those contained in the definition for such projects and those that govern the maximum abatement that can be provided for such projects, may be waived with the majority approval of the Bell County Commissioners Court. Nothing herein shall imply or suggest that the County is under any obligation to provide financial incentives to any applicant.

3 General Procedures

Where the property is located within an incorporated City, the applicant should begin the process with the City before the County

Company begins negotiations with City; City makes County aware of request and invites County comments during negotiations. County makes City aware of concerns/changes prior to final action by City.

Company makes application to County for participation in abatement. County may negotiate additional performance criteria with Company required for County participation.

Once an abatement agreement is approved by the City, Commissioners Court action to participate will normally take place within 45 days of the execution date of the municipal abatement agreement.

It shall be the County's policy to notify adjacent property owners once the application is accepted by the Court. This notification will not apply to abatement request located in established tax abatement zones.

4 General Eligibility Criteria

A Tax Abatement can only be granted to persons or entities eligible for Tax Abatement pursuant to Section 312.204(a) of the Texas Tax Code, which persons or entities as of the effective date of this Policy are (i) the owner of taxable real property located in a Tax Abatement reinvestment zone; (ii) the owner of taxable business personal property in a Tax Abatement reinvestment zone; or (iii) the owner of a leasehold interest in real property located in a Tax Abatement reinvestment zone. Although the County will consider all applications for Tax Abatement that meet the eligibility requirements set forth in this Policy, it is especially interested in development projects that are expected to produce a meaningful impact on the county and its economy and that:

- retain local jobs and/or increase the number and diversity of high-quality jobs that offer attractive wages and benefits.
- encourage additional unsubsidized private development in Bell County, either directly or indirectly through "spin off" development (without the use of tax abatement).
- facilitate the development process and to achieve development of sites that would not be developed without tax abatement assistance.
- encourage redevelopment of commercial and industrial areas that result in high quality redevelopment, private investment, and an increase in the County tax base.
- offset increased costs of redevelopment (i.e. contaminated site clean-up) over and above the costs normally incurred in development.
- provide infrastructure necessary to accommodate economic development.
- meet public policy goals, as adopted by Bell County from time to time.

Requests for abatements will generally not be considered if, prior to the submission of the application, the project is already substantially underway or completed. A project will be considered to be substantially underway if actions such as, but not limited to the following have occurred:

- Demolition, site preparation, or the installation of infrastructure has begun
- A building permit has been issued
- Construction (including renovation or tenant finish-out) has begun
- Equipment, inventory, or employees have been relocated to the new site

5 Abatement Authorized

5.1 Eligible Facilities

Upon application, the County will consider granting tax abatement on Eligible Facilities as hereinafter provided:

5.2 Authorized Facility

A facility may be eligible for abatement if it is a: Manufacturing facility, Research facility, Distribution center or regional service facility, or other basic industry, or a facility that the Commissioners Court determines would enhance job creation and the economic future of Bell County.

5.3 Creation of New Value

Abatement may only be granted for the additional value of eligible real property (including fixed-in-place machinery and equipment [must be classified as Category F2 under the Texas Property Code]) listed in an agreement between the County and the property owner and lessee (if applicable), subject to such limitations and the Commissioners Court and the Texas Property Tax Code may require.

5.4 New and Existing Facilities

Abatement may be granted for new facilities and for the expansion or modernization of existing facilities.

5.5 Eligible Property

Abatement may be extended to the value of buildings, structures, site improvements plus that office space, business personal property and related fixed improvements necessary to the operation and administration of the facility at the discretion of the Commissioners Court

5.6 Ineligible Property

The following types of property shall be fully taxable and ineligible for tax abatement: land; personal property, tools, furnishings, and other forms of movable personal property; vehicles, watercrafts, aircrafts, housing, convalescent homes, assisted living homes/centers, hotel accommodations, retail facilities, deferred maintenance investments, property to be rented or leased, real property with a productive life of less than 15 years, property owned or used by the State of Texas or its political subdivisions or by any organizations owned operated or directed by a political subdivision of the State of Texas, or any other property for which abatement is not allowed by Texas Tax Code.

5..7 Owned/Leased Facilities

If a leased facility is granted abatement the agreement shall be executed with the lessor and the lessee.

6 Standards for Tax Abatement

6.1 Minimum Standards –

The County will consider a tax abatement only on Eligible Facilities which meet at least two on the following criteria:

- (1) The project involves a minimum increase in property value of three hundred percent (300%) for construction of a new facility, or fifty percent (50%) for expansion of an existing facility, with an overall new investment of at least \$1 million in taxable assets. For Eligible Facilities in any reinvestment zone within the Strategic Investment Zone Grant Corridors, the project must involve either a minimum increase in property value of one hundred and fifty percent (150%) for construction of a new facility, or twenty-five percent (25%) for expansion of an existing facility, with an overall new investment of at least \$50,000 in taxable assets.
- (2) The project makes a substantial contribution to redevelopment efforts, special area plans, or strategic economic development programs by enhancing either functional or visual characteristics, e.g., historical structures, traffic circulation, parking, facades, materials, signs.
- (3) The project has high visibility, image impact, or is of a significantly higher level of development quality.
- (4) The project is in an area which might not otherwise be developed because of constraints of topography, ownership patterns, site configuration, etc.
- (5) The project can serve as a prototype and catalyst for other development of a higher standard.
- (6) The project stimulates desired concentrations of employment or commercial activity.
- (7) The project generates greater employment than would otherwise be achieved, e.g., commercial/industrial versus manufacturing versus warehousing.
- (8) For eligible facilities in any reinvestment zone within the Strategic Investment Zone Grant Corridors, the project improves the aesthetic appearance of the neighborhood, brings new jobs to the area, increases the availability of public parking, or increases the amount of green space (landscaping).

6.2 Minimum Required Investment

An applicant requesting a tax abatement shall agree as a condition of any tax abatement agreement ultimately approved by the County to expend a certain minimum amount of funds on real property improvements, or to provide a certain number of jobs, as provided below, the following chart may be used as a general guideline by the Commissioners Court as it relates to minimum capital investment and/or jobs creations:

Percentage of increased value to be abated	Minimum Required Real Property Investment and/or Job Creation	
	Eligible Real Property Improvements	Job Creation
25%	\$250,000 - \$400,000	25 – 30
30%	\$400,001 - \$550,000	31 - 35
35%	\$550,001 - \$700,000	36 – 40
40%	\$700,001 - \$850,000	41 – 45
45%	\$850,001 - \$1,000,000	46 – 50
50%	\$1,000,001 - \$1,300,000	51 – 55
55%	\$1,300,001 - \$1,600,000	56 – 60
60%	\$1,600,001 - \$1,900,000	61 – 65
65%	\$1,900,001 - \$2,200,000	66 – 70
70%	\$2,200,001 - \$2,500,000	71 – 75
75%	\$2,500,000 - \$3,500,000	76 – 85
80%	\$3,500,001 - \$4,500,000	86 – 95
85%	\$4,500,001 - \$5,500,000	96 – 105
90%	\$5,500,001 - \$6,500,000	106 – 115
95%	\$6,500,001 - \$7,500,000	116 – 125
100%	\$7,500,001 - \$10,000,000	126 - 175

Projects involving an investment in real property in excess of \$10,000,000 or the creation of more than 175 new full-time jobs or requests for tax abatement for more than 5 years, will be individually negotiated.

6.3 Job Creation

As used herein, the creation of jobs refers to the creation of a job paying not less than \$12 per hour, the approximate median salary for employees in Bell County. To qualify for a level of tax abatement, e.g., 25%, based on the creation of a specific number of jobs, the applicant must commit to hiring the required effective number of employees by the end of year 2 of the agreement. To calculate the effective number of jobs created: (1) calculate the total annual payroll created (based on the number of employees you will hire at various annual salaries); (2) divide this annual payroll by \$24,768 (our calculated annual salary for a \$12/hr. employee); and (3) round this figure to the nearest whole integer.

6..4 Health Care Benefits

The company must offer a health benefit plan to its full-time employees at a rate that is reasonable to the majority of its employees and which allows access to the plan by the employees' dependents. For additional consideration, the company may provide information on other employee benefits provided, such as retirement/pension programs and subsidies for education, job-training, transportation assistance and child/elderly care.

6..5 Additional or Enhancement Factors

In addition to the minimum investment or job creation criteria listed above, Bell County may also consider the following factors when evaluating tax abatement requests to assist private development projects:

- To support local businesses, extra consideration will be given to existing businesses seeking to expand and grow within Bell County.
- The extent to which the proposed project adds to the net commercial, industrial or general tax base of the County and optimizes the private development of the proposed site.
- Whether or not the proposed project provides services not already provided in the county, or services which are needed.
- Whether or not the proposed business would be in direct competition with existing businesses in Bell County. Abatements should not be given to businesses which would receive a competitive advantage over existing businesses in the same geographic in Bell County.
- The extent to which the project represents “new” dollars into the county.
- The extent to which the project requires improvements in county infrastructure, such as pollution control, road construction, or other traffic problems. Also, to be considered is the impact of the proposal on other county services such as law enforcement, human services, or prosecutions.
- Whether or not the project will significantly impact environmental/natural resources.
- The extent to which other political subdivisions are in support of the project.
- How the proposed project furthers the goals and objectives of the county and/or community.
- The level of private financial investment into the project.

7 Denial of Abatement

An abatement agreement shall not be authorized if it is determined that:

1. There would be substantial adverse effect on the provision of government services or tax base;
2. The applicant has insufficient financial capacity;
3. Planned or potential use of the property would constitute a hazard to public health, safety and/or morals;

4. Initial contact with the County about the project was made after the host city had executed an abatement agreement for the project;
5. Violation of other codes or laws;
6. Any other reason deemed appropriate by the Bell County Commissioners Court.

8 Application for Tax Abatement

The Commissioners Court shall review the application during a regular or closed session(s). Bell County acknowledges the necessity for a level of confidentiality regarding potential business prospects and when appropriate will deliberate matters regarding commercial or financial information in closed meeting. *See 551.087 Open Meeting Act.*

A complete application package for consideration of a tax abatement shall consist of:

- a completed County application form;
- an investment budget detailing components and costs of the real property improvements for which tax abatement is requested, including type, number, and economic life;
- A map and legal description of the property;
- A time schedule for undertaking and completing the proposed improvements;
- The number of jobs to be retained and/or created as a result of the proposed project;
- Financial and other information, as the County deems appropriate, for evaluating the financial capacity and other factors of the applicant;
- For a leased facility, the name and address of the lessor and a copy of the proposed or existing lease, or option contract.

Additional information may be requested as needed.

The County reserves the authority to enter into incentives agreements at differing percentages and/or terms as set forth in the guidelines of this Policy.

Once an abatement agreement is approved by the City, Commissioners Court action to participate will take place in accordance with requirements of HB 3143.

Note: HB 3143, with an effective date of September 1, 2019, requires a 30 notice prior to action on any request presented to the County's Commissioners Court.

9 Tax Abatement Agreement

After Commissioners Court approval of a resolution authorizing a tax abatement application, the owner (and lessee, where applicable) of the Facility and the County shall execute an agreement which shall include, but not be limited to:

- The kind, number, and location of all proposed improvements on the property;
- The amount of investment, increase in appraised value and number of jobs to be added and/or retained;

- A provision authorizing access to and inspection of the property by municipal employees to ensure that the improvements are made according to the specifications and conditions of the agreement;
- Limits for the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period the property tax abatement is in effect;
- A provision providing for recapture of property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements as provided by the agreement;
- All other contractual terms agreed to by the owner of the property;
- A requirement that the owner of the property annually certify to the governing body of each taxing unit that the owner is in compliance with each applicable term of the agreement;
- A provision allowing the **Commissioners Court** to cancel or modify the agreement if the owner fails to comply with the agreement;
- The percentage of value to be abated each year; and
- The commencement date and the termination date of abatement.

10 Administration

The Tax Appraisal District shall administer the tax abatement agreements, to include calculation, assessment, collection and distribution of any rebates applicable to an abatement agreement.

Upon completion of construction the municipality creating the reinvestment zone shall annually evaluate each facility receiving abatement to ensure compliance with the agreement and report possible violations to the contract and agreement to the Commissioners Court.

- On or before April 30th of every year during the life of the abatement agreement, the company or individual receiving the abatement shall complete and file a Tax Abatement Evaluation Report with the authorizing jurisdiction detailing and certifying the abatement recipient's compliance with the terms of the abatement agreement.
- A copy of this report shall be sent to the Bell County Judge on or before May 15th. Failure to provide information requested in the compliance evaluation by the prescribed deadline may result in taxes abated in the prior year being due and payable.

The Tax Abatement Evaluation Report shall provide information for the evaluations of the received abatement; this report shall include, but not be limited to, the following:

- The total number of employees of the company, their average salaries, and the number of employees residing in Bell County and their average salaries, reported in job classifications appropriate to the employee;
- The total dollar amount of inventory not subject to the Freeport Exemption;
- The number and dollar amount of all construction contracts and subcontracts awarded on the project (first year report, after project completion, only);

- Evidence of compliance with employee health benefits requirements of the County abatement agreement;
- Statement affirming that all non-abated taxes are currently paid;
- Should the dollars, percentages or actions not meet the original or modified requirements of the abatement agreement, a statement shall be provided explaining the reason for the failure to meet the requirements and a recommended course of rectification.

The County may accept the reporting requirements spelled out in the municipal abatement agreement so long as these requirements are agreed on by the County prior to the execution of the agreement by the municipality.

11 Recapture

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

12 Assignment

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

Appendix A

Application for Tax Abatement



Bell County Application for Tax Abatement

I. APPLICANT INFORMATION

Applicant / Property Owner: _____

Entity/Project name to appear on Agreement: _____

Mailing Address: _____

Telephone: _____ Fax: _____

Applicant's Representative for contact regarding abatement request:

Name and Title: _____

Mailing Address: _____

Telephone: _____ Fax: _____ Email: _____

Name of Municipality tax reinvestment zone located (if applicable): _____

Municipality's representative for contact regarding Municipality abatement request (if applicable):

Name and Title: _____

Mailing Address: _____

Telephone: _____ Fax: _____ Email: _____

II. PROPERTY AND PROJECT DESCRIPTION

Address and legal description of property to be considered for Tax Abatement:

Project Description:

Description of activities, products, or services produced:

Present Appraisal District value of land and any EXISTING improvements owned by the OWNER:

(Answer this question based on Appraisal District records for the specific site you select.)

Real Property: \$ _____

Estimated start date of construction/site improvements: _____

Project date of occupancy/commencement of operations at project site: _____

Please indicate dates for phases if applicable: _____

Location of existing company and/or parent facilities: _____

Explain why a tax abatement is necessary for the success of this project. Include a feasibility study estimating the economic effect of the proposed tax abatement.

III. PROJECT VALUE OF IMPROVEMENTS

Value of Real Property as of January 1, prior to the abatement: \$ _____

Value of Business Personal Property as of January 1, prior to the abatement: \$ _____

Estimated value of real property improvements: \$ _____

Will any infrastructure improvements (roads, drainage, etc.) be required of Bell County for this Project?

Yes No

If "Yes", describe requested infrastructure improvements in attachment:

Detail any direct benefits to Bell County as a result of this project (i.e. inventory tax, etc.):

Do the proposed improvements compete with existing businesses the local economy: Yes No

If yes, describe the competitive nature and the businesses affected:

Variance: Is a variance being sought under and provision of this Abatement Policy. Yes No If "Yes", attach any supplementary information required.

IV. EMPLOYMENT IMPACT AT PROJECT LOCATION

A. NEW EMPLOYMENT

- Projected number of new jobs created as a result of the proposed improvement(s):
Full-time: _____ Part-time: _____
- Provide types of jobs created and average salary levels:
- Start date and annual payroll of new permanent positions (if positions to be phased in provide figures for each year):
- Number of employees transferring from other company locations outside of Bell County: _____

B. CURRENT COMPANY/PROJECT LOCATION EMPLOYMENT

Current Number of Employees: Full-time: _____ Part-time _____
Average annual payroll: \$ _____

C. CONSTRUCTION RELATED EMPLOYMENT

- Projected number of construction related jobs: _____
- Estimated total construction payroll: \$ _____

D. Company Sponsored Health Care Benefits are Available

Full-time Employees Part-time Employees Employee Dependents Not Available
Average monthly employee cost for health care benefits: Individual: \$ _____ Family: \$ _____
Other employee benefits provided or offered:

V. ENVIRONMENTAL IMPACT OF PROJECT

Indicate if development, construction, equipment, distribution methods, and/or operational processes may impact the environment in any of the following areas:

AIR QUALITY Water Quality Water Use Solid Waste Disposal Storm/Water Runoff
Floodplain Noise Levels Others (specify)

Provide detail as necessary to explain.

VI. ADDITIONAL INFORMATION (TO BE ATTACHED)

- Plat/Map of project location (to include notation of reinvestment zone should the project fall within)
- Proposed site plan and elevations
- Description of any proposed changes in zoning
- Descriptive list and value of real property improvements
- Project time schedule, detailing start and completion dates and project major milestones.
- Tax Certificates on all accounts showing property taxes paid for the most recent tax year (as applicable)
- Copy of applicant's application for abatement with Municipality

VII. CERTIFICATION

Upon receipt of a completed application, Bell County may require such financial and other information as may be deemed appropriate for evaluating the financial capacity and other factors of the applicant.

Note: Copy of the executed Municipality Abatement Agreement is required before Bell County will act on any abatement request.

Note: HB 3143, with an effective date of September 1, 2019, requires a 30 notice prior to action on any request presented to the County's Commissioners Court.

I certify the information contained in this application (including all attachments) to be true and correct to the best of my knowledge. I further certify that I have read the Bell County Tax Abatement Policy and agree to comply with the guidelines and criteria stated therein.

Signature

Title

Printed Name

Date

Return completed application and attachments to:

David Blackburn
Bell County Judge
P.O. Box 768
Belton, Texas 76513-0768
Email: david.blackburn@bellcounty.texas.gov
Phone: 254 933-5105

COUNTY USE ONLY

Abatement issues to:

New Development Expansion Remodel Existing Facilities

Total real property amount to be abated:

Abatement terms approved:

Examined and Approved in open Commissioners Court Bell County Texas

Date: _____

David Blackburn
County Judge

Attested by
Shelley Coston
County Clerk

Attachment C

Attached is a description of the Site.

Attachment D

Attached is the Local Outreach Plan.

LOCAL OUTREACH PLAN

A. In connection with the procurement, site preparation, construction and operation of the Project and Improvements in Bell County, Owner and its agents shall make, and cause its general contractor to make, commercially reasonable attempts to:

1. Utilize qualified and experienced Bell County individuals and businesses for materials, labor and services, provided that nothing in this paragraph shall require Owner to use services and supplies that are not of similar quality to those provided by residents of businesses outside of Bell County or are not made available on terms and/or at prices comparable to those offered by residents or businesses outside of Bell County; and
2. In filling positions of employment connected with the Project and Improvements, Owner and its contractors and agents shall use commercially reasonable efforts to employ qualified and experienced individuals who reside within the borders of Bell County, provided that nothing in this paragraph shall require Owner or its contractors or agents to employ Bell County residents who are not (i) equally or more qualified than nonresidents; and (ii) are not available for employment on terms and/or at salaries comparable to those required by nonresidents.

B. In no event shall Owner or its contractors discriminate against Bell County residents or businesses in employment or in the purchase of goods and services in connection with the construction of the Project and Improvements in Bell County.

C. Owner and its general contractor for the Project and Improvements shall hold a job and contracting information session in Belton, Texas, prior to beginning physical construction of the Project and Improvements at which information will be provided regarding the construction and hiring needs of the Project and Improvements.

D. Notwithstanding the forgoing, Bell County acknowledges that Owner shall engage a nationally recognized solar power plant contractor to act as the general/prime contractor of the Project and Improvements, and that Owner or such contractor shall procure specialty equipment and specialty materials, including but not limited to inverters, transformers, modules, trackers, and energy storage equipment, directly from the manufacturers or distributors of such equipment and materials. The parties agree that such actions shall not in any way violate this Local Outreach Plan.

E. Owner conclusively shall be deemed to comply with this Local Outreach Plan so long as it holds a job and contracting information session as described in paragraph C above and actively solicits proposals from Local contractors or subcontractors and makes its selection using reasonable discretion based on economic, commercial, practical, or similar considerations.

Attachment E

A list of County Roads to be utilized by Owner during the development of the Project and Improvements is provided below.

1. Arthur Cemetery Road
2. Bottoms East Road
3. Bean Hill Spur Road
4. Camp Creek Road
5. Oil Loop Road
6. Bottoms East Connection Road
7. Curtis Williams Road