

UNDERWOOD

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September 9, 2019

Tabita Collazo, Research Analystist
Economic Development and Analysis Division
Texas Comptroller of Public Accounts
111 E. 17th St.
Austin, TX 78774

Via Email and Federal Express

Re: App No. 1373 – Wellman-Union ISD-Algodon Solar Energy, LLC

Dear Tabita:

Enclosed please find supplemental application pages, specifically, Terry County's Resolution Designating the Terry-Algodon Solar Reinvestment Zone and the County's Guidelines and Criteria. These documents are submitted as Application Supplement No. 2.

A CD containing this Supplement is also enclosed. Please let me know if you require any additional information.

Sincerely,



Fred A. Stormer

Encl.
0D1DQ4

cc: Adam Glatz, Ernst & Young, LP

via email: adam.h.glatz@ey.com

**RESOLUTION OF THE COMMISSIONERS COURT
OF TERRY COUNTY, TEXAS DESIGNATING
TERRY-ALGODON SOLAR REINVESTMENT ZONE**

**A RESOLUTION DESIGNATING A CERTAIN AREA AS A REINVESTMENT ZONE
FOR A COMMERCIAL/INDUSTRIAL TAX ABATEMENT IN TERRY COUNTY,
TEXAS, ESTABLISHING THE BOUNDARIES THEREOF, AND PROVIDING FOR AN
EFFECTIVE DATE**

WHEREAS, the Commissioners Court of Terry County, Texas (the “**County Commissioners Court**”) desires to promote the development or redevelopment of a certain contiguous geographic area within its jurisdiction by the creation of a reinvestment zone as authorized by the Property Redevelopment and Tax Abatement Act, as amended (Texas Tax Code § 312.001, *et seq.*), and the Terry County Tax Abatement Guidelines and Criteria (the “**Guidelines**”);

WHEREAS, on this date, a hearing before the County Commissioners Court was held, such date being at least seven (7) days after the date of publication of the notice of such public hearing in the local newspaper of general circulation in Terry County, Texas (the “**County**”) and the delivery of written notice to the respective presiding officers of each taxing entity that includes within its boundaries real property that is to be included in the proposed reinvestment zone;

WHEREAS, the County Commissioners Court at such public hearing invited any interested person to appear and speak for or against the creation of the reinvestment zone and whether all or part of the territory described should be included in the proposed reinvestment zone; and

WHEREAS, the proponents of the reinvestment zone offered evidence, both oral and documentary, in favor of all of the foregoing matters relating to the creation of the reinvestment zone and opponents, if any, of the reinvestment zone appeared to contest the creation of the reinvestment zone.

BE IT RESOLVED BY THE COUNTY COMMISSIONERS COURT:

SECTION 1. That the facts and recitations contained in the preamble of this Resolution are hereby found and declared to be true and correct.

SECTION 2. That the County Commissioners Court, after conducting such hearing and having heard such evidence and testimony, has made the following findings and determinations based on the evidence and testimony presented to it:

- (a) That the public hearing on adoption of the Terry-Algodon Solar Reinvestment Zone has been properly called, held and conducted and that notice of such hearing has been published as required by law and mailed to the respective presiding officers of the governing bodies of all taxing units

overlapping the territory inside the proposed reinvestment zone;

- (b) That the boundaries of the Terry-Algodon Solar Reinvestment Zone should be the area described in the legal description and corresponding map attached hereto as Exhibit "A," which is incorporated herein by reference for all purposes;
- (c) That creation of the Terry-Algodon Solar Reinvestment Zone will result in benefits to the County and to land included in the reinvestment zone and that the improvements sought are feasible and practical; and
- (d) The Terry-Algodon Solar Reinvestment Zone meets the criteria set forth in Chapter 312 of the Texas Tax Code for the creation of a reinvestment zone as set forth in the Property Redevelopment and Tax Abatement Act, as amended, and the Guidelines, in that it is reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract investment in the zone that would be a benefit to the property and that would contribute to the economic development of the County, and that the entire tract of land is located entirely within an unincorporated area of the County.

SECTION 3. That pursuant to the Property Redevelopment and Tax Abatement Act, as amended, and the Guidelines, the County Commissioners Court hereby creates the Terry-Algodon Solar Reinvestment Zone; a reinvestment zone for commercial-industrial tax abatement encompassing only the area described in and as shown on the map in Exhibit A, and such reinvestment zone is hereby designated and shall hereafter be referred to as the Terry-Algodon Solar Reinvestment Zone.

SECTION 4. That the Terry-Algodon Solar Reinvestment Zone shall take effect on the date of this Resolution and shall remain designated as a commercial-industrial reinvestment zone for a period of five (5) years from such date of designation and may be renewed for an additional five (5) year period thereafter.

SECTION 5. That if any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution.

SECTION 6. That it is hereby found, determined and declared that a sufficient notice of the date, hour, place and subject, of the meeting of the County Commissioners Court at which this Resolution was adopted was posted at a place convenient and readily accessible at all times as required by the Texas Open Meetings Act, Texas Government Code, Chapter 551, as amended, and that a public hearing was held prior to the designation of such reinvestment zone and that proper notice of the hearing was published in the official newspaper of general circulation within the County, and furthermore, such notice was in fact delivered to the presiding officer of any affected taxing entity as prescribed by the Property Redevelopment and Tax Abatement Act.

PASSED, APPROVED AND ADOPTED on this the 22nd day of July, 2019.

Terry County Commissioners Court

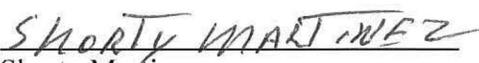


J.D. Wagner, County Judge



Mike Swain,
Precinct 1 Commissioner

Kirby Keesee,
Precinct 2 Commissioner



Shorty Martinez,
Precinct 3 Commissioner



Ernesto Elizardo,
Precinct 4 Commissioner

Attest:



Kim Carter, County Clerk



EXHIBIT A
LEGAL DESCRIPTION AND MAP OF
TERRY-ALGODON SOLAR REINVESTMENT ZONE

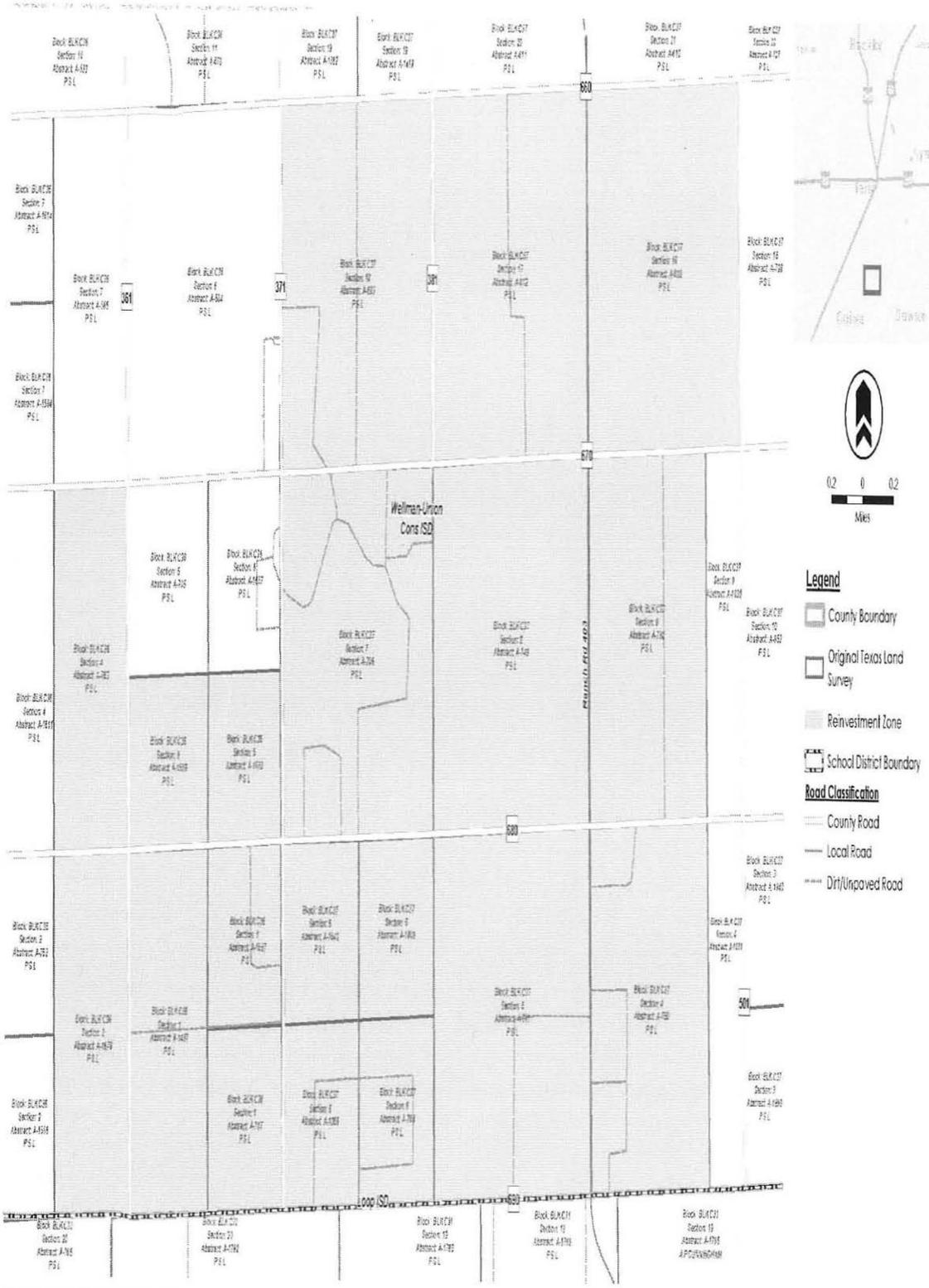
The Terry-Algodon Solar Reinvestment Zone is comprised of the following parcels located in Terry County, Texas. In the event of discrepancy between the following legal description and the attached map, the map will control; provided however, the Terry-Algodon Solar Reinvestment Zone shall in no way be deemed to include any portion of any municipality.

Legal Description:

Section 1, Block C-36, Abstract 1437 of the P S L Survey
Section 1, Block C-36, Abstract 1537 of the P S L Survey
Section 1, Block C-36, Abstract 707 of the P S L Survey
Section 5, Block C-36, Abstract 1539 of the P S L Survey
Section 5, Block C-36, Abstract 1538 of the P S L Survey
Section 2, Block C-36, Abstract 1678 of the P S L Survey
Section 4, Block C-36, Abstract 763 of the P S L Survey
Section 6, Block C-37, Abstract 1542 of the P S L Survey
Section 6, Block C-37, Abstract 1366 of the P S L Survey
Section 6, Block C-37, Abstract 1809 of the P S L Survey
Section 6, Block C-37, Abstract 704 of the P S L Survey
Section 7, Block C-37, Abstract 706 of the P S L Survey
Section 18, Block C-37, Abstract 583 of the P S L Survey
Section 17, Block C-37, Abstract 612 of the P S L Survey
Section 16, Block C-37, Abstract 609 of the P S L Survey
Section 8, Block C-37, Abstract 749 of the P S L Survey
Section 9, Block C-37, Abstract 752 of the P S L Survey
Section 5, Block C-37, Abstract 751 of the P S L Survey
Section 4, Block C-37, Abstract 750 of the P S L Survey

EXHIBIT A (CONTINUED)
MAP OF
TERRY-ALGODON SOLAR REINVESTMENT ZONE

SEE ATTACHED MAP



Reinvestment Zone Map

Algodon Solar Project | Terry County, Texas

Rev. 01
April 19, 2019



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**STATE OF TEXAS
TERRY COUNTY
TAX ABATEMENT GUIDELINES AND CRITERIA**

Terry County (the "County") is committed to the promotion of quality development in all parts of the County and to improving the quality of life for its citizens. In order to help meet these goals, the County will consider providing Tax Abatements (as defined below) to stimulate economic development. It is the policy of the County that such an incentive will be provided in accord with the guidelines and criteria outlined in this document. All applicants for Tax Abatements shall be considered on an individual basis.

In order to be eligible for designation as a Reinvestment Zone and receive Tax Abatement, the planned improvement:

1. must be an Eligible Facility (as defined below);
2. must add at least Five Hundred Thousand Dollars (\$500,000.00) to the tax roll of eligible property;
3. must create no less than five (5) new, permanent, full-time jobs;
4. must be reasonably expected to have an increase in positive net economic benefit to the County of at least One Million Dollars (\$1,000,000.00) over the life of the Abatement, computed to include (but not be limited to) new sustaining payroll and/or capital improvement; and
5. must not be expected to solely or primarily have the effect of transferring employment from one part of the County to another.

In addition to the criteria set forth above, the Terry County Commissioners Court (the "Commissioners Court") reserves the right to negotiate a Tax Abatement Agreement in order to compete favorably with other communities.

Only that increase in the fair market value of the property that is a direct result of the development, redevelopment, or improvement specified in the Tax Abatement Agreement will be eligible for Abatement and then only to the extent that such increase exceeds any reduction in the fair market value of the other property of the applicant located within the jurisdiction creating the reinvestment zone.

All Tax Abatement Agreements will remain in effect no longer than allowed by law.

It is the goal of the County to grant Tax Abatements on the same terms and conditions as the other taxing units having jurisdiction of the property. However, nothing herein shall limit the discretion of the Commissioners Court to consider, adopt, modify or decline any Tax Abatement request.

This policy is effective as of the date of adoption, shall at all times be kept current with

regard to the needs of the County and reflective of the official views of the Commissioners Court, and shall be reviewed every two (2) years.

The adoption of these guidelines and criteria by the Commissioners Court does not:

1. limit the discretion of the governing body to decide whether to enter into a specific Tax Abatement Agreement;
2. limit the discretion of the governing body to delegate to its employees the authority to determine whether or not the governing body should consider a particular application or request for Tax Abatement; or
3. create any property, contract, or other legal right in any person to have the governing body consider or grant a specific application or request for Tax Abatement.

SECTION I. DEFINITIONS

A. **"Abatement" or "Tax Abatement"** means the full or partial exemption from ad valorem taxes of certain property in a reinvestment zone designated for economic development purposes.

B. **"Agreement" or "Abatement Agreement"** means a contractual Agreement between a property owner and/or lessee and the County.

C. **"Base Year Value"** means the assessed value on the eligible property as of January 1 preceding the execution of the Agreement.

D. **"Deferred Maintenance"** means improvements necessary for continued operation which do not improve productivity or alter the process technology.

E. **"Eligible Facilities"** means new, expanded, or modernized buildings and structures, including fixed machinery and equipment, which is reasonably likely as a result of granting the Abatement 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 County, but does not include facilities which are intended to primarily provide goods or services to residents or existing businesses located in the County such as, but not limited to, restaurants and retail sales establishments. Eligible facilities may include, but shall not be limited to:

- aquaculture/agriculture facilities;
- distribution center facilities;
- manufacturing facilities;
- office buildings;
- regional entertainment/tourism facilities;
- research service facilities;

regional service facilities;
historic buildings in a designated area;
wind, solar, or other renewable energy facilities; or
other basic industrial facilities.

F. **"Expansion"** means the addition of building structures, machinery, equipment, or payroll for purposes of increasing production capacity.

G. **"Facility"** means property improvement(s) completed or in the process of construction which together comprise an interregional whole.

H. **"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, or equipment.

I. **"New Facility"** means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion or Modernization.

J. **"Productive Life"** means the number of years property improvement(s) is/are expected to be in service in a facility.

SECTION II. ABATEMENT AUTHORIZED

A. **Eligible Facilities.** Upon application, Eligible Facilities shall be considered for Tax Abatement as hereinafter provided.

B. **Creation of New Values.** Abatement may only be granted for the additional value of eligible property improvement(s) made subsequent to and specified in an Abatement Agreement between the County and the property owner or lessee, subject to such limitations as the County may require.

C. **New and Existing Facilities.** Abatement may be granted for the additional value of eligible property improvement(s) made subsequent to and specified in an Abatement Agreement between the County and the property owner or lessee, subject to such limitations as the County may require.

D. **Eligible Property.** Abatement may be extended to the value of new, expanded, or modernized buildings, structures, fixed machinery and equipment, site improvements, and related fixed improvements necessary to the operation and administration of the facility, and all other real and tangible personal property permitted by Chapter 312 of the Texas Tax Code.

E. **Ineligible Property.** The following types of property shall be fully taxable and ineligible for Tax Abatement: land; animals; inventories, supplies; tools; furnishings; vehicles; vessels; aircraft; deferred maintenance investments; housing and property to be rented or leased, except as provided in Section II(F); property owned or used by the State of Texas.

F. Owned/Leased Facilities. If a leased facility is granted Abatement, the Agreement shall be executed with the lessor and the lessee. If the land is leased, but the facility constructed or installed thereon is owned by the lessee, the lessee shall execute the Agreement.

G. Economic Qualifications. In order to be eligible for designation as a reinvestment zone and receive Tax Abatement, the planned improvement:

- (1) must be an Eligible Facility;
- (2) must add at least Five Hundred Thousand Dollars (\$500,000.00) to the tax roll of eligible property;
- (3) must create no less than five (5) new, permanent, full-time jobs;
- (4) must be reasonably expected to have an increase in positive net economic benefit to the County of at least One Million Dollars (\$1,000,000.00) over the life of the Abatement, computed to include (but not be limited to) new sustaining payroll and/or capital improvement. The creation of new jobs (including number and type) will also factor into the decision to grant an Abatement; and
- (5) must not be expected to solely or primarily have the effect of transferring employment from one part of the County to another.

H. Standards for Tax Abatement. The following factors, among others, will be considered in determining whether to grant Tax Abatement:

- (1) value of existing improvements, if any;
- (2) type and value of proposed improvements;
- (3) productive life of proposed improvements;
- (4) number of existing jobs to be retained by proposed improvements;
- (5) number and type of new jobs to be created by proposed improvements;
- (6) amount of local payroll to be created;
- (7) whether the new jobs to be created will be filled by persons residing or projected to reside within the affected taxing jurisdiction;
- (8) amount by which property tax base valuation will be increased during the term of Abatement and after Abatement, which shall include a definitive commitment that such valuation shall not, in any case, be less than Five Hundred Thousand Dollars (\$500,000.00);

(9) expenses to be incurred in providing facilities directly resulting from the new improvements;

(10) the amount of ad valorem taxes to be paid to the County during the Abatement period considering (a) the existing values, (b) the percentage of new value abated, (c) the Abatement period, and (d) the value after expiration of the Abatement period;

(11) the population growth of the County that occurs directly as a result of new improvements;

(12) the types and values of public improvements, if any, to be made by applicant seeking Abatement;

(13) whether the proposed improvements compete with existing businesses to the detriment of the local economy;

(14) the impact on the business opportunities of existing business;

(15) the attraction of other new businesses to the area;

(16) the overall compatibility with the zoning ordinances and comprehensive plan for the area; and

(17) whether the project obtains all necessary permits from the applicable environmental agencies.

Each Eligible Facility shall be reviewed on its merits utilizing the factors provided above. After such review, Abatement may be denied entirely or may be granted to the extent deemed appropriate after full evaluation.

I. 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) applicant activities would violate applicable codes or laws; or

(4) any other reason deemed appropriate by the County.

J. Taxability. From the execution of the Abatement to the end of the Agreement period, taxes shall be payable as follows:

- (1) the value of ineligible property as provided in Section II(E) shall be fully taxable;
- (2) the base year value of existing eligible property as determined each year shall be fully taxable; and
- (3) the additional value of new eligible property shall be fully taxable at the end of the Abatement period.

SECTION III. APPLICATION

A. Any present or potential owner of taxable property in the County may request Tax Abatement by filing a written application with the Commissioners Court.

B. The application shall consist of a general description of the new improvements to be undertaken; a descriptive list of the improvements for which an Abatement is requested; a list of the kind, number and location of all proposed improvements of a property; a map and property description; and a time schedule for undertaking and completing the proposed improvements. 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. The Commissioners Court may require such financial and other information as deemed appropriate for evaluating the financial capacity and other factors pertaining to the applicant, to be attached to the application. The completed application must be accompanied by the payment of a non-refundable application fee for administrative costs and fees associated with the processing of the Tax Abatement request. All checks in payment of the administrative fee shall be made payable to the County. The fee for Abatement requests shall be One Thousand and No/100 Dollars (\$1,000.00). In addition, the Applicant shall agree to reimburse the County for any and all reasonable legal fees incurred by the County in processing and considering this application and in negotiating and formalizing any Abatement Agreement and any requested modification or amendment to any Abatement Agreement.

C. The County shall give notice as provided by the Property Tax Code, including written notice to the presiding officer of the governing body of each taxing unit in which the property to be subject to the Agreement is located, not later than seven (7) days before acting upon the application.

D. The application process described in this Section III shall be followed regardless of whether a particular reinvestment zone is created by the County or a taxing entity within the County. No other notice or hearing shall be required except compliance with the Texas Open Meetings Act, unless the Commissioners Court deem them necessary in a particular case.

SECTION IV. AGREEMENT

A. After approval, the Commissioners Court shall formally execute an Agreement with the owner of the facility and lessee, as required, which shall:

- (1) include a list of the kind, number and location of all proposed improvements to the property;
- (2) provide access to and authorize inspection of the property by the taxing unit to insure compliance with the Agreement;
- (3) limit the use of the property consistent with the taxing unit's development goals;
- (4) provide for recapturing property tax revenues that are lost if the owner fails to make improvements as provided by the Agreement or otherwise fails to comply with the Agreement;
- (5) include each term that was agreed upon with the property owner and require the owner to annually certify compliance with the terms of the Agreement to each taxing unit; and
- (6) allow the taxing unit to cancel or modify the Agreement at any time if the property owner fails to comply with the terms of the Agreement.

SECTION V. RECAPTURE

A. In the event that the applicant or its assignee (1) allows its ad valorem taxes owed to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or content; or (2) violates any of the terms and conditions of the Abatement Agreement and fails to cure during any cure period, the Agreement then may be terminated and all taxes previously abated by virtue of the Agreement will be recaptured and paid within thirty (30) days of the termination.

B. Should the County determine that the applicant or its assignee is in default according to the terms and conditions of its Agreement, the County shall notify the applicant in writing at the address stated in the Agreement, and if such is not cured within the cure period set forth in such notice, if any, then the Agreement may be terminated.

SECTION VI. ADMINISTRATION

A. The Chief Appraiser of the Terry County Appraisal District will annually determine an assessment of the real and personal property comprising the reinvestment zone. Each year, the company or individual receiving Abatement shall furnish the appraiser with such information as may be necessary for the Abatement. Once value has been established, the Chief Appraiser will notify the Commissioners Court of the amount of the assessment.

B. The County may execute a contract with any other jurisdiction(s) to inspect the facility to determine if the terms and conditions of the Abatement Agreement are being met. The Abatement Agreement shall stipulate that employees and/or designated representatives of the

County will have access to the reinvestment zone during the term of the Abatement to inspect the facility to determine if the terms and conditions of the Agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such a manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the applicant present and in accordance with its safety standards.

C. Upon completion of construction, a designated representative of the County shall annually evaluate each facility receiving Abatement to insure compliance with the Agreement and shall formally report such evaluations to the Commissioners Court.

SECTION VII. ASSIGNMENT

The Abatement Agreement may be transferred and assigned by the holder to a new owner or lessee of the same facility either upon the approval by resolution of the Commissioners Court, or in accordance with the terms of an existing Tax Abatement 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 delayed or withheld. Notice shall be given to the Commissioners Court at least twenty (20) days in advance of any transfer or assignment.

SECTION VIII. SUNSET PROVISION

These guidelines and criteria are effective upon the date of their adoption and shall supersede and replace any and all prior guidelines and criteria for Tax Abatement in the County. These guidelines and criteria shall remain in force for two (2) years, unless amended by three-quarters (3/4) vote of the Commissioners Court, at which time all reinvestment zones and Tax Abatement Agreements created pursuant to these provisions will be reviewed to determine whether the goals have been achieved. Based on such review, the guidelines and criteria will be modified, renewed or eliminated; provided, however, that no modification or elimination of the Guidelines and Criteria shall affect Tax Abatement Agreements that have been previously approved until the parties thereto shall agree to amend such Agreements.

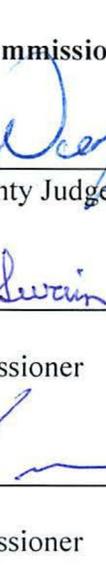
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PASSED, APPROVED, AND ADOPTED on this the 10th day of June, 2019.

Terry County Commissioners Court



J.D. Wagner, County Judge



Mike Swain,
Precinct 1 Commissioner



Kirby Keese,
Precinct 2 Commissioner



Shorty Martinez,
Precinct 3 Commissioner



Ernesto Elizardo,
Precinct 4 Commissioner

Attest:



Kim Carter, County Clerk

