

**TAX ABATEMENT AGREEMENT**

**BETWEEN**

**POLK COUNTY, TEXAS**

**AND**

**UMBRIEL SOLAR, LLC**

**DATED**

**November 10, 2020**

**STATE OF TEXAS**

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**COUNTY OF POLK**

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THIS TAX ABATEMENT AGREEMENT (the "Agreement"), effective as of the last date set forth on the signature page hereto (the "Effective Date"), is made and entered into by and between Polk County, Texas, ("County"), acting through its duly elected officers and Umbriel Solar, LLC, a Delaware limited liability company, ("Umbriel"), holding a fee simple or leasehold interest (or an option for such interests) in the real property described herein (referred to hereinafter as the "Site"). In this Agreement UMBRIEL and County may be referred to individually as a "Party" or collectively as "Parties."

### **RECITALS**

WHEREAS, UMBRIEL wishes to develop approximately a one hundred fifty megawatt (150 MW) alternating current (AC) solar photovoltaic generation facility (hereinafter the "Project," described more fully on Exhibit A hereto) within the jurisdictional limits of County. The Project may be larger or smaller than 150 MW upon full construction and installation;

WHEREAS, the property taxes otherwise imposed by County on UMBRIEL's planned Project (coupled with the aggregate effects of other local property taxes) form a considerable financial impediment such that, absent abatement by County, UMBRIEL might not develop the Project within Polk County;

WHEREAS, the Project is located entirely within the Reinvestment Zone designated by County, as referenced and defined in the County's Guidelines & Criteria (defined below); and

WHEREAS, County wishes to abate the property taxes otherwise imposed (absent abatement) upon UMBRIEL by virtue of its Project and UMBRIEL wishes to develop its Project in Polk County provided that County abates property taxes associated with the Project.

NOW, THEREFORE, for good and valuable consideration, including, without limitation, the covenants and agreements contained herein, the amount and sufficiency of which are expressly acknowledged, the Parties agree to the terms and conditions stated in this Agreement.

### **ARTICLE 1 DEFINITIONS**

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

"Abatement" means the full or partial exemption from Ad Valorem Taxes on property in the Reinvestment Zone.

**“Ad Valorem Taxes”** means those property taxes assessed by Polk County on real and personal property located within Polk County.

**“UMBRIEL”** means UMBRIEL SOLAR, LLC, as set forth in the introductory paragraph of this Agreement.

**“Business Activities”** has the meaning set forth in Article 3.2 of this Agreement.

**“Business Day”** means any day except a Saturday, Sunday, a Federal Reserve Bank holiday or an official State of Texas holiday. A Business Day shall commence at 8:00 ante meridiem (AM) central standard time (CST) and close at 5:00 post meridiem (PM) CST.

**“Calendar Year”** means each year beginning on January 1 and ending on the close of business December 31 thereafter.

**“Certificate”** means a letter provided by UMBRIEL to County within thirty (30) days after the Completion Deadline (as may be extended or deferred) that certifies that UMBRIEL has completed construction of the Project, outlines Improvements included in the Project, and states the overall Nameplate Capacity of the Project. Upon receipt of a Certificate, Polk County may inspect the Site and the Project within the Reinvestment Zone in accordance with the terms of this Agreement in order to verify that the Improvements are as certified in such Certificate.

**“Certified Appraised Value”** means the appraised value, for property tax purposes, of the property on the Site within the Reinvestment Zone, as certified by the Polk County Appraisal District for each taxable year.

**“Commissioners Court”** means the Commissioners Court of Polk County, Texas.

**“Completion Deadline”** has the meaning set forth in Article 6.1(A)(i) of this Agreement.

**“County”** means Polk County, Texas, as set forth in the introductory paragraph of this Agreement.

**“County Judge”** means the County Judge of Polk County, Texas.

**“Effective Date”** has the meaning set forth in the introductory paragraph of this Agreement.

**“Eligible Property”** means property eligible for Abatement under the Guidelines & Criteria, including (but not limited to) new, expanded, or modernized buildings and structures; fixed machinery and equipment; Improvements; related fixed improvements; other tangible items necessary to the Project’s operation and administration; and all other tangible personal property permitted by Chapter 312 of the Texas Tax Code and the Guidelines & Criteria. Tangible personal property located on the real property comprising the Site at any time before the period covered by this Agreement is not eligible for Abatement, nor is any real property comprising the Site. Tangible personal property eligible for Abatement shall not include inventory or supplies.

**“Force Majeure”** has the meaning set forth in Article 8.1 of this Agreement.

**“Governmental Authority”** means any federal, state, territorial or local government body (including the State of Texas and Polk County); any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

**“Guidelines & Criteria”** has the meaning set forth in Article 2.1 of this Agreement. Such Guidelines and Criteria have been previously approved and duly adopted by the Commissioners Court.

**“Improvements”** means Eligible Property meeting the definition for Improvements provided by Chapter 312 of the Texas Tax Code and includes (but is not limited to) any building, structure, or fixture erected on or affixed to the land. A list of the proposed Improvements is set forth on Exhibit D hereto.

**“Local”** means an individual or entity whose principal residence or business address is located within the jurisdictional limits of Polk County, Texas.

**“Nameplate Capacity”** means the maximum installed instantaneous generation capacity of the completed Project, expressed in MW (AC) as measured on the AC side of the inverters.

**“Reinvestment Zone”** means the reinvestment zone, as that term is defined in Chapter 312 of the Texas Tax Code, created by Polk County by the resolution dated November 10, 2020, duly passed by the Commissioners Court and included as Exhibit E hereto.

**“Related Entity”** means any parent, subsidiary, or affiliate of UMBRIEL (or any entity resulting from any merger, acquisition, or other corporate restructure or reorganization of UMBRIEL), or any component thereof, or any tax equity participant in the Project, and specifically includes UMBRIEL SOLAR, LLC, and any affiliates thereof.

**“Site”** means that specific real property located within the Reinvestment Zone on which UMBRIEL intends to make the Improvements for which the Abatement is granted hereunder; the Site is more particularly described on Exhibit B attached hereto; the term “Site” also includes any other land actually leased, or optioned to lease, or owned by UMBRIEL within the Reinvestment Zone as of the Completion Deadline.

**“Term Of Abatement”** has the meaning set forth in Article 6.2 of this Agreement.

**“Term Of Agreement”** means the time period commencing on the Effective Date and continuing until the date this Agreement is terminated or the date the Term Of Abatement ends.

**ARTICLE 2  
AUTHORITY TO ENTER AGREEMENT**

- 2.1 **AUTHORIZATION.** This Agreement is authorized by Chapter 312 of the Texas Tax Code, as amended, and by the "Polk County Guidelines and Criteria for Tax Abatement," previously approved by the Commissioners Court which are attached hereto as Exhibit C).
- 2.2 **FINDINGS.** County, by its approval of this Agreement, hereby finds that the terms of this Agreement are within its Guidelines & Criteria, subject to any exceptions approved by the Commissioners Court, and that the approval of this Agreement will not have any substantial, long-term, adverse effect upon the provision of County's services or its tax base. The Commissioners Court hereby resolves that it is eligible to participate in tax abatement (pursuant to Texas Tax Code §312.002(a)) and that UMBRIEL's planned use of the Site inside the Reinvestment Zone does not constitute a hazard to public safety, health, or morals.

**ARTICLE 3  
THE SITE, PROJECT, AND IMPROVEMENTS**

- 3.1 **THE SITE.** UMBRIEL is fee simple owner or lessee (or has an option for such an interest) in control of real property as legally described in Exhibit B (attached hereto and incorporated herein), which property is referred to herein as the "Site." The Site location qualifies as a Reinvestment Zone for the purposes of the Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312.
- 3.2 **BUSINESS ACTIVITIES.** UMBRIEL desires to install the Project upon the Site for the sale of generated solar energy (the "Business Activities"). UMBRIEL (or its affiliates, agents, successors, or its assigns) shall conduct the Business Activities on the Site for the Term Of Abatement. Notwithstanding, nothing herein shall cause to commit UMBRIEL to installing the Project and the actual construction of the Project at the Site is completely discretionary.
- 3.3 **INVESTMENT.** With the construction of the Project, UMBRIEL will invest an amount estimated to be one hundred thirty-five million and zero one hundredths dollars (\$135,000,000.00) in the Improvements and control (acquisition or lease) of the Site for the Business Activities, albeit the actual amount of the investment may be much larger or smaller depending on the size of the Project ultimately built and/or the actual cost of materials and labor at time of construction. UMBRIEL shall not place (or cause to be placed) the Improvements on the Site before the Effective Date of this Agreement.
- 3.4 **PAYMENTS BY UMBRIEL.** Payments made by UMBRIEL pursuant to this Agreement shall be sent to the Polk County Tax Assessor/Collector and assigned a line item by the Polk County Auditor.

**ARTICLE 4  
REPRESENTATIONS AND WARRANTIES**

- 4.1 REPRESENTATIONS BY UMBRIEL.** UMBRIEL represents and warrants to County, as of the Effective Date, that the following statements are true and correct:
- A. That UMBRIEL has no knowledge that any interest in the Site is presently owned, held, or leased by any member of the Commissioners Court, the County Judge, or any other County officer or employee;
  - B. That UMBRIEL will have a taxable interest with respect to Improvements to be placed on the Property;
  - C. That construction / integration of the proposed Improvements will be performed by UMBRIEL and/or its contractors or subcontractors;
  - D. That UMBRIEL's use of the property in the Reinvestment Zone is limited to that which is consistent with: 1) the County's general purpose of encouraging development or redevelopment of the area during the period of the Abatement; and 2) the terms of this Agreement;
  - E. That all representations made in the Application for Abatement (as applicable) are true and correct to the best of UMBRIEL's knowledge;
  - F. That no litigation is pending against UMBRIEL for any violations under the Occupation Safety and Health Act ("OSHA");
  - G. That a solar generation facility similar in size and technology to that of the Project is expected to create an average of one (1) new permanent job; and
  - H. That the productive life of the Project's facility is expected to be thirty-five (35) or more years and at least as long as the Term Of Agreement.
- 4.2 REPRESENTATIONS BY COUNTY.** County represents and warrants to UMBRIEL, as of the Effective Date, that the following statements are true and correct:
- A. That the Reinvestment Zone and this Agreement have been created in accordance with Chapter 312 of the Texas Tax Code and the Guidelines & Criteria as both exist on the Effective Date;
  - B. That no member of the Commissioners Court, County Judge, or other officer or employee of County owns, possesses, or subleases any interest in the Site or in the Improvements;
  - C. That the Site is wholly within the Reinvestment Zone and is wholly within the legal boundaries of Polk County, Texas; and

- D. That County has made and will continue to make all necessary filings with the Office of the Comptroller of Public Accounts and any other requisite governmental entities concerning the Reinvestment Zone and this Agreement.
- E. Road Repair. UMBRIEL and its contractors and service providers shall have the right to use County roads during the construction of the project. If requested by UMBRIEL the County shall provide a separate letter in a reasonable form, executed by the County Judge, that evidences the permission granted by the County to UMBRIEL to use the County roads.

During construction of the Improvements, UMBRIEL shall use commercially reasonable efforts to minimize disruption to County roads caused by the construction process and to repair any and all damage to the extent directly caused to County roads by UMBRIEL or its agents during the construction period. UMBRIEL shall have no obligation under this Article to repair or replace (in whole or in part) any County road that UMBRIEL actually uses if any party (or parties) other than UMBRIEL collectively causes fifty percent (50.00%) or more of the damage to such road between the Effective Date and the date of the issuance by UMBRIEL of the Certificate. UMBRIEL will give the County prior notice of the county roads to be utilized by UMBRIEL for construction of the Improvements. The County will document the condition of the roads and provide UMBRIEL with a copy of such condition report, and the County will take reasonable steps to document use of the identified roads during the construction of the Improvements. In the event that UMBRIEL disagrees with the County's determination of the condition of the roads to be utilized by the UMBRIEL, UMBRIEL shall, at its sole expense, engage a consultant to determine the condition of such roads. The selection of the consultant shall be subject to the approval of the County, such approval not to be unreasonably withheld, conditioned or delayed. The County shall perform a post- COD road inspection to determine any cost to repair such roads within thirty (30) days following COD, and UMBRIEL will be provided a copy of said report and given an opportunity to challenge any alleged damages.

## **ARTICLE 5 COVENANTS BY UMBRIEL**

- 5.1 **DEVELOPMENT OF THE PROJECT.** UMBRIEL owns, possesses, holds an interest in, or otherwise controls the Site and Improvements that are the subject matter of this Agreement. UMBRIEL agrees to use commercially reasonable efforts to develop the Project, with a goal of investing up to an estimated one hundred thirty-five million and zero one hundredths dollars (\$135,000,000.00) in constructing the Improvements by December 31, 2023. UMBRIEL already has leased, has acquired, or has obtained options for control of the Site for the duration of the Term of this Agreement. Upon development of the Site for the Project, UMBRIEL shall occupy and use the Site only for its Business Activities (and any other purpose that is reasonably related thereto).

- A. **LOCAL LABOR.** UMBRIEL covenants and agrees to make commercially reasonable efforts to hire Local contractors and subcontractors, if necessarily qualified and available, to fulfill its requirements under Article 5.2 and in maintaining the Site and the Improvements thereafter. Notwithstanding, nothing herein shall cause to bind UMBRIEL to hire local contractors.
  - B. **LOCAL SUPPLIES AND EQUIPMENT.** UMBRIEL covenants and agrees to make good faith efforts to purchase Local supplies and equipment in constructing and maintaining the Site and the Improvements thereafter. Notwithstanding, nothing herein shall bind UMBRIEL to procure equipment and supplies from local vendors and UMBRIEL may seek competitive bids from outside the County. UMBRIEL shall have no obligation to consider or respond to any proposal that, in UMBRIEL's sole but reasonable discretion, does not meet UMBRIEL's collective economic, commercial, practical, and other reasonably similar needs. This Agreement shall not be construed as creating any right of any party (other than a Party to this Agreement) to be a beneficiary of or under this Agreement, nor does this Agreement create any such third-party beneficiary status; no party (other than a Party to this Agreement) shall have standing to sue under the terms of or in reliance upon this Agreement (including its terms and its existence).
  - C. **COMPLIANCE WITH LABOR LAW.** UMBRIEL covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees.
  - D. **COMPLIANCE WITH CONSTRUCTION LAW.** UMBRIEL covenants and agrees that UMBRIEL shall construct (or shall require its contractors and Subcontractors to construct) all improvements in compliance with all applicable federal, state, and local laws including (but not limited to) Texas Commission on Environmental Quality regulations, EPA regulations, County regulations, building codes and ordinances and flood, subdivision, building, electrical, plumbing, fire, and life safety codes and regulations, current and as amended.
- 5.2 **OPERATION OF THE FACILITY.** Except as explicitly provided herein, UMBRIEL covenants and agrees that it shall use the Site only to conduct its Business Activities (as defined in Article 3.2) and in accordance with all applicable federal, state, and local laws. Without prior or additional consent by County, any Related Entity may occupy and use the Site for Business Activities. To be eligible for Abatement, such Related Entity must agree in writing fully to comply with all applicable terms of this Agreement. In the event any Related Entity placed Improvements on the Site outside the scope of this Agreement, said Improvements will be subject to normal taxation by the County. UMBRIEL covenants and agrees not to change the primary use of the Site absent the prior written approval of County.
- A. **MAINTENANCE.** UMBRIEL covenants and agrees that it shall maintain the Site and any Improvements in good repair and condition during the Term (normal wear and tear and damage by fire or other casualty not caused as a result of UMBRIEL's negligence, intentional act, or misconduct excepted). Compliance with the



maintenance obligations imposed herein shall be presumed if UMBRIEL follows its normal and customary maintenance procedures and schedules.

- B. IMPROPER DEALINGS WITH COUNTY PERSONNEL.** UMBRIEL covenants and agrees that it shall not knowingly sell, lease, or convey any ownership, possessory, beneficial, or other interest in the Project, the Site, or the Improvements to any member of the Commissioners Court, the County Judge, or any other County officer or employee so long as this Agreement remains in effect.
  - C. SALE, TRANSFER, OR ASSIGNMENT.** UMBRIEL covenants and agrees to notify County at least twenty (20) days prior to any sale, transfer, or sublease of the Site or of the Improvements during the Term as may be required by Article 9.
  - D. RELOCATING OR CEASING BUSINESS ACTIVITIES.** UMBRIEL covenants and agrees to notify County at least twenty (20) days prior to relocating or ceasing its Business Activities. In the event UMBRIEL elects to relocate outside the County or cease operations, UMBRIEL will have to elect to pay the County damages as set out in Article 6.1(B).
- 5.3 CREATION OF NEW JOBS.** UMBRIEL covenants and agrees if it constructs the Project at the Site to create and maintain throughout the Term of this Agreement no fewer than one (1) new permanent jobs to work at and support the Project's facility, which job (i) shall be a new employment position, (ii) shall enjoy no fewer than one thousand eight hundred twenty (1,820) hours of work annually, and (iii) shall be paid no less than approximately forty-one thousand eight hundred twenty-three dollars (\$41,823) per year. Notwithstanding the foregoing, UMBRIEL shall not be deemed to be in violation of this Agreement in the event a job initially created pursuant to this Section no longer continues to be held by persons residing within the County's jurisdictional limits.
- 5.4 ANNUAL REPORTS.** UMBRIEL covenants and agrees that during the Term Of Abatement UMBRIEL shall provide to the County Judge within thirty (30) days preceding each April 15 an annual certification from an officer of UMBRIEL attesting to the compliance of the terms of this Agreement and providing such other information as outlined in Chapter 22, V.A.T.S. Tax Code, as amended, as may be necessary for tax abatement and appraisal purposes. In addition, the first Annual Certification delivered after completion shall include UMBRIEL's certification of the final rated capacity of all equipment actually installed along with a certification by an authorized representative of UMBRIEL reflecting the installed cost of all eligible Improvements. UMBRIEL shall amend the UMBRIEL's Cost Certification after the first Annual Certificate is filed if it discovers any material inaccuracy in the cost certification.
- 5.5 PERMISSION TO MONITOR.** Upon forty-eight (48) hours prior notice to UMBRIEL by County (which such notice must actually be received by UMBRIEL to be deemed effective), UMBRIEL covenants and agrees that it shall allow County's designated representatives access to the Site provided they comply with all UMBRIEL safety requirements and agree to be escorted by UMBRIEL personnel at all times while on site

during UMBRIEL's normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. This inspection is independent of County's police powers to inspect for purposes of assuring compliance with applicable County codes and ordinances. In addition, upon such notice, County shall have the right to access information needed to verify that UMBRIEL is and has been conducting Business Activities. Any information that is not required by law to be made public shall be kept strictly confidential by County. UMBRIEL representatives may accompany County representatives during any inspection, and all inspections shall be conducted in such a manner as (1) not to interfere unreasonably with the operation of the Project and (2) to comply with UMBRIEL's reasonable security requirements.

## **ARTICLE 6 ABATEMENT AND COVENANTS BY COUNTY**

### **6.1 CONDITIONS TO ABATEMENT.**

#### **A. CONSTRUCTION.**

- i. **COMPLETION.** UMBRIEL agrees to use commercially reasonable efforts to construct and to install the Project and provide the Certificate to County no later than December 31, 2023 (the "Completion Deadline"). The Project may be constructed in one or more phases, and each phase may have its own LLC or other form of special purpose project entity. Subject to the requirements under Article 5.2(C), UMBRIEL may assign rights and responsibilities set forth herein to each and any such project entity in relation to the number of megawatts to be installed by such project entity.
- ii. **DEFERRAL.** UMBRIEL shall have the right to extend this Agreement by automatically deferring the Completion Deadline for up to two (2) years in the event that construction and installation of the Project is not complete before the Completion Deadline and such lack of completion is not the result of a lack of diligence on the part of UMBRIEL.

- B. IMPROVEMENTS TO REMAIN IN PLACE.** UMBRIEL agrees that the Improvements, once constructed and installed, shall remain in place until at least twenty-five (25) years after the date the Certificate for such Improvements is provided by UMBRIEL, provided that nothing herein prevents UMBRIEL from replacing any equipment or fixture comprising the Improvements prior to that date, so long as such replacement does not result in a reduction of the Certified Appraised Value of the Improvements to less than eighty percent (80%) of such original Certified Appraised Value. **IN THE EVENT OF A BREACH OF THIS ARTICLE 6.1(B) (UNLESS THE CIRCUMSTANCES GIVING RISE TO SUCH BREACH ARE THE RESULT OF FORCE MAJEURE, AS DEFINED IN SECTION 8.1 OF ARTICLE 8), COUNTY'S SOLE REMEDY (AND UMBRIEL'S SOLE LIABILITY) SHALL BE FOR UMBRIEL (IN ITS SOLE AND ABSOLUTE DISCRETION AS TO ELECTION BETWEEN THE FOLLOWING TWO**

OPTIONS) EITHER (1) TO PAY TO COUNTY THE FULL AMOUNT OF ACTUAL TAXES ALREADY ABATED UNDER THIS AGREEMENT ON THE REMOVED IMPROVEMENTS (I.E. ON TAXES THAT OTHERWISE WOULD HAVE COME DUE BUT FOR THIS AGREEMENT) OR (2) TO PAY TO COUNTY THE FULL AMOUNT OF ACTUAL TAXES THAT WOULD BE ABATED UNDER THIS AGREEMENT ON THE REMOVED IMPROVEMENTS BETWEEN THE DATE OF ELECTION AND THE END OF THE TERM OF ABATEMENT (I.E. ON TAXES THAT WOULD BECOME DUE BUT FOR THIS AGREEMENT). The terms of this section 6.1 shall not be construed to allow tax abatement or partial tax abatement to UMBRIEL in the event it fails to originally construct the Improvements described in Exhibit D appended hereto, but shall be applicable only after such Improvements are completed.

6.2 **ABATEMENT.** Beginning on the first day of January 2024 (as may be extended pursuant to Article 6.1(A)(ii) and ending upon the conclusion of ten (10) full Calendar Years thereafter (the "Term Of Abatement"), County agrees to abate and shall abate one hundred percent (100%) of all County Ad Valorem Taxes on the Certified Appraised Value of all Improvements in the Certificate and of any and all otherwise taxable personal property owned by UMBRIEL (and actually placed in the Reinvestment Zone) (the "Abatement"). As of the Effective Date, the Parties specifically represent and agree that there are no Improvements on the Site. The Parties anticipate that UMBRIEL will make the Investment set forth in Section 3.3.

6.3 **EXCEPTIONS TO ABATEMENT.** Any real property comprising the Site is not eligible for Abatement and shall be taxable by County. Any Improvements and any other personal property installed, put in place, or otherwise set upon the Site prior to the Effective Date of this Agreement are not eligible for Abatement. The following other types of property shall be fully taxable and ineligible for Abatement: any animals, tools, supplies, inventories, furnishings, and other forms of movable personal property; vehicles; vessels; aircraft; housing and residential property; hotels / motels; fauna; flora; retail facilities (except when housed in an historic structure); any improvements including those involved in the production, storage, or distribution of natural gas or fluids that are not integral to the operation of the facility; and property owned or used by the State of Texas or its political subdivisions or by any organization owned, operated, or directed by a political subdivision of the State of Texas. Equipment related to the installation and maintenance of solar energy production by UMBRIEL and related Improvements located in the Reinvestment Zone shall remain eligible for Abatement provided the relevant Improvement is awaiting installation to become a permanent part of a fixture located or to be constructed in the Reinvestment Zone that is or will be eligible for Abatement, including any replacement parts. The base year value of such excepted properties under this Article 6.3 (as determined each year) shall be taxable. The Abatement does not apply to the development of any and all hydrocarbon, oil, gas and associated products that may be produced from said Site which are outside the scope of this Agreement and not subject to any Abatement.

6.4 **POST-ABATEMENT.** Upon the expiration of the tenth (10th) Calendar Year of the Term Of Abatement as set forth in Article 6.2, County and UMBRIEL agree that one hundred

percent (100%) of the Certified Appraised Value of property subject to this Agreement that exists in the Reinvestment Zone shall be fully taxable thereafter as otherwise provided by the laws of the State of Texas.

- 6.5 **CHANGE IN LAW.** The Parties specifically acknowledge that a portion of the Eligible Property may be eligible for complete or partial exemption from Ad Valorem Taxes as a result of existing law or future legislation. This Agreement shall not be construed as evidence that such exemptions do not apply to the Improvements so long as set Improvements are directly related to the maintenance and improvements of UMBRIEL's solar facility. To the extent that existing or future law exempts any of the Eligible Property, this Agreement automatically shall be modified (prospectively for the remaining portion of the Term Of Abatement) to incorporate such complete or partial exemption, which calculation shall be made prior to the calculation of Abatement.
- 6.6 **RIGHT TO CHALLENGE APPRAISALS.** Notwithstanding any of the foregoing, UMBRIEL at all times shall have the right to protest appraisals of the Site, Improvements, and Eligible Property, including any portion thereof. However, Umbriel will be bound by representations of its installed cost of all improvements necessary to qualify for and obtain the granted tax abatement.
- 6.7 **PAYMENT IN LIEU OF TAXES ("PILOT").** As consideration for the Abatement and within thirty (30) days of January 1 for each Calendar Year of the Term of Abatement, UMBRIEL agrees to make an annual payment to the County in an amount equivalent to Seven hundred twenty and zero one hundredths dollars (\$720.00) per megawatt of the completed Project's aggregate Nameplate Capacity (the "PILOT Payments"). The PILOT Payments, which are in lieu of property taxes, are wholly contingent upon UMBRIEL constructing and installing the Project at the Site

## **ARTICLE 7 DEFAULT / TERMINATION / RECAPTURE**

- 7.1 **DEFAULT BY UMBRIEL.** The occurrence of any of the following events during the Term Of Agreement shall be deemed a default, which automatically shall trigger a right to terminate this Agreement pursuant to Article 7.2 (subject to the limitations set forth therein):
- (1) **FAILURE TO COMPLY WITH AGREEMENT.** UMBRIEL fails to adhere to any of the terms of this Agreement for a period of ninety (90) consecutive calendar days;
  - (2) **FAILURE TO PAY AD VALOREM TAXES.** UMBRIEL allows its Ad Valorem Taxes due on the Site, Improvements, or any other personal property installed, put in place, or otherwise set upon the Site (including inventory and supplies) to become delinquent (after taking into account any reallocation allowed under this Agreement and any extensions of deadlines to pay and any payment plans, which County shall extend to UMBRIEL at least to the same extent as County normally

offers such payment plans to other taxpayers in similar situations) for a period of thirty (30) days and fails timely and properly to follow any legal procedures or remedies for protest of such taxes; or

- (3) **CESSATION OF OPERATIONS.** UMBRIEL completes construction of the Project and commences generation of electricity but, for any reason other than an event of Force Majeure, discontinues generation of electricity for a period greater than one (1) year during the Term of Abatement.

The Parties shall not deem any default to have occurred in situations involving minor or immaterial changes to the description of the Site, minor or immaterial changes to the description of the Improvements and/or Eligible Property, or any changes in ownership or in management of UMBRIEL or of the Project (so long as UMBRIEL or any Related Entity provides notice under Article 5.2(C) of such changes, to the extent such notice otherwise is required under this Agreement).

- 7.2 **TERMINATION.** In the event of any default under Article 7.1, County either (1) may modify this Agreement with the mutual consent of UMBRIEL or (2) may terminate this Agreement after providing notice of default (as set forth hereafter) and providing an opportunity to cure. In addition, County may assess its reasonable cost and legal expenses against UMBRIEL for any such modification or termination under this Article 7.2.

- A. **NOTICE OF DEFAULT.** County shall notify UMBRIEL of any default in writing in the manner prescribed herein. The notice shall specify the basis for the declaration of default and prominently shall state the following language at the top of such notice:

**NOTICE OF DEFAULT UNDER TAX ABATEMENT AGREEMENT**

**YOU ARE HEREBY NOTIFIED OF THE FOLLOWING DEFAULT UNDER YOUR TAX ABATEMENT AGREEMENT WITH POLK COUNTY. FAILURE TO CURE THIS DEFAULT WITHIN NINETY (90) DAYS OF YOUR RECEIPT OF THIS NOTICE OR OTHERWISE CURE THE DEFAULT AS PROVIDED BY THE AGREEMENT SHALL RESULT IN TERMINATION OF THE TAX ABATEMENT AGREEMENT AND, IF THE DEFAULT INVOLVED FAILURE TO MAKE IMPROVEMENTS UNDER THE AGREEMENT, RECAPTURE OF TAXES ABATED PURSUANT TO THAT AGREEMENT.**

- B. **CURE PERIOD.** UMBRIEL shall have ninety (90) days from the date of UMBRIEL's actual receipt of such notice to cure any default (unless fulfillment of any obligations requires activity over a period of time, in which case performance shall be commenced within ninety (90) days after the actual receipt of notice and such performance shall be diligently continued until the default is cured). The decision whether to cure any such default solely and absolutely belongs to UMBRIEL, and no party may compel UMBRIEL to cure.

- C. **CONTESTING TERMINATION.** If UMBRIEL believes such termination is improper, UMBRIEL may file suit in any court of competent jurisdiction in the State of Texas and challenge such termination. During the pendency of such suit (including any appeals thereto), Abatement shall remain in effect as though no event of default had occurred.
- D. **LIMITATION OF REMEDIES.** Modification or termination of the Agreement (plus recapture of property taxes subject to the limits of Article 7.3 and Article 7.4), as appropriate, along with any reasonable incurred costs and fees, shall be County's sole remedies in the event UMBRIEL defaults. County shall not be entitled to any exemplary, punitive, compensatory, or other damages or remedies beyond those explicitly set forth in this Agreement, other than its reasonable attorneys' fees should it prevail in a court challenge brought by UMBRIEL contesting termination.

7.3 **RECAPTURE.** County shall be entitled to recapture property tax revenue lost as a result of this Agreement so long as each of the following conditions have occurred: first, UMBRIEL has defaulted pursuant to Article 7.1(1) or Article 7.1(2); second, County properly has provided notice of default under Article 7.2(A); third, UMBRIEL has failed to cure such default under Article 7.2(B); and fourth, County terminates this Agreement following such proper notice and such failure to cure. The amount of property tax revenue that may be recaptured is set forth in Article 7.3(A) of this Agreement.

- A. **AMOUNT OF RECAPTURE.** If entitled under Article 7.3 to recapture property tax revenue lost as a result of this Agreement, County shall have the right to recapture one hundred percent (100%) of taxes already actually abated under this Agreement (i.e. recapture for prior tax years only—no anticipatory / prospective recapture of future taxes).
- B. **RECAPTURE PAYMENT SCHEDULE.** If termination occurs during the Term Of Abatement, then UMBRIEL shall have sixty (60) calendar days from its actual receipt of demand from County for recapture under Article 7.3 to pay all recaptured property tax revenues.
- C. **CREDITS TO UMBRIEL.** Any recapture under this Article 7.3 shall be subject to any and all lawful offsets, settlements, deductions, and credits to which UMBRIEL may be entitled.

7.4 **BREACH BY COUNTY.** In the event that County fails to abate pursuant to Article 6 of this Agreement, so long as UMBRIEL is not in default under Article 7.1 (and so long as County has not terminated pursuant to Article 7.2) at the time UMBRIEL gives written notice to County of County's failure to abate, County shall be deemed to be in breach of its obligations under this Agreement. If County breaches this Agreement, it will have a cure period of ninety (90) days in which to remedy its breach, during which time UMBRIEL only will be responsible for paying that portion of its property taxes to County as though County had not breached. If after ninety (90) days of receiving written notice

County has failed to remedy its breach, then UMBRIEL shall be entitled to bring suit in any court of competent jurisdiction in the State of Texas for specific enforcement of this Agreement. The prevailing party shall be entitled to an award of its reasonable attorneys' fees as determined by the Court.

## **ARTICLE 8 FORCE MAJEURE**

- 8.1 DEFINITION OF FORCE MAJEURE.** "Force Majeure" means an event or circumstance that prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of (or the result of the negligence of) the claiming Party, and which (by the exercise of due diligence) the claiming Party is unable to overcome or avoid or cause to be avoided. So long as the requirements of the preceding sentence are met, a "Force Majeure" event may include, but shall not be limited to, flood, monsoon, drought, environmental catastrophes, government regulation for environmental assets and species protection, military ordinances or archaeological discoveries at the Site, change in applicable law or interpretation or application thereof, failure of any transmission line between the Site and the substation nearest the Site (so long as such transmission continues for a period of thirty (30) calendar days or more), failure or disruption of the substation nearest the Site (so long as such substation is inoperable, in whole or in part, for a period of thirty (30) calendar days or more), failure or delay by any Governmental Authority in issuing any required permit, earthquake, storm, fire, lightning, volcanic ash, mudslides, tsunamis, typhoons, epidemic, pandemic, high winds, war, worldwide economic collapse, economic collapse of the United States of America, economic collapse of the State of Texas, terrorism, riot, strike, or other labor dispute. Notwithstanding the foregoing, Force Majeure shall not be based on (i) the loss of UMBRIEL's markets; (ii) UMBRIEL's inability economically to use or sell the electricity generated by the Project; (iii) the loss or failure of UMBRIEL's Improvements, including materials or equipment, unless such loss or failure is caused by a Force Majeure event; (iv) the delay in or inability of UMBRIEL to obtain financing or economic hardship of any kind; or (v) strike or other labor dispute specific to UMBRIEL.
- 8.2 EFFECT OF FORCE MAJEURE.** County shall not declare a default, and no default shall be deemed to have occurred, when the circumstances giving rise to such declaration are the result of Force Majeure; in such event, County shall not be allowed to exercise its rights under Article 7.2. The burden of proof for whether an event of Force Majeure exists shall rest upon the Party claiming its existence. To obtain relief based upon this Article 8.2, UMBRIEL must send written notice of the existence of an event of Force Majeure to the Commissioners Court.

**ARTICLE 9  
ASSIGNMENT**

- 9.1 **ASSIGNMENT OF ASSETS.** Subject to the covenants in 5.2.C, UMBRIEL may assign this Agreement, in whole or in part, to one or more assignees, with the consent of County, upon twenty (20) days written notice prior to such assignment. The County will not withhold consent, except as provided herein. Such assignment shall only be valid under this Agreement if it complies with the Guidelines and Criteria, and the assignee shall be bound thereto. Subsequent to such assignment, UMBRIEL shall provide a copy of the assignment agreement (or a memorandum concerning same) to County. An assignment or transfer of rights or obligations by UMBRIEL pursuant to this Article 9 shall relieve UMBRIEL from any liability and financial responsibility for the performance thereof arising after any such transfer or assignment, provided such transferee enters into an assignment and assumption agreement pursuant to which such transferee assumes all of UMBRIEL's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.
- 9.2 **COLLATERAL ASSIGNMENT.** UMBRIEL may, without the consent of County, assign this Agreement to a financing party for collateral security purposes in connection with any financing or refinancing of the Improvements. In connection therewith, County agrees to execute a written consent to such collateral assignment in a form acceptable to County should the financing party reasonably request such an assignment.
- 9.3 **County May Withhold Consent.** The County may withhold its consent to a proposed assignment, and such action by the County will not be considered to be unreasonable if: (i) the proposed assignee cannot demonstrate that it reasonably can expect to have, during the term of this Agreement, annual revenues sufficient to comply with the Agreement and pay the ad valorem tax assessments from Polk County as they are made, or the proposed assignee cannot otherwise demonstrate its financial ability to abide by all terms and conditions set forth herein, (ii) the proposed assignee has a record of violations or defaults with respect to its operations of solar projects such that the assignee does not have the capability and reliability to perform the requirements of the Agreement. If the County reasonably requests additional information, then the County, UMBRIEL and the prospective assignee agree to negotiate in good faith regarding what information will, and will not, be made available to the County and any conditions to the disclosure of such information. The County shall advise UMBRIEL in writing of whether it consents to a proposed assignment not later than thirty (30) days from the date the County is provided with all information required by this Section 9.3. If the County decides to withhold its consent, it shall provide the reasons it is doing so in the written decision.
- 9.4 UMBRIEL or assignee, shall reimburse the County of all reasonable expenses actually incurred by the County in connection with the proposed assignment, including, without limitation, its reasonable and necessary attorney's fees in connection with the assignment as well as the expenses referred to in Section 9.3 above in an amount not to exceed \$5,000.00;



**ARTICLE 10  
MISCELLANEOUS**

- 10.1 **NO COUNTY BOND FINANCING.** This Agreement is entered into subject to the rights of the holders of any outstanding County bonds related to this project. No bonds for which County is liable have been used to finance this project.
- 10.2 **COMPLIANCE WITH TAX CODE.** In the event that (A) the term of the Abatement with respect to any property is longer than allowed by law or (B) 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 overbroad, and for the portion of the Term Of Abatement not deemed excessive. Any provision required by the Texas Tax Code Chapter 312 to be contained herein that does not appear herein is incorporated herein by reference.
- 10.3 **VIOLATIONS OF GOVERNMENT CODE, CHAPTER 2264.** UMBRIEL understands and agrees that if UMBRIEL is a “business” and if County’s contribution under this Agreement is a “public subsidy” as that term is defined in Texas Government Code Chapter 2264, then UMBRIEL is required to refund money that UMBRIEL has received from County through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six (6) months of final conviction. Interest shall accrue at the rate of zero and one-half percent (0.5%) per month until the time of such repayment from the date of final conviction.
- 10.4 **UMBRIEL AS NECESSARY PARTY TO LITIGATION.** UMBRIEL, as a Party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or Commissioners Court actions authorizing same, and UMBRIEL shall be entitled to intervene in said litigation.
- 10.5 **ESTOPPEL CERTIFICATES.** Any Party hereto may request an estoppel certificate related to the Project (hereinafter referred to as an “Estoppel Certificate”) from the other Party hereto so long as the Estoppel Certificate is requested in connection with a bona fide business purpose. The Estoppel Certificate, which if requested shall be addressed to a subsequent purchaser or assignee of UMBRIEL or other party designated by UMBRIEL, shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default, if such is the case, the remaining Term Of Agreement, the level Abatement in effect, and such other matters reasonably requested by the party or parties to receive the Estoppel Certificate.
- 10.6 **NOTICES.** Any notices, requests, statements, payments, or demands (“Notices”) shall be made as specified hereafter. Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service, or

facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day.

A Party may designate another address for all purposes under this Agreement by giving the other Party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

**TO UMBRIEL:**

UMBRIEL SOLAR, LLC  
330 Congress Street, 6<sup>th</sup> Floor  
Boston, MA 02210

**TO COUNTY:**

POLK COUNTY JUDGE  
101 W. Church, Ste 300  
Polk, Texas 77351

- 10.8 **GOVERNING LAW.** This Agreement shall be construed under the laws of the State of Texas and is performable in Polk County, Texas, the location of the Reinvestment Zone, without regard to principles of conflicts of law. Nothing in this Agreement shall be construed to alter or affect the obligations of UMBRIEL to comply with any order, rule, statute or regulation of County or the State of Texas. Venue for any disputes regarding this agreement shall be in the District Court of Polk County, or the United States District Court having jurisdiction over Polk County, Texas.
- 10.9 **MONETARY UNITS.** All monetary units set forth in this Agreement shall be in the dollar of the United States of America (USD).
- 10.10 **SEVERABILITY.** In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, 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 section, subsection, paragraph, subparagraph, sentence, phrase or word. In such event there shall be substituted for such deleted provision(s) a provision as similar as possible in terms and in effect to such deleted provision that is valid, legal, and enforceable.
- 10.11 **INCORPORATION OF EXHIBITS.** Attached to this Agreement are the following exhibits (including all continuation pages thereto), which hereby expressly and wholly are incorporated by reference into this Agreement: Exhibit A – Project Description, Exhibit B – Site Description, Exhibit C – Guidelines & Criteria, Exhibit D – Improvements, Exhibit E – Designation of Reinvestment Zone, Exhibit F – Estimated Amounts of Abatement.
- 10.12 **ENTIRE AGREEMENT.** This Agreement, together with any appendices, exhibits, schedules, and any written supplements hereto constitutes the entire agreement between the Parties relating to the subject matter hereof.
- 10.13 **FUTURE PROJECTS.** The Parties anticipate that UMBRIEL (or a Related Entity to UMBRIEL, whether in existence as of the Effective Date or whether an entity or party created after the Effective Date) may develop additional solar projects (similar to the

Project) within the limits of Polk County over the next several years. For a period of three (3) years immediately following the Effective Date, and subject to all applicable and future law, as may be modified or amended, from time to time, the Parties agree that they shall negotiate in good faith tax abatements for any subsequent projects using this Agreement as a template.

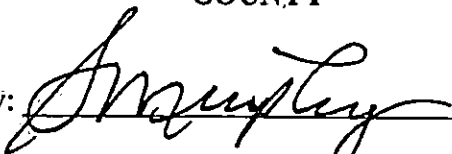
- 10.14 **NO CONSTRUCTION AGAINST DRAFTER.** This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- 10.15 **AMENDMENT; MODIFICATION.** Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. UMBRIEL acknowledges that Commissioners Court approval is required for any such amendment or modification (except as otherwise noted in this Agreement).
- 10.16 **Expenses of Negotiation and Compliance.** UMBRIEL agrees to pay the County's reasonable expenses incurred as a result of the negotiation, including all costs of publication or other required procedures under applicable statutes, of this Agreement including all reasonable and necessary attorneys' fees incurred during the negotiation and preparation of this Agreement. Payment is to be made within thirty (30) days of receipt by Company of invoice from Polk County, with supporting documentation sufficient to enable UMBRIEL to verify such expenses. Notwithstanding anything in this paragraph, the maximum reimbursement to be paid by UMBRIEL is \$10,000.

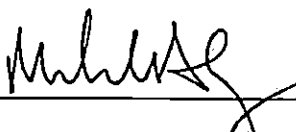
*[Signature page follows]*

IN WITNESS THEREOF, the Parties hereto made and executed this Agreement, signed by their duly authorized officers or individuals, as of the dates listed below.

**POLK COUNTY, TEXAS**  
**"COUNTY"**

**UMBRIEL SOLAR, LLC**  
**"UMBRIEL"**

By: 

By: 

Name: Honorable Sydney Murphy

Name: Michael U. Alvarez


Title: Polk County Judge

Title: Chief Operating Officer

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

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

Attest:



Schelana Hock  
POLK COUNTY CLERK

**EXHIBIT A  
PROJECT DESCRIPTION**

UMBRIEL SOLAR, LLC, anticipates constructing a solar photovoltaic (PV) electric generating facility having an operating capacity of approximately 150 MW AC. The exact capacity and the specific technology components will be determined during the development and design process. It is anticipated that construction will begin in Q1 of 2022 and be completed by December of 2023.

A 150 MW solar PV generating facility may include a qualified investment consisting of the following improvements:

- 1) Solar modules/panels
- 2) Steel/aluminum/other metal mounting system with tracking capabilities
- 3) Underground conduit, communication cables, and electrical collection system wiring
- 4) Multiple combiner boxes
- 5) One or multiple project substation(s) including breakers, a transformer, and meters
- 6) Collection substation will be connected to utility interconnection by an above ground transmission line
- 7) Inverter boxes on concrete or gravel pads
- 8) Operations and maintenance facility
- 9) Fencing for safety and security
- 10) Telephone system
- 11) New or improved access and service roads
- 12) Meteorological equipment to measure solar irradiation and weather conditions

**EXHIBIT B**  
**SITE DESCRIPTION**

All that Real Property situated in Polk County, State of Texas, being generally described as follows:

**Tract 1:** 4,398.1 acre, more or less, tract of the Maria Lindsey Survey, Abstract No. 397 in Polk County, Texas being more particularly described as Tract 236 in that certain Deed dated November 3, 2006 from International Paper Company to RMS Timberlands I LP recorded in Vol. 1549, Pg. 1 of the Official Public Records of Polk County Texas. Also identified as part of Property ID 23879 by Polk County CAD.

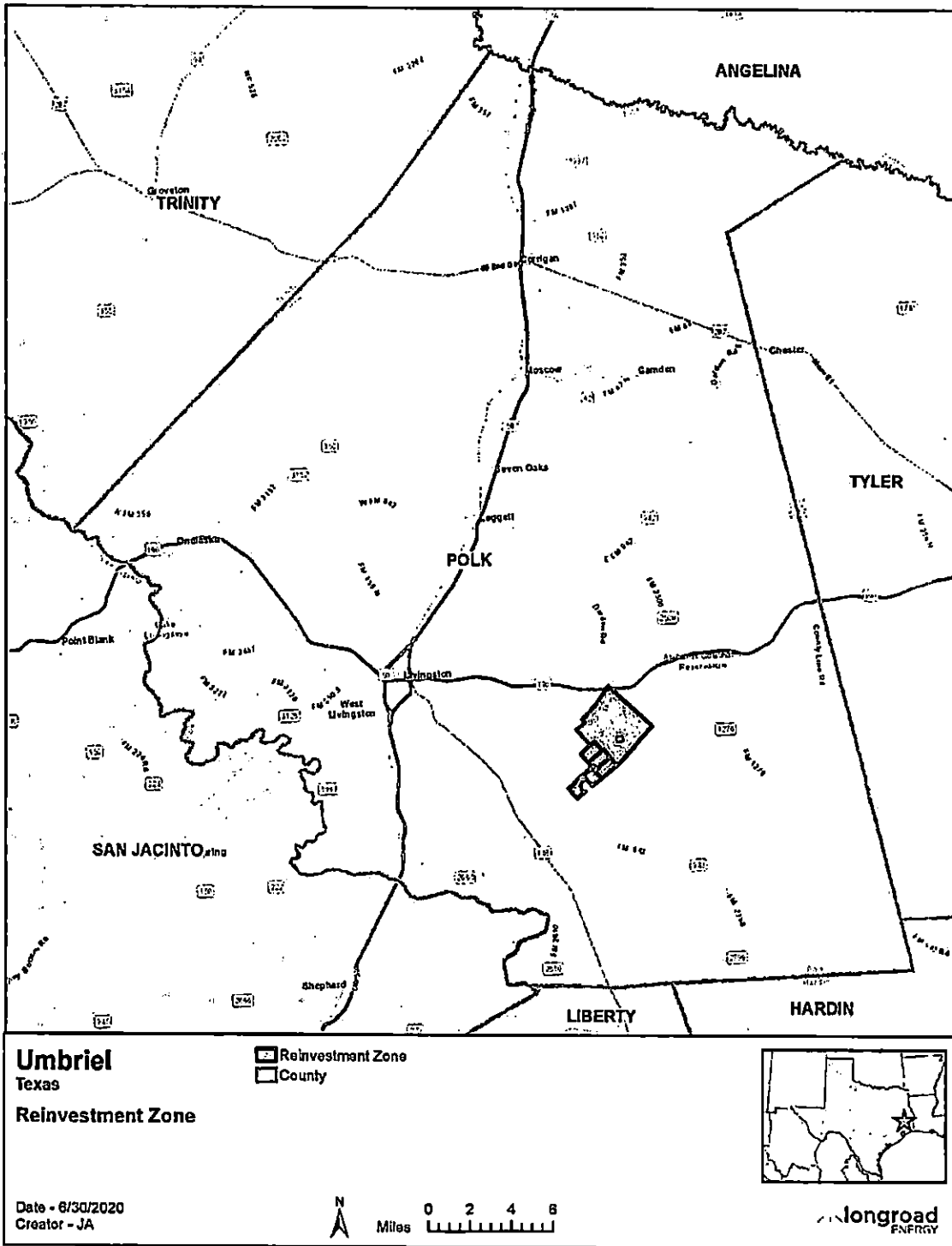
**Tract 2:** 320.0 acres, more or less, being all of the RB Hannay Survey, Abstract No. 279, Polk County, Texas being more particularly described in that certain Deed dated January 19, 1963 from Gertrude B. Murphy to T.E. Duke recorded in Vol. 197, Pg. 232 of the Deed Records of Polk County Texas. Also identified as part of Property ID 21250 by Polk County CAD.

**Tract 3:** 324.849 acre, more or less, tract out of the M. Moore Survey, Abstract 424 in Polk County, Texas being more particularly described as Tract 257 in that certain Deed dated November 3, 2006 from International Paper Company to RMS Timberlands I LP recorded in Vol. 1549, Pg. 1 of the Official Public Records of Polk County Texas. Also identified as part of Property ID 70151 by Polk County CAD.

**Tract 4:** 45.0 acres more or less, out of the N. Magruder Survey, Abstract 415 in Polk County, Texas being a strip of land 300' wide to be surveyed along the southernmost boundary line of the N. Magruder Survey, Abstract A 415 being a part of a 1,292.1 acre tract being more particularly described as Tract 197, 195 and 246 in that certain Deed dated November 3, 2006 from International Paper Company to RMS Timberlands I LP recorded in Vol. 1549, Pg. 1 of the Official Public Records of Polk County Texas, also identified as part of Property ID 19724 by Polk County CAD.

**Tract 5:** 531.4 acre tract out of the Napoleon Magruder Survey, Abstract 415, Polk County, Texas, being the same property described as Tract A21 in that certain Deed dated December 14, 2012 from Hannah Davis Cutshall et al to Rayonier TRS Forest Operations, LLC, a Delaware limited liability company and recorded Vol 1874, Page 330 of the Official Public Records of Polk County, Texas. Also identified as part of Property ID 22745 by Polk County CAD.

**Tract 6:** 320.0 acres, more or less, being all of the south one-half of the Murty Moore Survey, A-424, Polk County, Texas, containing 320 acres of land, more or less, being the same property described as Tract B4 in that certain Deed dated December 14, 2012 from Hannah Davis Cutshall et al to Rayonier TRS Forest Operations, LLC, a Delaware limited liability company and recorded Vol. 1874, Page 577 of the Official Public Records of Polk County, Texas. Also identified as part of Property ID 70152 by Polk County CAD.

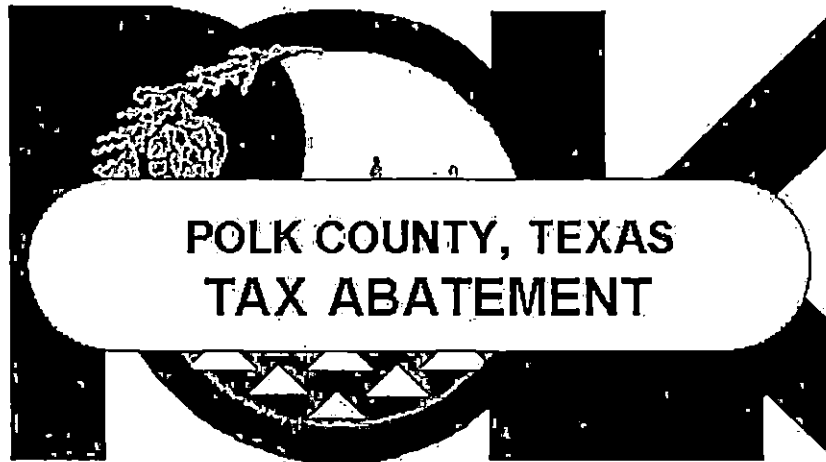


**Note: The above maps are an estimate of the location of Improvements on the Site. The location of the Improvements and the Site may change within the Reinvestment Zone due to construction constraints or other factors such as set asides for mineral exploration.**

**EXHIBIT C  
GUIDELINES & CRITERIA**

*[POSTED ON SUBSEQUENT PAGES]*





**AS ADOPTED BY THE COMMISSIONERS COURT  
OF POLK COUNTY, TEXAS  
December 10, 2019**

**GUIDELINES & CRITERIA**

**Effective December 11, 2019 through December 10, 2021**



# ORDER

## OF THE POLK COUNTY COMMISSIONERS COURT

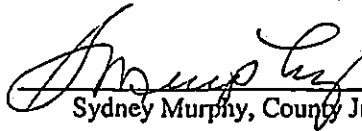
Approving Polk County's Tax Abatement Criteria & Guidelines

WHEREAS, The Polk County Commissioners Court met in a regularly called session on December 10, 2019 and where among other business found that the "Guidelines and Criteria for Granting Tax Abatement and Governing Tax Abatement Agreements, Within the County of Polk, State of Texas, " have been reviewed; and

WHEREAS, This Court wishes to renew the Criteria and Guidelines, as revised, for the purpose of making tax abatement incentives available within the County;

Now, Therefore, be it ordered by the Commissioners Court of Polk County, Texas, that the "Guidelines and Criteria for Granting Tax Abatement and Governing Tax Abatement Agreements Within the County of Polk, State of Texas, " are hereby approved and renewed for a period of two years commencing December 11, 2019

Ordered and adopted on this, the 10<sup>th</sup> day of December, 2019.

  
Sydney Murphy, County Judge

IN WITNESS WHEREOF, I have affixed my signature and the official seal of the Polk County Commissioners Court to this certification.



Schelana Hock, County Clerk  
Polk County, Texas



## Polk County, Texas Tax Abatement Guidelines and Criteria

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1. **Introduction.** These Guidelines and Criteria Governing Tax Abatement Agreements ("the Guidelines") by Polk County, Texas ("the County"), support Polk County's priority of implementing policies and incentives to attract, retain and expand industries, increase employment and wages, expand the tax base, and create new economic opportunities within the County. The County is authorized to abate property taxes in accordance with the Property Redevelopment and Tax Abatement Act, which is codified as chapter 312 of the Texas Tax Code ("the Act"). These guidelines have been reviewed to help ensure that any abatement of property taxes achieves the County's economic development goals.
2. **Resolution.** In accordance with the Act, the Commissioners' Court, by resolution passed on December 12, 1988 and attached hereto as Exhibit "A", has elected to become eligible to participate in tax abatement, and to that end, has adopted these guidelines governing tax abatement agreements which supersede any previously adopted, renewed or amended guidelines.
3. **Effective Period.** These guidelines are and shall be effective on December 11, 2017 through December 10, 2019, unless repealed or further amended during the interim period by action of the Commissioners' Court of Polk County, Texas.
4. **Approval by Governing Body.** Before the County may adopt, amend, repeal, or reauthorize guidelines and criteria, the Commissioners Court must hold a public hearing regarding the proposed adoption, amendment, repeal, or reauthorization at which members of the public are given the opportunity to be heard. The notice of a meeting required by section 312.002(c-1) will be posted in a newspaper of general circulation in the County, on the public notification board in the Courthouse, and on the County website at least seven days prior to the hearing. Following the public hearing, pursuant to the Act, these guidelines may be amended, repealed or reauthorized only by a vote of, at minimum, three-fourths of the members of the Commissioners Court.
4. **No Property Right Created/Discretion Retained.** The adoption of these guidelines does not limit the discretions of the County to decide whether to enter into a specific tax abatement agreement; does not limit the discretion of the County to delegate to its employee(s) the authority to determine whether or not the County should consider a particular application or request for tax abatement; does not limit the discretion of the County to determine the proportion of value to be abated; and does not create any property, contract, or other legal rights in any person to have the County consider or grant a specific application or request for tax abatement.
5. **Definitions.** The following words and terms, when used in these Guidelines, shall have the meanings set forth below unless the context *clearly* indicates otherwise:
  - a. **Abatement** means the full or partial exemption from ad valorem taxes of certain real property in a reinvestment zone designated for economic development purposes.
  - b. **Affected Jurisdiction** means Polk County, Texas, and every other taxing unit within Polk County, Texas that includes within its boundaries real property that is to be included in a proposed or existing reinvestment zone.
  - c. **Agreement** means a contractual agreement between a property owner and/or lessee and the County of Polk for the purposes of tax abatement.

- d. **Base year value** means the assessed value of eligible property as of the January 1st preceding the execution of the agreement, plus the agreed upon value of eligible property improvements made after January 1 but before the execution of the agreement.
- e. **Deferred maintenance** means improvements necessary for continued operations which do not improve productivity or alter the process technology.
- f. **Distribution Center Facility** means buildings and structures, including machinery and equipment, used or to be used primarily to receive, store, service or distribute goods or materials owned by the facility operator.
- g. **Expansion** means the addition of buildings, structures, machinery or equipment for 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, including machinery and equipment, 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. Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery, or equipment. It shall not be for the purpose of reconditioning, refurbishing or repairing.
- 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. **Other Basic Industry** means buildings and structures, including fixed machinery and equipment not elsewhere described, used or to be used for the production of products or services. Other Basic Industry shall also include retail and wholesale sales facilities.
- m. **Productive Life** means the number of years a property improvement is expected to be in service.
- n. **Regional Entertainment Facility** means buildings and structures, including machinery and equipment, used or to be used to provide entertainment through the admission of the general public.
- o. **Research Facility** means building and structures, including machinery and equipment, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials, or to improve or develop the production processes thereto.
- p. **Regional Service Facility** means buildings and structures, including machinery and equipment, used or to be used to service goods.

**6. Eligibility.**

- a. **Reinvestment Zone.** To be eligible for tax abatement, the owner must own taxable real property which is the subject of the tax abatement which is located within a reinvestment zone designated by the governing body of a municipality or the County in accordance with the Act and must enter into a written agreement with the County wherein the owner agrees to make specified improvements or repairs to the property and, if applicable, that such specified improvements or repairs to the property are being made in conformity with the municipality's comprehensive plan.
- b. **Authorized facility.** A facility may be eligible for tax abatement if it is a Manufacturing Facility, Research Facility, Distribution Center or Regional Service Facility, Regional Entertainment Facility, or Other Basic Industry.
- c. **Creation of new value.** Abatement may only be granted for the increase in appraised value of eligible property improvements located in the reinvestment zone made subsequent to, and specified

in, an abatement agreement between the County and the owner or lessee, subject to such limitations as the County may require.

- d. **New and existing facilities.** Abatement may be granted for both new facilities and structures, and for the expansion or modernization of existing facilities and structures, unless the property is property described by section 312.211(a) of the Texas Tax Code, in which event requirements must conform with section 312.211.
- e. **Leased facilities.** If a leased facility is granted tax abatement, then the agreement authorizing such abatement shall be executed by both the lessor (owner) and the lessee, and the term of abatement that may be granted shall be no more than seven (7) years or the term of the lease between lessor and lessee, whichever is less. Publicly owned land leased to private entities shall be eligible for abatement if otherwise qualified.
- f. **Eligible property.** Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements, plus that office space and related fixed improvements necessary to the operation and administration of the facility, subject to the discretion of the County. The value of the property shall be the certified appraised value for each year, as finally determined by the County's appraiser.
- g. **Ineligible property.** The following types of property shall be fully taxable and are ineligible for tax abatement: land, inventories, supplies, tools, furnishings and other forms of movable personal property, vehicles, vessels, aircraft, housing, hotels accommodations, furniture, deferred maintenance investments, property to be rented or leased (except as provided in Leased facilities above), property which has a productive life of less than fifteen (15) years, any improvements, including those to produce, store or distribute natural gas, fluids or gasses, which are not integral to the operation of the facility, property owned or used by the State of Texas or its political subdivisions or by any organization owned, operated, or directed by a political subdivision of the State of Texas, or any property exempted by local, state or federal law.
- h. **Forego protest.** Any applicant for tax abatement shall agree to forego any protest, application, negotiations, or other procedures available to taxpayers that would challenge or dispute the assessed value of the property subject to the proposed abatement that is annually determined by the County's appraiser.
- i. **Basic qualifications.** To be eligible for designation as a reinvestment zone and be eligible for tax abatement, the planned improvement:
  1. Must be shown to directly create employment for ten (10) additional permanent full time employees or prevent the loss of at least ten (10) permanent full time employees, wherein the worksite for the employees is within the reinvestment zone;
  2. Must be shown not the solely or primarily have the effect of transferring employment from one part of the County to another part of the County;
  3. The total expenditure for the construction and addition of eligible, taxable property must exceed \$1,000,000.00, upon completion of the contractually defined construction period, however, in the event a facility for which tax abatement has already been granted, and for which the owner and the County have in place a tax abatement agreement, is expanded, and the owner applies for additional tax abatement for the increased value of the expansion, the County may, at its discretion, waive the minimum dollar valuation requirement and/or the required number of new employees stated herein. Any such waiver may be contained in the original tax abatement agreement, or in the resolution authorizing a new or amended tax abatement with the owner; and
  4. Must be necessary because capacity cannot be provided efficiently utilizing existing improved property.

7. **Value and Term of Abatement.** Abatement shall be granted effective with the January 1 valuation date immediately following the date of execution of the Agreement. One hundred percent (100%) of the value of new eligible properties shall be abated for a maximum period of ten (10) years. The abatement may be extended through an initial agreement between the owner and the County, and/or a subsequent agreement as may be required to comply with state law regarding the term of a reinvestment zone, for any period authorized by law.

8. **Joint Municipal Tax Abatement.**

- a. **Term.** Polk County may consider joining in approved municipal abatements for an abatement period of up to seven (7) years, inclusive of construction, upon application by the municipality to the Commissioners Court.
- b. **Application by municipality.** In making such application to the Commissioners Court, the municipality must include a certified copy of the tax abatement application that the applicant submitted to the municipality and a certified copy of the tax abatement agreement entered into between the municipality and the applicant.
- c. **Eligibility.** To be eligible for abatement by the County, the requested tax abatement must be eligible and conform to the requirements of these Guidelines.
- d. **Agreement.**
  1. The County may participate in the abatement through the vehicle of an amendment to the municipal tax abatement agreement, or through a separate agreement entered into between the County and the applicant. The terms of the County's agreement to participate in the abatement are not required to contain terms identical to those contained in the agreement with the municipality.
  2. In the event of an amendment to the municipal tax abatement agreement, the amendment shall, at a minimum, include a specification of the term of the County's participation, the proportion of value to be abated, the date upon which abatement commences (for the municipality and for the County), the date upon which the abatement ends (for the municipality and for the County), and the date that taxes shall be due and payable. The County's participation in an abatement on property within the taxing jurisdiction of a municipality remains subject to these Guidelines.

9. **Taxability.** Subsequent to full execution of the Agreement and for the duration of the abatement period specified within the Agreement, taxes shall be payable as follows:

- a. The value of ineligible property shall be fully taxable;
- b. The base year value of existing eligible property as determined each year shall be fully taxable;
- c. The additional value of new eligible property shall be taxable in the manner described hereinabove in section 8; and
- d. If the base year value decreases during the term of tax abatement or if an additional exemption is granted by the State or Federal government, then the maximum amount of abatable value to be used in an abatement calculation will be reduced each year by the same rate.

10. **Application for Abatement.**

- a. **Written application.** Any current or potential owner or lessee of taxable property in the County may request tax abatement by filing a written application with the County. The Commissioners Court has adopted an application for this purpose, which is attached to these Guidelines as Exhibit "B". A completed application must be submitted to the County, along with required supporting documentation and fee payment.

- b. **Contents of application.** The application shall be signed by the owner or lessee, as applicable, and shall be accompanied by:
  1. A general description of the proposed use and the general nature and extent of the modernization, expansion, or new improvements to be undertaken;
  2. A non-refundable application fee of \$500, payable to Polk County;
  3. A descriptive list of the improvements which will be part of the facility;
  4. An estimate of the cost of the improvements which will be part of the facility;
  5. A map and metes and bounds description of the property;
  6. A time schedule for undertaking and completing the proposed improvements;
  7. A certification prepared by the Tax Assessor-Collector of Polk stating that all of applicant's tax accounts with the County are paid and current; and
  8. Any financial and other information the County deems necessary for evaluating the financial capacity of the applicant.
- c. **Modernization.** In the case of modernization, applicant shall include a statement of the assessed value of the facility separately stated for real and personal property for the tax year immediately preceding the application.
- d. Upon receipt of a completed application, the County Judge of Polk County shall notify in writing the presiding officer of the governing body of each taxing jurisdiction directly affected by the proposed abatement. Before acting on the application, the County shall afford the applicant and the designated representative of each affected taxing jurisdiction the opportunity, via public hearing before the Commissioners Court, to show why the abatement should or should not be granted. However, should any other taxing entity for which abatement has been requested have already been afforded a public hearing on such abatement, the requirement of a public hearing may be waived at the discretion of the County.
- e. After receipt of a completed application for tax abatement, the County shall prepare a feasibility study setting out the potential impact of the requested abatement will have on the economic stability of the County and its citizens.
- f. The County shall not grant the request for tax abatement if it finds that the request for abatement was filed after the commencement of construction, alteration or installation of improvements related to a proposed modernization, expansion or new facility.
- g. Requests for variance from the above provisions shall be made in writing to the County Judge of Polk County, Texas. Said written request shall include a complete description of the circumstances why the application should be granted a variance. Approval of a request for variance requires a three-fourths (3/4) vote of the Commissioners Court, and their determination of whether or not to grant the variance shall be final.

**11. Public Hearing.**

- a. **Public Hearing for Reinvestment Zone Required.** Before the County may designate a Reinvestment Zone, the Commissioners Court must hold a public hearing on the designation and find that the designation would contribute to the economic development of the county. At the hearing, interested persons are entitled to speak and present evidence for or against the designation.
  1. Notice of the hearing must be published at least seven days prior to the hearing in a newspaper of general circulation within the County, as well as posted on the Courthouse Public Notice Board and on the County Website for the same time period, and delivered in writing to the presiding officer of the governing body of each taxing unit that includes its boundaries real property that is to be included in the Reinvestment Zone.

- b. **Public Hearing for Tax Abatement Agreement Required.** Before the County may agree to a Tax Abatement, the Commissioners Court must hold a public hearing.
1. Notice of public hearing for tax abatement must be published at least thirty days prior to the hearing in a newspaper of general circulation within the County, as well as posted on the Courthouse Public Notice Board and on the County Website for the same time period, and must contain:
    - a. the name of the property owner and the name of the applicant for the tax abatement agreement
    - b. the name and location of the reinvestment zone in which the property subject to the agreement is located;
    - c. A general description of the nature of the improvements or repairs included in the agreement, and
    - d. The estimated cost of the improvements or repair.
  2. Should any affected jurisdiction be able to show good cause in the public hearing why the granting of abatement shall have a substantial adverse impact on the bonds, tax revenue, or general economic wellbeing of the affected jurisdiction, that showing may form a basis for the County denying the request for abatement. Request for tax abatement shall not be granted if it is shown that:
    - a. there would be substantial adverse effect on the provision of County services or on the overall well-being of the County's tax base;
    - b. the applicant has insufficient financial capacity;
    - c. the planned or potential use of the property would constitute an encroachment on the County's public safety, health or morals, when applying standards currently prevalent in the community; or
    - d. the agreement would in any way result in a violation of local, state or federal regulations and/or laws.

**12. Agreement.**

- a. **Approval by Commissioners Court required.** To be effective, an agreement for tax abatement must be approved by the affirmative vote of a majority of the members of the Commissioners Court at a regularly scheduled meeting thereof. After the public hearing, the Commissioners Court shall adopt a resolution finding that the proposed agreement filed with the resolution, a copy of which must be attached thereto, meets the applicable provisions of these Guidelines and Criteria. The resolution shall also authorize the execution of the agreement with the owner of the facility or, if applicable, the lessee.
- b. **Statutory mandatory requirements.** The execution, duration and other terms of the agreement are governed by chapter 312 of the Texas Tax Code. Accordingly, the agreement shall:
  1. List the kind, number, and location of all proposed improvements to the property;
  2. Provide access to and authorize inspection of the property by County employees to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement;
  3. Limit the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that the property tax exemptions are in effect;
  4. Provide for recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement;
  5. Contain each term agreed to by the owner of the property;



6. Require the owner of the property to certify annually to the governing body of each taxing unit that the owner is in compliance with each applicable term of the agreement; and
  7. Provide that the Commissioners Court may cancel or modify the agreement if the property owner fails to comply with the agreement.
- c. Additional mandatory requirements. The agreement shall also include:
1. a map showing existing uses and conditions of real property in the reinvestment zone;
  2. a map showing proposed improvements and uses in the reinvestment zone;
  3. the estimated value to be abated and the base year value;
  4. the percent of value to be abated each year as provided herein;
  5. the commencement date and the termination date of abatement;
  6. the proposed use of the facility, the nature and type of construction, a time schedule, and a property description and improvement list as provided herein.
  7. contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided herein, and;
  8. the size of investment and average number of jobs involved for the period of the abatement.
- d. Execution time frame. Such agreement shall be executed within 60 days after the applicant has forwarded all necessary information and documentation to the County of Polk.
- e. Mandatory terms are not limitations. The Commissioners Court retains the right to require additional terms and conditions for abatement and the listing of mandatory provisions specified above is not a limitation on the terms and conditions that may be required by the Commissioners Court.

**13. Recapture.**

- a. In the event that the facility is completed and begins operations or producing products or services, but subsequently discontinues or significantly reduces producing product or service for any reason for a period of 180 days while the agreement is active, or for one year in the event of a declared disaster under the Texas Disaster Act of 1975 in which the disaster is the cause for the discontinuation, then the agreement shall terminate and so shall the abatement of the taxes for the calendar year during which the facility no longer produces or significantly reduces production. The taxes otherwise abated for that calendar year shall be paid to the County of Polk within sixty (60) days from the date of termination. Any reduction of 50% or more from the estimated production/service listed in the application shall constitute a significant reduction in the production of product or service. The company or individual shall notify the County in writing at the address stated within the agreement within ten (10) business days from any discontinuation or significant reduction, stating the reason for the discontinuation or significant reduction, stating the reason for the discontinuation or significant reduction, and the projected length of the discontinuation or significant reduction. If the County, in its sole discretion, determines that this requirement for notification has not been complied with, the agreement may be terminated immediately and all taxes previously abated by virtue of the agreement shall be recaptured and must be paid within sixty (60) calendar days.
- b. Should the County determine that the owner or lessee is in default according to the terms and conditions of the agreement, the County shall notify the owner or lessee in writing at the address stated in the agreement, and if such default is not cured within sixty (60) days from the date of such notice ("Cure Period"), then the agreement may be terminated, and all taxes previously abated by virtue of the agreement shall be recaptured and must be paid within sixty (60) calendar days.
- c. In the event that the owner or lessee (1) allows its ad valorem taxes owed to the County or other affected jurisdiction to become delinquent, and fails to timely and properly follow the legal procedures for their protest and/or contest, or (2) violates any of the terms and conditions of the abatement agreement and fails to cure during the Cure Period, the agreement then may be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within sixty (60) days of the termination.

**14. Administration.**

- a. The Chief Appraiser as designated by the County shall annually determine an assessment of the real and personal property for which tax abatement has been granted. Each year, the owner or lessee receiving the abatement shall furnish the assessor with such information as may be necessary for administration of the abatement. Once the value has been established, the Chief Appraiser shall notify the affected jurisdictions which levy taxes of the amount of the assessed value.
- b. The agreement shall stipulate that employees and/or designated representatives of the County will have access to the property and facilities thereon during the term of the abatement in order 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 prior notice to the facility of not less than twenty-four (24) hours, and shall be conducted in such 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 owner or lessee and in accordance with its safety standards.
- c. Upon completion of construction, the County shall annually evaluate each facility and report possible violations of the agreement to the County and its attorney.
- d. For each of the first three tax years following the expiration of a tax abatement agreement executed under this chapter, the Chief Appraiser shall deliver to the comptroller a report containing the appraised value of the property that was the subject of the agreement.

**15. Assignment.** Abatement may be transferred and assigned by the holder to a new owner or lessee of the same facility upon the approval by resolution of the County, subject to the financial capacity of the assignee, and provided that all conditions and obligations in the abatement agreement are guaranteed by the execution of a new agreement with the County. No assignment or transfer shall be approved if the parties to the existing agreement, the new owner, or new lessee are liable to the County of Polk, or any affected jurisdiction, for outstanding taxes or other obligations. Approval shall not be unreasonably withheld.

**16. Sunset Provision.** These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two years, at which time all tax abatement contracts created pursuant to its provisions will be reviewed by the County to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria may be modified, renewed or eliminated, providing that such actions shall not affect existing agreements.

**17. Severability.** If any provision of the Guidelines and Criteria is held invalid by a court of competent jurisdiction, the invalidity shall not affect the other provisions of these Guidelines and Criteria that can be given effect without the invalid provision, and to this end the provisions of these Guidelines and Criteria are severable.

A RESOLUTION

OF THE COMMISSIONER'S COURT OF POLK COUNTY, TEXAS,  
ADOPTING A COMPREHENSIVE POLICY OF GUIDELINES AND  
CRITERIA FOR GRANTING TAX ABATEMENT AND GOVERNING  
TAX ABATEMENT AGREEMENTS, WITHIN THE COUNTY

WHEREAS, the Commissioner's Court of Polk County, Texas, desires to promote economic development within its territory; and

WHEREAS, the existence of certain economic development incentives in the form of tax abatement may encourage prospective businesses and companies to locate in the County, or existing businesses and companies to expand; and

WHEREAS, the creation and retention of job opportunities that bring new wealth to the County is of the highest civic priority; and

WHEREAS, new jobs and investments will benefit the County economy, provide needed opportunities, and generate tax revenue to support local services; and

WHEREAS, the County of Polk must compete with other counties across the State and Nation currently offering tax inducements to attract new retail and industrial projects; and

WHEREAS, the establishment of specific guidelines, criteria, and procedures is necessary to insure that tax abatement incentives are given and administered effectively; and

WHEREAS, the adoption of guidelines and criteria is required by the Property Redevelopment and Tax Abatement Act, as amended, before tax abatement may be granted:

NOW THEREFORE: BE IT RESOLVED BY THE COMMISSIONER'S COURT OF POLK COUNTY, TEXAS:

SECTION ONE: That the County of Polk hereby establishes and adopts certain guidelines and criteria, attached hereto and made a part hereof, governing the granting of tax abatements and tax abatement agreements, within the County of Polk and its jurisdiction, and such guidelines and criteria shall expressly govern all subsequent tax abatement agreements.

SECTION TWO: That such guidelines and criteria shall be effective for two (2) years from the date of adoption and may only be amended or repealed by a vote of three-fourths (3/4) of the Commissioner's Court.

PASSED and APPROVED this 12th day of December, 1988.

  
WAYNE R. BAKER, County Judge

ATTEST:

  
MARTHA JOHNSON, County Clerk

## **EXHIBIT D IMPROVEMENTS**

UMBRIEL SOLAR, LLC, anticipates constructing a solar photovoltaic (PV) electric generating facility with an operating capacity of approximately 150 MW AC. The exact capacity and the specific technology components will be determined during the development and design process.

A 150 MW solar PV generating facility may include a qualified investment consisting of the following improvements:

- 1) Solar modules/panels
- 2) Steel/aluminum/other metal mounting system with tracking capabilities
- 3) Underground conduit, communication cables, and electrical collection system wiring
- 4) Multiple combiner boxes
- 5) One or multiple project substation(s) including breakers, a transformer, and meters
- 6) Collection substation will be connected to utility interconnection by an above ground transmission line
- 7) Inverter boxes on concrete or gravel pads
- 8) Operations and maintenance facility
- 9) Fencing for safety and security
- 10) Telephone system
- 11) New or improved access and service roads
- 12) Meteorological equipment to measure solar irradiation and weather conditions

**EXHIBIT E**  
**DESIGNATION OF REINVESTMENT ZONE**

[FOLLOWS ON SUBSEQUENT PAGES]