

**Cameron County Commissioners' Court  
Agenda Request Form**

2019C10354

No. 3-L

Date: Sept. 12, 2019 Meeting Date Request: September 17, 2019  
Deadline for Action: September 17, 2019 Contact Person: Mark Yates  
Department: PD&M Phone: (956) 544-0828 Fax: (956) 544-0891  
Department Head Name: Mark Yates Signature: \_\_\_\_\_

**Caption:** Action

**DISCUSSION AND POSSIBLE APPROVAL OF CHAPTER 312 TAX ABATEMENT AGREEMENT  
WITH BT CANTWELL SOLAR, LLC. PURSUANT TO THE TEXAS TAX CODE, SECTION 312.**

**Background:** (Briefly summarize your request, if needed use separate sheet(s) or attach supporting documentation).

The Cantwell Solar Project is a renewable energy project which is approximately a 140 to 180 MW solar photovoltaic facility. The project is expected to utilize approximately 1,127 acres. Estimated total investment is between \$140-190 million. Electricity generated from the plant will be injected into the ERCOT grid at the existing AEP substation on Searcy Ranch Road. Start construction date is estimated to be May 2020. The tax abatement is for the M&O portion of the tax rate beginning January 1, 2021 with base year being 2020. There will be consideration provided by the Cantwell Solar Project to provide for a 300 foot easement set back for their development for a possible road corridor future project. The ten-year PILOT will be \$95,000 per year for ten years beginning 2021, payable by December 31<sup>st</sup>.

Project Office located at 19900 Searcy Ranch Rd, Harlingen, TX 78550. Legal description\*: (1) OJO DE AGUA GRANT ABST 27 SHARE 163 TRACT 258 800.00 ACRES; (2) LOT 1 BLK 9 SAN DOMINIC S 20.00 ACRES AKA TRACT 259 OJO DE AGUA GRANT; (3) SURVEY 273- SAM PARR N323E1/2, 307.9600 ACRES

Taxing units at project site: School District: Rio Hondo ISD, Port of Harlingen, Emergency Service District #1, South Texas ISD, and Drainage District #5. Property to be located at parcels whose tax ID's are # 197445, 197789, 212843

**PLEASE FILL IN ALL BLANKS WITH REQUIRED INITIALS AND FISCAL DATA INFORMATION  
OR PLACE N/A IF IS NOT APPLICABLE:**

County Judge \_\_\_\_\_ Auditor *mps* Budget *[Signature]* Legal *[Signature]* Human Resources \_\_\_\_\_ Purchasing \_\_\_\_\_  
1295 Form \_\_\_\_\_

**Fiscal Data:** Dept. Name: \_\_\_\_\_ Fund No. \_\_\_\_\_ **Funds From:** Department: Yes No Amt. Expended : \$  
Funds Available: Yes No General: Yes No Impact on future budget: Yes No  
Grant: Yes No

**Comments:**

**Action taken by Commissioners' Court**

Approved \_\_\_\_\_ Tabled \_\_\_\_\_ Denied \_\_\_\_\_ Motion made by \_\_\_\_\_ Seconded \_\_\_\_\_ Vote \_\_\_\_\_

STATE OF TEXAS           §  
COUNTY OF CAMERON   §

Contract No. 2019C10354

CAMERON COUNTY, TEXAS  
CHAPTER 312, TAX CODE TAX ABATEMENT  
AGREEMENT WITH  
BT CANTWELL SOLAR, LLC

THIS TAX ABATEMENT AGREEMENT FOR BT CANTWELL SOLAR("Agreement"), dated this \_\_\_\_\_ day of September, 2019 is entered into by and between BT Cantwell Solar, LLC, a Texas limited liability company (the "Company") and the County of Cameron, Texas, acting by and through its County Judge or his designee (the "County").

WHEREAS, the County adopted Resolution No. 2019R01001 governing Chapter 312 tax abatement agreements and Chapter 381 economic development grant programs within the County on January 8, 2019, and this Agreement is consistent with such Resolutions and applicable state laws, including Chapter 312 of the Texas Tax Code;

WHEREAS, the County adopted Resolution No. 2016R12073 governing Chapter 312 tax abatement agreements and Chapter 381 economic development grant programs within the County on December 13, 2016, and amended by Resolution No. 2017R09073 adopted on September 5, 2017 and this Agreement is consistent with such Resolutions and applicable state laws, including Chapter 312 of the Texas Tax Code;

WHEREAS, the County adopted Resolution No. 2016R12073 governing Chapter 312 tax abatement agreements and Chapter 381 economic development grant programs within the County on December 13, 2016, and amended by Resolution No. 2017R09073 adopted on September 5, 2017 and this Agreement is consistent with such Resolutions and applicable state laws, including Chapter 312 of the Texas Tax Code;

WHEREAS, the aforementioned resolutions set forth Guidelines and Criteria governing Chapter 312 tax abatement agreements and Chapter 381 economic development grant agreements within the County (the "Guidelines") and this Agreement is consistent with the Guidelines;

WHEREAS, the County has been duly designated as an Enterprise Zone pursuant to Chapter 2303 of the Texas Local Government Code and consistent with Section 312.4011 of the Texas Tax Code (the "Enterprise Zone");

WHEREAS, the Chapter 312 tax abatement program established by the Guidelines was created by the County to assist companies in establishing operations in the County to provide economic benefits to the County, stimulate increased economic activity, and provide job opportunities for residents of the County;



WHEREAS, Company submitted an application for tax abatement to the County concerning contemplated improvements and investment;

WHEREAS, the County believes the Company represents significant potential to increase economic activity and job opportunities for residents in the County and wishes to offer the Company participation in its tax abatement program to encourage the Company to site their operations in the County, in the location more specifically described in Exhibit 1;

WHEREAS, as further described herein, Company proposes to construct and operate a utility scale solar electricity generation facility on the property described in Exhibit 1 (the "Site") which will be engaged in the active conduct of a trade or business, a substantial portion of which is located within the County;

WHEREAS, in accordance with the Guidelines, the Commissioners Court finds that Company's contemplated investment (i) is significantly impactful to the County, and (ii) has the potential to exceed an aggregate investment of \$180 million;

WHEREAS, the Commissioners Court finds that the terms of this Agreement are consistent with encouraging development in the County and are in compliance with the Guidelines and applicable law; and, thus deems that it is in the best interest of the County to assist the Company in establishing operations in Cameron County;

NOW, THEREFORE, the County and the Company agree as follows:

#### ARTICLE I DEFINITIONS

(a) The term "**Added Value**" means the assessed value of Eligible Property as determined by the Cameron County Appraisal District over the Base Year Value.

(b) The term "**Affiliate**" means any entity which is controlled by, controls, or is under common control with the Company. For the purposes of this definition, the term "controlled by", "controls" or "under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of any entity, whether through ownership, legally or beneficially, of voting securities, by contract or otherwise.

(c) The "**Base Year Value**" means the base year value of the land and any improvements, fixtures or equipment thereon as of January 1, 2019 as determined by the Cameron County Appraisal District.

(d) A "**business day**" means Monday through Friday of each calendar week, exclusive of holidays observed generally by Cameron County, Texas.

(e) The term "**Eligible Property**" means the improvements, fixtures and equipment for the Facility to be located on the Site as shown on Exhibit 4 (such schematic shall be

illustrative of the location of the Eligible Property on the Site and not intended to limit in any way the scope of such Eligible Property).

(f) **"Full-Time Employee"** means a full-time employee as defined by § 4980H(c)(4) of the Internal Revenue Code, as amended, codified at Title 26 of the United States Code. If the aforementioned definition is at any time removed from Title 26 of the United States Code, a Full-Time Employee shall mean a full-time employee as defined by § 4980H(c)(4) of the Internal Revenue Code as of the Effective Date. The parties acknowledge that as of the Effective Date, this term generally means, with respect to any month, an employee who is employed on average at least 30 hours of service per week.

(g) **"Full-Time Equivalent Employee"** means a combination of employees whose combined hours add-up to forty (40) hours per week, each of whom individually is not a Full-Time Employee, but who, in combination, are counted as the equivalent of a Full-Time Employee. For example, two (2) employees, each of whom works twenty (20) hours per week, shall be considered a Full-Time Equivalent Employee for purposes of this Agreement.

(h) **"Related Employers"** means an Affiliate, EPC contractor or other applicable employer that hires employees to work within the County for the administration, construction, operation and/or routine maintenance of the Facility.

(i) **"Required Wage"** means (i) a minimum wage of \$12/hour for employees that are compensated on an hourly basis; or (ii) a minimum salary of \$25,000/year for employees that are compensated on an annual basis. The calculation of the Required Wage may include bonuses and employee benefits provided by the employer, excluding healthcare benefits. The calculation of the Required Wage specifically excludes compensation for overtime work. For employees that are compensated on an annual basis, but have not yet worked a full year as of the "reporting date" in an applicable Award Affidavit, if any, such employee(s)' salaries may be prorated based on the number of months such employee has been employed.

(j) **"Solar Generation Facility" or "Facility" or "Project"** means the industrial scale solar generation facility to be constructed on the Site to be installed and operational with a nameplate capacity of no less than 75 MW AC (**"Full Commercial Operations"**)

## **ARTICLE II** **BASIC TERMS**

The following understanding forms the basis of this Agreement:

2.01 The Company presently leases real property in Cameron County, Texas, which property is currently owned by 122112 Irrevocable Trust, John Christopher Cantwell, Trustee, and by Geistman Farms, Inc. as described in Part A of Exhibit 1 (the "Site").



2.02 The Company proposes to construct and operate the Facility at the Site. The Company expects the Project to be in operation for at least twenty five (25) years.

2.03 This Agreement pertains to the tax incentives applicable to the Project (as defined herein) and any associated infrastructure at the Site, including the real estate improvements, fixtures, personal property, and any new additional value after the Base Year Value associated with such improvements. Additionally, if the requirements of Section 9.04 herein relating to assignment are met, Company may assign all or a portion of its rights under this Agreement to such Affiliate.

### ARTICLE III ABATEMENT CONDITIONS AND REQUIREMENTS

As conditions precedent to Company receiving the abatement granted herein, Company agrees to the following commitments and performance requirements.

3.01 The Company shall commence construction of the Facility within four years of the Effective Date; provided, such date may be extended by vote of the Commissioners Court, which shall not to be unreasonably withheld, conditioned or delayed, for up to two additional years if: (i) the Company, at least forty-five (45) days prior to the Effective Date, respectively, provides a written request for extension to the County along with third-party written attestation from its financial advisor and supporting evidence that commercially reasonable efforts are being undertaken by Company to commence construction. If the Company requests a Start Extension and the extension is granted, the Annual PILOT Amount for the Facility due under Section 6.01 of this Agreement shall be increased by \$25,000 for each Start Extension granted. Company shall notify the County in accordance with the requirements of Article VIII when it has commenced construction.

3.02 The Company agrees to invest a minimum amount of \$50 million in improvements, fixtures and equipment at the Site by the date it commences Full Commercial Operations (as defined herein). Provided, that if there are No Company Structures on Set-Aside Land (as described in Section 3.08 below), the minimum amount shall be reduced by the proportion of the acreage of the Set-Aside Land to the acreage of the Site.

3.03 The Company will achieve the schedule of minimum performances shown on Exhibit 2. Such minimum performances shall form the basis for the Company to continue to receive the County incentives outlined in Article V during the Incentive Period. Provided, that if there are No Company Structures on Set-Aside Land (as described in Section 3.08 below), the minimum performances shall be reduced by the proportion of the acreage of the Set-Aside Land to the acreage of the Site.

3.04 As an inducement for the County to enter into the Agreement, the Company shall make certain payments in lieu of taxes ("PILOT") as further described in Article VI below.



3.05 During the Incentive Period, as defined below, the Site and the Facility shall be used for a lawful use related to the support and/or operation of Company's business. The Site shall at all times be used in a manner consistent with the general purpose of encouraging development within the Enterprise Zone. The parties acknowledge that the use of the Site as described in Section 2.02 is consistent with such purposes.

3.06 Company shall be and remain current on the payment of any and all taxes owed by Company to the County and all remaining taxing entities within the County; provided, however, that Company may properly follow legal procedures to protest or contest any such taxes. Nothing in this Agreement shall prohibit the land owner of the Site to continue use of portions of the Site for agricultural purposes to the extent not used for the Project, and to qualify for any exemption or special valuation associated with such portions of the Site, to the extent they qualify for such agricultural exemption or special valuation under applicable laws and regulations.

3.07 Company shall conform to the requirements of applicable city ordinances and all other applicable laws and regulations of the County, state and federal government.

3.08 The County wishes to incentivize the Company to refrain from erecting structures on a certain portion of the Site as identified in Exhibit 5 ("Roadway Set-Aside Land"). At the Company's option, the Company may choose to refrain from erecting structures owned by the Company or its affiliates (other than fences, gates, access driveways, and similar peripheral items with low investment value) on the Roadway Set-Aside Land (maintaining a condition of "No Company Structures on Set-Aside Land"). Any period of time in which there are No Company Structures on Set-Aside Land will entitle the Company to certain additional tax incentives as set forth in other provisions of this Agreement. Maintaining a condition of No Company Structures on Set-Aside Land will also entitle the company to certain lower minimum investment thresholds as set forth in other provisions of this Agreement.

#### ARTICLE IV TERM AND INCENTIVE PERIOD

4.01 This Agreement shall take effect on the date on which construction of the Facilities begins on the Site ("**Effective Date**") and, unless earlier terminated in accordance with its terms and conditions, shall expire simultaneously upon the expiration of the Incentive Period ("**Term**").

4.02 The tax abatements granted herein and the payment commitments undertaken hereby are contingent on a final investment decision being taken by the Company or an Affiliate for the construction of the Facility in the County.

4.03 If Company's leasehold interest at the Site terminates without assignment of the Agreement to a successor in interest of Company's leasehold interest in accordance with Section 9.04, and a leasehold interest at the Site is not restored with ninety (90) days

of termination, this Agreement will automatically terminate unless amended in accordance with Section 9.01. Notwithstanding the foregoing, no taxes may be abated during any period in which Company (or its assignee) does not hold an ownership or leasehold interest in the Site.

4.04 For purposes of this Agreement the **"Incentive Period"** shall mean the ten (10) calendar years starting on January 1 of the first full calendar year following the Effective Date. Each such calendar year of the Incentive Period shall be referred to in this Agreement as an **"Operational Year."**

## ARTICLE V INCENTIVES AND REPORTING

5.01 As an inducement to the Company to develop and continuously operate the Facility for at least ten (10) years, and to maintain the Facility in operation for the minimum period set forth in Section 2.02, provided that Company has met the abatement conditions contained in Article III herein, the County agrees that the Company shall receive a tax abatement for the County's ad valorem personal property taxes as specified in Section 5.02 to financially support the construction, startup and operation of the Project.

5.02 In consideration of the Company's performance of its obligations under this Agreement, the County agrees that the Company shall receive a tax abatement during the Incentive Period for the County's Maintenance and Operation's ad valorem personal property taxes (NOT INCLUDING THE COUNTY'S INTEREST AND SINKING FUND TAX RATE NECESSARY TO FUND THE COUNTY'S DEBT OBLIGATIONS SUPPORTED BY PROPERTY TAX LEVIES) relative to the Added Value of the Eligible Property located on the Site, as follows:

### Percent of County Taxes to be Abated:

Year 1 M&O	100%
Year 2 M&O	100%
Year 3 M&O	100%
Year 4 M&O	100%
Year 5 M&O	100%
Year 6 M&O	100%
Year 7 M&O	100%
Year 8 M&O	100%
Year 9 M&O	100%
Year 10 M&O	100%

Such tax abatements will commence on January 1 of the first Operational Year. The tax abatement granted herein shall continue for the duration of the Incentive Period and expire at the end of the tenth Operational Year. At a future date, the Cameron County Appraisal District will determine the base year value of the Eligible Property as of January 1, 2019.



5.03 Report Upon Completion. Upon completion of the minimum investment set forth in Section 3.02 above, Company will submit to the County a report with reasonable documentation of the minimum investment and confirmation evidencing that Company has met the requirements of Article III ("**Completion Report**"). For Sections 3.05, 3.06, and 3.07 a statement by an authorized representative or officer of Company that to the best of Company's knowledge it is in compliance with these requirements will suffice for purposes of the Completion Report.

5.04 Award Affidavit. On or before April 1 of each year that this Agreement is in effect, the Company shall submit to the County, an award affidavit signed and affirmed by an officer or authorized representative of the Company (each an "**Award Affidavit**"), stating that to the best of the Company's knowledge: (i) the Company intends to maintain the Facility in full operation in accordance with the terms of this Agreement; (ii) the Company's representations and warranties contained in Section 7.01 continue to remain true and correct as of the date of the Award Affidavit; (iii) a narrative description of the development's progress; (iv) information supporting reporting requirements set forth in Section 5.03; and (v) for Award Affidavits provided during an Operational Year, certification by the Company that the aggregate performances set forth in Section 3.03 have been achieved and that reasonable backup documentation exists to substantiate the Company's calculations and performances as set forth in the Award Affidavit. Subject to Section 9.06(j), the Company shall also submit documentation as may be reasonably requested by the County in such form as the County may reasonably determine in accordance with the terms and subject matter of this Agreement. The County shall not make copies or otherwise duplicate any documentation submitted by the Company pursuant to such a request and all documentation submitted to the County pursuant to this Agreement shall be returned to Company within fifteen (15) days after County's receipt thereof, except as required by the Texas Public Information Act or other applicable law.

5.05 The Company's failure to comply with and meet the performance requirements of Section 3.03 for an Operational Year will not eliminate or limit the right of the Company to an abatement for that Operational Year if, and only if, (i) the deficit in the requirements was less than ten (10%) percent of the target and (ii) the Company accurately set forth the calculations in the Award Affidavit for the Operational Year.

5.06 Audits of Books and Records. The County will have the right, and the Company shall allow the County to audit the Company's operating records relevant for the County to determine compliance with this Agreement after submission of the Completion Report and, thereafter, during each Operational Year. Company must make all such records available to the County at the Company's office in the County or at another location within the County acceptable to both parties. If the Award Affidavit is found to be incorrect in any material way with respect to the calculations or regarding the Company's representations and warranties, then, in addition to the remedies available to the County under Section 9.05, the Company will pay to the County on demand at its address set forth herein, the reasonable cost of the audit. If such audit proves the Award Affidavit is correct, the expense of any such audit will be paid by the County. Any audit conducted pursuant to this Section 5.06 shall be undertaken during the Company's normal working hours, and the



Company shall be provided with reasonable notice and opportunity to prepare relevant records for review without disruption to the conduct of its ordinary business activities. Any amounts payable by one party to the other party shall be settled within thirty (30) days of submission of documentary evidence of the costs of such audit.

5.07 Inspections. At any time during Company's normal working hours throughout the Term and following at least fifteen (15) business days prior written notice to Company, the County will have the right to inspect the Site and the Facility in order to determine compliance with the Agreement. Company will reasonably cooperate with County and any County employees during any such inspection. Notwithstanding the foregoing, Company shall have the right to require that any representative of the County on the Site be escorted by a representative or security personnel of Company during any such inspection and Company shall be able to exercise a requested inspection date and time in its reasonable discretion so as not to interfere with ongoing business operations at the Site. Further, Company may require that all individuals inspecting the Site or the Eligible Property first sign a confidentiality agreement under which they agree not to discuss or publicize information revealed in such inspection except as necessary for them to complete such inspection and evaluation in accordance with the terms of this Agreement.

#### ARTICLE VI PAYMENTS IN LIEU OF TAXES

6.01 In consideration of the tax abatements described in Section 5.02 being granted to it, the Company (or an Affiliate) shall pay to the County \$125,000 in each Operational Year (each, a "**PILOT Amount**"), unless increased pursuant to Section 3.01 herein. Provided, however, that in any year in which there are No Company Structures on Set-Aside Land the PILOT Amount shall be reduced to \$95,000.

6.02 The PILOT Amount may be paid in ANNUAL installments no later than December 31st of each Operational Year (the "**PILOT Payments**"). The County acknowledges and accepts that the PILOT Payments may be made by Company or any Affiliate in order to optimize the financing structure for the Facility. In no event will the tax payments due under this Agreement be higher than the tax payments would have been in the absence of this Agreement.

#### ARTICLE VII REPRESENTATIONS AND WARRANTIES

7.01 The Company represents and warrants to the County (and covenants with the County where applicable) that:

(a) The Company is authorized to do business in the State of Texas and has the requisite power and authority, corporate or otherwise, to conduct its business, to own its present assets, and to perform all of its obligations under this Agreement;



(b) The Company's execution, delivery and performance of its obligations under this Agreement have been duly authorized by all necessary actions and do not violate any provision of any existing law, rule, regulation, or contract by which the Company or its property or assets are bound or affected;

(c) The Company has not filed and there are no pending bankruptcy proceedings or other debtor relief proceeding relative to the Company or contemplated by the Company; and

(d) To the Company's best knowledge, the Company is not delinquent in the payment to the County of any material impositions (as that term is hereinafter defined) due and owing from the Company (if any) related to the Facility or Company's operations at the Site, except those contested by the Company by appropriate proceedings promptly initiated and diligently conducted or to the extent required for the purposes of project financing. As used herein, "impositions" means (i) real estate and personal property taxes, water, gas, sewer, electricity and other utility rates, and (ii) all other taxes, charges and assessments and any interest, cost or penalties with respect thereto, of any kind and nature, levied or imposed upon the Facility or Company, or any income therefrom, or the ownership, use, occupancy or enjoyment thereof.

7.02 The County represents and warrants to the Company that:

(a) The County is duly authorized to do business in the State of Texas and has requisite power and authority, corporate or otherwise, to conduct its business and to own its present assets, and to execute and deliver all of its obligations under this Agreement;

(b) The execution, delivery, and performance by the County of its obligations under this Agreement have been duly authorized by all necessary action and does not violate any provision of existing law, rule, regulation or contract by which the County or its property or assets is bound or affected.

## ARTICLE VIII NOTICES

8.01 Any notice or document required or permitted to be given hereunder by one party to the other will be in writing, mailed by first-class or express mail, postage prepaid, certified with return receipt requested, sent by facsimile, sent by overnight delivery using a recognized overnight courier, or sent via electronic mail. All such communication will be mailed, sent, or delivered at the address respectively indicated in this Article VII or at such other address as either party may have furnished the other party in writing pursuant to Section 8.04. Any communication so addressed and mailed will be deemed to be given three (3) calendar days after mailed. Any communication sent by overnight courier or electronic mail shall be deemed received one (1) business day after so sent. Any communication sent by rapid transmission shall be deemed to be given when receipt of such transmission is acknowledged by the receiving operator or equipment. Finally, any



communications delivered in person shall be deemed to be given when receipted for by the Company or the County, as the case may be.

8.02 The address of the County for all purposes under this Agreement and for all notices hereunder shall be:

Eddie Treviño, Jr., or his successor  
County Judge  
1100 E. Monroe  
Brownsville, Texas 78520  
(956) 544-0830  
etrevino@co.cameron.tx.us

**With a copy to:**

Mr. Juan Gonzalez or his successor  
Cameron County General Civil Legal Counsel  
County of Cameron, Texas  
1100 E. Monroe  
Brownsville, TX 78520  
(956) 550-1345  
Juan.Gonzalez@co.cameron.tx.us

8.03 The address of the Company for all purpose under this Agreement and for all notices hereunder shall be:

Belltown Power Texas Land, LLC  
13612 Midway Road  
Suite 200  
Farmers Branch, TX 75244972-656-9180  
awillis@belltownpower.com

**With a copy to:**

Wesley Schlenker, Esq.936 Knott PlaceDallas, Texas 75208

8.04 From time to time either party may designate another notice address within the 48 contiguous states of the United States of America for the purpose of this Agreement by giving the other party written notice of such of address in accordance with the provisions of this Article VIII.

**ARTICLE IX**  
**GENERAL**

9.01 This Agreement may be amended, but only in writing, signed by each of the parties hereto and through using the same procedure for approval as is required for this Agreement.



9.02 The covenants and contracts contained in this Agreement, or in any document certificate or other instrument delivered under or pursuant to this Agreement, will survive the execution and delivery hereof, the consummation of this Agreement, and continue to survive thereafter for the applicable statute of limitations to ensure full performance thereof and full recourse for nonperformance by any party.

9.03 No Third Party Beneficiaries. The parties agree that no third person has in any way brought the parties together or been instrumental in the making of this Agreement. Nothing in this Agreement, expressed or implied, is intended to confer upon any other persons any rights or remedies under or by reason of this Agreement. The Company agrees to indemnify the County against any cost resulting from any claim by any third person for any commission brokerage, finder's fee or any other payment based upon any alleged agreement or understanding between such third party and the Company, whether expressed or implied from the actions of the Company. If such a claim is brought against the County, the Company shall have the right and authority to control and direct the investigation, defense and settlement of such claim, as permitted by state law and constitution. For the avoidance of doubt, the Company has engaged financial and tax advisors on a fee basis, and no compensation is contingent on execution of this Agreement.

9.04 Assignment. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns. This Agreement may not be assigned by either the County or the Company without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld or delayed. Notwithstanding the forgoing, the County hereby consents to Company's assignment of all or a portion of its rights under this Agreement upon prior written notice to the County to (i) any Affiliate that assumes Company's leasehold interest and/or acquires an ownership or leasehold interest at the Site (to the extent of such leasehold or ownership interest); (ii) to any entity that has acquired all or substantially all of the Company's assets; (iii) to any successor to the Company by merger, consolidation or other reorganization; and (iv) to a lender providing financing for the Facility as further described below, provided that, with respect to any assignment pursuant to (i), (ii), (iii) or (iv): the Company shall notify the County of any such transaction following such occurrence in accordance with the terms of Article VIII hereof. Any assignment shall require that: (i) all rights duties, obligations and liabilities under the Agreement applying to the interest acquired by the assignee shall be assigned from the assignor and assumed by the assignee, and upon such assumption, the assignor shall have no further rights, duties, or obligations under the Agreement from the date of such assignment to the extent such rights, duties, obligations or liabilities apply to the interest acquired by the assignee; (ii) the assignment be made subject and subordinate to this Agreement and the policies and procedures of the Guidelines; and (iii) the assignment document is in a form and contains content reasonably acceptable to the Cameron County Civil Division Office. For any lender to the Facility, Company may assign as collateral, pledge and/or grant a security interest in this Agreement without the County's consent, but with prior written notice to the County and the County shall execute any document reasonably required by the Company or its lenders, acting reasonably, to effect such assignment, pledge or security interest.



9.05 Upon the occurrence of an event of default pursuant to Section 10.01(a), 10.01(b), or 10.01(c) and after the expiration of the Company's right to cure as set forth in Section 10.02, the County may, as its exclusive remedies, elect to terminate this Agreement and be entitled to collect and recapture the full amount of ad valorem taxes abated under this Agreement as of the date of default, and Company's liability shall be limited to such amount; *provided however*, that (i) the County must give notice of such termination within sixty (60) days of the expiration of the cure period provided in Section 10.02 and (ii) all additional considerations paid by the Company as set forth in Sections 3.04, 3.06, 3.07, Article VI, and Section 9.07 and Exhibit 3 of this Agreement, expressly including without limitation all PILOT Payments, shall be credited against the recapture amount due under this provision. Such a recapture shall be due and payable to the County within sixty (60) days of the date the County provides notice to Company exercising its right of recapture. Upon the occurrence of a default pursuant to Section 10.01(d) or 10.01(f) and after the expiration of the Company's right to cure as set forth in Section 10.02, the County will be entitled to collect and recapture the amount of ad valorem taxes abated under this Agreement for the calendar year in which such a default occurred and may elect to terminate this Agreement. Such a recapture shall be due and payable to the County within sixty (60) days from the date the County provides notice to Company exercising its right of recapture. Upon the occurrence of an event of default pursuant to Section 10.01(e), and after the expiration of the Company's right to cure as set forth in Section 10.02, the County may terminate this Agreement and assert any remedy at law or equity to enforce the provisions hereof. Upon the occurrence of an event of default pursuant to Sections 10.01(i) and after the expiration of the Company's right to cure as set forth in Section 10.02, the County may, as its exclusive remedies, elect to terminate this Agreement and be entitled to collect and recapture the full amount of ad valorem taxes abated under this Agreement during the period beginning on the date such default first occurred and continuing through the date of notice of termination.

If more than one remedy for a default by the Company may be applicable, the County may pursue such jointly or alternatively as it may elect and the forbearance by the County to enforce any remedy provided above upon an event of default shall not be deemed or construed to constitute a waiver of such default.

9.06 The County acknowledges and understands that the Company is relying on the County's representations and warranties in this Agreement and the County's ability to perform the terms thereof. Accordingly, in the event of default by the County, Company may seek to have the provisions of this Agreement enforced by declaratory judgment or injunctive relief to obtain specific performance. Except as provided in this Section 9.06, nothing contained in this Agreement shall be construed as constituting a waiver of the County's governmental immunity from suit or liability, which is expressly reserved to the extent allowed by law.



9.07 General Terms:

(a) The headings contained in the articles of this Agreement are for reference only and do not affect in any way the meaning or interpretation of this Agreement.

(b) As used in this Agreement, all references to exhibits refer to the exhibits attached hereto (each of which is hereby incorporated into and deemed to be a part of this Agreement).

(c) This Agreement will be construed and enforced in accordance with the laws of the State of Texas.

(d) If any term or provision of this Agreement is invalid, illegal or incapable of being enforced, all other terms and provisions of this Agreement will remain in full force and effect and such invalid, illegal or unenforceable term or provisions shall be reformed automatically so as to comply with the applicable law or public policy and to effect the original intent of the parties.

(e) This Agreement may be executed simultaneously in one or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(f) This Agreement (together with the Exhibits hereto and the documents to be delivered pursuant hereto) constitutes the entire agreement among the parties, all negotiations by between and among them being merged into this Agreement (together with such Exhibits and documents).

(g) Unless context requires otherwise, the words, "herein", "hereof" and "hereunder", and words of like import, shall be deemed to refer to this Agreement in its entirety and not to any individual article, section, subsection, paragraph, or subparagraph. The pronouns used in this Agreement will be constructed as masculine, feminine or neuter, singular or plural, as the context may require.

(h) Each party hereto has been represented by legal counsel designated by it and no provision of this Agreement will be construed in favor of, or against, any of the parties hereto by reason of the extent to which this Agreement or any provision hereto is inconsistent with any prior draft hereof or thereof.

(i) The Company shall provide to the County (or permit the County to inspect, as the case may be) the financial information and records referred to in this Agreement, and the County will accept from the Company the financial information as "**Confidential Information**" and agrees to receive and, for the duration of this Agreement and three (3) years thereafter, to not make any unauthorized use of the Confidential Information, including, without limitation, to use such information in the support of activities competitive with those of the Company, and to maintain said Confidential Information in secrecy and strict confidence unless: (i) such information has lawfully become public



information through action of the County; (ii) such information was known to the County prior to having obtained such information under the terms of this Agreement or was developed independently of the Confidential Information provided by the Company; (iii) such information becomes lawfully available to the County, from another source, which has not received the information, either directly or indirectly, from either of the Company or an Affiliate; or (iv) the disclosure of the information is required by law. The confidentiality obligations of this Section 9.09(j) shall expire three (3) years after the last day of the last Operational Year of this Agreement.

(j) In the event that the County receives a request for information relating to the Company, Confidential Information or any other information provided by the Company to the County pursuant to this Agreement, the County shall timely seek an opinion from the Attorney General of the State of Texas requesting if the information requested is required to be provided. The County agrees to use its best efforts in safeguarding all information relating to the Company, including all proprietary or Confidential Information, as well as non-proprietary or non-confidential information provided pursuant to this Agreement, and any other information provided by the Company to the County.

#### **ARTICLE X** **DEFAULT**

10.01 The following events shall be deemed to be events of default by the Company under this Agreement:

(a) The Company fails to submit to the County an Award Affidavit at the time and in the manner required in this Agreement;

(b) Any warranty, affirmation or representation made to the County by or on behalf of the Company with respect to any certificate, Completion Report or Award Affidavit proves to have been false or intentionally misleading in any material respect when made;

(c) Company fails to meet the minimum investment requirement in Section 3.02;

(d) The Project is completed and begins operations, but subsequently the operational Project at the Site ceases the production of electricity for a period of one year or more for any reason except production shut downs to address safety concerns, fire, explosion or other casualty, accident or natural disaster or other event for which Company (or one or more of its Affiliate's) performance is excused for reason of Force Majeure during the Incentive Period unless (i) the Company can demonstrate to the County (acting reasonably) that it is diligently pursuing the resumption of {activity} production operations for at least one third of the Facility and (ii) the Company continues to meet the requirements of Section 3.03; and where for purposes of this Agreement "Force Majeure" shall mean any act, event or circumstance, whether of the kind described herein or otherwise, that is not reasonably within the control of, does not result from the fault or negligence of, and would not have been avoided or overcome by the exercise of reasonable



diligence by the party claiming Force Majeure, with such party having observed a standard of conduct that is consistent with a reasonable and prudent operator; including: (i) acts of God, the government, or a public enemy; strikes, lockout, or other industrial disturbances; (ii) adverse weather conditions, catastrophic storms or floods (including adverse weather conditions, catastrophic storms or floods that prevent access to or operation of the Facility due to closure of roads by decision of a local, state or federal authority); (iii) wars, terrorism, revolts, insurrections, sabotage, commercial embargoes, blockades or civil disturbances of any kind, epidemics, fires, explosions, arrests and actions of a local, state or federal authority that were not requested, promoted or caused by the affected party; (iv) changes in or introduction of laws, rules, regulations, ordinance, decree or orders of any national, municipal or other governmental authority, whether domestic or foreign, or the nationalization, confiscation, expropriation, compulsory acquisition arrest or restraint of any assets by any governmental authority; (v) loss of, accidental damage to, or inaccessibility to or inoperability of any transmission lines to/from the Facility or any disruption under the power purchase agreements associated with the Facility; (vi) any event affecting the power grid or supporting infrastructure that is directly connected to the Facility, which results in the Facility having to declare an event of Force Majeure due to the impact on the Facility's operations; and (vii) the denial, expiration of, or failure to obtain, any regulatory approval, required for the Facility's operations;

(e) Any warranty, affirmation or representation, other than those described in Section 10.01(b), made to the County by or on behalf of the Company on the date hereof proves to have been false or misleading in any material respect when made;

(f) The Company fails to timely comply with the County's request to inspect the Facility in accordance with Section 5.07;

(g) The Company fails to timely pay, when obligated, any investigation cost incurred by the County hereunder or any audit cost under Section 5.06;

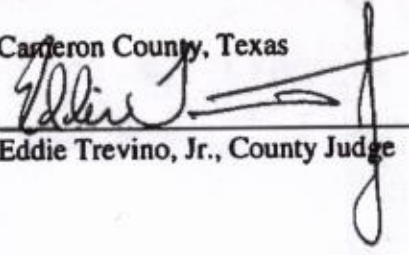
(h) To the extent permitted by law, if bankruptcy or insolvency proceedings are commenced by or against the Company; or

(i) The Company fails to pay any PILOT Payment when due and owing.

10.02 If the County determines that the Company is in default in accordance with the terms and conditions of this Agreement, then the County shall notify the Company in writing of such default. If the default is not cured within thirty (30) calendar days from the date of the notice, then the County may exercise its remedies under Section 9.05. Notwithstanding the foregoing sentence, the cure period for a default pursuant to Section 10.01(i) shall only be thirty (30) business days. The County Commissioners Court may extend the thirty (30) day cure period an additional thirty (30) days if the default may not reasonably be cured within such thirty (30) day period.

IN WITNESS WHEREOF, the undersigned parties hereto have duly executed this Agreement as of the date written below the parties' representatives' signatures, hereinafter.

Cameron County, Texas

  
Eddie Trevino, Jr., County Judge

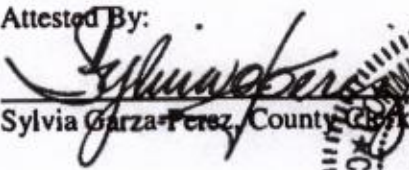
BT Cantwell Solar, LLC

By: 

Name: Lloyd Pope

Title: COO

Attested By:

  
Sylvia Garza-Perez, County Clerk





**Exhibit 1**

**PART A**

**DESCRIPTION OF REAL PROPERTY UNDER LEASE (THE "SITE")**

**METES AND BOUNDS DESCRIPTION**

**122112 Irrevocable Trust, John Christopher Cantwell, Trustee**

**Tract 1:**

All that certain parcel of land containing Eight Hundred (800) acres of land known as all of Tract No. Two Hundred Fifty Eight and also known as all of Share No. One Hundred Sixty Three (163) of the Ojo de Agua Tract in Cameron County, Texas as more fully described in the Decree of Partition rendered on June 3, 1935, Cause NO. 2935, styled Piler Villareal vs. A.A. Browne, et al, in the District Court of Cameron County, Texas; and also known as Map No. One (1) of four (4) maps showing said partition and formerly known as the South Eight Hundred (800) acres of a tract containing 2093.3 acres more or less, in Cameron County, Texas, being part of the Ojo de Agua Portion of the Las Mestanas Grant, originally made by the Spanish Government of America to Vicente Hinojosa, which was subsequently confirmed to his said tract containing 2093.3 acres more or less, being particularly described by mates and bounds as "Second Tract" in deed dated April 5, 1924, made by Browne Land and Cattle Company to H.H. Hardin, which is recorded in Book 124 at pages 202-208 inclusive, Deed Records, Cameron County, Texas, and in deed from H.H. Hardin to Trinity Portland Cement Company, dated April 13<sup>th</sup>, 1931, recorded in Vol. 225, Page 289, of the Records of Deeds of Cameron County, Texas, to which reference is made for a full and accurate description;

**Tract 2:**

Tract No. Two Hundred Fifty Nine (259), containing Twenty (20) acres of land, more or less, in Cameron County, Texas, out of the Ojo de Agua Tract and shown on the Map No. One (1) of a judgment and decree, same being the South half of Lot One (1), Block Nine (9), of the San Dominic Subdivision, as per map thereof recorded in Book 3, p. 14 of the Map Records of Cameron County, Texas, and fully described in an being the Twenty (20) acres of land partitioned on June 3, 1935 in cause styled and numbered Piler Villareal vs. A.A. Browne, et al, number 2935 in the District Court of Cameron County, Texas, and in deed from Myron Turfitt Trustee, to Trinity Portland Cement Company dated the 6<sup>th</sup> day of August, 1940 and duly recorded in Vol. 300, pages 317-318 Deed Records of Cameron County, Texas, to which reference is made for full and accurate description;

**Geistman Farms, Inc.**

All that certain 323-acre tract or parcel of land, situated in the Samuel Parr Survey No. 273, more particularly described by metes and bounds as "Tract 1" and "Tract 2" in that certain Warranty Deed dated January 16, 1969, from P.L. Geistman as Grantor to Geistman Farms, Inc., as Grantee, recorded in Volume 873, Page 129 of the Deed Records of Cameron County, Texas, **SAVE AND EXCEPT** Tract One and Tract Two, described below, the property described herein containing 307.96 acres, more or less, situated in Cameron County, Texas.

**TRACT ONE:** all that certain tract of land, situated in the Samuel Parr Survey No. 273, more particularly described by metes and bounds in that certain Warranty Deed dated May 7, 1993 by and between Geistman Farms, Inc. as Grantor and the City of Harlingen, Texas, a municipal corporation, as Grantee, said Warranty Deed being recorded in Volume 2418, Page 254 of the Official Public Records of Cameron County, TX, containing 14.33 acres, more or less.

**TRACT TWO:** all that certain tract of land, situated in the Samuel Parr Survey No. 273, more particularly described by metes and bounds in that certain Warranty Deed dated May 28, 1993 by and between Geistman Farms, Inc. as Grantor and John Abbott, as Grantee, said Warranty Deed being recorded in Volume 2505, Page 30 of the Official Public Records of Cameron County, TX, containing 0.71 acres, more or less.



**Exhibit 2**

**Schedule of the Company's Minimum Performance**

The Company will establish Full Commercial Operations, and will maintain Full Commercial Operations for substantially all of the Abatement Period.

**Exhibit 3**  
**Community Benefit Agreement Principles**  
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**Exhibit 4**  
**Site Plan**



**Exhibit 5**  
**Roadway Set-Aside Land**

The Roadway Set-Aside Land is described as the yellow-hatched area depicted in Exhibit 4 above, which is that portion of the Cantwell Site described in Exhibit 1 above within 300 feet of the southern border of such Cantwell Site.



# CW Solar Project

Start Date 5/1/2020  
 Construction completion 5/1/2021  
 Value at Base Year \$ 648,323  
 Year 1 - 10 Abatement 100%  
 Taxes to be abated M&O  
 Investment\* \$ 165,000,000  
 Value at end of Abatement\* \$ 33,000,000  
 Proposed annual PILOT \$ 125,000  
 Permanent Jobs 2  
 Average Salary 250  
 Construction Jobs 30-40 Years  
 Economic life All over Texas  
 Other possible locations

	Value	0.360875 M&O	0.056018 I&S	Taxes Foregone	Total Possible Taxes	PILOT**	Total Payments	% Taxes Abated
Year 0	\$ 648,323	\$ -	\$ -	\$ -	\$ -	\$ 95,000	\$ 193,032	0%
Year 1	\$ 165,000,000	\$ 595,443.75	\$ 98,032	\$ 631,531	\$ 687,873	\$ 95,000	\$ 180,035	72%
Year 2	\$ 151,800,000	\$ 547,808.25	\$ 85,035	\$ 545,432	\$ 632,844	\$ 95,000	\$ 172,641	77%
Year 3	\$ 138,600,000	\$ 500,172.75	\$ 77,641	\$ 479,964	\$ 577,814	\$ 95,000	\$ 165,247	70%
Year 4	\$ 125,400,000	\$ 452,537.25	\$ 70,247	\$ 429,441	\$ 522,784	\$ 95,000	\$ 157,852	68%
Year 5	\$ 112,200,000	\$ 404,901.75	\$ 62,852	\$ 378,919	\$ 467,754	\$ 95,000	\$ 150,458	66%
Year 6	\$ 99,000,000	\$ 357,266.25	\$ 55,458	\$ 328,396	\$ 412,724	\$ 95,000	\$ 143,063	60%
Year 7	\$ 85,800,000	\$ 309,630.75	\$ 48,063	\$ 277,874	\$ 357,694	\$ 95,000	\$ 135,669	55%
Year 8	\$ 72,600,000	\$ 261,995.25	\$ 40,669	\$ 227,351	\$ 302,664	\$ 95,000	\$ 128,275	48%
Year 9	\$ 59,400,000	\$ 214,359.75	\$ 33,275	\$ 176,829	\$ 247,634	\$ 95,000	\$ 120,880	37%
Year 10	\$ 46,200,000	\$ 166,724.25	\$ 25,880	\$ 126,306	\$ 192,605	\$ 95,000	\$ 110,880	37%
Value at end	\$ 33,000,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%
Total Taxes		\$ 3,810,840.00	\$ 597,152	\$ 3,602,044	\$ 4,402,390	\$ 950,000.00	\$ 1,547,152	65%

	Mkt Value	Ag Exemption	Appraised	Ag Recapture*	5-Year
Tract 1 - 800 acres	\$ 1,855,376	\$ (1,354,513)	\$ 500,863	\$ 26,752	
Tract 2 - 307 acres	\$ 844,426	\$ (696,966)	\$ 147,460	\$ 13,765	
			\$ 648,323	\$ 40,517	
			Estimated****		

Tax Code Section 23.26(d)(3) requires that the depreciated value of the property be calculated using a useful life that does not exceed 10 years. Additionally, Tax Code Section 23.26(e) prohibits a chief appraiser from determining the depreciated value to be less than 20 percent of the total value adjusted for physical, functional, or economic obsolescence.