



MEMORANDUM

Date: November 23, 2022

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: Jan Leshner 
County Administrator

Re: **Additional Information for the December 6, 2022 Board of Supervisors Meeting -
Project Flag/American Battery Factory - Term Sheet and Negotiations**

Background

On [October 11, 2022](#) I provided the Board of Supervisors a memorandum and land appraisal that served as initial notification of an impending economic development project known as Project Flag, in which the company had issued a letter of intent to lease and purchase Pima County-owned land for construction of a battery manufacturing complex. This significant business attraction project is expected to hire 1,000 employees and provide an estimated economic impact of \$3.1 billion in Pima County over 10 years at full build-out as planned at the County's Aerospace and Research Campus (ARC). The primary points in my October 11, 2022 notification memorandum are:

- The industry sector is the manufacturing of batteries for the technology market.
- ABF will build its own complex of facilities on approximately 267 acres currently owned by Pima County and located at the Aerospace Research Campus within the corporate boundaries of the City of Tucson.
- The appraised value of this land which has been identified by Pima County for economic development purposes is \$23,250,000 and the land will not require rezoning from its current I-2 Industrial classification.
- The project anticipates employing 1,000 FTEs at full build out at an average annual salary of \$65,000.
- The expected capital expenditure by ABF is estimated at \$1.17 billion and the estimated economic impact is \$3.1 billion over 10 years.
- The incentives provided by Pima County are limited to job training support, recruitment assistance and possible Pima County support for Foreign Trade Zone activation of the site.
- The estimated water use is 150,000 gallons per day and the expected wastewater usage is expected to be 25,000 gallons per day when the site is built out. An Air Quality Permit will not be required based on information from ABF.

Discussion

Project Flag is the business attraction code name for American Battery Factory, also known as ABF. The company is a Utah-based startup that was incubated from Utah-based energy storage company Lion Energy in 2021. ABF is a Lithium-Iron-Phosphate (LPF) battery cell manufacturer and has already established several significant supplier relationships and off-take agreements for the LPF cells that would be developed at Pima County's ARC.

Pima County Economic Development and its regional partners have been engaged in discussions with ABF since approximately January of 2022. Pima County Administration, Pima County Economic Development, Pima County Real Property Services, and the Pima County Attorney's Office have been working on the specific terms of a lease-purchase agreement with the company since October 2022. Because ABF is a start-up company, Pima County is developing a carefully crafted lease-purchase agreement that places significant focus on assuring the job creation and capital investment aspects while safeguarding the valuable economic development land at the ARC.

The County's ARC is located in the City of Tucson's jurisdiction and ABF is seeking incentives from the City of Tucson as well as the Arizona Commerce Authority, and those negotiations are still in progress. Primary permitting review and approval will be conducted directly by Pima County Development Services. The City has already agreed to this delegation of the development process.

ABF has an accelerated time frame for the lease and purchase of the County land in order to accommodate its construction and production schedules. A final lease-purchase contract will be on the Board's Regular Agenda for the December 6, 2022 meeting. In order to provide information ahead of contract consideration, the Board of Supervisors is provided attached term sheet (Attachment). This information contains the primary deal points that both ABF and Pima County have agreed to in principle, and which constitute the primary contract provisions of the lease-purchase agreement that will be available to the Board no later than December 1, 2022.

The term sheet itself is a non-binding agreement but constitutes the primary aspects of the lease-purchase agreement. The primary points in the term sheet are:

- The lease-purchase structure enables Pima County to require verifiable employment and wage benchmarks and other safeguards during three development phases of the project. Phase 1 benchmarks must be confirmed during the initial lease term before any sale of County land at ARC occurs.
- Lease rates and sale terms will comply with applicable Arizona Revised Statutes and the Gift Clause of the Arizona Constitution. ABF's lease of the property under the agreement requires fair market rent that has been determined by a third party appraisal of the property, and the sale price has been determined by an independent appraisal. ABF receives no direct financial incentives from Pima County and the company will construct its own facilities and onsite infrastructure.

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- The lease-purchase agreement is structured to begin with an initial five-year ground lease term (with four possible five-year renewals) for 70 acres of land at ARC. The rental rate shall increase by 2.5% per annum during the remainder of each renewal term.
- During Phase 1 of the agreement, and within 24 months of the lease execution, ABF will be required to complete construction targets, employ 300 FTEs on the site at an average annual wage of \$65,000 and be in compliance with the agreement to proceed to Phase 2.
- Phase 2 would occur within 48 months of the lease execution and require ABF to complete additional construction targets, employ 600 FTEs in aggregate on site at an average annual wage of \$65,000 and be in compliance with the agreement to proceed to Phase 3.
- Phase 3 would occur within 72 months of the lease execution and require ABF to complete additional construction targets, employ 1,000 FTEs aggregate on site at an average annual wage of \$65,000 and be in compliance with the agreement.
- If ABF completes construction of all improvements on the leased property prior to the required Phase 1 construction completion date, satisfies the Phase 1 employment requirements and is not otherwise in default under the lease for the Leased Property, ABF will have the option to purchase the 267 acres upon written notice to the County delivered no less than 30 months following lease execution. The purchase price, based on appraised value, will be \$78,318.00 per acre.

Conclusion

The provided term sheet contains the primary points that ABF and Pima County have agreed to in principle, and which constitute the primary contract provisions of the lease-purchase agreement that will be on the December 6, 2022 Board agenda. The finalized lease-purchase contract will be transmitted to the Board no later than December 1, 2022.

County Administration and Economic Development staff are available for any questions or information requests in advance of the December 6, 2022 Board of Supervisors meeting.

JKL/dym

Attachment

c: Carmine DeBonis, Jr., Deputy County Administrator for Public Works
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer
Steve Holmes, Deputy County Administrator
Heath Vescovi-Chiordi, Director, Pima County Economic Development
Jeff Teplitsky, Director, Real Property Services
Patrick Cavanaugh, Deputy Director, Pima County Economic Development

PROJECT FLAG

PIMA COUNTY, ARIZONA

Project Structure:

- Ground Lease between Pima County (the “County”) and American Battery Factory, Inc. (“ABF”)

Ground Lease Terms:

- **Term:** Initial term of 5 years (the “Initial Term”).

Renewals: Four renewal terms of 5 years each (each a “Renewal Term”). ABF must exercise its renewal rights at least 6 months prior to the expiration of the then-current term.

- **Subject Property:** Approximately 70 acres of unimproved real property within the Aerospace Research Campus in Tucson, Arizona, which is generally depicted on Exhibit A attached hereto (the “Leased Property”)
- **Permitted Use:** The manufacture of battery cells, together with office and light warehousing related thereto
- **Rent:**
- Initial Term: For the Initial Term, the rent shall be as follows:

Lease Year	Per Acre Rent	Annual Rent (based upon 70 acres)
1	\$6,500	\$455,000
2	\$6,663	\$466,410
3	\$6,829	\$478,030
4	\$7,000	\$490,000
5	\$7,175	\$502,250

Renewal Term: The rent for the first year of a Renewal Term shall be the fair market rent as determined by a third party appraiser and such rental rate shall increase by 2.5% per annum during the remainder of such Renewal Term.

- **Security Deposit:** \$50,000.00, to be deposited upon execution of the Lease
- **Allocation of Expended Funds:** The Security Deposit and the Option Consideration (defined below) shall be credited against the price to be paid to exercise the option to purchase the entirety of the Primary Property.
- **Environmental Indemnity:** Executed by ABF and a third party reasonably acceptable to the County in favor of the County.
- **Development Terms:** ABF will develop the Leased Property without additional funding or direct financial assistance from the County upon the following terms and conditions -

- *Existing Zoning:* Heavy Industrial Zone (I-2), under Tucson zoning code; to be independently investigated and confirmed by ABF
- *Improvements:*
 - Fully improved industrial/manufacturing project, including a Sprung Structures Power & Energy structure of at least 250,000 square feet of floor area (the “Premises”)
 - The Premises will include:
 - Office space for ABF executive and plant management;
 - Manufacturing area for ABF’s first phase production line; and
 - Warehousing and distribution area for ABF’s products
- *Plans & Specifications:* Plans and specifications for all improvements on the Leased Property, including the Premises, will be subject to the County’s review and approval no later than 150 days after lease execution; provided, however, that such date may be extended by administrative approval by the County if needed.
- *Construction Start Date:* No more than 270 days following lease execution
- *Construction Completion Date:* No more than 24 months following lease execution, as evidenced by a certificate of occupancy (or equivalent) for the improvements
- *Construction, generally:* Construction of all improvements on the Leased Property to be in strict accordance with the plans and specifications approved by the County; ABF to obtain all permits prior to commencing construction; construction of all improvements to be at ABF’s sole cost and expense; all construction work to be performed by a licensed and bonded general contractor in good standing with the Arizona Registrar of Contractors; ABF to ensure lien-free completion of all improvements
- **Insurance:** ABF to maintain at its expense such insurance coverage for the Leased Property and its operations as the County may determine from time to time during the term of the lease, including commercial general liability, environmental/pollution liability, auto liability and workers’ compensation.
- **Local Employment and Salary Requirements:**
 - No more than 24 months following lease execution, ABF must satisfy the following (collectively, the “Phase I Employment Requirements”):
 - At all times employ at least 300 employees working full-time at the Leased Property
 - The average salary of employees working full-time at the Leased Property must be at least \$65,000 (U.S.) per year
 - All such employees must be full-time residents of Pima County, Arizona
 - During the term of the lease agreement, ABF to provide to the County quarterly reports certified by ABF’s CFO stating the number of ABF’s full-time employees employed at the Leased Property and the average salary of such full-time employees for each month during the quarter (“Employment Certificates”)

- **Purchase of Property:**

- If ABF timely completes construction of all improvements on the Leased Property prior to the Construction Completion Date, including, without limitation, the Premises, timely satisfies the Phase I Employment Requirements and is not otherwise in default under the lease for the Leased Property, ABF will have the right and option to purchase the Primary Property (as defined below) upon written notice to the County delivered no less than 30 months following lease execution; the purchase price will be \$78,318.00 per acre of the Primary Property.

The “Primary Property” is approximately 267 acres of unimproved real property within the Aerospace Research Campus in Tucson, Arizona, which is generally depicted on Exhibit B attached hereto. The Primary Property includes the Leased Property, the Phase II Property (as defined below) and the Phase III Property (as defined below).

Option Consideration: \$50,000.00, to be deposited upon execution of the Lease

- **Phase II:**

- *Phase II Property:* No later than December 31, 2023, ABF and the County shall mutually agree in writing on the number of contiguous acres and the location of such acres within the Primary Property that will comprise the “Phase II Property”.
- *Improvements:*
 - Fully improved industrial/manufacturing project consisting of one or more buildings, with a minimum aggregate square footage of 400,000 square feet inclusive of the Phase I buildings.
 - Improvements will include:
 - Office space for ABF executive and plant management;
 - Manufacturing area for ABF’s second phase production line; and
 - Warehousing and distribution area for ABF’s products
 - Improvements must be completed no more than 48 months following execution of the lease for the Leased Property.
- *Phase II Employment Requirements:*
 - No more than 48 months following execution of the lease for the Leased Property, ABF must satisfy the following (collectively, the “Phase II Employment Requirements”):
 - At all times employ at least 300 additional employees working full-time at the Leased Property and Phase II Property (600 total employees between the Leased Property and the Phase II Property)
 - The average salary of employees working full-time at the Leased Property and Phase II Property must be at least \$65,000 (U.S.) per year
 - All such employees must be full-time residents of the State of Arizona
 - ABF to provide County Employment Certificates on a quarterly basis
- *Phase II Purchase Option:* If ABF fails to (i) timely complete construction of all improvements on the Phase II Property prior to the completion deadline therefor, or (ii) timely satisfies the Phase II Employment Requirements, the County will have the right and

option to purchase the (x) any portion of the Phase II Property that has not yet be developed, and (y) all of the Phase III Property; the purchase price will be the lesser of (X) fair market value at the time of exercise, or (Y) \$78,318.00 per acre. The purchase price shall be reduced by the amount of any reasonably administrative fees incurred by the County in connection with such purchase transaction.

- **Phase III:**

- *Phase III Property:* No later than December 31, 2023, ABF and the County shall mutually agree in writing on the number of contiguous acres and the location of such acres within the Primary Property that will comprise the “Phase III Property”.

- *Improvements:*
 - Fully improved industrial/manufacturing project consisting of one or more buildings, with a minimum square footage of 800,000 square feet inclusive of the Phase I and II buildings, which aggregate square footage ABF represents and covenants shall be sufficient to meet the capital investment, economic impact, construction impact and other economic development criteria in the Sun Corridor Inc. Project Assessment System – Project Summary dated October 5, 2022.
 - Improvements will include:
 - Office space for ABF executive and plant management;
 - Manufacturing area for ABF’s third phase production line; and
 - Warehousing and distribution area for ABF’s products
 - Improvements must be completed no more than 72 months following execution of the lease for the Leased Property.

- *Phase III Employment Requirements:*
 - No more than 72 months following execution of the lease for the Leased Property, ABF must satisfy the following (collectively, the “Phase III Employment Requirements”):
 - At all times employ at least 400 additional employees working full-time at the Leased Property, the Phase II Property and the Phase III Property (1,000 total employees among the Leased Property, Phase II Property and Phase III Property)
 - The average salary of employees working full-time at the Leased Property, Phase II Property and Phase III Property must be at least \$65,000 (U.S.) per year
 - All such employees must be full-time residents of the State of Arizona
 - ABF to provide County Employment Certificates on a quarterly basis

- *Phase III Purchase Option:* If ABF fails to (i) timely complete construction of all improvements on the Phase III Property prior to the completion deadline therefor, or (ii) timely satisfies the Phase III Employment Requirements, the County will have the right and option to purchase the (x) any portion of the Phase II Property or Phase III that has not yet been developed; the purchase price will be the lesser of (X) fair market value at the time of exercise, or (Y) \$78,318.00 per acre. The purchase price shall be reduced by the amount of any reasonably administrative fees incurred by the County in connection with such purchase transaction.

Restrictions on Property.

- Until the County's purchase options on the Phase II Property and the Phase III Property have expired, ABF shall not lease, assign any interest in, create a lien on, or otherwise encumber the Phase II Property and the Phase III Property in any manner without the prior written consent of the County, which consent may be granted, withheld or conditioned in the County's sole and absolute discretion.
- The County shall be entitled to record these restrictions on the Phase II Property and the Phase III Property.
- ABF shall not undertake any development on the Phase III property until ABF has timely completed construction of all improvements on the Phase II Property prior to the completion deadline therefor and (ii) timely satisfied the Phase II Employment Requirements.

Notwithstanding anything to the contrary set forth herein, this outline is not an offer to lease, buy or sell the Leased Property, the Phase II Property, the Phase III Property or any portion of such properties. This outline is non-binding. It is merely an expression of the County's interest in developing the Leased Property, the Phase II Property and the Phase III Property and outlines terms upon which the County may consider the development of the properties. The terms of this outline are neither all-encompassing nor comprehensive. Unless and until a lease agreement has been fully executed and delivered by ABF and the County, neither ABF nor the County will be bound by the terms described in this outline.

EXHIBIT A

Depiction of the Leased Property

See Attached

EXHIBIT B

Depiction of the Primary Property

See Attached