
PREEMPTING THE NEGOTIATION · PER AMENDMENT

What SunVest Will Counter With — and Our Position

Read this before the negotiation call

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Amendment 1 — Tax reimbursement language ("solely" → "substantially as a result of")

Likely SunVest pushback. "We won't accept audit-cap reimbursement — our tax-reimbursement obligations need a defined upper bound based on the BESS's contribution, not unlimited exposure to county reassessment decisions outside our control."

Our position. Agreed on no audit-cap, but the increase tied to the BESS installation must be specifically attributable. "Solely as a result of" is too narrow — partial-cause tax increases get excluded under that wording. "Substantially as a result of, or contributed to by" captures partial-cause cases without giving SunVest an excuse to walk away from clear obligations. Rollback taxes (Illinois imposes these when ag land converts to non-ag use) must explicitly be SunVest's responsibility.

Fallback acceptable. Pass-through with annual reconciliation. SunVest reimburses gross property tax assessed against the leased portion of the parcel, with an annual true-up against the prior-year base. Rollback taxes stay 100% SunVest's at conversion.

Walk trigger. They refuse any rollback-tax responsibility, or insist on the "solely" wording with no movement.

Amendment 2 — Decommissioning bond before construction, surety/LOC only

Likely SunVest pushback. "Posting a multi-million dollar bond before construction is a significant capital cost. We typically post at commercial operation when revenue can support the cost. Removing corporate guarantee as a form is unusual — we have an investment-grade parent and want to use the parent guarantee in early years before switching to surety."

Our position. Pre-construction posting is non-negotiable. The construction phase is the highest-risk phase for partial-build abandonment, per Scenario B in

SUNVEST_RISK_SCENARIOS_2026_05_10.md. Corporate guarantees are worthless if the guarantor itself goes under — which has happened repeatedly in the 2024-2026 renewable-developer bankruptcy wave. Surety bond or letter of credit only.

Fallback acceptable. Parent guarantee plus surety in early years (years 1-5), surety-only by year 5+. Parent guarantee accepted only if the parent is rated investment grade by S&P or Moody's at the time of posting, with 24-month notice and surety replacement required if the parent is ever downgraded below BBB-/Baa3. Salvage value reassessment: 3-year cadence for years 1-9 (highest cell-degradation uncertainty), 5-year thereafter.

Walk trigger. They insist on corporate guarantee as the only form, or refuse pre-construction posting entirely.

Amendment 3 — Assignment threshold \$50M / 100 MW

Likely SunVest pushback. "Five-year continuing liability on the original entity is unusual — typical is one or two years. The \$50M / 100 MW threshold is high for a 10 MW project; we usually see \$25M / 50 MW."

Our position. \$50M / 100 MW is the proper floor for a 35-year obligation. Below that is shell-company tier — exactly the abandonment scenario the amendment prevents (Scenario D in the risk doc). Continuing liability of 5 years protects dad if an assignee fails shortly after acquisition.

Fallback acceptable. \$40M / 80 MW with 5-year joint-and-several, or \$50M / 100 MW with 3-year joint-and-several. New decommissioning bond at assignment non-negotiable — assignee posts fresh financial assurance, not inherited.

Walk trigger. Below \$30M / 50 MW, or no continuing-liability requirement on the original SunVest entity at all.

Amendment 4 — One-way environmental indemnification, SunVest to dad

Likely SunVest pushback. "We're willing to indemnify for our own negligence. Strict-liability indemnification — meaning we pay regardless of fault — is broader than industry standard and we typically request bilateral language so each party covers its own actions."

Our position. Strict-liability is required because CERCLA itself is a strict-liability statute. Property owners can be named as Potentially Responsible Parties under CERCLA without any showing of negligence — the federal government doesn't have to prove dad did anything wrong to come after him.

Negligence-based indemnification leaves dad exposed to CERCLA enforcement when the cause is ambiguous or when the regulator pursues a strict-liability theory. The Moss Landing precedent shows this is not theoretical.

Fallback acceptable. Bilateral indemnification structure, but with a carve-out: SunVest indemnifies dad on

a strict-liability basis for any contamination, pollution, or hazardous material release "caused by or arising from the Energy Facilities or Tenant Operations." Dad's reciprocal obligation is negligence-only and limited to acts of dad or his agents on the parcel. Dad selects counsel; SunVest pays defense costs upfront, not by reimbursement. Survives lease termination indefinitely.

Walk trigger. They refuse strict-liability indemnification for CERCLA/RCRA/state environmental statute claims. That's the entire purpose of the clause.

Amendment 5 — Insurance: \$5M / \$10M aggregate + \$5M environmental policy

Likely SunVest pushback. "\$5M occurrence / \$10M aggregate overinsures a 10 MW project. Industry norm for our project size is \$2M / \$4M general liability. Environmental policies at \$5M are also rare for projects this size — we'd typically carry \$1M to \$2M environmental."

Our position. The Moss Landing fire (January 2025, cited in SUNVEST_RISK_SCENARIOS_2026_05_10.md) generated cleanup costs well into nine figures. \$5M is a small fraction of realistic incident exposure for a battery storage facility. Industry "norms" reflect what developers want to pay, not what landowners need for protection. The Moss Landing precedent makes \$5M / \$10M GL plus \$5M environmental appropriate, not excessive.

Fallback acceptable. \$3M occurrence / \$5M aggregate general liability as the floor. Separate \$5M environmental and pollution liability policy, non-negotiable. Owner-as-additional-insured automatically (not "upon request") non-negotiable. Annual certificate delivery, 60-day cancellation notice non-negotiable. Continued coverage through the 12-month removal period.

Walk trigger. No separate environmental policy at all, or GL limits below \$2M / \$4M, or owner-named "upon request" language preserved.

Negotiation logistics — what to do on the call

After SunVest has responded in writing to the amendment letter (verbal negotiations are faster but only after positions are on the record):

1. Schedule a 30 to 45-minute call with Bill French.
2. Have dad's attorney on the call if possible; if not, reachable by text.
3. Open with the amendments SunVest is most likely to accept (Amendments 1 and 5 wording tweaks, owner improvement consent change from "sole discretion" to "reasonable" — all standard contract polish). Build momentum.
4. Move to the middle (Amendments 2 bond cadence and 3 assignment threshold). Apply the fallback positions where indicated.
5. End with the hardest one (Amendment 4 environmental indemnification). Hold the walk trigger.

6. Take notes during the call. After the call, send Bill a same-day summary email confirming what was agreed. Memorialize before counsel drafts the redline.
7. Counsel produces the redline. SunVest's counsel reviews. Dad signs only after the final redline matches the agreed summary.

What not to do on the call

- Don't negotiate against yourself. If SunVest gives a counter, take it to counsel, don't immediately counter-counter on the call.
- Don't bluff about other deals you don't actually have. The QCELLS deal IS real — reference it freely. CP Development is parked — describe it as parallel but not imminent.
- Don't accept verbal commitments. Everything goes into the redline.
- Don't try to negotiate higher rent on this call. Rent is set; this call is about protective clauses. Per the comps analysis in LEASE\COMPS_BENCHMARK_2026_05_13.md, the \$150K/yr is fair-market for the public-data view — protecting it through amendments is higher leverage than trying to push it up.

Cross-references: LEASE\SUNVEST_AUDIT_2026_05_10.md (full clause audit), LEASE\BILL_FRENCH_AMENDMENT_REQUEST_DRAFT_2026_05_10.md (the letter SunVest is responding to), LEASE\DECISION_TREE_2026_05_13.md (branch logic per response category), LEASE\COMPS_BENCHMARK_2026_05_13.md (why \$150K rent doesn't need re-pricing).