Board of Trustees

Tax Abatement Agreement Documents

Revised after Board Packet

1. **Memorandum from Legal Counsel ..... 1 - 3**

2. **Guidelines and Criteria Governing Tax Abatement Agreements by South Texas College, as revised by Legal Counsel on May 22, 2015..... 4 - 26**

3. **Tax Abatement Agreement between South Texas College and Duke Energy Renewables Wind, LLC as revised in Response to Legal Counsel..... 27 - 38**

SOUTH TEXAS COLLEGE

THE J. RAMIREZ LAW FIRM

Attorneys at Law
Ebony Park, Suite B
700 N. Veterans Blvd.
P.O. Box 181
San Juan, Texas 78589
Phone: (956) 502-5424 Fax: (956) 502-5007
Writer's e-mail address: jramirez@rg-legal.com

May 26, 2014

Dr. Shirley S. Reed, President
South Texas College
McAllen, Texas

Re: Duke Tax Abatement Agreement

Dear Dr. Reed.

You have asked us to opine with respect to whether the College may grant a tax abatement under the Texas Tax Code and the College's adopted tax abatement guidelines to an eligible property on which construction of improvements are under erection on the date of application for tax abatement or of the granting of the abatement.

Effective May 26, 2015, if the board of trustees approves them, the College will have adopted Tax Abatement Guidelines and Criteria under the provisions of the Property Development and Tax Abatement Act, codified at Chapter 12 of the Texas Tax Code (the "Tax Abatement Act"). The board of trustees will also consider an abatement application from Duke Energy ("Duke") prior to the board of trustees meeting. The application has been thoroughly reviewed by College staff and the proposed tax abatement agreement has been reviewed and addressed by both parties. Duke's application (attached hereto) seeks a tax abatement from 85 percent of the eligible improvements' maintenance and operations taxes for a period of ten years. The eligible improvements consist primarily of wind towers placed strategically throughout a reinvestment zone designated by Starr County. Constructed in phases, when completed, the eligible improvements are anticipated to have a taxable value in excess of $500 million, which exceeds the $400 million threshold required by the College's tax abatement guidelines. On the date of the application, Duke had constructed much of one Phase, which is scheduled for completion within a few weeks of approval of the tax abatement agreement. Duke's schedule calls for completion of entire project by the year 2017. Duke will tender completions of improvements in phases and the tax abatement will apply to improvements as those phases are completed and approved.

The College's tax abatement authority is granted and governed by provisions of the Tax Abatement Act. *see infra.* Nothing in that chapter precludes the tax abatement's application to improvements in the process of being constructed. What is critical under the Tax Abatement Act is that the improvements not have been taxed for a prior tax year. The legislative policy implicit in this provision would appear to be that the construction or installation of improvements be induced by virtue of the tax abatement. Granting a tax abatement to an existing improvement that has been taxed would not satisfy that legislative objective.

Notably, a related statute, the Texas Economic Development Act (the "Economic Development Act") addresses tax abatements by school districts. Section 313 of the Tax Code defines "qualified property" for purposes of tax abatement by school districts as: "(1) land that is located in an area designated as a reinvestment zone under Tex. Tax Code 311 or 312, or as an enterprise zone under 2303 of the Gov't Code; (2) on which a person proposes to construct a new building or erect or affix a new improvement ***that does not exist before the date the person submits a complete application for a limitation on appraised value under this subchapter***... [our emphasis]" Tex. Tax Code 313.021(2)(A). While various statutes in Texas (such as the Education Code) do include a junior college (such as the College) within the definition of a school district, such is not the case here. "Taxing unit" is described in Section 1.04 of the Tax Code to include both a "junior college" and a "school district". A "school district" is defined as subject to Chapter 42, Education Code, and that is organized primarily to provide general elementary and secondary public education. The College is a junior college and not governed by the provisions of Chapter 42 of the Education Code. Hence, when the Tax Abatement Act or the Economic Development Act refer to "school district" they do so to the exclusion of a "junior college.

It is our opinion that with respect to the abatement agreement, the College is subject to provisions of Chapter 212, the Tax Abatement Act, and not to the Economic Development Act. Therefore, as long the improvements have not been previously taxed prior to the tax abatement, the tax abatement will apply. In the abatement agreement, we have included provisions that allow the College to rely on as the tax abatement laws and the Tax Code as they are adopted and amended and interpreted by the Courts. In the exercise of due diligence if the abatement agreement is approved, it may also be reasonable to request a Texas Attorney General's opinion on the matter.

Out of an abundance of caution, we note that our opinion cannot be conclusive as against a court judgment. Given the time limitations that the College and we have been be subject to, we have struggled with various issues raised by the tax abatement, including future tax exemptions that may be adopted by the Texas Legislature. We have included provisions that address that. But we note, Duke has not relied on either adoption of the abatement agreement or on our legal opinion in order to undertake their capital investment. Duke has equally qualified legal counsel and before issuing our opinion we requested their own legal opinion which they have provided openly to the board of trustees and have subsequently provided to us (see copy attached).

Very truly yours,

Jesus Ramirez

2015 – 2017

Guidelines and Criteria Governing Tax Abatement Agreements by South Texas College

Adopted by Resolution of the Board of Trustees of South Texas College
on May 26, 2015

SOUTH TEXAS COLLEGE
GUIDELINES AND CRITERIA Governing Tax Abatement Agreements

Table of Contents

Page

Section 1. Definitions. 1

Section 2. Abatement Authorized. 4

Section 3. Application. 5

Section 4. College Approval. 6

Section 5. Agreement. 6

Section 6. Recapture. 7

Section 7. Administration. 9

SOUTH TEXAS COLLEGE
GUIDELINES AND CRITERIA
FOR GRANTING TAX ABATEMENT

WHEREAS, South Texas College finds that tax abatement provides a valuable economic tool for use by the College and other governmental entities interested in supporting and creating jobs in Hidalgo and Starr Counties;

WHEREAS, South Texas College finds that a tax abatement policy is in the public interest and will contribute to the economic development of Hidalgo and Starr Counties;

WHEREAS, South Texas College (the ñCollegeò) has considered playing a limited, but significant, role in the development of substantial renewable energy and scientific investment in South Texas;

WHEREAS, Chapter 312 of the Texas Tax Code, popularly known as the Property Redevelopment and Tax Abatement Act (the ñActò), authorizes junior college districts to join a municipality or a county in offering a temporary real property and/or tangible personal property tax abatement for limited periods of time as an inducement for financial investment in the development or redevelopment of certain taxable property; and

WHEREAS, the Act grants the College great discretion to adopt guidelines and criteria identifying the types of development or redevelopment suitable to the educational and financial goals of the College;

WHEREAS, the Act requires eligible taxing jurisdictions to establish Guidelines and Criteria as to eligibility for tax abatement agreements prior to granting any future tax abatements, said Guidelines and Criteria to be unchanged for a two-year period unless amended or repealed by a three-fourths vote of the Board of Trustees;

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of South Texas College that the following Guidelines and Criteria for granting tax abatements be adopted:

Section 1. Definitions.

(a) ñAbatementò means the temporary, full or partial exemption from ad valorem taxes of certain added value to real and personal property in a zone designated for economic development purposes pursuant to the Act by the Counties of Hidalgo and Starr.

(b) ñAdded Valueò means the increase in the Appraised Value of an Eligible Property as a result of ñExpansionò or ñModernizationò of an existing facility or construction of a ñNew Facility.ò Added Value does not mean or include ñDeferred Maintenance.ò

(c) ñAppraised Valueò means the appraised value for property tax purposes as determined by a County Appraisal District, subject to the appeal procedures set forth in the Texas Tax Code.

(d) ñAgreementò means a contractual agreement between a property owner and/or lessee in an Eligible Jurisdiction for the purposes of tax abatement. Any Agreement shall be in conformity with these Guidelines and Criteria, including any variance granted under Section 3(g) set out herein. Upon the adoption of a resolution authorizing an Agreement and the execution of same by the parties, the Agreement shall be deemed to embody all of the terms of the Abatement. and no provision of these Guidelines and Criteria shall be deemed to supersede any terms of the Agreement.

(e) ñBase Year Valueò means the Appraised Value of Eligible Property as of the date specified in the Agreement.

(f) ñBasic Manufacturing or Service Facilityò means buildings and structures, including fixed machinery and equipment used or to be used for the production of renewable energy.

(g) ñConstruction Phaseò means the period during which a material and substantial improvement of the property occurs which represents a separate and distinct construction operation undertaken for the purpose of erecting the improvements. The Construction Phase ends upon the earliest to occur of the following events:

(1) when a certificate of occupancy is issued for the Facility or the engineer/architect supervising construction issues a certificate of final completion,

(2) when the Facility has achieved commercial production of a product; provision of a service or start up for production of electrical power;

(3) when the architect or engineer supervising construction issues a certificate of substantial completion, or some similar instrument, or

The determination of the end of the Construction Phase shall be made by the College, in its sole and absolute discretion, based upon the above criteria and such other factors as the College may deem relevant. The determination of the completion of the Construction Phase shall be conclusive, and any judicial review of such determination shall be governed by the substantial evidence rule.

(h) ñCountyò means Hidalgo County, Texas and/or Starr County, Texas

(i) ñDeferred Maintenanceò means improvements necessary for continued operations which do not improve productivity or alter the process technology.

(j) ñEconomic Lifeò means the number of years a property improvement is expected to be in service in a Facility.

(k) ñEligible Propertyò means Abatement may be extended to the value of the improvements to real property, including buildings, structures, fixed machinery and equipment, and site improvements, plus that office space and related fixed improvements necessary to the operation and administration of the Facility.

(l) ñExpansionò means the addition of buildings, structures, fixed machinery or equipment for the purposes of increasing capacity.

(m) ñFacilityò means property improvements completed or in the process of construction which together compromise an integral whole comprising the project as described in the agreement for temporary tax abatement.

(n) ñForce Majeureò means circumstances beyond the control of Owner which shall include casualty losses, national economic factors, shutdowns due to governmental regulations, strikes, acts of war, and the like.

(o) ñIneligible Propertyò The following types of property shall be fully taxable and ineligible for abatement: land; inventories; supplies; tools; furnishings and other forms of movable personal property; vehicles; vessels; aircraft; housing; hotel accommodations; Deferred Maintenance investments; property to be rented or leased except as provided in Section 1(k); improvements to real property which have an economic life of less than 20 years; 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; unless specifically authorized by the Eligible Jurisdiction.

(p) ñModernizationò means the replacement and upgrading of existing facilities which increase the productive input or output, updates the technology or substantially lowers the unit cost of the operation, and extends the economic life of the facilities. 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, repairing or completion of Deferred Maintenance.

(q) ñNew Capital Investmentò means the total value of expenditures capitalized for the Facility on the Ownerôs books, prior to depreciation, whether relating to exempt or non-exempt property, including all buildings, structures, site improvements, fixed equipment, intangibles, and pollution control equipment.

(r) ñNew Facilityò means a property previously undeveloped which is placed into service by means other than or in conjunction with an Expansion or Modernization.

(s) ñOwnerò means the owner of a Facility subject to Abatement. If the Facility is constructed on a leased property, the owner shall be the party which owns the property subject to Abatement. The other party to the lease shall join in the execution of Agreement but shall not be obligated to assure performance of the party receiving Abatement.

(t) òThe Actò means Property Tax Code chapter 312

(u) ñResearch and Developmentò means Ownerôs collaboration of research and development with South Texas College to undertake scientific, technical or educational endeavors of alternative energy programs. aimed at research and development.

Section 2. Abatement Authorized.

(a) Authorized Facilities. A Facility may be eligible for tax incentives in the form of tax abatement if it is substantially designed and constructed or manufactured for construction or installation (i) operated exclusively for the production, of renewable energy, including solar, geothermal, wind and hydro and (ii) the estimated proposed New Capital Investment shall exceed $400 million. Abatement may be granted for New Facilities and improvements to existing facilities for the purpose of Modernization or Expansion.

(b) Creation of New Value. Abatement may only be granted for the Added Value of Eligible Property improvements made subject to and listed in an Agreement between the College and the property owner or lessee (if required), subject to such limitations as the College may require. The economic life of the improvements must exceed the term of the Agreement by ten (10) years.

(c) Period of Abatement. Abatement shall be granted effective with the January 1 valuation date specified in the Agreement. Abatement shall be allowed for a period of up to ten years following the certification of completion of construction; provided that, in no event shall the period of Abatement, not inclusive of the Construction Phase exceed ten (10) years. Prior to the effective date of the tax abatement any improvements under construction should be taxed in full in accordance with the Tax Code

(d) Abatement Percentage. The percentage of the total tax to be abated (1% to 100%) which is authorized by the College on a case by case basis is the Abatement Percentage.

(e) Rehabilitation Projects. The $400 million minimum Added Value or Capital Investment requirement for Abatement shall not apply to Rehabilitation Projects which involve the adaptive reuse of an existing structure or building for a Facility. In order to qualify as a Rehabilitation Project under this provision, the Project must involve a minimum New Capital Investment of at least $250 million. Any Rehabilitation Project must involve the adaptive reuse of an existing structure or building currently on the property tax rolls so that the Base Year Value associated with the Project will include both the value of the land and the existing improvements. For such Rehabilitation Projects, all Eligible Property in excess of the Base Year Value shall be subject to Abatement. The value of personal property such as furniture and movable equipment shall be considered Ineligible Property.

(f) Estimated Added Value Requirement. At the time of execution of the Agreement, the Owner shall reasonably estimate the Added Value or Capital Investment projected upon completion of construction of any improvements to real property or tangible personal property in connection with the Facility. This ñEstimated Added Valueò shall be stated in the Agreement.

(g) Economic Qualification. In order to be eligible for Abatement, the Facility:

(1) must create no later than the January 1 following the completion of construction and maintain throughout the remainder of the term of the Agreement the

minimum required number of permanent jobs in the District set out in the Agreement;

(2) must not adversely affect competition in the local market with established local businesses.

(h) Taxability. From the commencement of the Abatement period to the end of the Abatement period, taxes shall be payable as follows:

(1) The value of Ineligible Property shall be fully taxable and;

(2) The Added Value of new Eligible Property (and certain personal property added in connection with a Rehabilitation Project) shall be taxable in the manner described in Section 2(d) above.

(i) Environmental and Worker Safety Qualifications. In determining whether to grant a Abatement, consideration will be given to compliance by the Facility with all state and federal laws designed to protect human health, welfare and the environment (ñenvironmental lawsò) that are applicable to all facilities in the State of Texas owned or operated by the owner of the Facility or lessee, its parent, subsidiaries and, if a joint venture or partnership, every member of the joint venture or partnership (ñapplicantsò). Consideration may also be given to compliance with environmental and worker safety laws by applicants at other facilities within the United States.

Section 3. Application.

(a) Written Application. Any current or potential owner of taxable property may request Abatement by filing a written application with the President of the College.

(b) Contents of Application. The application shall consist of a completed application form accompanied by: a general description of the new improvements to be undertaken; a descriptive list of the improvements for which Abatement is requested; a list of the kind, number and location of all proposed improvements of the property; a map and property description; proposed turbine location (if a wind turbine Facility); and a time schedule for undertaking and completing the proposed improvements. In the case of a Modernization or Expansion Project, a statement of the Appraised Value of the Facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The application form may require such financial and other information as the College or other Eligible Jurisdiction, as applicable, deems appropriate for evaluating the financial capacity and other relevant factors of the applicant.

(c) Local Employment and Procurement. Owner shall, as part of the Application, provide: (i) a list and description of all component parts and equipment which are included in the construction and/or installation of the Facility, (ii) a list of maintenance and operations personal or professional services anticipated or required for the operation and maintenance of the Facility on an on-going basis; and (iii) the identify of all persons or firms in Starr County and Hidalgo County, or within 100 files thereof, with the capability of providing these services (a complete Schedule I and Schedule II).

(d) Written Notification. Upon receipt of a completed application, the President shall evaluate the application for a determination of the proposed Facilityôs compliance with these Guidelines.

(e) Feasibility. After receipt of an application for Abatement, the College shall consider the feasibility and the impact of the proposed Abatement. The study of feasibility shall include, but not be limited to, an estimate of the economic effect of the Abatement of taxes and the benefit to the College Jurisdiction and the Facility to be covered by such Abatement.

(f) No Abatement if Construction has been Completed. No Agreement shall be approved if the application for the Abatement was filed after the completion of construction, alteration or installation of improvements related to the proposed Modernization, Expansion or New Facility.

(g) Variance. Requests for variance from the provisions of these Guidelines and Criteria may be made in written form; provided, however, that no variance may extend the term of Abatement beyond five (5) years after completion of the Construction Phase. Such requests shall include a complete description of the circumstances explaining why the applicant should be granted a variance. Approval of a request for variance requires a three-fourths (3/4ths) vote of the board of trustees of the College.

Section 4. College Approval.

(a) Designation of Zone. An Abatement shall be granted only for Facilities in a zone designated for Abatement under the Act by a County.

(b) Required Findings. The College must adopt findings that the proposed abatement terms of the proposed Agreement meet the Collegeôs Guidelines and Criteria.

(c) Reservation of Rights. Nothing shall be construed to limit the authority of the College to examine each application for Abatement on a case-by-case basis and determine in its sole and absolute discretion whether or not abatement of the tax on the proposed Facility should be granted; whether or not it will comply with these Guidelines and Criteria, whether it is feasible, and whether or not the proposed temporary abatement of taxes will inure to the long-term benefit of the College. The Collegeôs final determination shall not be subject to judicial review.

Section 5. Agreement.

(a) Contents of Tax Abatement Agreement. The Agreement with the Owner shall include:

(1) the estimated value to be subject to Abatement and the Base Year Value;

(2) the percentage of value to be abated each year as provided in Section 2(d);

(3) the commencement date and termination date of Abatement;

(4) the proposed use of the Facility, time schedule, map, proposed turbine location, property description and improvements list as provided in the application as required;

(5) the contractual obligations in the event of default, delinquent taxes, recapture, administration and assignment as provided in these Guidelines and Criteria or other provisions that may be required for uniformity or by state law;

(6) the amount of Added Value as set out in 2(c) and required number of permanent jobs;

(7) a requirement that Owner shall certify to the board of trustees of the College on or before April 1 each year that the Owner is in compliance with each applicable term of the agreement;

(8) a requirement that the owner or lessee will obtain and maintain all required permits and other authorizations from all local, state and federal agencies with jurisdiction over the licensing or permitting, the design, construction, manufacture and operation of the Facility and for the storage, transport and disposal of waste, if any;

(9) a limitation that the uses of the property must be consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect;

(10) provision of access to and authorization to inspect the property by employees or authorized agents of the College to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement; and

(11) a provision that the board of trustees of the College may cancel or modify the Agreement if the Owner fails to comply with the Agreement.

(b) Time of Execution. The Agreement shall normally be executed within 60 days after the applicant has provided all necessary information and documentation.

(c) Attorneyôs Fees. In the event any attorneyôs fees are incurred by the College in the preparation of an Agreement, said fees shall be paid by the applicant upon execution of the Agreement.

Section 6. Recapture.

(a) Failure to Commence Operation During Term of Agreement. In the event that the Facility is not completed and does not begin operation as provided in the Agreement, no Abatement shall be given for that tax year, and the full amount of taxes assessed against the property shall be due and payable for that tax year. In the event that the Owner of such a Facility fails to begin operation with the minimum required number of permanent jobs by the next January 1, then the Agreement shall be subject to termination and all abated taxes during the period of construction shall be recaptured and paid within 60 days

of such termination. Notwithstanding the foregoing, in the event that the above defaults are due to a Force Majeure condition, the College may grant extensions if the Owner is diligently proceeding to cure such defaults.

(b) Discontinuance of Operations During Term of Agreement. In the event the Facility is completed and begins operation but subsequently discontinues operations during any four (4) consecutive weeks during the term of the Agreement, for any reason except on a temporary basis due to a Force Majeure condition, the Agreement may be terminated by the College, and all taxes previously abated by virtue of the Agreement during the preceding four years shall be recaptured and paid within 60 days of such termination.

(c) Delinquent Taxes. In the event that the Owner allows its ad valorem taxes to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, the Agreement shall be subject to termination and so shall the Abatement of the taxes for the tax year of the delinquency. The total taxes assessed without Abatement, for that tax year shall be paid within 60 days from the date of termination.

(d) Notice of Default. Should the College determine that the Owner is in default according to the terms and conditions of its Agreement, it shall notify the Owner in writing at the address stated in the Agreement that if such is not cured within 60 days from the date of such notice (the ñCure Periodò), then the Agreement may be terminated. In the event the Owner fails to cure said default during the Cure Period and the Agreement is terminated, the taxes abated by virtue of the Agreement will be recaptured and paid as provided herein.

(e) Actual Capital Investment. Should the College determine that the total level of New Capital Investment is lower than provided in the Agreement, the difference between the tax abated and the tax which should have been abated based upon the actual New Capital Investment as determined shall be paid to the taxing agencies within 60 days of notification to the Owner of such determination.

(f) Reduction in Rollback Tax Rate. If during any year of the period of Abatement with respect to any property any portion of the abated value for the Eligible Property which is added to the current total value of the College is not treated as ñnew property valueò (as defined in Section 26.012(17) of the Texas Tax Code) for the purpose of establishing the ñeffective maintenance and operations rateò (as defined in Section 26.012(16) of the Texas Tax Code) in calculating the ñrollback tax rateò in accord with Section 26.04(c)(2) of the Texas Tax Code and if the Collegeôs budget calculations indicate that a tax rate in excess of the ñrollback tax rateò is required to fund the operations of the College for the succeeding year, then the College shall recapture from the taxpayer a tax in an amount equal to the lesser of the following:

(1) The amount of the taxes abated for that year by the College with respect to such property.

(2) The amount obtained by subtracting the rollback tax rate computed without the abated property value being treated as new property value from the rollback tax

rate computed with the abated property value being treated as new property value and multiplying the difference by the total Appraised Value of the College.

If the College has granted an Abatement of taxes to more than one taxpayer, then the amount of the recapture calculated in accord with subparagraph (2) above shall be prorated on the basis of the amount of the Abatement with respect to each taxpayer.

All recaptured taxes must be paid within thirty (30) days after notice thereof has been given to the affected taxpayer. Penalty and interest applicable under the Tax Code shall not begin to accrue upon such sum until the first day of the month following such thirty (30) day notice, at which time penalty and interest shall accrue in accord with the laws of the State of Texas.

(g) Statutory Tax Lien. The amount of tax abated each year under the terms of these Guidelines and the Agreement shall continue to be secured by the statutory tax lien pursuant to Section 32.01 of the Texas Tax Code which shall continue in existence from year to year throughout the entire term of the Agreement or until all taxes, whether assessed or recaptured, are paid in full.

(h) Automatic Termination. The Agreement shall automatically terminate on and as of the date any of the following events occur: the filing of a petition in bankruptcy by the Owner; or the making by the Owner of an assignment for the benefit of creditors; or if any involuntary petition in bankruptcy or petition for an arrangement pursuant to the federal bankruptcy code is filed against the Owner; or if a receiver is appointed for the business of the Owner. In the event of automatic termination for any of the above reasons, the prior notice of default provisions in subsection (d) above shall not apply.

Section 7. Administration.

(a) Annual Assessment. The Starr County Appraisal District or the Hidalgo County Appraisal District, as applicable, shall annually determine the Appraised Value of the real and personal property subject to an Agreement. Each year, the Owner shall furnish the Appraisal District with such information as may be necessary for the Abatement. Once value has been established, the Appraisal District shall notify the affected jurisdictions which levy taxes of the amount of the Appraised Value and the Abatement.

(b) Access to Facility. The Agreement shall stipulate that employees and/or designated representatives of the College will have access to the Facility during the term of the Agreement to inspect the Facility to determine if the terms and conditions of the Agreement are being met. All inspections will be made only after giving 24 hours prior notice and will only 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 and in accordance with all applicable safety standards.

(c) Annual Evaluation. Upon completion of construction, the College, individually or in conjunction with other affected jurisdictions, shall annually evaluate each Facility receiving Abatement to ensure compliance with the Agreement and report possible violations of the Agreement.

(d) Annual Reports. Owner shall certify to the governing body of the College on or before April 1 each year that Owner is in compliance with each applicable term of the Agreement. Additionally, during the initial four years of the term of Abatement, the Owner shall provide to the College approving the Abatement an annual report covering those items listed on Schedule 1 in order to document its efforts to acquire goods and services on a local basis. Such annual report shall be prepared on a calendar year basis and shall be submitted to the Eligible Jurisdiction no later than ninety (90) days following the end of each such calendar year. The annual report shall be accompanied by an audit letter prepared by an independent accounting firm which has reviewed the report.

(e) ñBuy Localò Provision. Each recipient of Abatement shall additionally agree to give preference and priority to local manufacturers, suppliers, contractors and labor for the materials, equipment and labor described on Schedule 1, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency. In any such exceptional cases involving purchases over $1,000,000 during construction and over $50,000 during operations, a justification for such purchase shall be included in the annual report. Each such recipient shall further acknowledge that it is a legal and moral obligation of persons receiving Abatement to favor local manufacturers, suppliers, contractors and labor, all other factors being equal. For the purposes of this provision, the terms ñmaterialsò and ñlaborò shall have the meaning set out in Schedule 1. For the purposes of this provision, the term ñlocalò as used to describe manufacturers, suppliers, contractors and labor shall include firms, businesses, and persons who reside in or maintain an office in either Hidalgo County or Starr County. In the event of a breach of the buy-local provision, the percentage of Abatement shall be proportionately reduced equal to the amount the disqualified contract bears to the total construction cost (materials and labor) for the Facility. In the event that Owner contracts the supply and construction of the Facility to an affiliate or other non-local contractor, Owner shall use commercially reasonable efforts to ensure compliance with this Section by including in such contract a flow-through provision requiring such compliance.

SCHEDULE I

"Buy Local" Annual Reports

The following information shall be reported to the College on a calendar-year basis during the first four years of the tax abatement program:

1. Dollar amount spent for materials* (local).

2. Dollar amount spent for materials* (total).

3. Dollar amount spent for labor** (local).

4. Dollar amount spent for labor** (total).

5. Number of jobs created in the construction of the Facility (local).

6. Number of jobs created in the construction of the Facility (total).

7. Number of jobs created on a permanent basis (local).

8. Number of jobs created on a permanent basis (total).

* The term ñmaterialsò is defined to include all materials used in excavation, site improvement, demolition, concrete, structural steel, fire proofing, piping, electrical, instruments, paintings and scaffolding, insulation, temporary construction facilities, supplies, equipment rental in construction, small tools and consumables. This term does not include major items of machinery and equipment not readily-available locally.

** The term ñlaborò is defined to include all labor in connection with the excavation, site improvement, demolition, concrete construction, structural steel, fire proofing, equipment placement, piping, electrical, instruments, painting and scaffolding, insulation, construction services, craft benefits, payroll burdens, and related labor expenses. This term does not include engineering services in connection with the design of the Facility.

The term ñlocalò as used to describe manufacturers, suppliers, contractors and labor shall include firms, businesses, and persons who reside in or maintain an office in either Hidalgo County or Starr County.

SCHEDULE II

ADDITIONAL INFORMATION REQUIRED OF APPLICANT FOR TAX ABATEMENT

Section 1. Eligibility Criteria

1. To be eligible for consideration by College for a tax abatement under these Guidelines, an Owner of the Facility must meet or exceed all of the criteria described below:

- Å The Facility must be one that will generate renewable energy;
- Å The minimum amount of new real and/or personal property capital investment shall exceed $400 million (at start of project or by year 2017);
- Å Shall exceed minimum levels of full-time job creation;
- Å Provide employee and dependent access to health care benefits;
- Å Provide a minimum living and all-industry wage requirements for new and existing employees at project site;

Section 2. Amount and Terms of Tax Abatement Subject to Additional Commitments

2.1 The amount and term of the tax abatement offered will be dependent upon the Ownerôs commitment to exceed the minimum eligibility criteria, consideration of other public incentives offered for the same project and the overall benefit to the College and the community.

2.2 What resources will the Owner commit to the following:

(a) Sponsorship of scientific events, teacher research grants to the College; materials and equipment, teaching materials to the College; R&D collaboration with local college;

(b) Total number of jobs created and maintained in the area;

(c) Number of high-wage jobs.

Section 3. Wage Requirements

Companies receiving a tax abatement from the College must meet certain minimum wage requirements for all new and existing (i.e., retained) jobs at the project site.

3.1 Living Hourly Wage Requirement: In order to be eligible for a tax abatement, one hundred percent (100%) of the companyôs new and existing employees ***at the project***

location must earn no less than a ñliving wageò throughout the full term of the Tax Abatement Agreement. This wage is based on the poverty level for a family of four, as determined annually (January) by the U.S. Department of Health and Human Services (HHS). As of January 22, 2015, the living wage requirement is $11.66 per hour.

3.2 All Industries Median Hourly Wage Requirement: In addition to the ñLiving Wageò requirement, after one year of initiating full operations at the project location, but not more than two years after execution of the Tax Abatement Agreement with the College, at least seventy percent (70%) of all new and existing employees, with at least one year of full employment with the company at the project location, must earn a cash wage at or exceeding the annual Edinburg, Pharr McAllen Metropolitan Statistical Area (MSA) Median Hourly Wage for All Industries (Companies) for the most recent year available. This wage is compiled by the Bureau of Labor Statistics (BLS) Occupational Employment Survey and published annually by the Texas Workforce Commission (TWC). This wage is updated annually, and for 2014 the current applicable wage is $11.32 per hour.

High-Wage Jobs: High-wage jobs are either: (I) Qualified professional jobs reported in high-wage industries (e.g., advanced business services, aerospace, life sciences, renewable energy, high-tech/IT); or (2) Jobs for which earnings are above the Starr County average weekly wage (average for the most recent four quarters) as reported quarterly by the Bureau of Labor Statistics (currently $31,941 in 2014).

3.3 If the company does not meet and maintain these wage requirements for all new and existing employees at the project location, the company will be in default of its Tax Abatement Agreement, which could result in termination of the Agreement and the recapture of all or a portion of the previously abated property taxes.

Section 4. Targeted and Qualifying Industries/Business Activities or Project team

The majority of the companyôs business at the project location must be engaged in one of the following qualifying industries, business activities, or Project team:

Targeted Industries:

- Energy

Section 5. Local Assessment: County and Community:

5.1 Describe how has the companyôs plan been prepared in consultation with the local community, property owners and local political leaders?

(a) Local Community:

(b) Property Owners:

(c) Local Political Leaders:

5.2 Identify the local, state and federal bodies that have jurisdiction over the design, construction, licensing, regulation and operation of the Facility and here any public records of review of the Facility may be accessed by the College and the public:

a. Local:

b. State:

c. Federal:.

5.3 Outline what processes, if any, were followed for community consultation for the Facilityôs development.

5.4 Is there an Environmental Impact Statement and Clearance required for the Facility? If so, identify where any public records of environmental review may be assessed by the College and members of the public.

5.5 If the Facility is a wind farm, did the assessment of the Facility by any governmental agency measure and assess potential environmental noise impacts from wind turbines? If so, please provide copies of any records with the Application.

5.6 Identify the Texas agency, if any, which has on-going regulatory authority over the Facility. Describe any approval process which has taken place in connection with locating the Facility.

5.7 Please state whether any of the following were considered in the assessment and location of wind turbines, and if so, how any negative impacts have/or will be addressed:

Ålandscape and visual amenity:

Ånoise impacts (have noise guidelines been developed to assess regulate noise):

Åhealth issues (what health issues, if any, have been identified and what guidelines or policies have been adopted to address potential health impacts, if any:

Åeconomic issues, including potential impacts on property values:

Åecological issues, including potential impacts on threatened species:

Ådecommissioning and rehabilitation:

The College will rely on the review of the applicable County and on state agencies with regulatory responsibility over the compatibility of the Facility site(s) with the surrounding uses, to include noise impacts, visual amenity and ecological issues.

Section 6. Life of Facility and Decommissioning

Include life projections for the Facility, depreciation schedules for income tax purposes and the decommissioning plan. If the Owner on the Application is a ñpass-throughò owner or intends to assign its interest in the Facility and the Abatement Agreement, include proposed contractual language that obligates Owner and any future assignee to comply with the decommissioning plan. To assure the College that the Owner, or Ownerôs assignee, will perform the decommissioning plan, what financial security, bond or enforceable pledge does the Owner proposed.

Section 7. Noise Auditing and compliance:

Has applicant developed a plan on procedure to undertake compliance monitoring and auditing. If so, please describe and submit relevant documents.

Å Does Owner propose to maintain noise monitoring facilities? Will Special audible characteristics such as excessive amplitude modulation (including the van den Berg effect) together with cumulative impacts be considered.

Å What noise standards and reporting of noise records have been developed? Does Owner propose to prepare and submit a noise compliance report on a regular basis? If so, to whom? Will Owner make noise compliance reports publicly available.

EXHIBIT A

Application for Tax Abatement

SOUTH TEXAS COLLEGE

Please submit the answers to the following questions and attach any additional pages as needed. Please complete and attach to the application completed Schedules I and II.

Applicant name:

Applicants address and phone number:

Applicant organization:

Type of Business: Wind powered generation of electricity

Organization address and phone:

Organization Contact:

Contact address and phone:

Proposed project or facility address: **[Need to add address or location]**

1. Provide brief description of project or facility for which tax abatement is sought.

2. Does this property fall under the definition of ñeligible propertyò provided in the _____County Guidelines & Criteria?

___ Yes
___ No

3. This application is for (choose one):

___ new plant
___ Expansion
___ Modernization

4. Please list all the taxing jurisdictions in which the proposed project or facility is located.

[Are applications for tax abatement being submitted to all these jurisdictions?]

5. Please describe the nature and scope of the tax abatement that is sought. What is the total estimated taxable value or total range of taxable values of the project or facility for which abatement is sought?

[What is the extent of the abatement being requested?]

[Does (company) contemplate that the Project will be completed in Phases?]

6. What will be the total estimated taxable value or total range of taxable values of the project or facility in the first year after the expiration of the abatement?

[The (amount) represents 5% depreciation over 10 years.]

7. Please attach information describing how the proposed project or facility meets the minimum Requirement for tax abatement outlined in the Guidelines & Criteria.

See Attachment 1

8. Please attach information on the following aspects of the proposed project or facility:

(1) current value of land and existing improvements, if any;
(2) type, value and purpose of proposed improvements;
(3) productive life of proposed improvements;
(4) impact of proposed improvements and other expenditures on existing jobs;
(5) number and type of new jobs, if any, to be created by proposed improvements and expenditures;
(6) costs to be incurred by Starr County, if any, to provide facilities or services directly resulting from the new improvements;
(7) types and values of public improvements, if any, to be made by applicant seeking abatement;
(8) estimation of the amount of ad valorem property taxes to be paid to Starr County after expiration of the abatement agreement;
(9) the impact on the business opportunities of existing businesses and the attraction of new businesses to the area, if any;
(10) the overall compatibility with the zoning ordinances and comprehensive plan, if any, for the area;
(11) whether the applicantôs proposed facility or improvement or modernization is an industry which is new to Starr County.

See Attachment 1

9. Please attach the following information to this application:

(1) A map and description of the property for which abatement is sought;
(2) A time schedule for completing the planned improvements; and
(3) Basic financial information about yourself and your organization sufficient to enable evaluation of the applicantôs financial capacity.

See Attachment 1

10. Please describe the proposed or existing Reinvestment Zone in which this project will be located.

DEGS seeks the Countyôs approval of the Reinvestment Zone attached as Exhibit. The Project will be located in the center portion of the Zone, Although the Project could expand north and northwest into other areas inside the zone boundary shown on the attached Exhibit B.

11. Please attach a copy of the Countyôs approved Tax Abatement Agreement with applicant, or, if not yet approved, a copy of the proposed Countyôs Tax Abatement Agreement.

I attest that the information provided in this application is true and correct to the best of my knowledge.

Applicant Signature:

_____
Authorized Representative

Name of Applicant:

Date of application submission:

Exhibit A
Legal Description of Reinvestment Zone
Containing Proposed Project

Please attach a copy of the map of the Countyôs Reinvestment Zone and the location(s) of the facility (ies)

The real property in _____ County, being all of the (lots, block/section) in the _____.

Exhibit B
Map of Project Area

ADDENDUM A

A RESOLUTION OF THE BOARD OF TRUSTEES OF SOUTH TEXAS COLLEGE ELECTING TO PARTICIPATE IN TAX ABATEMENT AGREEMENTS AND ADOPTING GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS.

STATE OF TEXAS	§
COUNTY OF STARR	§
AND HIDALGO	§
SOUTH TEXAS COLLEGE DISTRICT	§

WHEREAS, the Board of Trustees of South Texas College, is authorized to enter into Tax Abatement Agreements for Commercial-Industrial purposes as authorized in Chapter 312 of the Texas Tax Code, ñProperty Redevelopment and Tax Abatement Actò (The ñActò);

WHEREAS, the Act requires South Texas College to establish Guidelines and Criteria for the designation for reinvestment zones and the entering into Tax Abatement Agreements; and

WHEREAS, the Act requires eligible taxing jurisdictions to establish Guidelines and Criteria as to eligibility for tax abatement agreements prior to granting any future tax abatements, said Guidelines and Criteria to be unchanged for a two-year period unless amended or repealed by a three-fourths vote of the Board of Trustees;

NOW, THEREFORE, BE IT RESOLVED that South Texas College declares it is eligible to participate in a Tax Abatement Program.

FURTHER, BE IT RESOLVED that South Texas College hereby adopts the attached Guidelines and Criteria for Tax Abatement for use in all Tax Abatement Programs.

CONSIDERED. PASSED, APPROVED, AND SIGNED this _____ day of _____ at a regular meeting of the Board of Trustees of South Texas College at which a quorum was present and which was held in accordance with the provisions of Texas Government Code Chapter 551.

SOUTH TEXAS COLLEGE

BY:_____
Chairman

ATTEST:

BY:_____
Secretary

Tax Abatement Agreement
between
South Texas College and
Duke Energy Renewables Wind, LLC

State of Texas

County of Starr

This Tax Abatement Agreement (this ñAgreementò) is made and entered into by and between South Texas College (the ñCollegeò), acting through its duly elected officers, and Duke Energy Renewables Wind, LLC, a Texas limited liability company, formerly known as DEGS Wind I, LLC (the ñOwnerò), owner of Eligible Property (as hereinafter defined) to be located on the tract of land comprising Los Vientos Reinvestment Zone #1, more specifically described in Attachment A to this Agreement, and this Agreement becomes effective upon final signature by both parties. The Agreement remains in effect until fulfillment of the obligations described in Paragraph IV (D) herein, unless terminated earlier as provided herein.

I. Authorization

This Agreement is authorized and governed by Chapter 312 of the Texas Tax Code, as amended, and by the College Tax Abatement Guidelines and Criteria.

II. Definitions

A. As used in this Agreement, the following terms shall have the meaning set forth below: ñAbatementò means the full or partial exemption from ad valorem Maintenance Taxes on property in a Reinvestment Zone as provided herein, and in no event will the duration of the Abatement period exceed 10 years, commencing on the date of Final Completion of Construction of the Eligible Property.

B. ñActò Act shall mean Chapter 312 of the Texas Tax Code.

C. ñCalendar Yearò means each year beginning on January 1 and ending on December 31. ñCertificateò means a letter, provided by the Owner to the College, certifying that Owner has completed construction of the wind power project or any phase thereof described herein (the ñProjectò), outlining the Improvements and stipulating the overall Turbine Nameplate Capacity of the Project. Upon receipt of the Certificate, the College may inspect the Site in accordance with this Agreement to determine that the Improvements are in place as certified.

D. ñCertified Appraised Valueò means the appraised value, for property tax purposes, of the Facility [property] within Los Vientos Reinvestment Zone #1 as certified by the Starr County Appraisal District for each taxable year.

E. ñEligible Propertyò means the Facility which has been approved and designated by the College as property eligible for Abatement under the College Tax Abatement

Guidelines and Criteria, and this agreement as provided in Exhibit A of the Application for Tax Abatement, including: designated new, expanded or modernized buildings and structures; fixed machinery and equipment; Site improvements; related fixed improvements; other tangible items necessary to the operation and administration of the Project or facility; and all other real and tangible personal property permitted by Chapter 312 of the Texas Tax Code and the College Tax Abatement Guidelines and Criteria. Taxes on Real Property may be abated only to the extent the propertyôs value for a given year exceeds its value for the year in which the Agreement is executed. Tangible personal property eligible for Abatement shall not include inventory or supplies. **The maximum value of the Eligible Property to which the tax abatement will apply shall not exceed $462,000,000.**

F. ñForce Majeureò means any contingency or cause beyond the reasonable control of the party claiming Force Majeure including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omissions of such party), fires, explosions, floods, tornadoes, and strikes.

G. ñImprovementsò means Eligible Property as defined herein and includes, but is [not] limited to, any building, structure, or fixture erected on or affixed to the land. Improvements specifically include the Ownerôs substation and switching station if located within Reinvestment Zone. [the taxing jurisdiction of the College].

H. ñMaintenance Taxesò means the Collegeôs maintenance tax, as distinguished from its debt taxes.

I. ñOwnerò means Duke Energy Renewables Wind, LLC, the entity that owns or holds under one or more easements the Real Property for which Abatement is being granted, and any assignee or successor in interest of Duke Energy Renewables Wind, LLC. The term ñDuke Energy Renewables Wind, LLCò means and includes Owner.

J. ñReal Propertyò means Eligible Property meeting the description for the taxable real property on which the Facility is constructed.

K. ñReinvestment Zoneò means Los Vientos Reinvestment Zone #1, the reinvestment zone (as that term is defined in Chapter 312 of the Texas Tax Code) created by Starr County Commissioners Court and described in Attachment A to this Agreement.

L. ñSiteò means the portion of the Reinvestment Zone on which Owner makes the Improvements for which the Abatement is granted hereunder.

L. ñTurbine Nameplate Capacityò means the generating capacity of an individual wind turbine as designated by the manufacturer(s) of the turbines to be constructed as Improvements hereunder and where appropriate may refer to the total or overall generating capacity.

Any terms undefined herein shall be given the definition provided in the Collegeôs Tax Abatement Guidelines and Criteria.

III. Improvements in Reinvestment Zone

Owner agrees to make the following Improvements in consideration for the Abatement set forth herein:

A. The Owner anticipates that it will complete the construction of Phase III of the Improvements shall be completed on or about August 2015 and that upon completion, Phase III will have an estimated appraised value of $200 million. The owner anticipates that Phase IV of the Improvements shall be completed on or about June 2016 and that upon completion Phase IV will have an appraised value of $210 million. The Owner anticipates that Phase V of the Improvements shall be completed on or about December 2015 and that upon completion Phase V will have an estimated appraised value of $52 million.

B. Improvements also shall include any other property in the Reinvestment Zone owned by Owner and meeting the definition of ñEligible Propertyò that is used to produce wind power and perform other functions related to the production, distribution and transmission of electric power. The College agrees, without limitation, that the wind turbines, towers, transmission lines, substations, operations & maintenance buildings and other related materials and equipment affixed to the Eligible Property [land] will constitute Improvements under this Agreement.

C. Owner shall complete construction of the Improvements no later than December 31, 2017.

IV. Term and Portion of Tax Abatement; Taxability of Property

A. The College and Owner specifically agree and acknowledge that the Facility [property] in the Reinvestment Zone shall be taxable in the following ways before and during the Term of this Agreement:

1. Property not eligible for Abatement, if any, shall be fully taxable at all times;

2. Prior to commencement of the Abatement period designated in Paragraph IV(B), 100% of property taxes levied on the Certified Appraised Value of real and personal property owned by Owner and located in the Reinvestment Zone will be owed and payable by Owner;

3. College property taxes on the Certified Appraised Value of Eligible Property shall be abated for the periods and in the amounts provided for by Paragraph IV(B) below; and

4. 100% of the Certified Appraised Value of Eligible Property existing in the Reinvestment Zone shall be fully taxable after expiration of the Abatement period designated in Paragraph IV(B), including during the remainder of the Term.

B. The College and Owner specifically agree and acknowledge that this Agreement shall provide for tax Abatement, under the conditions set forth herein, of Ownerôs [College] property taxes as follows:

1. There shall be granted and allowed hereunder to Owner [Company] by the College a property tax abatement on the approved Eligible Property and Improvements constructed, expanded, or acquired hereunder on the Property at a rate of eighty-five percent (85%) for ten years, commencing on January 1 of the next tax year after the date that College Administrator (i.e. President) receives the Certificate of Completion for Los Vientos III, IV, & V Wind Project.

2. The foregoing percentage of property taxes on the Certified Appraised Value of all Improvements approved by the College and described in the Certificate (and actually in place in the Reinvestment Zone) are abated in the respective period designated above up to the maximum taxable value approved in this Agreement.

M. A portion or all of the Improvements may be eligible for complete or partial exemption from ad valorem taxes as a result of existing law or future legislation. Should any such exemption which has not been addressed herein or be proposed in the Texas Legislature, (a) Owner may request a modification of this Agreement, and (b) College may reconsider the effect of such exemption on its tax revenues, and amend the Agreement accordingly to the extent that the exemption as applied to the Eligible Property would materially reduce the Collegeôs tax benefits as anticipated in this Agreement. [This Agreement is not to be construed as evidence that no such exemptions shall apply to the Improvements.]

N. As partial consideration for the granting of tax abatement in Paragraph IV(B) hereof, the Company agrees to make the following payments to the College. On December 31 of each year of the first ten years of tax abatement, commencing **in 2015** the Company shall pay the College the following payments as annual payment in lieu of taxes:

Year 1- 10 - $ 65,000

In the event the amounts due under this Paragraph IV(D) are not paid by December 31 of the year in which they are due, the College shall notify the Company that such payments are due and owing by January 15 of the following year. Delinquent payments shall accrue penalty and interest as provided in the Texas Tax Code commencing thirty days after receipt of notice of such delinquency from the College.

E. Owner agrees that the Improvements described in Paragraph III hereof, once constructed, will remain in place until at least twenty (20) Calendar Years after the date the Certificate for such Improvements is provided to the College by the Owner (ñTermò); provided that nothing herein prevents Owner from replacing equipment or fixtures comprising the Improvements prior to that date, as long as such replacement does not result in a reduction of the Certified Appraised Value of the Improvements.

In the event that Owner removes Improvements (comprising in the aggregate not more than 10% of all Improvements), the Ownerôs removal shall not be deemed a default under this Agreement if Owner pays to the College as liquidated damages for such removal from the Abatement in this Agreement, within thirty (30) days after demand, all taxes for such removed Improvements (which otherwise would have been paid to the College through the date of such removal without benefit of a tax abatement) with interest at the statutory rate under the Texas Tax Code, as amended, but without penalty. IN THE EVENT OF A BREACH OF THIS PARAGRAPH IV(E), THE SOLE REMEDY OF THE COLLEGE, AND OWNERôS SOLE LIABILITY, WILL BE FOR OWNER TO PAY TO THE COLLEGE THE FULL AMOUNT OF ACTUAL TAXES ABATED DURING THE YEAR OF DEFAULT UNDER THIS AGREEMENT. IN THE EVENT OF A BREACH OF THIS PARAGRAPH IV(E), ANY TAXES DUE BY OWNER SHALL BE SUBJECT TO ANY AND ALL STATUTORY RIGHTS FOR THE PAYMENT AND COLLECTION OF TAXES IN ACCORDANCE WITH THE TEXAS TAX CODE.

V. Representations

The College and Owner make the following respective representations:

A. Owner represents and agrees that (i) Owner, its successors and/or assigns, will have a taxable interest with respect to Improvements to be placed on the Site; (ii) construction of the proposed Improvements described in Paragraph III will be performed by the Owner, its successors and/or assigns and/or their contractors or subcontractors, (iii) Ownerôs, its successorsô and assignsô use of the property in the Reinvestment Zone is limited to that which is consistent with the general purpose of encouraging development or redevelopment of the area during the period of the Abatement, (iv) all representations made in this Agreement and in the Application for Abatement, if any, are true and correct in all material respects to the best of Ownerôs knowledge, and (v) Owner will make required filings, if any, by Owner with the Office of the Comptroller of Public Accounts and other governmental entities concerning this Agreement that may be required in the future.

B. The College represents that (i) this Agreement has been entered into in accordance with Chapter 312 of the Texas Tax Code and the College Tax Abatement Guidelines and Criteria as both exist on the effective date of this Agreement; (ii) no interest in the Improvements or the land on which they are located is held or subleased by an officer of the College or a member of the College Board of Trustees, (iii) the property within the Reinvestment Zone is located within the legal boundaries of the College; and (iv) the College has made and will continue to make all required filings with the Office of the Comptroller of Public Accounts and other governmental entities concerning this Agreement**.**

C. At least 24 hours prior to Owner issuing the press release relating to the Project announcing the commencement of commercial operation, Owner shall email or fax a copy of such press release to the College. The College shall maintain the confidentiality of any press release and shall not disclose any information in the press release until such time as such information is made public by Owner.

D. Owner represents and agrees that, if built, the Project will, within the proposed time lines, (i) add at least Five Hundred Million Thousand Dollars ($500,000.00) to the tax roll of Eligible Property, (ii) create no fewer than five (5) new, permanent, full-time jobs Starr County, and (iii) lead to a positive net economic benefit to Starr County of at least One Million Dollars ($1,000,000.00) over the life of this Agreement, computed to include (but not limited to) new sustaining payroll and/or capital improvement.

VI. Access to and Inspection of Property by College Employees

A. Owner shall allow the College employees or designees of the College access to the Improvements for the purpose of inspecting any Improvements erected to ensure that the same are conforming to the minimum specifications of this Agreement and to ensure that all terms and conditions of this Agreement are being met. All such inspections shall be made only after giving Owner twenty-four (24) hoursô notice and shall be conducted in such a manner as to avoid any unreasonable interference with the construction and/or operation of the Improvements. All such inspections shall be made with one (1) or more representatives of Owner in accordance with all applicable safety standards.

B. Owner shall, within ninety (90) days of the beginning of each Calendar Year, certify annually to the College its compliance with this Agreement by providing written testament to the same to the College Board of Trustees.

VII. Default, Remedies and Limitation of Liability

A. No party may terminate this Agreement unless (i) such party provides written notice in accordance with Paragraph X hereof (a ñNoticeò) to the other party specifying a material default in the performance of a material covenant or obligation under this Agreement and (ii) such failure is not (x) excused by the occurrence an event of Force Majeure or (y) cured by the other party within sixty (60) days after Notice thereof, or if such failure cannot be cured within a sixty (60)-day period, the other party shall have such additional time to cure such default as is reasonably necessary as long as such party has commenced remedial action to cure such failure and continued to diligently and timely pursue the completion of such remedial action. Notwithstanding the preceding portions of this paragraph, if any default arises from a violation of law resulting from a change in law, or a change in the interpretation or enforcement of law, by a governmental entity, then such default shall not give rise to the termination of this Agreement so long as the defaulting party acts in accordance with a commercially reasonable plan of action to cure such default prepared by such defaulting party and delivered to the other party. If Owner believes that such termination was improper, Owner may file suit in the proper court challenging such termination. In the event of default which remains uncured after all applicable notice and cure periods, the College may pursue the remedies provided for in Paragraph VII(D) below or the preceding Paragraph IV(E), as applicable.

B. The College shall not declare a default, and no default will be deemed to have occurred, when the circumstances giving rise to such declaration are the result of Force Majeure.

C. The College shall notify Owner and any Owner lender of which the College has notice of any default in writing in the manner prescribed herein. All contact information for purposes of a notice of default shall be provided to the College Board of Trustees. The notice shall specify the basis for the declaration of default, and Owner shall have the periods of time specified above to cure any default. Any Owner lender of which the College has notice shall have the right to cure any defect or default, including any defect caused by an assignee or contractor of Owner, during the same cure periods provided for Owner under this Agreement.

D. As required by section 312.205 of the Texas Tax Code, if Owner fails to make the Improvements as provided for by this Agreement, the College shall be entitled to cancel the Agreement and all future tax abatements under this Agreement shall be void. .

E. LIMITATION OF LIABILITY: CANCELLATION OF THE AGREEMENT (RESULTING IN A FORFEITURE OF ANY RIGHT TO ABATEMENT HEREUNDER BEYOND THE CANCELLATION DATE), RECAPTURE OF PROPERTY TAXES ABATED ONLY AS PROVIDED FOR AND ONLY UNDER THE CIRCUMSTANCES DEFINED IN PARAGRAPH VII(D) OF THIS AGREEMENT, AND/OR RECOVERY OF THE AMOUNTS PROVIDED FOR IN PARAGRAPH IV(E) ONLY AS PROVIDED FOR AND ONLY UNDER THE CIRCUMSTANCES DEFINED IN PARAGRAPH IV(E), ALONG WITH ANY REASONABLY INCURRED COURT COSTS AND ATTORNEYSô FEES, SHALL BE THE COLLEGEôS SOLE REMEDY, AND OWNERôS SOLE LIABILITY, IN THE EVENT OWNER FAILS TO TAKE ANY ACTION REQUIRED BY THIS AGREEMENT, INCLUDING ANY FAILURE TO PAY AMOUNTS OWED UNDER THIS AGREEMENT. OWNER AND THE COLLEGE AGREE THAT THE LIMITATIONS CONTAINED IN THIS PARAGRAPH ARE REASONABLE AND REFLECT THE BARGAINED FOR RISK ALLOCATION AGREED TO BY THE PARTIES. IN THE EVENT OF A BREACH OF THIS AGREEMENT, ANY TAXES DUE FROM OWNER SHALL BE SUBJECT TO ANY AND ALL STATUTORY RIGHTS FOR THE PAYMENT AND COLLECTION OF TAXES IN ACCORDANCE WITH THE TEXAS TAX CODE.

F. Any notice of default under this Agreement shall prominently state the following at the top of the notice:

NOTICE OF DEFAULT UNDER TAX ABATEMENT AGREEMENT

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING DEFAULT UNDER YOUR TAX ABATEMENT AGREEMENT WITH THE COLLEGE. FAILURE TO CURE THIS DEFAULT WITHIN SIXTY DAYS OF NOTICE OR OTHERWISE CURE THE DEFAULT WITHIN THE TIME PERIODS PROVIDED BY THE AGREEMENT SHALL RESULT IN TERMINATION OF THE TAX ABATEMENT AGREEMENT AND MAY INCLUDE RECAPTURE OF TAXES ABATED PURSUANT TO THAT AGREEMENT.

VIII. Compliance with State and Local Regulations

Nothing in this Agreement shall be construed to alter or affect the obligations of Owner to comply with any order, rule, statute or regulation of the College, Starr County, or the State of Texas.

IX. Assignment of Agreement

A. Owner may assign its rights and responsibilities hereunder; provided however, that Owner shall give College written notice prior to any such assignment.

B. Any assignment of this Agreement shall require that all conditions and obligations in this Agreement shall apply to and be binding upon assignee. Upon such assignment and assumption, Owner shall have no further rights, duties or obligations under the Agreement to the extent such rights, duties or obligations apply to the interest acquired by the assignee.

C. No assignment shall be allowed if (a) the College has declared a default hereunder that has not been cured within all applicable notice and cure periods, or (b) the assignee is delinquent in the payment of any amount required under this Agreement or ad valorem taxes owed to the College or any other taxing jurisdiction in Starr County. The parties hereto agree that a transfer of all or a portion of ownership interests in Owner to a third party shall not be considered an assignment under the terms of this Agreement and shall not require any consent of the College. However, Owner shall notify the College President at least 24 hours before the transfer of any ownership interest in Owner.

X. Notice

All notices, demands, or other communications of any type (collectively, ñNoticesò) given shall be given in accordance with this Paragraph. All Notices shall be in writing and delivered, by commercial delivery service, to the office of the person to whom the Notice is directed (provided that that delivery is confirmed by the courier delivery service); by United States Postal Service (USPS), postage prepaid, as a registered or certified item, return receipt requested in a proper wrapper and with proper postage; by recognized overnight delivery service as evidenced by a bill of lading; or by facsimile transmission. Notices delivered by commercial delivery service shall be deemed delivered on receipt or refusal; notices delivered by USPS shall be deemed to have been given upon deposit with the same; facsimile notice shall be effective upon receipt by the sender of an electronic confirmation. Regardless of the method of delivery, in no case shall notice be deemed delivered later than actual receipt. In the event of a notice of default given pursuant to Paragraph VII, such notice shall be given by at least two (2) methods of delivery and consistent with Paragraph VII(F). All Notices shall be mailed or delivered to the following addresses:

To the Owner:	Duke Energy Renewables Wind, LLC Graham Furlong, Development Executive 400 South Tryon St., Mail Code: NASCAR Charlotte, NC 28202-1007
With Copies to:	Duke Energy Renewables Wind, LLC Theodore D. Matula, Deputy General Counsel 2801 Via Fortuna, Suite 100 Austin, TX 78746-7568
	Duke Energy Renewables Wind, LLC 550 South Tryon Street, Mail Code: DEC 41B Charlotte, NC 28202-1007 Attention: Property Tax
To the College:	South Texas College Board of Trustees 3201 West Pecan McAllen, TX 78501 Attention: Dr. Shirley Reed, President

Any party may designate a different address by giving the other party at least ten (10) days written notice in the manner prescribed above.

XI. Severability

In the event any paragraph or other part of this Agreement is held invalid, illegal, factually insufficient, or unconstitutional, 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 sections or other part. In the event that (i) the term of the Abatement with respect to any property is longer than allowed by law, or (ii) 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 overly broad, and for the portion of the term of the Abatement not deemed excessive. Any provision required by the Tax Code to be contained herein that does not appear herein is incorporated herein by reference.

XII. Applicable Law

This Agreement shall be construed under the laws of the State of Texas.

XIII. Amendment

Except as otherwise provided, this Agreement may be modified by the parties hereto upon mutual written consent to include other provisions which could have originally been included in this Agreement or to delete provisions that were not originally necessary to this Agreement pursuant to the procedures set forth in Chapter 312 of the Texas Tax Code.

XIV. Guidelines and Criteria

This Agreement is entered into by the parties consistent with the College Tax Abatement Guidelines and Criteria. To the extent this Agreement modifies any requirement or procedure set forth in the College Tax Abatement Guidelines and Criteria, those Guidelines and Criteria are deemed amended for purposes of this Agreement only.

XV. Entire Agreement

This Agreement contains the entire and integrated Tax Abatement Agreement between the College and Owner, and supersedes any and all other negotiations and agreements, whether written or oral, between the parties. This Agreement has not been executed in reliance upon any representation or promise except those contained herein.

XVI. Coordination of Local Hiring and Services

Owner shall use reasonable commercial efforts to maximize its use of Starr County labor and services and supplies purchased from Starr County businesses in the course of performing under this Agreement.

XVII. Provision of Health Insurance

As of the date this Agreement becomes effective, and until the earlier to occur of (i) the end of the tenth (10th) year of Abatement or (ii) the date this Agreement is terminated as provided herein, Owner shall provide health insurance to its full-time employees working in Starr County. Owner also agrees to use commercially reasonable efforts to require that the prime engineering, procurement and construction contractor working on the Project provides health insurance to its full time employees.

XVIII. Attorney Fees

The Owner agrees to reimburse the College for its reasonable attorneysô fees incurred in the negotiation and preparation of this Agreement.

(Signature Page Follows)

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the College as authorized by the College Board of Trustees and executed by the Owner on the respective dates shown below.

South Texas College

DATED: _____, 2015

South Texas College Board of Trustees

_____
Mr. Roy de Leon, Chair

_____
Dr. Alejo Salinas, Vice Chair

Attest:

_____
Mr. Paul R. Rodriguez, Secretary

Duke Energy Renewables Wind, LLC

By:_____
Greg Wolf, President

Attachment A

Attached is the Resolution Designating Reinvestment Zone by Starr County Commissioners Court.