

# **Board of Trustees**

## **Finance, Audit, and Human Resources Committee Meeting**

**October 9, 2018**

**5:30 p.m.**

**Ann Richards Administration Building,  
Board Room-Pecan Campus-McAllen, TX**



**SOUTH TEXAS  
COLLEGE**

**South Texas College**  
**Board of Trustees**  
**Finance, Audit, and Human Resources Committee**  
**Ann Richards Administration Building Board Room**  
**Pecan Campus, McAllen, Texas**  
**Tuesday, October 9, 2018 @ 5:30 p.m.**

“At anytime during the course of this meeting, the Board of Trustees may retire to Executive Session under Texas Government Code 551.071(2) to confer with its legal counsel on any subject matter on this agenda in which the duty of the attorney to the Board of Trustees under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code. Further, at anytime during the course of this meeting, the Board of Trustees may retire to Executive Session to deliberate on any subject slated for discussion at this meeting, as may be permitted under one or more of the exceptions to the Open Meetings Act set forth in Title 5, Subtitle A, Chapter 551, Subchapter D of the Texas Government Code.”

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- VII. Review and Discussion on Contracting for Electric Power Services..... 128-129
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**Approval of September 11, 2018 Finance, Audit, and Human Resources Committee  
Minutes**

The Minutes for the Finance, Audit, and Human Resources Committee Meeting of September 11, 2018 are presented for Committee approval.

**South Texas College  
Board of Trustees  
Finance, Audit, and Human Resources Committee  
Ann Richards Administration Building Board Room  
Pecan Campus, McAllen, Texas  
Tuesday, September 11, 2018 @ 5:30 p.m.**

**Minutes**

The Finance, Audit, and Human Resources Committee Meeting was held on Tuesday, September 11, 2018 in the Ann Richards Administration Building Board Room at the Pecan Campus in McAllen, Texas. The meeting commenced at 6:15 p.m. with Mr. Roy de León presiding.

Members present: Mr. Roy de León, Ms. Rose Benavidez, and Mr. Rene Guajardo

Other Trustees Present: Dr. Alejo Salinas, Jr.

Members absent: Mr. Paul R. Rodriguez

Also present: Dr. Shirley A. Reed, Mr. Jesus Ramirez, Mrs. Mary Elizondo, Dr. Anahid Petrosian, Mr. Matthew Hebbard, Mrs. Becky Cavazos, Mr. Rick De La Garza, Mr. George McCaleb, Ms. Katrina Bugariu, Mrs. Brenda Jo Balderaz, Dr. Murad Odeh, Mr. Paul Varville, Ms. Alicia Gomez, Dr. Jesus Campos, Mr. Matt Dorsen, Mr. Eric Briones, Mr. Evan Horn, Mr. Jeff Neves, and Mr. Andrew Fish

**Approval of August 14, 2018 Finance, Audit, and Human Resources  
Committee Minutes**

Upon a motion by Ms. Rose Benavidez and a second by Mr. Rene Guajardo, the Minutes for the Finance, Audit, and Human Resources Committee Meeting of August 14, 2018 were approved as written. The motion carried.

**Discussion and Action as Necessary on Mesteño Windpower, LLC, Tax  
Abatement Application and Resolution for the Tax Abatement Agreement**

Approval of the Mesteño Windpower, LLC, Tax Abatement Application and the Resolution for the Tax Abatement Agreement was scheduled for the September 25, 2018 Board meeting.

Purpose – Mesteño Windpower, LLC, submitted an application for tax abatement for their wind powered electric generating facility in Starr County. Approval of the tax abatement application



and resolution was needed in order for the College to participate in a tax abatement agreement with a wind power renewable energy company.

Justification – Property Tax Code Chapter 312 authorizes a taxing unit to enter into a tax abatement agreement in order to offer a temporary real property and/or tangible personal property tax abatement for a limited period of time as an inducement for financial investment in the development or redevelopment of certain taxable property. The property tax code requires that a taxing unit establish guidelines and criteria governing tax abatement agreements and approve a resolution to allow the College to participate in tax abatements.

Background – The Board of Trustees adopted the current guidelines and criteria, and resolution electing to participate in Tax Abatement Agreements on November 28, 2017. The College's Guidelines and Criteria for Granting Tax Abatements were effective for a two-year period from the adoption date. The current New Capital Investment minimum threshold was \$200 million.

According to Mesteño Windpower, LLC, the improvements would consist of a proposed wind power generation facility, expected to comprise 201.6 megawatts of nameplate capacity located in the Reinvestment Zone. The project would begin construction no later than the 4<sup>th</sup> quarter of 2018 and it was currently anticipated that construction would be complete within twelve (12) months thereafter.

The improvements were expected to have an estimated value of at least \$159,800,000 upon completion, although the actual value would be determined by an appraisal from the Starr County Appraisal District. The Project was expected to include approximately 56 wind turbines, although the exact number may vary substantially depending on factors such as the type of turbines used and site wind characteristics.

The \$159,800,000 estimated value of the Mesteño Windpower, LLC, project was below the College's Guidelines and Criteria for Granting Tax Abatements estimated New Capital Investment minimum threshold of \$200 million. Proceeding with the proposed tax abatement for the Mesteño Windpower, LLC, project would require Board of Trustees approval of an exception or approval to revise the College's Guidelines and Criteria for Granting Tax Abatements in order to lower the estimated New Capital Investment minimum threshold of \$200 million to \$150 million.

Options for the Committee to consider included revising the Guidelines and Criteria for Granting Tax Abatements to lower the minimum threshold from \$200 million to \$150 million or to consider an exception. Legal counsel was available to discuss the options at the meeting.

Mr. Evan Horn, Manager Indirect Tax Services - Property Tax for Ernst & Young LLP, and Mr. Jeff Neves, Vice President for Amshore US Wind, LLC presented the project to the Committee and were available to respond to any questions.

Reviewers – Mr. Jesus Ramirez, South Texas College's Legal Counsel, and Mrs. Mary Elizondo, Vice President for Finance and Administrative Services, reviewed this item and were available to provide additional information and address questions by the Committee as needed.

Enclosed Documents – The comparison of tax abatement spreadsheet prepared by South Texas College, the Duke Energy Renewables Presentation, the tax abatement resolution, the tax abatement guidelines, and the tax abatement application were included in the packet for the Committee's information and review.

### **Executive Session:**

The South Texas College Board Finance and Human Resources Committee convened into Executive Session at 6:45 p.m. in accordance with Chapter 551 of the Texas Government Code for the specific purpose provided in:

- Section 551.071, Consultations with Attorney
- 1. Discussion and Action as Necessary on Mesteño Windpower, LLC, Tax Abatement Application and Resolution for the Tax Abatement Agreement

### **Open Session:**

The South Texas College Board Finance and Human Resources Committee returned to Open Session at 7:26 p.m. No action was taken in Executive Session

The Finance, Audit, and Human Resources Committee thanked the presenters for providing the information on the Mesteño Windpower, LLC, project. No action was taken.

### **Review and Action as Necessary on Award of Proposal, Purchases, Renewals, and Interlocal Agreements (Non-Bond Proceeds)**

Upon a motion by Ms. Rose Benavidez and a second by Mr. Rene Guajardo, the Finance, Audit, and Human Resources Committee recommended Board approval of the award of proposal, purchases, renewals, and interlocal agreements (Non-Bond Proceeds) as listed below:

#### **A. Award**

- 1) **Syllabus Management Software (Award):** award the proposal for syllabus management software to **Intellidemia, Inc.** (New York, NY) (New), at a total amount of \$24,900.00;

**B. Instructional Items**

- 2) Testing Materials (Purchase):** purchase testing materials for the Texas Success Initiative (TSI), which uses the Accuplacer Platform from **The College Board** (New York, NY), a sole source vendor, for the period beginning September 1, 2018 through August 31, 2019, at a total amount of \$59,000.00;

**C. Non-Instructional Items**

- 3) Advertisement – Classified Ads (Purchase):** purchase advertisement – classified ads from **AIM Media Texas/The Monitor** (McAllen, TX), a sole source vendor, for the period beginning September 1, 2018 through August 31, 2019, at an estimated amount of \$50,000.00;
- 4) Chiller Maintenance Agreement (Purchase):** purchase a chiller maintenance agreement with **Johnson Controls, Inc.** (Milwaukee, WI), a The Interlocal Purchasing System (TIPS) purchasing cooperative approved vendor, for the period beginning November 21, 2018 through November 20, 2019, at an annual amount of \$51,900.00 for scheduled services and an estimated amount of \$70,000.00 for as needed repair services. The total annual amount is \$121,900.00;
- 5) Maintenance Equipment, Parts, and Supplies (Purchase):** purchase maintenance equipment, parts, and supplies through the Texas Association of School Boards – Buyboard approved vendors, for the period beginning September 1, 2018 through August 31, 2019, at an estimated amount of \$200,000.00, with the following vendors:
- **Carrier Enterprise, LLC.** (Houston, TX/Pharr, TX)
  - **Crawford Electric Supply** (San Antonio, TX/Mission, TX)
  - **Dealers Electric Supply** (Waco, TX/McAllen, TX)
  - **Ferguson Enterprise, Inc.** (Newport News, VA/Pharr, TX)
  - **Johnson Supply & Equipment** (Houston, TX/Pharr, TX)
  - **Johnstone Supply** (Corpus Christi, TX/Pharr, TX)
  - **Trane** (Fort Worth, TX/Weslaco, TX)
- 6) Institutional Membership - TACC (Renewal):** renew the institutional membership – TACC with the **Texas Association of Community Colleges (TACC)** (Austin, TX), a sole source vendor, for the period beginning September 1, 2018 through August 31, 2019, at a total amount of \$79,157.00;

**D. Technology**

- 7) Audio Visual Equipment and Supplies (Purchase):** purchase audio visual equipment and supplies for the period beginning September 1, 2018 through August 31, 2019, at an estimated amount of \$170,000.00, which is based on prior year expenditures, with the following purchasing cooperative vendors:

<b>Vendor/Purchasing Cooperative</b>	<b>Amount</b>
<b>Audio Visual Aids</b> (San Antonio, TX) – Texas Association of School Boards – Buyboard, Purchasing Cooperative of America, and The Interlocal Purchasing System (TIPS) Purchasing Cooperative	\$80,000.00
<b>B &amp; H Foto &amp; Electronics, Corp.</b> (New York, NY) – Texas Association of School Boards – Buyboard, Purchasing Cooperative of America, The Interlocal Purchasing System (TIPS) Purchasing Cooperative, and E & I Cooperative Services	\$80,000.00
<b>Audio Fidelity Communications, Corp./dba Whitlock</b> (Austin, TX) – State of Texas Department of Information Resources (DIR)	\$10,000.00

- 8) **Computer Components, Peripherals, Software, and Supplies (Purchase):** purchase computer components, peripherals, software, and supplies for the period beginning September 1, 2018 through August 31, 2019, at an estimated amount of \$350,000.00, which is based on prior year expenditures, with the following purchasing cooperative vendors:

<b>Vendor/Purchasing Cooperative</b>	<b>Amount</b>
<b>CDW Government</b> (Vernon Hills, IL) – State of Texas Department of Information Resources (DIR), National Intergovernmental Purchasing Alliance (NIPA)/Texas Cooperative Purchasing Network (TCPN), National Joint Power Alliance (NJPA), Harris County Dept of Ed – Choice Partners, The Interlocal Purchasing System (TIPS) Purchasing Cooperative, and E & I Cooperative Services	\$140,000.00
<b>CRC Computer Repair Center</b> (McAllen, TX) – State of Texas Department of Information Resources (DIR)	\$40,000.00
<b>Dell Marketing, LP.</b> (Dallas, TX) – State of Texas Department of Information Resources (DIR)	\$100,000.00
<b>GovConnection</b> (Merrimack, NH) – State of Texas Department of Information Resources (DIR), Harris County Dept of Ed – Choice Partners, and National Intergovernmental Purchasing Alliance (NIPA)/Texas Cooperative Purchasing Network (TCPN)	\$10,000.00
<b>SHI Government Solutions, Inc.</b> (Austin, TX) – Texas Association of School Boards – Buyboard, State of Texas Department of Information Resources (DIR), E & I Cooperative Services, Purchasing Association of Cooperative Entities (PACE), The Interlocal Purchasing System (TIPS) Purchasing Cooperative, and Harris County Dept of Ed – Choice Partners	\$60,000.00

- 9) **Enrollment Management System Agreement (Renewal):** renew the enrollment management system agreement with **Hobsons, Inc.** (Cincinnati, OH), a sole source vendor, for the period beginning November 1, 2018 through October 31, 2021, at a total amount of \$195,000.00. The total amount will be split evenly into three (3) annual payments;

#### **E. Interlocal Agreements**

- 10) Data Collection Services for Starr County Asset Mapping Project (Interlocal Agreement/Purchase):** purchase data collection services for Starr County asset mapping project through an interlocal agreement between South Texas College and **The University of Texas – Rio Grande Valley (UTRGV) – Data and Information Services (DISC)** (Edinburg, TX), for the period beginning September 26, 2018 through January 31, 2019, at a total amount of \$20,000.00;
- 11) State Records Inquiry Access Agreement (Interlocal Agreement/Purchase):** enter into a state records inquiry access interlocal agreement with the **Texas Department of Public Safety** (Austin, TX), for the period beginning September 1, 2018 through August 31, 2019, at a total amount of \$12,000.00;
- 12) Strategic Planning and SWOT Analysis Training (Interlocal Agreement/Purchase):** purchase strategic planning and SWOT analysis training between South Texas College and **The University of Texas – Rio Grande Valley (UTRGV)/Texas Manufacturing Assistance Center (TMAC)** (Edinburg, TX), for the total amount of \$3,150.00.

Recommend Action - The total for all award of proposal, purchases, renewals, and interlocal agreements (Non-Bond Proceeds) was \$1,285,107.00.

The motion carried.

#### **Review and Action as Necessary on Award of Proposal and Purchase for the 2013 Bond Construction Program Funded by Non-Bond Proceeds**

Upon a motion by Mr. Rene Guajardo and a second by Ms. Rose Benavidez., the Finance, Audit, and Human Resources Committee recommended Board approval of the award of proposal and purchase for the 2013 Bond Construction Program Funded by Non-Bond Proceeds as listed below:

##### **A. Non-Bond Proceeds -- Maintenance and Operation Taxes (M&O)**

- 1) Floor Care Equipment (Award):** award the proposal for floor care equipment to **Gulf Coast Paper, Co.** (Brownsville, TX) in the amount of \$100,750.00 and to **CC Distributors, Inc.** (Corpus Christi, TX) in the amount of \$19,075.89;
- 2) District-Wide Wayfinding Signage (Purchase):** purchase district-wide wayfinding signage from **Innerface Architectural Signage, Inc.** (Atlanta, GA), a State of Texas Multiple Award Schedule (TXMAS) approved vendor, at a total amount of \$211,410.65.

Recommend Action - The total for the award of proposal and purchase for the 2013 Bond Construction Program and Related Projects Funded by Non-Bond Proceeds was \$331,236.54.

The motion carried.

### **Discussion and Action as Necessary to Continue Partnership with Food Bank of the Rio Grande Valley, Inc. for Support of Pecan Campus Food Pantry**

Approval to continue partnership with Food Bank of the Rio Grande Valley, Inc. for support of Pecan Campus Food Pantry until January 31, 2019 would be requested at the September 25, 2018 Board meeting.

Purpose – To continue partnership with Food Bank of the Rio Grande Valley, Inc. for support of Pecan Campus Food Pantry.

Justification – The Food Bank fiscally sponsored the College's Food Pantry by donating 100% of the food for the first twelve months of the partnership and will continue until January 31, 2019.

Beginning in February 2019, the College would begin purchasing food from the Food Bank of the Rio Grande Valley Inc. to be disbursed at the Food Pantry. The purchases would be made from funds raised by the College since the opening of the Food Pantry.

Background – The Board of Trustees at their September 19, 2017 meeting approved to partner with the Rio Grande Valley, Inc. (Food Bank) to open a Food Pantry at Pecan Campus for the period of September 20, 2017 through August 31, 2018.

The Food Bank was created for the following reasons:

- Many South Texas College students were faced with inadequate food supplies for themselves and their family. This is referred to as food insecurity, that is, a “lack of access, at times, to enough food for an active, healthy life for all household members and limited or uncertain availability of nutritionally adequate foods.” This program would provide students with canned/boxed food.
- South Texas College student households that are food insecure may be forced to make “trade-offs between important basic needs, such as housing or medical bills, and purchasing nutritionally adequate foods.” Hunger issues exist in colleges, especially in lower income areas served by South Texas College.

The Food Bank lend its 501(C) 3 status to the Food Pantry, and the Food Pantry became a program of the Food Bank. The Food Bank requires monthly reports from the College of how many students are served at the Food Pantry (including adults and children in the students' families). The Food Bank delivers the food to the College and trained staff and volunteers at the College on food safety handling

Reviewers - The Resolution was reviewed by Matt Hebbard, Vice President for Student Affairs and Enrollment Management, Eli Nguma, Director of Student Activities and Wellness, Paul

Hernandez, Dean of Student Affairs, and had previously been reviewed by South Texas College's legal counsel.

Enclosed Documents – A Resolution was provided in the packet for the Committee's review and information.

Matt Hebbard, Vice President for Student Affairs and Enrollment Management, and or Paul Hernandez, Dean of Student Affairs, were present at the September 11, 2018 Finance, Audit, and Human Resources Committee meeting to address any questions by the committee

Upon a motion by Mr. Rene Guajardo and a second by Ms. Rose Benavidez, the Finance, Audit, and Human Resources committee recommended Board approval to continue partnership with Food Bank of the Rio Grande Valley, Inc. for support of Pecan Campus Food Pantry until January 31, 2019 as presented. The motion carried.

### **Review and Discussion of Position Vacancy Report Recap for FY 2017 - 2018**

The Staffing Plan Position Vacancy Report Recap for FY 2017 - 2018 was included in the packet for the Committee's information and review. Information was current as of August 31, 2018.

Dr. Shirley A. Reed, President, and Mrs. Mary Elizondo, Vice President for Finance and Administrative Services, were available to respond to questions from the Committee.

The position information listed below included the Unrestricted Fund only and did not include positions for Auxiliary and Restricted Funds.

The presentation of the data was modified to detail the status of each position.

#### **1) Positions Filled during Fiscal Year 2017 - 2018**

##### **(EXHIBIT A – HIRED)**

- Two hundred and seventy-six (276) Full-Time Regular positions have been filled as of August 31, 2018, for FY 2017 – 2018.
- Out of the two hundred and seventy-six (276) full-time regular staff positions filled, there was a total of 7,211 applications; averaging 26 applicants per position posting for candidates.

**2) Vacancies at Beginning of Fiscal Year 2017 - 2018**

**(EXHIBIT B - VACANT POSITIONS - NEW)**

**(EXHIBIT C - VACANT POSITIONS - CONTINUING)**

- Fiscal Year 2017 – 2018 started with two-hundred and thirty-two (232) Full Time Regular positions from the previous fiscal year, and the Board approved seventy-three (73) additional new positions for a total of three-hundred and five (305) vacant Full Time Regular positions for FY 2017 – 2018.

**3) Position Turnover during Fiscal Year 2017 - 2018**

- There have been eighty (82) resignations, terminations, and/or retirement notices submitted for Full Time Regular staff positions as of August 29, 2018.

Below is a detail of the Fiscal Year 2017 – 2018 Non-Faculty Vacancies by Division as of August 31, 2018.

	Academic Affairs	Finance & Admin. Services	Information Services, Plan, Perform. & Strategic Init.	President's Office	Student Affairs & Enrollment Management	Total
<b>Continued</b>	30	72	36	12	14	<b>164</b>
<b>Cont-Bond FY17</b>	5	7	0	0	0	<b>12</b>
<b>New-Bond FY18</b>	6	0	1	0	0	<b>7</b>
<b>Total</b>	<b>41</b>	<b>79</b>	<b>37</b>	<b>12</b>	<b>14</b>	<b>183</b>

Further details can be found in the Position Vacancy Report Recap within the packet.

For Fiscal Year 2018 – 2019, the Board approved twenty (20) Full Time Regular positions. The detail for Fiscal Year 2018 – 2019 on vacancies was scheduled for information and review by the Committee at the October 9, 2018 scheduled meeting.

The Position Vacancy Report Recap for Fiscal Year 2017 - 2018 and Positions Filled and Vacated Report were presented for information and review by the Committee.

Dr. Shirley Reed applauded that considerable accomplishments had been made in filling vacancies, and credited the Office of Human Resources for their hard work in filling 276 positions, screening over 7,200 applications for those positions.

Dr. Reed noted that the extensive vacancy reports were presented each month at the Finance, Audit, and Human Resources Committee. She asked whether the Committee wished to continue seeing these reports on a monthly basis.



Mr. Rene Guajardo commended the HR office and personnel for their massive undertaking in the prior year's hiring. He noted that the report was additional labor on top of their normal processes, and he did not feel the report was necessary for future packets.

Mr. Roy de León concurred, stating that the Committee did not require the report moving forward.

Dr. Reed asked whether the Board should be asked about the continuation of the vacancy reports, and the committee members noted that the reports began at the request of an individual Trustee, and not at the formal request of the Board.

Mr. de León stated that as Chairman of the Committee, the report was no longer necessary. If vacancies were to become an issue, it might be revisited again.

Dr. Reed asked whether the report should be provided quarterly, and Mr. de León stated that he did not think it would be necessary at all, unless the Committee were to request it in the future.

No action was taken.

### **Adjournment**

There being no further business to discuss, the Finance, Audit, and Human Resources Committee Meeting of the South Texas College Board of Trustees adjourned at 7:35 p.m.

I certify that the foregoing are the true and correct Minutes of the September 11, 2018 Finance, Audit, and Human Resources Committee Meeting of the South Texas College Board of Trustees.

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Mr. Roy de León  
Committee Chair

### **Review and Discussion Regarding Student Enrollment Revenue Projections and Year to Date Revenue Projections**

In the Fall 2018 semester, the College experienced a decline in traditional student enrollment from the Fall 2017 semester by 761 students. In addition, the actual enrollment of traditional students in the Fall 2018 semester of 19,324 did not meet the budgeted enrollment of 20,085 by 761 students.

As a result, the tuition and fee revenue projections for Fall 2018 were not met by approximately \$645,571.

If the downward trend in student enrollment continues for the Spring 2019 semester, the negative impact on tuition and fee revenue, is estimated to total \$1,258,356.

<b>Actual Traditional Student Enrollment Fall 2018</b>				
<b>Semester</b>	<b>Budgeted Student Enrollment</b>	<b>Actual Student Enrollment</b>	<b>Student Enrollment Difference</b>	<b>Tuition and Fee Revenue Deficit</b>
Fall (Actual)	20,085	19,324	(761)	\$(645,571)
<b>Projected Traditional Student Enrollment Spring 2019</b>				
<b>Semester</b>	<b>Budgeted Student Enrollment</b>	<b>Projected Student Enrollment</b>	<b>Student Enrollment Difference</b>	<b>Tuition and Fee Revenue Deficit</b>
Spring (Projected)	17,342	16,619	(723)	\$(612,785)
<b>Total Projected Tuition and Fee Revenue Deficit</b>				<b>\$(1,258,356)</b>

During the Fall 2018 semester, the College will closely monitor the Spring 2019 semester student enrollment to determine if the decline in enrollment is expected to continue as reflected above and to determine if measures are necessary to align expenses to projected revenues for Fiscal Year 2019.

Other revenue sources, such as property tax revenue, will also be closely monitored to determine whether actual revenues are meeting budgeted revenues. Levels of expenditures will also be tracked.

If the budgeted revenues are not projected to be met, budget adjustments may be necessary.

No action is required from the Committee. This item is presented for information and feedback to staff.

**Discussion and Action as Necessary on Mesteño Windpower, LLC, Tax Abatement Application, Agreement, and Resolution**

Approval of the Mesteño Windpower, LLC, Tax Abatement Application, Agreement, and Resolution, and take action as necessary regarding the terms and exception to the New Capital Investment minimum threshold of \$200 million requirement will be requested at the October 30, 2018 Board meeting.

Purpose – Mesteño Windpower, LLC, has submitted an application for tax abatement for their wind powered electric generating facility in Starr County. Approval of the tax abatement application and resolution is needed in order for the College to participate in a tax abatement agreement with a wind power renewable energy company.

Justification – Property Tax Code Chapter 312 authorizes a taxing unit to enter into a tax abatement agreement in order to offer a temporary real property and/or tangible personal property tax abatement for a limited period of time as an inducement for financial investment in the development or redevelopment of certain taxable property. The property tax code requires that a taxing unit establish guidelines and criteria governing tax abatement agreements and approve a resolution to allow the College to participate in tax abatements.

Background – The Board of Trustees adopted the current guidelines and criteria, and resolution electing to participate in Tax Abatement Agreements on November 28, 2017. The College's Guidelines and Criteria for Granting Tax Abatements are effective for a two-year period from the adoption date. The current New Capital Investment minimum threshold is \$200 million.

Mesteño Windpower, LLC presented the proposed wind power Mesteño Project at the September 11, 2018 Finance, Audit, and Human Resources committee meeting.

The proposed terms presented by Mesteño Windpower, LLC were as follows.

<b>Proposed Terms</b>	
Estimated Value	\$159,800,000
Estimated Megawatts	201.6
Estimated Number of Wind Turbines	56
Length of Tax Abatement	10 Years
Tax Abatement Percentage	75%
Annual Payments in Lieu of Taxes (Year 1 – Year 10)	\$25,805

Under the proposed terms, the financial impact is as follows.

<b>Financial Impact</b>	
<b>Funds Abated:</b>	
Estimated M&O Tax Abated (Year 1 - Year 10)	\$1,290,263
Payments in Lieu of Taxes (PILOT) (Year 1 - Year 10)	\$(258,050)
<b>Funds Abated Less PILOT</b>	<b>\$1,032,213</b>
<b>Funds Collected:</b>	
Estimated M&O Tax Not Abated (Year 1 - Year 10)	\$430,088
Payments in Lieu of Taxes (PILOT) (Year 1 - Year 10)	\$258,050
<b>Total Funds Collected</b>	<b>\$688,138</b>
<b>Difference-Funds Collected and Funds Abated Less PILOT (Year 1 - Year 10)</b>	<b>\$(344,075)</b>
Estimated M&O Tax After Abatement Period (Year 11 -Year 25)	\$1,214,445

The tax abatement proposed by Mesteño Windpower, LLC reflects the following:

- According to Mesteño Windpower, LLC representatives, the proposed terms are based on previous tax abatement project terms accepted by the College and on this particular project's size.
- The New Capital Investment of \$159.8 million does not meet the estimated New Capital Investment minimum threshold of \$200 million per the College's Guidelines and Criteria for Granting Tax Abatements.
- Approval for an exception to the College's guidelines is required from the Board of Trustees because the estimated value of the proposed tax abatement project is below the minimum threshold.
- The PILOT amount represents \$1,280.01 per megawatt. The PILOT amounts for Los Vientos and Rio Bravo were \$1,274.51 and \$1,281.51 per megawatt, respectively.
- The total funds abated exceed the funds collected by the College by \$344,075 during the period of Year 1 through Year 10.

The Committee did not make a recommendation at the September 11, 2018 Finance, Audit, and Human Resources committee meeting.

In negotiating the terms of the proposed tax abatement, the College requested that Mesteño Windpower, LLC include an up front lump sum scholarship payment in the amount of \$50,000. Under the College's counter proposal, the financial impact is as follows.

<b>Financial Impact – New Terms</b>	
<b>Funds Abated:</b>	
Estimated M&O Tax Abated (Year 1 - Year 10)	\$1,290,263
Payments in Lieu of Taxes (PILOT) (Year 1 - Year 10)	\$(258,050)
<b>Funds Abated Less PILOT</b>	<b>\$1,032,213</b>
<b>Funds Collected:</b>	
Estimated M&O Tax Not Abated (Year 1 - Year 10)	\$430,088
Payments in Lieu of Taxes (PILOT) (Year 1 - Year 10)	\$258,050
Up Front Lump Sum Scholarship Payment	\$50,000
<b>Total Funds Collected</b>	<b>\$738,138</b>
<b>Difference-Funds Collected and Funds Abated Less PILOT (Year 1 - Year 10)</b>	<b>\$(294,075)</b>
Estimated M&O Tax After Abatement Period (Year 11 -Year 25)	\$1,214,445

Mesteño Windpower, LLC has accepted the College's counter proposal that included a \$50,000 up front lump sum scholarship payment.

Mr. Graham Furlong, Managing Director for Duke Energy Renewables Wind, LLC, Evan Horn, Manager Indirect Tax Services - Property Tax for Ernst & Young LLP, and Mr. Jeff Neves, Vice President for Amshore US Wind, LLC will be present at the Committee meeting to discuss their proposal and answer any questions.

Reviewers – Mr. Jesus Ramirez, South Texas College's Legal Counsel, and Mrs. Mary Elizondo, Vice President for Finance and Administrative Services, have reviewed this item and will discuss and provide additional information and address questions by the Committee as needed.

Enclosed Documents – The comparison of tax abatement spreadsheet prepared by South Texas College, the Duke Energy Renewables Presentation, the tax abatement resolution, the tax abatement guidelines, and the tax abatement application follow in the packet for the Committee's information and review.

It is requested that the Finance, Audit, and Human Resources committee recommend for Board approval at the October 30, 2018 Board meeting, the Mesteño Windpower, LLC, Tax Abatement Application, Agreement, and Resolution, and take action as necessary regarding

the terms and exception to the New Capital Investment minimum threshold of \$200 million requirement as presented.

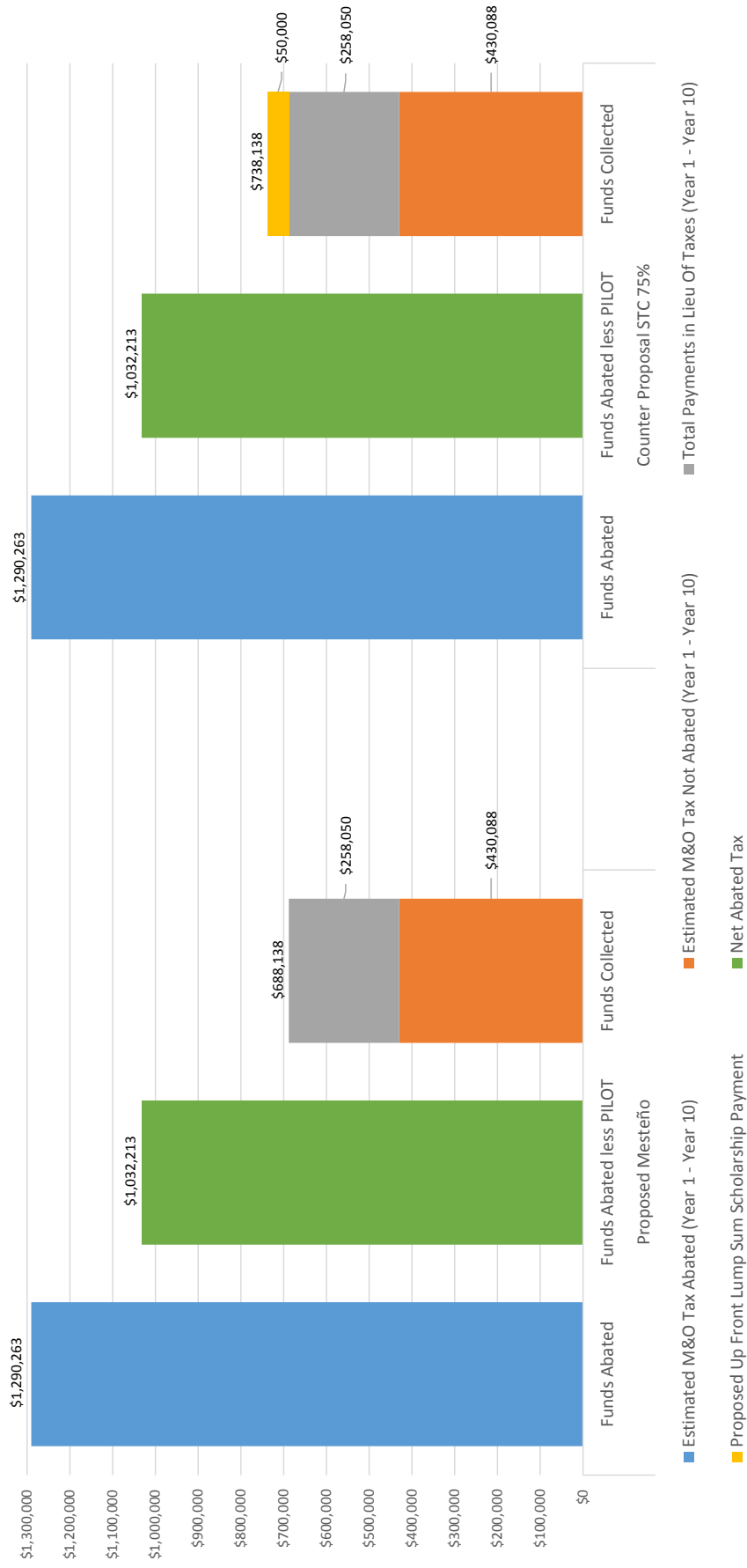
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**South Texas College**  
**Comparison of Mesteño Tax Abatement Scenarios Including Lump Sum Scholarship**  
As of October 4, 2018

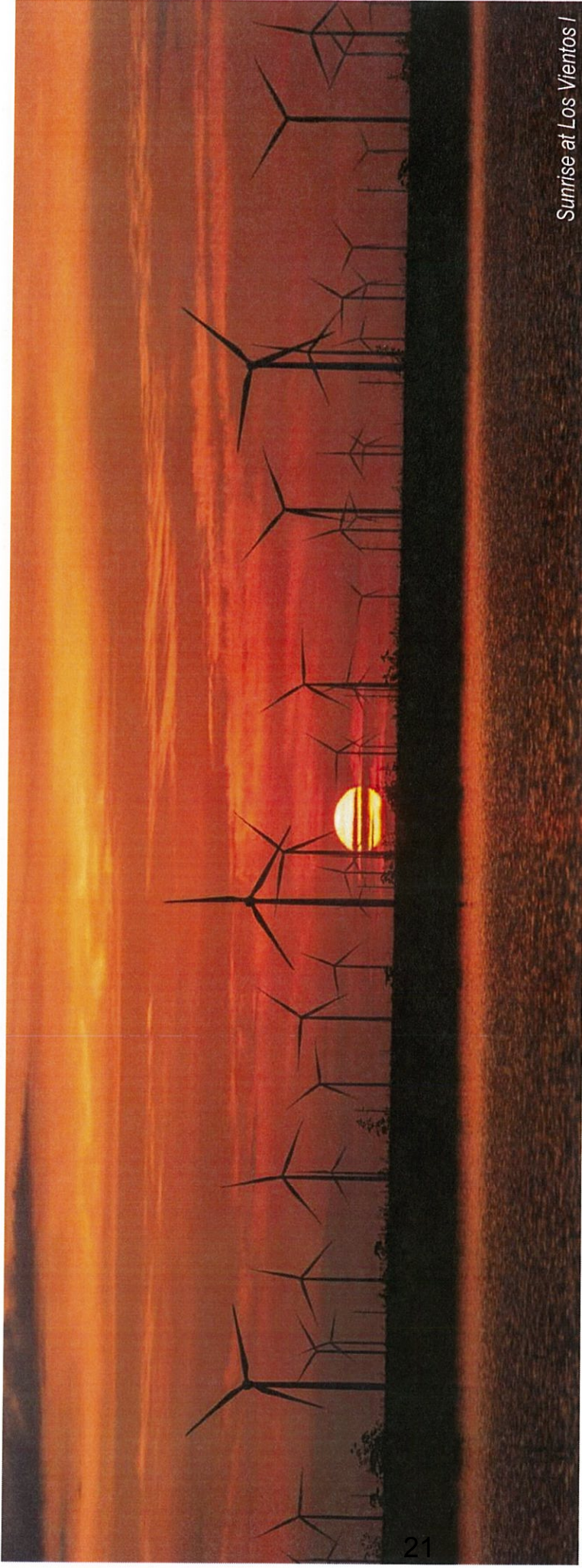
<b>Abatement Terms</b>	<b>Proposed Mesteño (75%)</b>	<b>Counter Proposal STC 75%</b>
Number of Megawatts	201.6 MW	201.6 MW
Number of Turbines	56	56
Length of Tax Abatement	10 Years	10 Years
Tax Abatement Percentage	75%	75%
Number of Phases	1	1
Tax Levies Affected by the Tax Abatement	Levy 2020 - Levy 2029	Levy 2020 - Levy 2029
Estimated Value of Entire Project Upon Completion	\$ 159,800,000	\$ 159,800,000
Estimated M&O Tax Not Abated (Year 1 - Year 10)	\$ 430,088	\$ 430,088
Estimated M&O Tax Abated (Year 1 - Year 10)	\$ 1,290,263	\$ 1,290,263
Application Fee	\$ 2,500	\$ 2,500
Attorney Fee Reimbursement	Pending	Pending
Annual Payments in Lieu Of Taxes (PILOT) Amount (Year 1 - Year 10)	\$ 25,805	\$ 25,805
Number of Payments in Lieu Of Taxes (Year 1 - Year 10)	10	10
Total Payments in Lieu Of Taxes (Year 1 - Year 10)	\$ 258,050	\$ 258,050
PILOT per MW Rate	\$ 1,280.01	\$ 1,280.01
Estimated M&O Tax After Abatement Period (Year 11 -Year 25)	\$ 1,214,445	\$ 1,214,445
Estimated Number of Full Time Jobs	6	6
Useful Life	25 Years	25 Years
<b>Summary of Total Funds Abated and Collected</b>		
Funds Abated:		
Estimated M&O Tax Abated (Year 1 - Year 10)	\$ 1,290,263	\$ 1,290,263
Payments in Lieu Of Taxes (Year 1 - Year 10)	\$ (258,050)	\$ (258,050)
Funds Abated less PILOT	\$ 1,032,213	\$ 1,032,213
Funds Collected:		
Estimated M&O Tax Not Abated (Year 1 - Year 10)	\$ 430,088	\$ 430,088
Payments in Lieu Of Taxes (Year 1 - Year 10)	\$ 258,050	\$ 258,050
Proposed Up Front Lump Sum Scholarship Payment	\$ -	\$ 50,000
Total Funds Collected	\$ 688,138	\$ 738,138
Difference-Funds Collected and Funds Abated less PILOT	\$ (344,075)	\$ (294,075)
Estimated M&O Tax After Abatement Period (Year 11 -Year 25)	\$ 1,214,445	\$ 1,214,445



# Mesteño Tax Abatement Comparison of Funds Abated and Funds Collected Including Lump Sum Scholarship



2



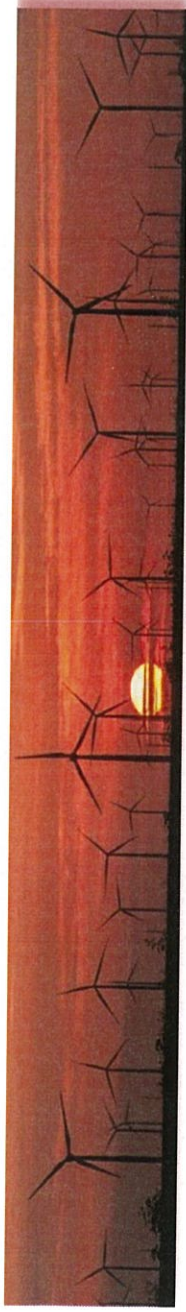
Sunrise at Los Vientos I

# Duke Energy Renewables

## Business Overview & Mesteño Wind Project Summary for STC Finance Committee

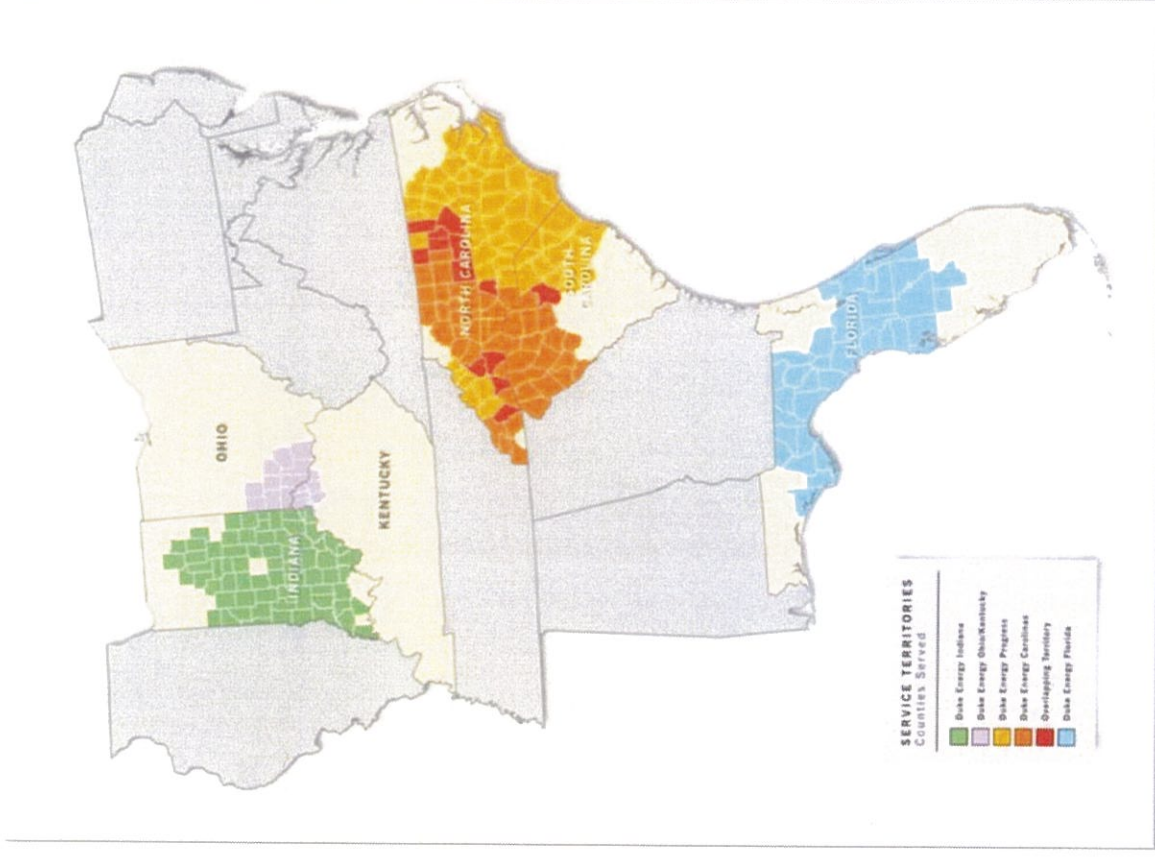
September 2018

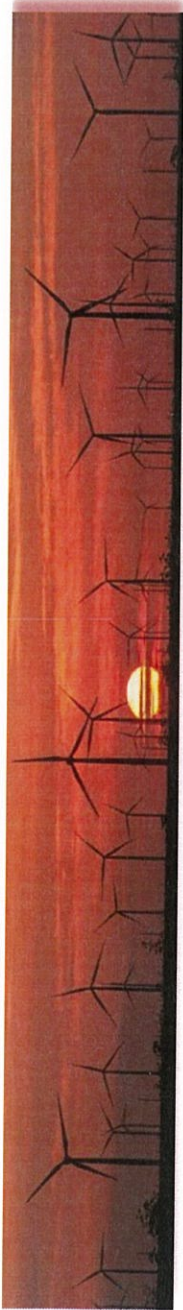




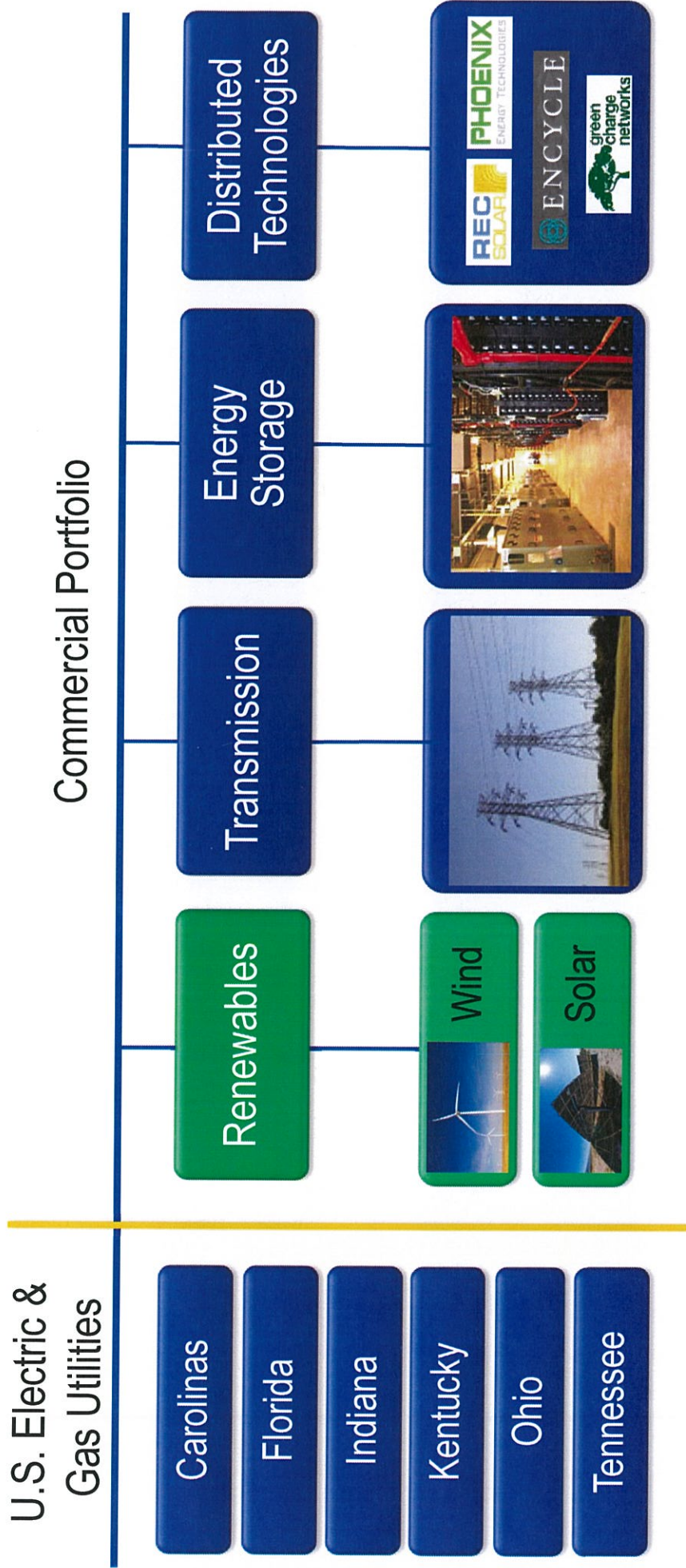
## Duke Energy

- A regulated electric and gas utility serving 7.4 million customers in seven states
- Headquartered in Charlotte, NC
- 150+ years of experience designing, constructing, and safely operating complex energy infrastructure
- A Fortune 125 company; NYSE listed (DUK) (A-/Baa1)
- Dow Jones Sustainability North America Index for 12 consecutive years
- 100 Best Corporate Citizens by Corporate Responsibility magazine for 5 of the past 6 years
- 31,000 employees
- 52 GW of generating capacity
- \$120 B of assets

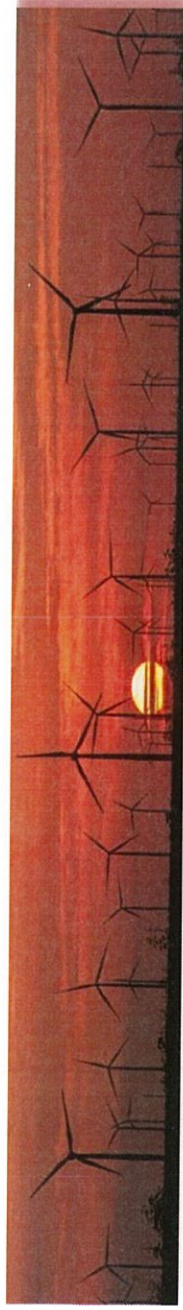




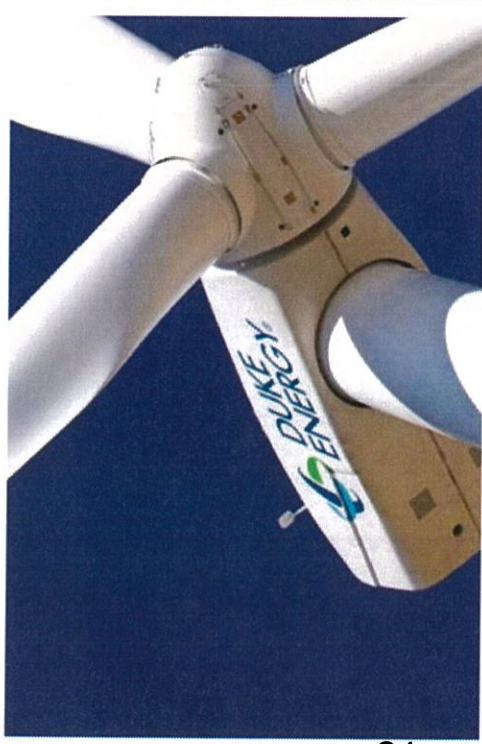
## Duke Energy – Major Businesses







## Duke Energy Renewables – Technologies



### Wind

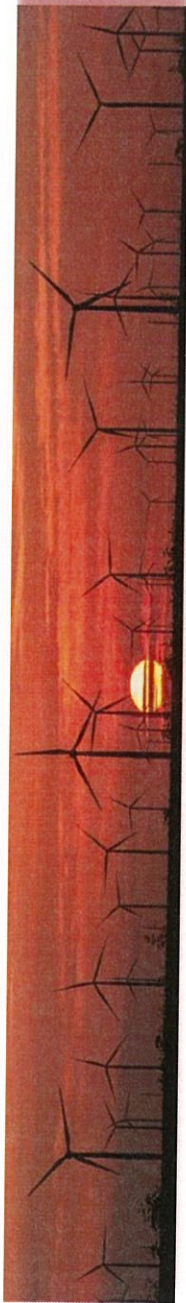
- Business model: develop/acquire, build, own, operate utility-scale windpower facilities throughout the U.S.
- Acquired Terra Energy (2007), Catamount Energy (2008), and Outland Energy Services (2012) to establish platform of operating and development assets with O&M services offering
- Currently 21 operating facilities totaling 2,310 MW (net)



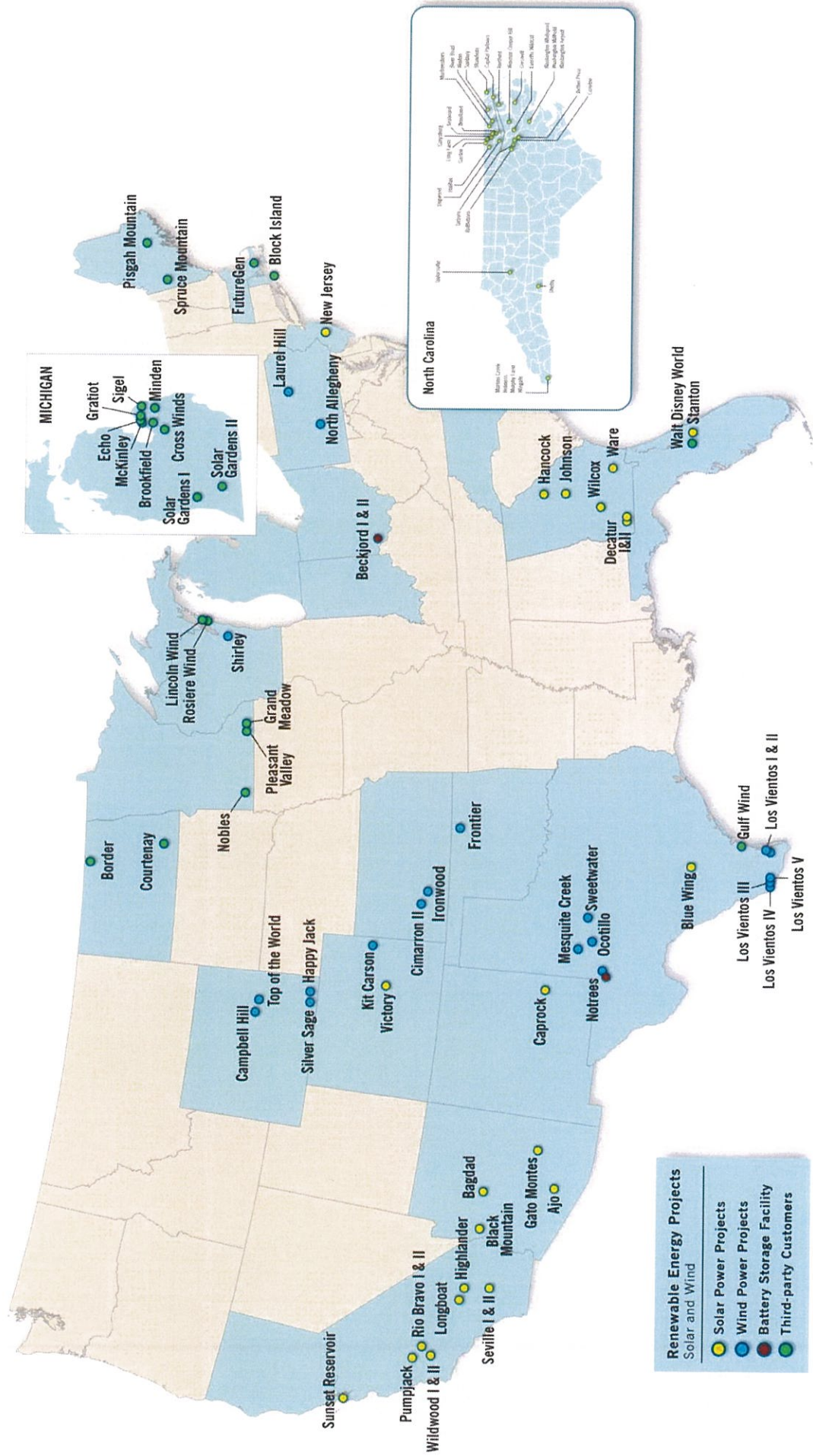
### Solar

- Business model: develop/acquire, build, own, operate solar projects throughout the U.S.
  - Primary focus on utility-scale PV projects
  - Also DG-scale projects through REC Commercial Solar
- Currently 52 operating facilities totaling 590 MWac





# Duke Energy Renewables – Portfolio with O&M Sites

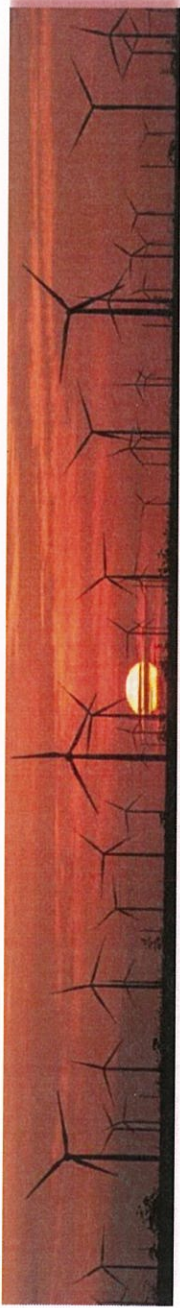




# Duke Energy Renewables – Strengths

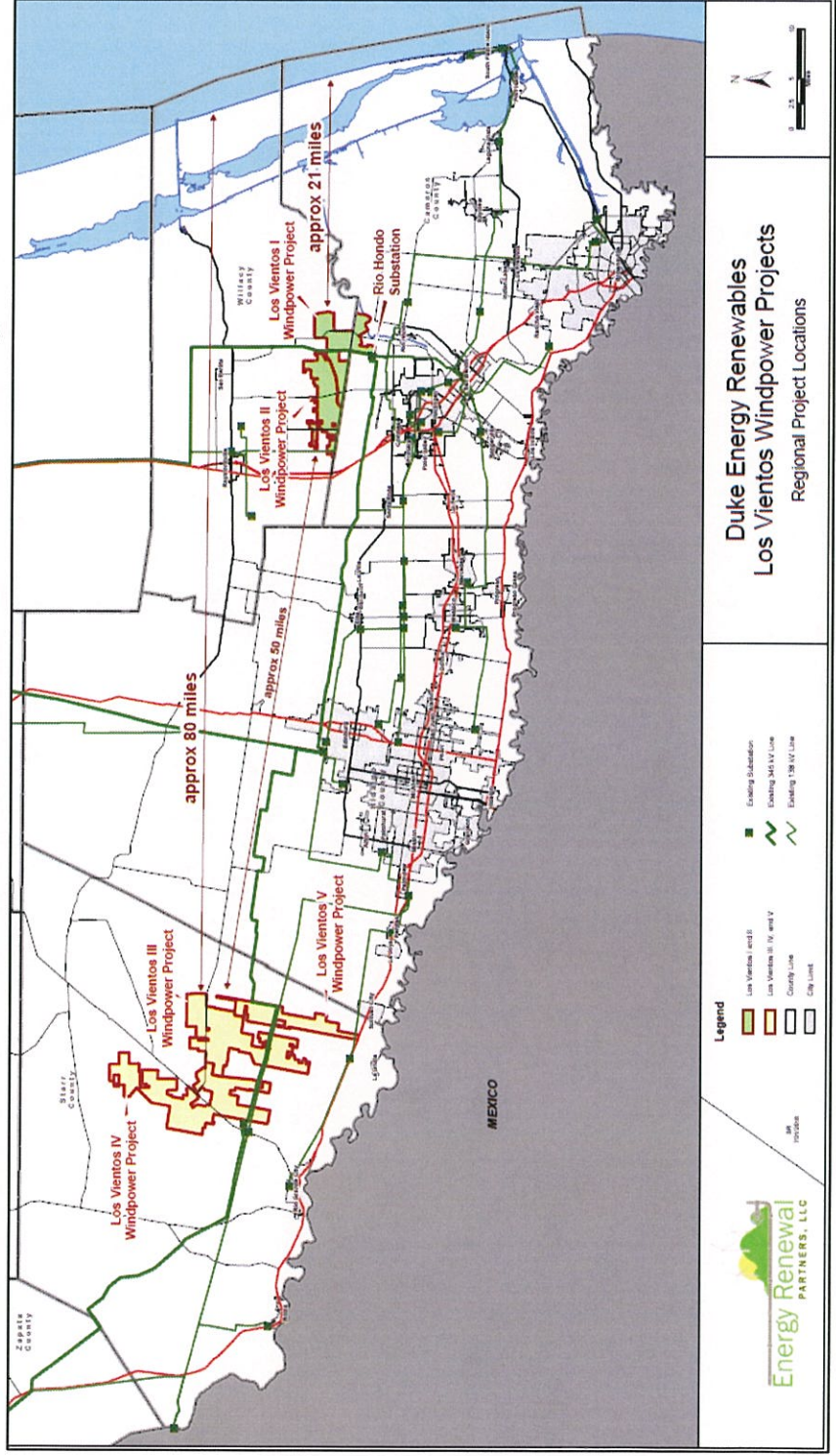


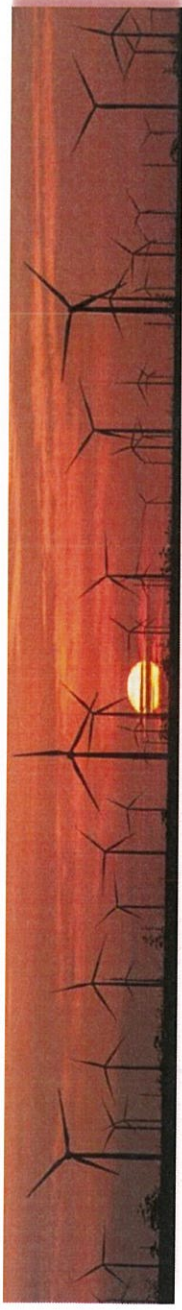




## Duke Energy Renewables – South Texas Projects

- Los Vientos Phases I, II, III, IV & V- Starr, Cameron & Willacy Counties
- 912 Megawatts installed in South Texas
- Largest Single Owner Wind Farm in Texas, 2<sup>nd</sup> Largest in United States





## Los Vientos III, IV & V Benefits to South Texas College and Community

- Over \$1.3 million in tax and pilot payment made to STC to date
- ~\$8.7 million spent locally during construction between Jan '14 – Jan '15
- >\$13 million in taxes paid to Rio Grande City ISD (\$11.8M) and Roma ISD (\$1.9M) in 2018
- Landowner royalties on an ongoing basis
- Clean energy production
- ~30 full time O&M jobs between Duke & Vestas
- Diversifies Starr County economy and tax base
- The Los Vientos III, IV & V Projects are currently some of the largest tax payers in Starr County

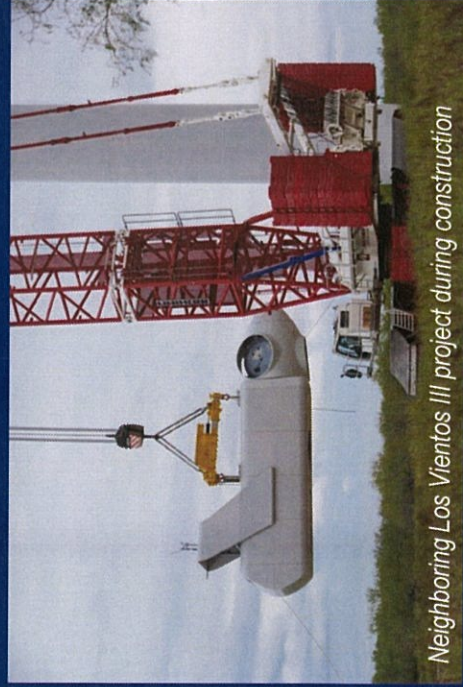


# Mesteño Windpower- Operations Target 12/2019



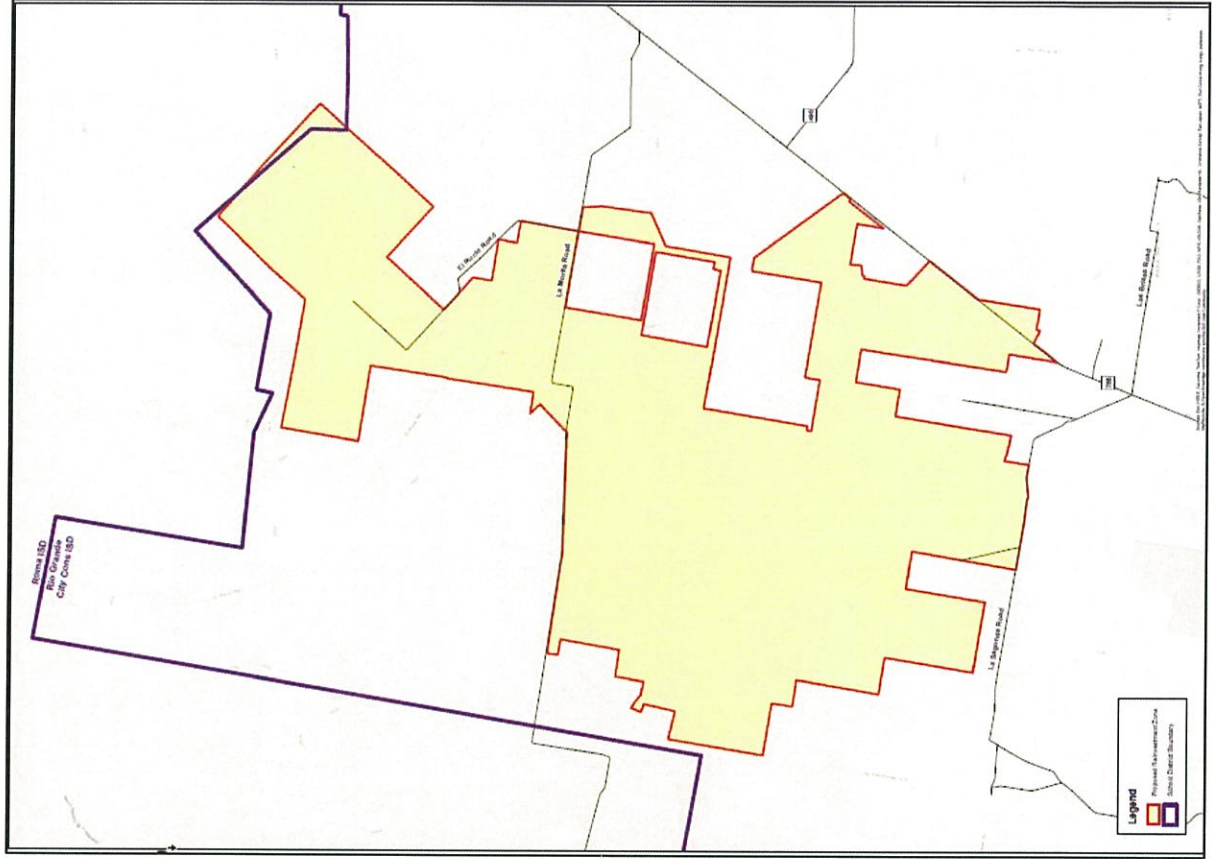
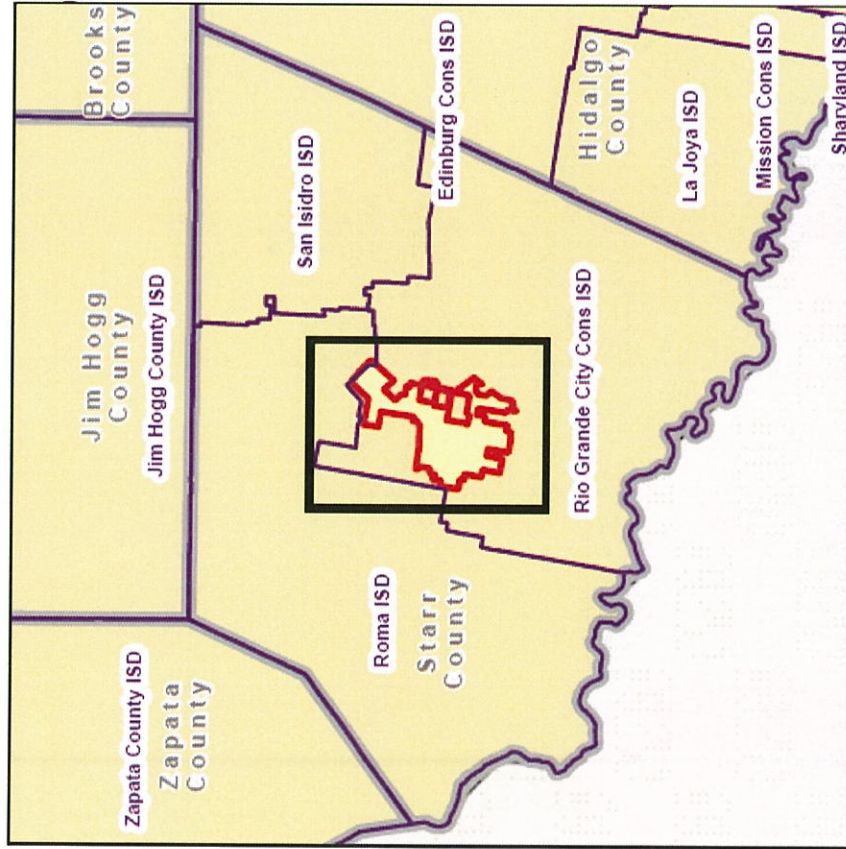
Market:	ERCOT
Hub:	ERCOT South Hub
Location:	Starr County, TX
Capacity:	~200 MW
Potential In-Service Date:	Est. Q4 2019
Interconnection Point:	ETT Del Sol 345kV Sub

- **Land Control**
  - ~14,000 acres, long-term land leases
  - Adjacent to operating Duke Los Vientos III, IV, V projects (2015-2016 in-service dates)
- **Wind Resource**
  - On Peak Wind Resource (Spring / Summer Peak Production)
  - 2 met towers & 1 SODAR unit plus numerous historical met towers
- **Environmental/Permitting**
  - Completed avian and bat studies
  - Positive feedback from USFWS & TPWD, ongoing coordination
- **Interconnection**
  - POI at ETT Del Sol 345kV substation
  - Signed 200MW Interconnection Agreement
    - Signed Interconnection Agreement does not obligate Duke to move the project forward into construction
- **Turbine Technology**
  - Turbine Model TBD, potential range of 56 to 100 turbines
    - 56 x 3.6MW turbines = 201.6MW total
    - 100 x 2.0MW turbines = 200.0MW total
- **Potential Financial Benefits to Community**
  - Potential Est. Minimum Total Investment ~\$170,000,000
  - Est. 4-5 New Full-Time Jobs



Neighboring Los Vientos III project during construction

# Mesteño Windpower





- Benefits to Community and STC from potential Mesteño Project
  - \$170 million investment in local community that does not require or obligate community to add infrastructure or improvements
    - Requires minimal to zero resources from County/ ISDs to attract investment
    - Added tax revenue for South Texas College, Rio Grande City ISD, Starr County and Starr County Hospital
  - 200MW of additional clean energy
  - 4 to 5 new Full Time Jobs
    - Wind O&M Jobs are long term, good paying jobs in a growing industry
  - Lease Income for local landowners
    - Diversifies income to support family farms and ranches
  - Local construction spending based on previous Los Vientos project history

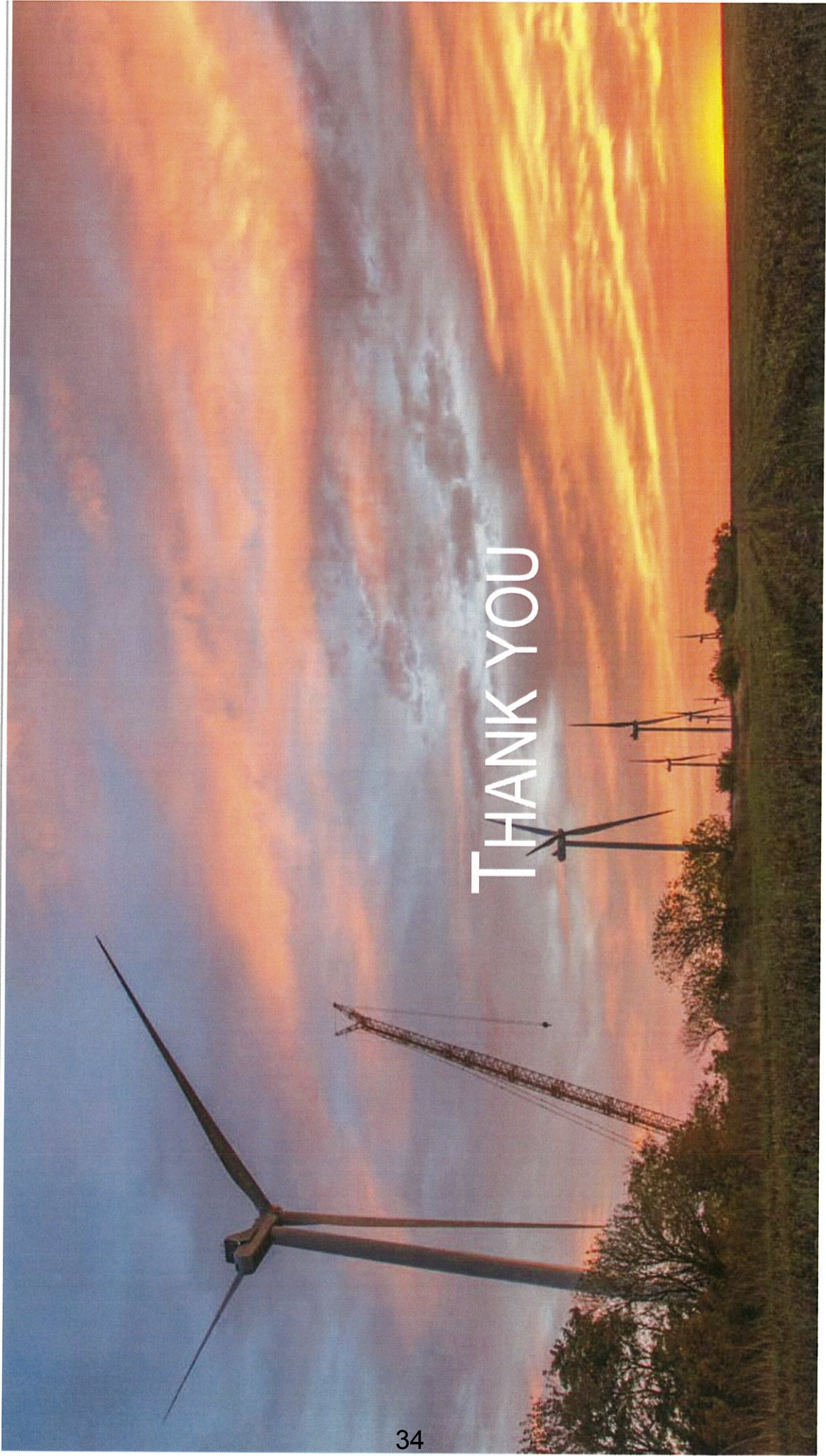
## Other Starr County Taxing Entity status and structure

- June 25, 2018 Rio Grande City ISD approved initiating the application and review process for the Mesteño 313 VLA with State Comptroller
  - Governed by Tax Code 313 that sets a value limitation for 10 years and standard formula for determining PILOTS based upon percentage of savings to project vs dollar per ADA. Will limit the value to \$30 million.
  - Comptroller has deemed Mesteno 313 application complete
- Starr County held public hearing on 312 abatement August 13, 2018 and voted to approve Mesteño Reinvestment Zone August 16, 2018, and voted to approve entering into Abatement August 27, 2018 - standard wind abatement structure of 75%
- Starr County Hospital will support new wind and solar with standard abatement - Mesteño Project presented July 31, 2018 and Hospital Board voted to accept Project application August 23, 2018

## Mesteño Windpower Requests 312 Abatement:

- 75% Abatement for 10 years
- Payment in lieu of Tax- PILOT payment of \$128 per Megawatt (MW) per year of installed capacity for 10 years
- Current planned project size is 201.6 MW
  - PILOT Agreement would pay \$25,800 per year
- Total Potential 30 yr Benefit to STC Assuming Estimated Depreciation (Unabated taxes and PILOTS) = >\$2.5M
  - -subject to appraisal and depreciation schedules







3

State of Texas )(

County of Starr and Hidalgo )(

South Texas College )(

A RESOLUTION AND ORDER OF THE BOARD OF TRUSTEES OF SOUTH TEXAS  
COLLEGE APPROVING TAX ABATEMENT AGREEMENT BETWEEN MESTEÑO  
WINDPOWER, LLC AND SOUTH TEXAS COLLEGE – STARR COUNTY, TEXAS

Whereas, Starr County, Texas (the “County”) designated the Mesteño Reinvestment Zone No. 1 (“the Zone”) by order of the Commissioner’s Court of Starr County dated August 13, 2018, pursuant to its Guidelines and Criteria for Tax Abatement and Chapter 312 of the Texas Tax Code; and

Whereas, Mesteño WindPower, LLC contemplates making certain improvements to the real property located within the Zone consisting of a wind powered electric power generating facility (the “Wind Power Project”); and

Whereas, the Board of Trustees of South Texas College has elected to become eligible to participate in tax abatements under the terms of the South Texas College Guidelines and Criteria for Granting Tax Abatements, adopted November 28, 2017; and

Whereas, a request for the tax abatement has been submitted to South Texas College and the request meets the requirements of the South Texas College Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zone in Starr County, Texas;

Whereas, Mesteño WindPower, LLC and South Texas College have agreed upon terms of a Tax Abatement Agreement;

NOW THEREFORE, BE IT ORDERED BY THE BOARD OF TRUSTEES OF SOUTH TEXAS COLLEGE:

That the tax abatement agreement in substantially the form attached hereto as Exhibit A (“Tax Abatement Agreement”) and made a part hereof is hereby approved pursuant to the South Texas College Guidelines and Criteria for Granting Tax Abatements; and

That the Chairman of the Board and the Secretary of the Board are hereby authorized to enter into, execute and deliver the Tax Abatement Agreement on behalf of South Texas College.

PASSED AND APPROVED ON THE \_\_\_\_ DAY OF OCTOBER, 2018, 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: \_\_\_\_\_  
Dr. SHIRLEY A. REED, President

ATTEST:

By: \_\_\_\_\_  
Secretary of the  
Board of Trustees

4

**Tax Abatement Agreement  
between  
South Texas College and  
Mesteño Windpower, LLC**

*State of Texas*

*County of Starr*

This Tax Abatement Agreement (this “Agreement”) is made and entered into by and between South Texas College (the “College”), acting through its duly elected officers, and Mesteño Windpower, LLC, a Delaware limited liability company (the “Owner”), owner of Eligible Property (as hereinafter defined) to be located on the tract of land within the Mesteño Reinvestment Zone No. 1, more specifically described in Attachment “A” to this Agreement. This Agreement becomes effective upon final signature by both parties.

**I. Authorization**

This Agreement is authorized and its terms governed by Chapter 312 of the Texas Tax Code, as amended, and by the College 2017-2020 Guidelines and Criteria Governing Tax Abatement Agreements, adopted November 28, 2017. The Agreement remains in effect until fulfillment of the obligations described in Paragraph IV (D) herein, unless terminated earlier as provided herein.

**II. Definitions**

As used in this Agreement, the following terms shall have the meaning set forth below, and any undefined terms shall be given the definitions provided in the College’s Tax Abatement Guidelines and Criteria.

- A. “Abatement” means the full or partial exemption from ad valorem Maintenance Taxes on property in the Reinvestment Zone No. 1 as provided herein, and in no event will the duration of the Abatement period exceed 10 Calendar Years, commencing on January 1 of the tax year next after the date that College President receives the Certificate of Completion for the Improvements.
- B. “Act” shall mean Chapter 312 of the Texas Tax Code.
- C. “Calendar Year” means each year beginning on January 1 and ending on December 31.
- D. “Certificate” 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 “Project”), outlining the Improvements and stipulating the overall Turbine Nameplate Capacity of the Project. Upon receipt of the Certificate, and upon reasonable notice to the Owner, the College may inspect the Site in accordance with this Agreement to determine that the Improvements are in place as certified.

- E. “Certified Appraised Value” means the appraised value, for property tax purposes, of the Facility within Reinvestment Zone No. 1 as certified by the Starr County Appraisal District for each taxable year.
- F. “Eligible Property” 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 described in Attachment A hereto, 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 adopted November 28, 2017. Taxes on Real Property may be abated only to the extent the property’s 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.
- G. “Facility” means that certain approximately two hundred one and six tenths megawatt (201.6 MW) wind generation facility to be developed in Starr County, Texas by the Owner.
- H. “Force Majeure” means any contingency or cause beyond the reasonable control of the party claiming Force Majeure including, without limitation, acts of God or a 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.
- I. “Improvements” 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 comprising the Site. Improvements specifically include the Facility, and the Owner’s substation and switching station if located within Reinvestment Zone No. 1.
- J. “Maintenance Taxes” means the College’s maintenance and operations tax and all other taxes or assessments imposed by the College (excluding, however, the College’s debt taxes).
- K. “Owner” means Mesteño Windpower, LLC, a Delaware limited liability company, the entity that owns or holds under fee simple title or one or more leasehold or easement interests in the land comprising the Site and in the Real Property for which Abatement is being granted, and any assignee or successor thereof.
- L. “Real Property” means buildings and structures; Site improvements and related fixed improvements.

- M. “Reinvestment Zone No. 1” means The Mesteño Reinvestment Zone Number One, 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.
- N. “Site” means the portion of the Reinvestment Zone No. 1 on which Owner makes the Improvements for which the Abatement is granted hereunder.
- O. “Turbine Nameplate Capacity” 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.

### **III. Improvements in Reinvestment Zone No. 1**

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

- A. The Owner anticipates constructing Improvements on the Site consisting of a wind power facility with approximately 201.6 megawatts of overall Turbine Nameplate Capacity located in the Reinvestment Zone No. 1 and that upon completion, it will have an estimated appraised value of \$159,800,000.
- B. The Improvements also shall include the Facility and any other property in the Reinvestment Zone No. 1 owned by Owner and meeting the definition of “Eligible Property” 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 Site, Real Property or Eligible Property will constitute Improvements under this Agreement.
- C. Owner anticipates that it will complete construction of the Improvements on or about December 31, 2019.

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

- A. The College and Owner specifically agree and acknowledge that the Facility in the Reinvestment Zone No. 1 shall be taxable in the following ways before and during the Term of this Agreement:
  - 1. Owner’s 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)(1), one hundred percent (100%) of property taxes levied on the Certified Appraised Value of real and personal property owned by Owner and located in the Reinvestment Zone No. 1 will be owed 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. One Hundred percent (100%) of the Certified Appraised Value of Eligible Property existing in the Reinvestment Zone No. 1 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 of Owner's property taxes under the conditions set forth herein:
1. There shall be granted and allowed hereunder a property tax abatement on the approved Eligible Property and/or Improvements constructed, expanded, or acquired hereunder on the Site at a rate of seventy-five percent (75%) for ten years, commencing on January 1 of the tax year next after the date that College President receives the Certificate of Completion for the Improvements.
  2. The foregoing percentage of property taxes on the Certified Appraised Value of all Eligible Property and/or Improvements approved by the College and described in the Certificate (and actually in place in the Reinvestment Zone No. 1) are abated in the respective period designated above.
- C. A portion or all of the Improvements may be eligible for complete or partial exemption, now or in the future, from ad valorem taxes as a result of existing law or future legislation. Should any such existing exemption not have been addressed herein or should any new exemption be proposed or adopted by 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 College's tax benefits as anticipated in this Agreement. This Agreement is not to be automatically construed as evidence that such exemptions shall automatically apply to the Improvements.
- D. As partial consideration for the granting of tax abatement in Paragraph IV(B) hereof, the Owner agrees to make the following payments to the College: (1) No later than 30 days from the date hereof, paid to the College of the sum of Fifty Thousand Dollars (\$50,000) to be allocated by College to student scholarships; and (2) on December 31 of each year of the first ten years of tax abatement (i.e., commencing with the tax year next after the date that College President received the Certificate of Completion for the Improvements) the Owner shall pay the College the following payments as annual payment in lieu of abated taxes:

Year 1- 10 - \$25,805.



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 Owner 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 ("Term"); 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 without replacing them with Improvements of equal or greater value (comprising in the aggregate not more than 10% of all Improvements), the Owner's 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, the pro rata portion of taxes relating to 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 OWNER'S 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) Owner's, its successors' and assigns' use of the property in the Reinvestment Zone No. 1 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 Owner's 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 No. 1 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 (i) add at least \$159,800,000 to the tax roll of Eligible Property, (ii) create no fewer than five (5) new, permanent, full-time jobs in 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 forty-eight (48) hours' 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 "Notice") 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(G) 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 Parties shall not deem any default to have occurred in situations involving minor or immaterial (as reasonably determined by the Parties) changes to the description of the Site, minor or immaterial (as reasonably determined by the Parties) changes to the description of the Improvements and/or Eligible Property, or any changes in ownership or in management of Owner or of the Project (so long as Owner or any Related Entity provides notice as provided for herein of such changes to the extent such notice is otherwise required under this Agreement) and so long as any and all successors of any interest whatsoever of Owner in this matter, expressly accept all terms and conditions of this entire Abatement Agreement.
- D. The College shall notify Owner and any Owner lender, tax equity provider, or hedge provider 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.
- E. Owner shall have sixty (60) days from the date of County's notice to cure any default (unless fulfillment of any obligations requires activity over a period of time, in which case performance shall be commenced within sixty (60) days after the actual receipt of notice and such performance shall be diligently continued until the default is cured). The decision whether to cure any such default solely and absolutely belongs to Owner, and no party may compel Owner to cure.

- F. 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.
- G. 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 ATTORNEYS' FEES, SHALL BE THE COLLEGE'S SOLE REMEDY, AND OWNER'S 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.
- H. RECAPTURE. College shall be entitled to recapture property tax revenue lost as a result of the exercise of remedies under this Agreement. The amount of property tax revenue that may be recaptured is set forth below:
- (1) If entitled under Article VII(H) to recapture property tax revenue lost as a result of this Agreement, College shall have the right to recapture up to one hundred percent (100%) of taxes already actually abated under this Agreement (i.e., recapture for prior tax years only – no anticipatory/prospective recapture of future taxes).
  - (2) If termination occurs during the Term of Abatement, then Owner shall have sixty (60) calendar days from its date of notice of demand from College to recapture under Article VII(H) to pay all recaptured property tax revenues.
  - (3) Any recapture under this Article VII(H) shall be subject to any and all lawful offsets, settlements, deductions, and credits to which Owner may be entitled.
- I. Owner and College agree that any litigation of any kind whatsoever that is or may be necessary to be filed to protect any interest of any party with any interest herein, arising from or under this Agreement, shall be filed, if at all, and shall only be maintained, exclusively in a court of competent jurisdiction in Starr or Hidalgo County, Texas, and no other legal forum or venue whatsoever. This legal venue stipulation expressly includes the prohibition of removal of any litigation

based in whole or in part upon federal statutes, rights, or causes of action. Further, any administrative or legal protest or any other legal challenge procedure(s) permitted by law to be undertaken by Owner in connection with taxes due and owing pursuant to this Abatement Agreement shall not release, delay or relieve Owner from making and meeting any and all additional and other financial commitments, payments and obligations it has agreed to make and is undertaking pursuant to all and other terms of this Abatement Agreement. During the pendency of any suit (including any appeals thereto), Abatement shall remain in effect as though no event of default had occurred and Owner shall continue to pay any disputed amounts to the College; provided, that upon final adjudication of the matter, if Owner is the prevailing party, such disputed amounts, if applicable, shall be returned to Owner.

- J. 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 IF THE DEFAULT INVOLVED FAILURE TO MAKE IMPROVEMENTS UNDER THE AGREEMENT, 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 applicable and lawful 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, “Notices”) 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:           Mesteño Windpower, LLC  
                                  c/o Duke Energy Renewables  
                                  550 South Caldwell St., Suite 600  
                                  Mailcode: NAS06  
                                  Charlotte, NC 28202  
                                  ATTN: Contract Management

With Copies to:       Mesteño Windpower, LLC  
                                  c/o Duke Energy Renewables  
                                  550 South Tryon St.  
                                  Charlotte, NC 28202  
                                  ATTN: Deputy General Counsel

To the College:       South Texas College Board of Trustees  
                                  3201 West Pecan  
                                  McAllen, Texas 78501  
                                  Attention: Dr. Shirley A. 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 attorneys' fees incurred in the negotiation and preparation of this Agreement, up to a maximum amount of Seven Thousand Five Hundred Dollars (\$7,500).

*(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:      October\_\_\_\_\_, 2018

**South Texas College Board of Trustees**

\_\_\_\_\_  
Paul R. Rodriguez, Chair

\_\_\_\_\_  
Rose Benavidez, Vice Chair

Attest:

\_\_\_\_\_  
Roy de León, Secretary

**Mesteño Windpower, LLC**

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

**Attachment A**

Resolution Designating Reinvestment Zone by Starr County Commissioners Court.

**Attachment A**

Resolution Designating Reinvestment Zone by Starr County Commissioners Court.

**ORDER OF THE COMMISSIONERS COURT  
OF STARR COUNTY, TEXAS**

**CREATING MESTEÑO REINVESTMENT ZONE NUMBER ONE, FOR  
COMMERCIAL/INDUSTRIAL TAX ABATEMENT IN STARR COUNTY, TEXAS,  
ESTABLISHING THE BOUNDARIES THEREOF, AND PROVIDING FOR AN  
EFFECTIVE DATE**

***PREAMBLE***

***WHEREAS***, the Commissioners Court of Starr County, Texas desires to promote the development or redevelopment of a certain contiguous geographic area within its jurisdiction by the creation of a reinvestment zone as authorized by the Property Redevelopment and Tax Abatement Act, as amended (Texas Property Tax Code § 312.001, *et seq.*), and the Starr County Tax Abatement Guidelines and Criteria (the "Guidelines"); and,

***WHEREAS***, Section 312.401 of the Texas Tax Code permits a County Commissioners Court to designate a reinvestment zone if that designation would contribute to the retention or expansion of primary employment, or attract major investment in the reinvestment zone that would be a benefit to the property to be included in the zone and contribute to the economic development of the County; and,

***WHEREAS***, none of the area, Described in **EXHIBITS 1 and 2**, below, for which application for the creation of a reinvestment zone has been made, is within the taxing jurisdiction of any municipality; and,

***WHEREAS***, on August 13, 2018, a hearing before the Commissioners Court of Starr County, Texas was held, such date being at least seven (7) days after the date of publication of the notice of such public hearing in *The Monitor* and the delivery of written notice to the respective presiding officers of each taxing entity that it includes within its boundaries real property that is to be included in the proposed reinvestment zone; and,

***WHEREAS***, the Commissioners Court of Starr County, Texas at such public hearing, held in accordance with the procedural requirements of Chapter 312, of the Texas Tax Code, and Chapter 551 of the Texas Government Code, invited any interested person to appear and speak for or against the creation of the reinvestment zone and whether all or part of the territory described should be included in the proposed reinvestment zone; and,

***WHEREAS***, the proponents of the reinvestment zone offered evidence, both oral and documentary, in favor of all of the foregoing matters relating to the creation of the reinvestment zone and opponents, if any, of the reinvestment zone appeared to contest the creation of the reinvestment zone; and,

STARR COUNTY COMMISSIONERS COURT  
Order creating Mesteño Reinvestment Zone Number One  
August 16, 2018  
Page 1

**WHEREAS**, the Starr County Commissioners Court wishes to create a reinvestment zone within the boundaries of Starr County as shown on the map attached as **EXHIBIT 1** and further described by the legal description set forth in **EXHIBIT 2** of this Order;

**NOW THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF STARR COUNTY, TEXAS:**

**SECTION 1.** That the facts and recitations contained in the preamble of this Order are hereby found and declared to be true and correct.

**SECTION 2.** That the Commissioners Court of Starr County, Texas, after conducting such hearing and having heard such evidence and testimony, has made the following findings and determinations based on the evidence and testimony presented to it:

- (a) That the public hearing on adoption of the *Mesteño Reinvestment Zone Number One* has been properly called, held and conducted and that notice of such hearing has been published as required by law and delivered to the respective presiding officers of the governing bodies of all taxing units overlapping the territory inside the proposed reinvestment zone; and
- (b) That the boundaries of *Mesteño Reinvestment Zone Number One* should be the area depicted in the plat map indicating the boundaries thereof, attached hereto as **EXHIBIT 1**, and further described in the legal description of the boundaries described in **EXHIBIT 2**, both of which are incorporated herein by reference for all intents and purposes; and,
- (c) That creation of *Mesteño Reinvestment Zone Number One* with boundaries as described in **EXHIBITS 1 and 2** will result in benefits to the Starr County, Texas and to land included in the zone and that the improvements sought are feasible and practical; and
- (d) The *Mesteño Reinvestment Zone Number One*, as described and depicted in in **EXHIBITS 1 and 2** meets all of the criteria set forth in Texas Property Tax Code Chapter 312 for the creation of a reinvestment zone as set forth in the Property Redevelopment and Tax Abatement Act, as amended, and the Guidelines, in that it would, as a result of the designation, contribute to the retention or expansion of primary employment or attract major investment in the zone that would be a benefit to the property included in the zone and would contribute to the economic development of Starr County, Texas, and that the entire tract of land is located entirely within an unincorporated area of Starr County, Texas.

STARR COUNTY COMMISSIONERS COURT  
Order creating *Mesteño Reinvestment Zone Number One*  
August 16, 2018  
Page 2

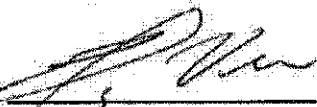
**SECTION 3.** That pursuant to the Property Redevelopment and Tax Abatement Act, as amended, and the Guidelines adopted by the Starr County Commissioners Court, the Starr County Commissioners Court hereby creates *Mesteño Reinvestment Zone Number One*, as a reinvestment zone for commercial-industrial tax abatement encompassing only the area within the boundaries described in **EXHIBITS 1 and 2**, and such reinvestment zone is hereby designated and shall hereafter be referred to as *Mesteño Reinvestment Zone Number One*.

**SECTION 4.** *Mesteño Reinvestment Zone Number One* shall take effect on August 16, 2018 and shall remain designated as a commercial-industrial reinvestment zone for a period of five (5) years from such date of designation and may be renewed for an additional five (5) year period thereafter.

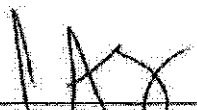
**SECTION 5.** That if any section, paragraph, clause or provision of this Order shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Order.

**SECTION 6.** That it is hereby found, determined and declared that a sufficient notice of the date, hour, place and subject, of the meeting of the Starr County Commissioners Court at which this Order was adopted was posted at a place convenient and readily accessible at all times as required by the Texas Open Government Act, Texas Government Code, Chapter 551, as amended, and that a public hearing was held prior to the designation of such reinvestment zone and that proper notice of the hearing was published in the official newspaper of general circulation within the County, and furthermore, such notice was in fact delivered to the presiding officer of any affected taxing entity as prescribed by the Property Redevelopment and Tax Abatement Act.

PASSED, APPROVED AND ADOPTED on this 16<sup>th</sup> day of August 2018.

  
\_\_\_\_\_  
Hon. Eloy Vera  
County Judge

Date: 08/16/2018

  
\_\_\_\_\_  
Hon. Jaime M. Alvarez  
Commissioner Precinct 1

Date: 08/16/2018

STARR COUNTY COMMISSIONERS COURT  
Order creating *Mesteño Reinvestment Zone Number One*  
August 16, 2018  
Page 3




Hon. Raul Peña, III.  
Commissioner Precinct 2

Date: 8-16-18




Hon. Eloy Garza  
Commissioner Precinct 3

Date: 8-16-18



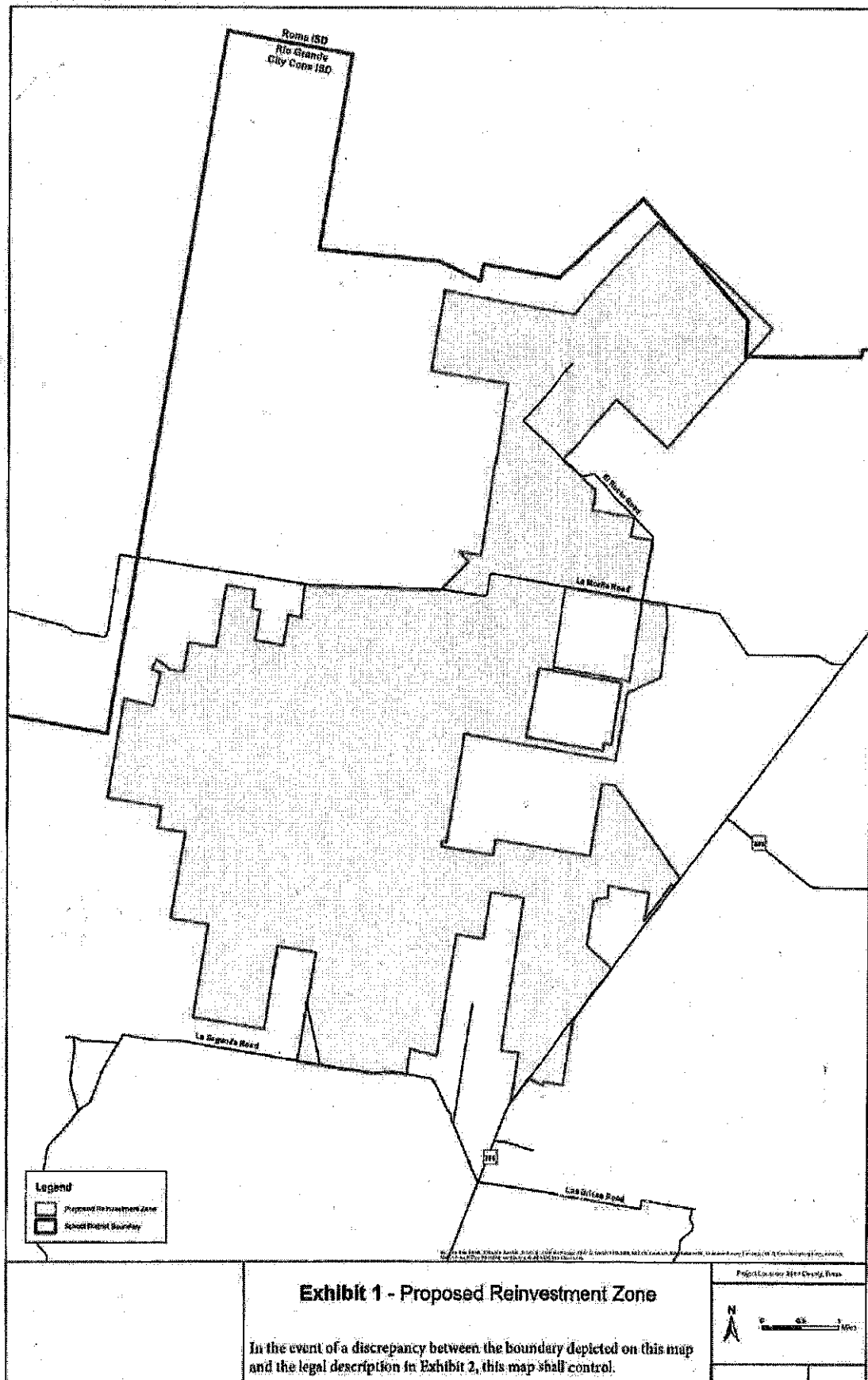
Hon. Ruben D. Saenz  
Commissioner Precinct 4

Date: 8-16-18

ATTESTED:   
Dennis D. Gonzalez, County Clerk

Date: 8-16-2018

[COUNTY SEAL]



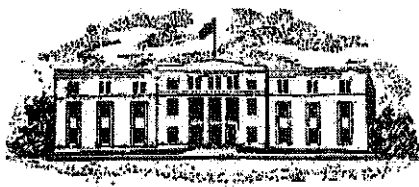
## EXHIBIT 2

### Proposed Mesteño Reinvestment Zone Number One

- Section 51 Abstract 710
- Section 767 Abstract 602
- Section 93 Abstract 38
- Section 94 Abstract 806
- Section 95 Abstract 716
- Section 96 Abstract 777
- Section 966 Abstract 1125
- The western part of Section 751 Abstract 1127
- Section 750 Abstract 863, save and except approximately 44 acres in the northeast corner
- Section 90 Abstract 750
- Section 89 Abstract 44, save and except the eastern 1000'
- The southern 500' and northern 200' out of the eastern 1000' of Section 89 Abstract 44
- A 1000' x 1000' area in the Southeast corner of Section 91 Abstract 43, in addition to the southern and eastern 500', and northern 200', out of the remaining part of Section 91 Abstract 43
- All of Section 754 Abstract 751 located west of an existing AEP transmission line"
- Section 627 Abstract 856
- Abstract 154
- Abstract 40
- Section 626 Abstract 996
- Section 628 Abstract 1097
- The southern part of Section 933 Abstract 1083
- The southern part of Section 164 Abstract 1014
- Part of Section 565 (aka Section 265) Abstract 359 west of FM 755
- Section 936 Abstract 1068
- Section 936 Abstract 1162
- Part of the southern part of Section 934 Abstract 1066 west of FM 755
- Part of Section 969 Abstract 1176
- The northern part of Porcion 85 Abstract 148
- Part of Porcion 84 Abstract 184 north of La Sagunada Road
- Part of Porcion 83 Abstract 130 north of La Sagunada Road
- All of Porcion 82 Abstract 179 north of La Sagunada Road
- All of Porcion 81 Abstract 75 north of La Saginada Road
- Part of Porcion 80 Abstract 74 north of La Sagunada Road
- Part of the northern part of Porcion 79 Abstract 66
- Part of the northern part of Porcion 78 Abstract 82







STARR COUNTY COURTHOUSE

# STARR COUNTY

Rio Grande City  
Texas 78582



ELOY VERA  
COUNTY JUDGE

DENNIS GONZALEZ  
COUNTY CLERK

August 13, 2018

## Notice

### COUNTY COMMISSIONERS

JAIME ALVAREZ  
PRECINCT NO. 1

RAUL PENIA, III  
PRECINCT NO. 2

ELOY GARZA  
PRECINCT NO. 3

RUBEN D. SAENZ  
PRECINCT NO. 4

BOYD CARTER  
COUNTY AUDITOR

RENE FUENTES  
SHERIFF

VICTOR CANALES  
COUNTY ATTORNEY

FERNANDO PENIA  
TREASURER

MA. AMEIDA SALINAS  
ASSESSOR \* COLLECTOR

OMAR ESCOBAR  
DISTRICT ATTORNEY

ELOY R. GARCIA  
DISTRICT CLERK

Notice is hereby given that a Special Commissioners' Court Meeting of the County of Starr will be held at 2:00 P.M. Thursday August 16, 2018 at the County Courthouse Annex in the Starr County Conference Room Suite #211 in Rio Grande City, Texas.

## Agenda

1. Calling the meeting to order.
2. Pledge of Allegiance
3. Discussion and possible action to adopt order creating Mesteno Reinvestment Zone Number One for Commercial/Industrial Tax Abatement in Starr County, Texas. Establishing the Boundaries Therefor, and Providing for an effective date.
4. Adjournment

COUNTY COMMISSIONERS' COURT MAY CHOOSE TO MEET IN A CLOSED MEETING (EXECUTIVE SESSION) AS PERMITTED BY THE TEXAS OPEN MEETINGS ACT ON ANY ITEM OF THIS AGENDA DEEMED APPROPRIATE INCLUDING, BUT NOT LIMITED TO CONSULTATION WITH ATTORNEY, DELIBERATIONS ABOUT GIFTS AND DONATIONS AND PERSONNEL MATTERS.

BY ORDER OF THE COUNTY JUDGE:

*Dennis Gonzalez*  
Dennis Gonzalez, County Clerk, Ex-Officio  
Clerk of the Commissioners' Court

*By Gloria De La Garza*

AT 1:58 POSTED 9 O'CLOCK P M

AUG 13 2018

DENNIS GONZALEZ, COUNTY CLERK STARR CO. TX  
BY: *Gloria De La Garza*

## **Attachment B**

Attached is a description and location of the proposed Eligible Property

Description of Eligible Property

### **Project Description**

Mesteño Windpower, LLC (Mesteño Windpower) anticipates constructing a wind powered electric generation facility with an operating capacity of approximately 201.6 megawatts. Presently, plans are to install 56 Vestas V136 3.6 megawatt turbines. Additional improvements for the Mesteño Windpower Project will include but are not limited to, towers, foundations, new and improved roads, buildings and offices, meteorological equipment, electrical transmission cables and towers, transformers, electrical substations, and any other equipment necessary to safely operate, maintain, and transmit power to the ERCOT electrical grid.

## **Attachment B**

### Location of Eligible Property

#### Site Description

The following real property in Starr County, Texas:

- Section 51 Abstract 710
- Section 767 Abstract 602
- Section 93 Abstract 38
- Section 94 Abstract 806
- Section 95 Abstract 716
- Section 96 Abstract 777
- Section 966 Abstract 1125
- The western part of Section 751 Abstract 1127
- Section 750 Abstract 863, save and except approximately 44 acres in the northeast corner
- Section 90 Abstract 750
- Section 89 Abstract 44, save and except the eastern 1000'
- The southern 500' and northern 200' out of the eastern 1000' of Section 89 Abstract 44
- A 1000' x 1000' area in the Southeast corner of Section 91 Abstract 43, in addition to the southern and eastern 500', and northern 200', out of the remaining part of Section 91 Abstract 43
- All of Section 754 Abstract 751 located west of an existing AEP transmission line
- Section 627 Abstract 856
- Abstract 154
- Abstract 40
- Section 626 Abstract 996
- Section 628 Abstract 1097
- The southern part of Section 933 Abstract 1083
- The southern part of Section 164 Abstract 1014
- Part of Section 565 (aka Section 265) Abstract 359 west of FM 755
- Section 936 Abstract 1068
- Section 936 Abstract 1162
- Part of the southern part of Section 934 Abstract 1066 west of FM 755
- Part of Section 969 Abstract 1176
- The northern part of Section 85 Abstract 148
- Part of Section 84 Abstract 184 north of La Sagunada Road
- Part of Section 83 Abstract 130 north of La Sagunada Road
- All of Section 82 Abstract 179 north of La Sagunada Road
- All of Section 81 Abstract 75 north of La Saginada Road
- Part of Section 80 Abstract 74 north of La Sagunada Road
- Part of the northern part of Section 79 Abstract 66
- Part of the northern part of Section 78 Abstract 82

5

**2017 – 2020**

**Guidelines and Criteria Governing  
Tax Abatement Agreements by  
South Texas College**

Adopted by Resolution of the Board of Trustees of South Texas College  
on November 28, 2017

**SOUTH TEXAS COLLEGE  
GUIDELINES AND CRITERIA GOVERNING TAX ABATEMENT AGREEMENTS**

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**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 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 “Act”), 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 South Texas 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) “Abatement” means the temporary, full or partial exemption from ad valorem maintenance taxes pursuant to the Act by the Counties of Hidalgo and Starr of certain added value to real and personal property in a zone designated for economic development purposes.
- (b) “Act” means Property Tax Code, chapter 312, popularly referred to as the Tax Abatement Act.
- (c) “Added Value” means the increase in the Appraised Value of an Eligible Property as a result of “Expansion” or “Modernization” of an existing facility or construction of a “New Facility.” Added Value does not mean or include “Deferred Maintenance.”



- (d) “Appraised Value” 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.
- (e) “Agreement” 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, except, no Agreement shall be deemed to supersede any terms of the Guidelines and Criteria or any requirements or conditions imposed of state law.
- (f) “Base Year Value” means the Appraised Value of Eligible Property as of the date specified in the Agreement.
- (g) “Basic Manufacturing or Service Facility” means buildings and structures, including fixed machinery and equipment used or to be used for the production of renewable energy.
- (h) “College” means South Texas College.
- (i) “Construction Phase” 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 by and appropriate governmental entity;
  - (2) when the Facility has achieved commercial production of a product; provision of a service or start up for production of electrical power; or
  - (3) when the architect or engineer supervising construction issues a certificate of substantial completion, or some similar instrument.

The final 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.
- (j) “County” means Hidalgo County, Texas and/or Starr County, Texas
- (k) “Deferred Maintenance” means improvements necessary for continued operations which do not improve productivity or alter the process technology.

- (l) “Economic Life” means the number of years a property improvement is expected to be in service in a Facility.
- (m) “Eligible Property” means property to which 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.
- (n) “Expansion” means the addition of buildings, structures, fixed machinery or equipment for the purposes of increasing capacity.
- (o) “Facility” 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.
- (p) “Force Majeure” 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.
- (q) “Ineligible Property” 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.
- (r) “Modernization” 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.
- (s) “New Capital Investment” means the total value of expenditures capitalized for the Facility on the Owner’s 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.
- (t) “New Facility” means a property previously undeveloped which is placed into service by means other than or in conjunction with an Expansion or Modernization.
- (u) “Owner” means the owner of a Facility subject to Abatement. If the Facility is constructed on 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.

- (v) “Research and Development” means Owner’s 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) is operated exclusively for the production, of renewable energy, including solar, geothermal, wind and hydro and (ii) the estimated proposed New Capital Investment shall exceed \$200 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. An Agreement shall not be entered into unless Owner has provided a certified valuation of the economic life of the improvements and depreciation schedule.
- (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 \$200 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 \$100 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 (as set out in the Act) 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 “Estimated Added Value” shall be certified to by Owner and 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 an 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 (“environmental laws”) 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 (“applicants”). 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 personnel 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 miles 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 Facility's 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 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 College's 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 the Facility will comply with these Guidelines and Criteria; whether it is financially feasible for the College, and whether or not the proposed temporary abatement of taxes will inure to the long-term benefit of the College.



On matters of interpretation of the Tax Code or the Tax Abatement Act, the College may request an Attorney General' Opinion. The College's 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) Attorney's Fees. In the event any attorney's 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 "Cure Period"), 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 "new property value" (as

defined in Section 26.012(17) of the Texas Tax Code) for the purpose of establishing the “effective maintenance and operations rate” (as defined in Section 26.012(16) of the Texas Tax Code) in calculating the “rollback tax rate” in accord with Section 26.04(c)(2) of the Texas Tax Code and if the College’s budget calculations indicate that a tax rate in excess of the “rollback tax rate” 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. Penalties 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. Owner shall immediately notify the College should any of the foregoing events occur.

#### 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. Owner shall, on the anniversary date of the Agreement provide the College the Appraised Values of the Property and a certificate of taxes paid to each jurisdiction.

- (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 College 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) “Buy Local” 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 “materials” and “labor” shall have the meaning set out in Schedule 1. For the purposes of this provision, the term “local” 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 “materials” 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 “labor” 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 “local” 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:

- The Facility must be one that will generate renewable energy;
- The minimum amount of new real and/or personal property capital investment shall exceed \$200 million (at start of project or by year 2017);
- Shall exceed minimum levels of full-time job creation;
- Provide employee and dependent access to health care benefits;
- 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 Owner's 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 company's new and existing employees ***at the project location*** must earn no less than a "living wage" 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 "Living Wage" 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: (1) 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 company's 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 company's 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 Facility's 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:
- landscape and visual amenity:
  - noise impacts (have noise guidelines been developed to assess regulate noise):

- health issues (what health issues, if any, have been identified and what guidelines or policies have been adopted to address potential health impacts, if any:
- economic issues, including potential impacts on property values:
- ecological issues, including potential impacts on threatened species:
- decommissioning 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. State if the Owner on the Application is a “pass-through” 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 Owner’s 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.

- 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?
- 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:

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 "Eligible Property" 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 applicant's 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 applicant's financial capacity.

See Attachment 1

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

DEGS seeks the County's 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 County's approved Tax Abatement Agreement with applicant, or, if not yet approved, a copy of the proposed County's 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 County's 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**

6

## 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 Schedule I.

Applicant name: Mesteno Windpower, LLC

Applicants address and phone number: 550 South Caldwell St. Suite 600  
Charlotte, North Carolina 28202  
(704) 382-1911

Applicant organization: Duke Energy Renewables

Type of Business: Wind Powered Electricity Generation

Organization address and phone: 550 South Caldwell St. Suite 600  
Charlotte, North Carolina 28202

Organization Contact: Graham Furlong

Contact address and phone: 550 South Caldwell St. Suite 600  
Charlotte, North Carolina 28202  
(704) 382-1911

Proposed project or facility address: Starr County, TX

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

Mesteno Windpower, LLC anticipates constructing a wind-powered electric generating facility with an operating capacity of approximately 201.6 megawatts. Presently our plans are to install 56 Vestas V136 3.6 megawatt turbines on the property within the "Mesteno Wind" reinvestment zone in Starr County, Texas. Mesteno Windpower, LLC estimates that all 56 turbines are planned to be installed in Starr County.

If granted an abatement pursuant to Texas Tax Code 312, Mesteno Windpower, LLC expects to issue a full notice to proceed for construction in Q4 of 2018 and expects to complete construction within 12 months.

The additional improvements for the Mesteno Windpower Project will include but are not limited to, wind turbines, towers, foundations, new and improved roads, buildings and offices, meteorological equipment, electrical transmission cables and towers, transformers, electrical substations, and any other equipment necessary to safely operate, maintain, and transmit power to the ERCOT electrical grid.

2. Does this property fall under the definition of “eligible property” provided in the Starr 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.

Starr County, Starr County Hospital District, South Texas College District, Rio Grande City Consolidated Independent School District, Starr County FM & FC and Starr County Drainage District. Applications and abatement / limitation agreements have been or are being submitted to the first five (5) of the above named taxing entities.

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?

Mesteno Windpower, LLC seeks an abatement of taxes effective for ten (10) full calendar years for the project beginning on January 1 of the next tax year, after the date that the College President and/or the President of the Board of Trustees receives a letter certifying completion of construction of Project, outlining the Improvements included in the Project, and stipulating the overall turbine capacity.

The estimated taxable value of the Project when completed is expected to be \$159,800,000, although the actual value will depend upon annual appraisal conducted by the Starr County Appraisal District and specific decisions to be made by Mesteno Windpower, LLC in the future.

Mesteno Windpower, LLC is seeking a 75% abatement for the full ten (10) year abatement period and will provide an annual Payment In Lieu of Tax (PILOT) of \$128 per Megawatt (MW) during the ten (10) year abatement period, or \$25,805 annually.

Mesteno Windpower, LLC anticipates the project being completed in one (1) phase, beginning in the 4<sup>th</sup> quarter of 2018 (if approved) and finished within twelve (12) months thereafter.

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?

Mesteno Windpower, LLC estimates the project will have an estimated taxable value of approximately \$86,070,695 in the first year after expiration of the proposed abatement although the value will be determined by appraisals by the Starr County Appraisal District and other factors. For purposes of estimation, the amount of \$86,070,695 represents a six (6) percent annual depreciation rate of the initial investment at the eleventh (11<sup>th</sup>) year.

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 applicant's 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 applicant's financial capacity.

See Attachment 1

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

Mesteno Windpower, LLC is scheduled to present to the Starr County Commissioner's Court on August 13<sup>th</sup>, 2018 to obtain approval for the attached Reinvestment Zone as displayed in Exhibit A.

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

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

Applicant Signature:

Christopher M. Fallon  
Authorized Representative

Name of Applicant: CHRIS FALLON

Date of application submission: 8/9/2018



Exhibit A  
Legal Description of Reinvestment Zone  
Containing Proposed Project

- Section 51 Abstract 710
- Section 767 Abstract 602
- Section 93 Abstract 38
- Section 94 Abstract 806
- Section 95 Abstract 716
- Section 96 Abstract 777
- Section 966 Abstract 1125
- The western part of Section 751 Abstract 1127
- Section 750 Abstract 863, save and except approximately 44 acres in the northeast corner
- Section 90 Abstract 750
- Section 89 Abstract 44, save and except the eastern 1000'
- The southern 500' and northern 200' out of the eastern 1000' of Section 89 Abstract 44
- A 1000' x 1000' area in the Southeast corner of Section 91 Abstract 43, in addition to the southern and eastern 500', and northern 200', out of the remaining part of Section 91 Abstract 43
- All of Section 754 Abstract 751 located west of an existing AEP transmission line"
- Section 627 Abstract 856
- Abstract 154
- Abstract 40
- Section 626 Abstract 996
- Section 628 Abstract 1097
- The southern part of Section 933 Abstract 1083
- The southern part of Section 164 Abstract 1014
- Part of Section 565 (aka Section 265) Abstract 359 west of FM 755
- Section 936 Abstract 1068
- Section 936 Abstract 1162
- Part of the southern part of Section 934 Abstract 1066 west of FM 755
- Part of Section 969 Abstract 1176
- The northern part of Section 85 Abstract 148
- Part of Section 84 Abstract 184 north of La Sagunada Road
- Part of Section 83 Abstract 130 north of La Sagunada Road
- All of Section 82 Abstract 179 north of La Sagunada Road
- All of Section 81 Abstract 75 north of La Saginada Road
- Part of Section 80 Abstract 74 north of La Sagunada Road
- Part of the northern part of Section 79 Abstract 66
- Part of the northern part of Section 78 Abstract 82

## Attachment 1

### Question 7: Minimum Requirements

The Project will contribute to the expansion of employment, attract major investment to Starr County, benefit the property on which it is constructed, and contribute to the economic development of the County.

Mesteno Windpower, LLC intends to construct a wind powered electric generating facility with an expected value greater than \$159,800,000 in Starr County. At a minimum, the Project will result in a wind power facility with an estimated 200 megawatt nameplate capacity.

Mesteno Windpower, LLC estimates that installing the wind turbines will create 100 to 150 temporary construction jobs over the course of the project's construction, which is estimated to last twelve months of construction. Mesteno Windpower, LLC further anticipates the creation of an estimated six (6) full-time jobs by the operator of the Project for the operation and maintenance of the Project. Continuing operations and maintenance activities in Starr County will create opportunities for purchase of contracting services and supplies from Starr County businesses. Over the course of construction of the Project, Mesteno Windpower, LLC will make an effort to use local labor and purchase services and materials local businesses where practicable.

The Project will make use of land that is currently used for agricultural and ranching purposes. The location of the Project is remote and not ideal for industrial or commercial development, but is well suited for a wind farm. Without the Project, the land could remain in its current state and would be unlikely to attract new investment to the area.

The wind farm will provide "clean" power to customers served by Mesteno Windpower, LLC. Wind energy creates little or no emissions impacting the environment. The project will provide this clean energy source.

The addition of full-time and contract-related jobs, the purchase of local services, supplies and materials, and the productive use of land to generate revenue and spur investment are examples of the kind of economic benefit that the proposed wind farm will bring to Starr County.

### Question 8: Information about specific aspects of the project

#### (1) Value of land and existing improvements, if any;

Mesteno Windpower, LLC will be leasing land from the local land owners. Currently, the only existing industrial improvements on the land is meteorological equipment (Met Towers) with an estimated value less than \$50,000.

(2) Type, value and purpose of proposed improvements;

The improvements will consist of a wind power facility, comprised of Mesteno Windpower, LLC project (1 phase) expected to be approximately 201.6 megawatts of nameplate capacity located in the Reinvestment Zone. It is currently anticipated that the wind farm will consist of approximately 56 3.6 megawatt wind turbines.

The improvements are expected to have a value of in excess of \$159,800,000, although the actual value will be determined by an appraisal by the Starr County Appraisal District. This projection regarding the number of turbines is based upon the use of 3.6MW turbines, and over the course of developing the project, Mesteno Windpower, LLC may elect to use another size turbine, or a combination of turbine types, however, the nameplate capacity of the facility is estimated to be 201.6 megawatts. The improvements also shall include any other property in the Reinvestment Zone meeting the contractual definition of "Eligible Property" that will be used to produce wind power and perform other functions related to the production, distribution and transmission of electric power.

(3) Productive life of proposed improvements; The Project is estimated to have a useful life of 25 years.

(4) Impact of proposed improvements and other expenditures on existing jobs; The Project is not expected to negatively affect any existing jobs. Based on Mesteno Windpower, LLC experience with existing wind projects in Texas, Mesteno Windpower, LLC investments in Starr County will create new jobs and result in increased local economic activity.

(5) Number and type of new jobs, if any, to be created by proposed improvements and expenditures; According to preliminary estimates, the direct effect of Mesteno Windpower, LLC's investment will be the creation of approximately 100 to 150 temporary construction jobs in Starr County during the construction phase of the wind power facility, which is estimated to last twelve months. The operations and maintenance of the wind power facility will provide an estimated six (6) full-time jobs.

(6) Cost to be incurred by South Texas College, if any, to provide facilities or services directly resulting from the new improvements; Mesteno Windpower, LLC expects that South Texas College will incur NO new costs as a result of the project.

(7) Types and values of public improvements, if any, to be made by applicant seeking abatement; Because almost all development will take place on private land, Mesteno Windpower, LLC does not anticipate constructing any public improvements other than the possible upgrade of county roads to a level sufficient to support construction needs.

- (8) The amount of ad valorem property taxes to be paid to South Texas College after expiration of the abatement agreement; It is difficult to estimate the exact amount of ad valorem taxes to be paid after expiration of the agreement, given the present uncertainty about future tax rates, appraisals, depreciation schedules, and final figures regarding the taxable value of the wind farm.
- (9) Mesteno Windpower, LLC estimates that at the end of the abatement (yr. 11), based on current tax rates and a value of \$86,070,695, the proposed project would produce \$159,231 in annual property taxes to South Texas College. The College would receive tax revenues during the first 10 years of the abatement in addition to the payments in lieu of taxes and then would receive post-abatement taxes in years 11-25 of the projected full useful life of the project.
- (10) The impact on the business opportunities of existing businesses and the attraction of new businesses to the area, if any; Over the course of construction of the project, Mesteno Windpower, LLC will make an effort to use local businesses to provide services and materials to the Project where practicable. Continuing operations and maintenance activities in Starr County will create opportunities for obtaining services and supplies from County businesses for the duration of the Project. The increased economic activity in Starr County resulting from the development and operation of the Project may result in attraction of new businesses to the area.
- (11) The overall compatibility with the zoning ordinances and comprehensive plan, if any, for the area; Not applicable. Starr County does not have a zoning ordinance or a comprehensive plan.
- (12) Whether the applicant's proposed facility or improvement or modernization is in an industry which is new to Starr County; The Project will contribute to the growth of the wind industry in Starr County and should have significant economic benefits for Starr County.

Question 9 (1): A map and descriptions of the property for which abatement is sought.

Exhibits A and B depict and describe the Project.

Question 9 (2): Time schedule for completing project.

Mesteno Windpower, LLC contemplates that construction will begin no later than Q4 of 2018 and will be completed within 12 months.

Question 9 (3): Basic Financial Information.

Duke Energy Corporation (Duke Energy) is one of the largest electric power holding companies in the United States. Headquartered in Charlotte, N.C., Duke Energy is a Fortune 250 company traded on the New York Stock Exchange under

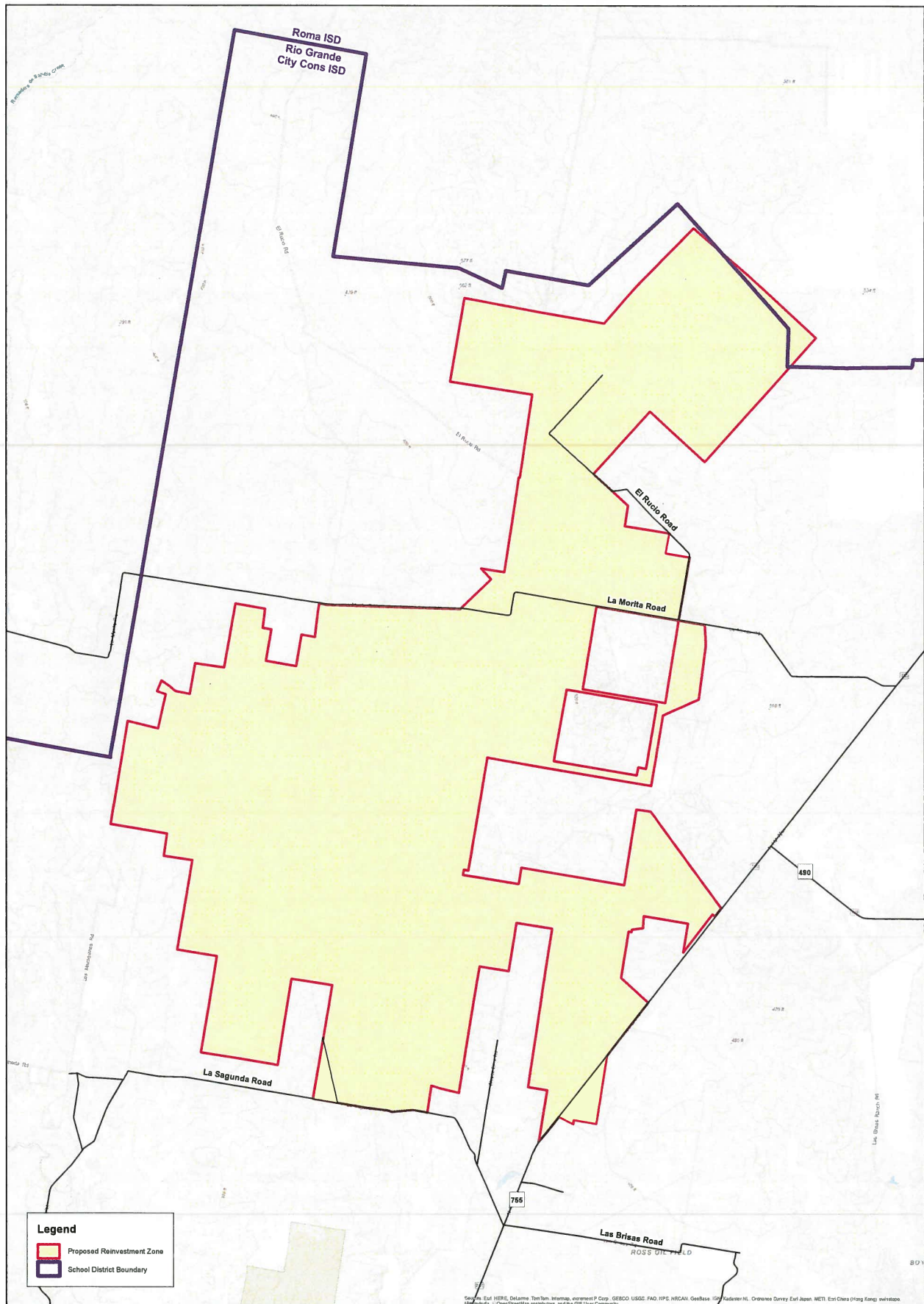
the symbol DUK. More information about the company is available at [www.duke-energy.com](http://www.duke-energy.com). Please reference our financials here: <https://www.duke-energy.com/our-company/investors/financials>

Duke Energy Renewables is a subsidiary of Duke Energy Corporation and is a leader in developing innovative wind and solar energy solutions for customers across the country. By developing renewable and clean energy technologies, we're working to reduce our company's environmental footprint. Since 2007, Duke Energy has invested more than \$4 billion to grow our portfolio of wind and solar power projects. We now own and operate about 2,900 megawatts (MW) of renewable energy: 2,300 MW wind power and 600 MW solar power. Learn more at [www.duke-energy.com/our-company/about-us/businesses/renewable-energy](http://www.duke-energy.com/our-company/about-us/businesses/renewable-energy).

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Exhibit B  
Map of Project Area





1221 South MoPac Expressway, Suite 225  
Austin, Texas 78746 | 512-222-1125  
www.energyrenewalpartners.com



# Duke Energy Renewables Mesteño Windpower Project Proposed Reinvestment Zone

Project Location: Stan County, Texas



Prepared by: B. Richards

Date: 7/28/2018



## **Review and Action as Necessary on Award of Proposal, Purchase, Renewal, Interlocal Agreement, and Release of Contract**

Approval of the following award of proposal, purchase, renewal, interlocal agreement, and release of contract will be requested at the October 30, 2018 Board meeting as follows:

- A. Award**
- B. Technology Items**
- C. Interlocal Agreement**
- D. Release of Contract**

### **A. Award**

#### **1) Industrial Supplies, Materials, and Accessories (Award)**

Award the proposal for industrial supplies, materials, and accessories for the period beginning November 25, 2018 through November 24, 2019 with two one-year options to renew, at an estimated amount of \$90,000.00 based on prior year expenditures. The vendors are as follows:

- **Burton Companies** (Weslaco, TX)
- **Industrial Supplier Larey, Inc./dba International Industrial Supply Company** (Brownsville, TX)
- **MSC Industrial Supply Company** (Harlingen, TX)
- **Rex Supply Company** (Pharr, TX)

Purpose - The Institute for Advanced Manufacturing (IAM) and Advanced Manufacturing Technology Program are requesting to purchase industrial supplies, materials, and accessories for student instruction.

Justification and Benefit – The industrial supplies, materials, and accessories included steel rods, aluminum rods, steel rods, and drill rods used in the instruction labs.

Background – Proposal documents were advertised on September 14, 2018 and September 21, 2018 and issued to six (6) vendors. Four (4) responses were received on September 28, 2018 and reviewed by the Purchasing Department.

Funds for this expenditure is budgeted in the IAM and Advanced Manufacturing Technology budgets for FY2018 – 2019.

### **B. Technology Items**

#### **2) Computers, Monitors, Laptops, and Tablets (Purchase)**

Purchase of computers, monitors, laptops, and tablets from the State of Texas Department of Information Resources (DIR) approved vendors **Dell Marketing, LP.** (Dallas, TX), and **Apple, Inc.** (Dallas, TX), and **GovConnection, Inc.** (Rockville, MD) a National

Intergovernmental Purchasing Alliance (NIPA) approved vendor, at a total amount of \$79,331.52.

All purchase requests for computers, monitors, laptops, and tablets have been evaluated by Information Technology and the Chief Information Officer. Information Resources does not have refurbished systems available for new hires. Instructional and/or business need must be clearly identified/justified for any equipment that is outside standard configuration or does not replace existing office systems. (Ex. mobile devices)

An itemized list with justification is included for your review and information.

Information Technology used the following criteria when recommending the purchase of technology:

- Systems being requested meet the South Texas College standard configuration
- The new systems will replace an older model (5+ years and out of warranty)
- Software requirements exceed the system capacity

The purchases can be summarized as follows:

- Staff Computers
  - ⇒ 2 Computers for Technology Support
- Faculty Computers
  - ⇒ 1 Computer for Art Program
  - ⇒ 3 Computers for Computer and Advanced Technologies
  - ⇒ 2 Computers for Kinesiology Program
- Student Computers
  - ⇒ 12 Computers for HSI Grant Academic Affairs
- Staff Laptops
  - ⇒ 1 Laptop for Business Office
  - ⇒ 11 Laptops for Technology Support
  - ⇒ 1 Laptop for Institutional Effectiveness and Assessment
- Faculty Laptops
  - ⇒ 1 Laptop for Medical Information Program
  - ⇒ 4 Laptops for Computer Science Program
- Student Laptops
  - ⇒ 3 Laptops for HSI Grant Academic Affairs
- Student Tablets
  - ⇒ 25 Laptops for Computer and Advanced Technologies
  - ⇒ 1 Laptop for Drama Program

- Staff Monitors  
⇒ 42 Monitors for Technology Support

Funds for this expenditure are budgeted in the requesting department budgets for FY 2018 - 2019 as follows: Technology Support, Art, Computer and Advanced Technologies, Kinesiology, HSI Grant Academic Affairs, Business Office, Institutional Effectiveness and Assessment, Medical Information, Drama, and Computer Science.

### **3) Microsoft Campus License Agreement (Renewal)**

Renew the Microsoft Campus License agreement with **Software House International Government Solution, Inc.** (Austin, TX), a State of Texas Department of Information Resources (DIR) approved vendor, for the period beginning November 1, 2018 through October 31, 2019, at a total amount of \$131,513.67.

Purpose – Information Technologies is requesting to purchase a non-perpetual license for Microsoft software that includes a one-year price assurance that includes upgrades for currently used software products and to ensure that all of the College owned computers have copyright compliant software installed. These software licenses are used by students, faculty, and staff for instructional and operational purposes.

Justification and Benefit – The Microsoft Campus License agreement includes the following software: Windows 10 Enterprise Upgrade, Microsoft Office Professional Plus 2016 and Office for Mac 2016, Microsoft Enterprise Client Access License (CAL) Suite, CAL for Lync Server Plus, Office 365 Pro Plus for faculty/staff, Office 365 Pro Plus and Office 365 A1 for students, one hundred (100) MS Windows Server Standard licenses, one hundred sixty-eight (168) MS Windows Server DC Core Licenses, three hundred sixty-four (364) Windows Server Standard Core Licenses, two hundred (200) Microsoft Windows Virtual Desktop Access, and twenty (20) Microsoft Visual Studio Professional with MSDN licenses.

Funds for this expenditure are budgeted in the Information Technology Client Services budget for FY 2018 - 2019.

## **C. Interlocal Agreement**

### **4) Graduation Facility (Lease Agreement)**

Lease the graduation facility from the **City of Hidalgo/ dba State Farm Arena** (Hidalgo, TX) through an interlocal license agreement from May 16, 2019 at 8:00 a.m. through May 19, 2019 at midnight, at an estimate amount of \$38,500.00.

Purpose – The Division of Student Services is requesting an interlocal license agreement for the graduation ceremonies, which will be held on Friday, May 17, 2019 and Saturday, May 18, 2019.

Justification and Benefit – The facility will be used for all the South Texas College May 2019 graduation ceremonies. The cost includes the use of the facility, audio visual equipment, and event personnel.

Funds for this expenditure are budgeted in the Graduation Account budget for FY 2018 – 2019.

#### **D. Release of Contract**

##### **5) Food Service – Starr County Campus (Release of Contract)**

Release Cactus Restaurant, the food service contractor at the Starr County Campus, from the contract as of September 27, 2018, as per their request, and authorize the advertisement of a new solicitation for these services.

On September 26, 2018, the College received in writing from Cactus Restaurant, a request to terminate their contract with the College for providing food services at the Starr County Campus Cafeteria as of September 27, 2018.

Background – The Board awarded the contract for food service – Starr County Campus at the January 31, 2017 Board of Trustees meeting for one year with two one-year annual renewals. The first renewal period began February 1, 2018 with an end date of January 31, 2019.

Award	Board Meeting Date	Original Term	Renewal Term
Original	1/31/17	2/1/17 – 1/31/18	2 – one year options
1 <sup>st</sup> Renewal	11/28/17		2/1/18 – 1/31/19

This item has been reviewed by South Texas College legal counsel.

#### **Recommendation:**

It is requested that the Finance, Audit, and Human Resources Committee recommend for Board approval at the October 30, 2018 Board meeting the award of proposal, purchase, renewal, interlocal agreement, and release of contract as listed below:

##### **A. Award**

##### **B. Technology Items**

##### **C. Interlocal Agreement**

##### **D. Release of Contract**

##### **A. Award**

- 1) Industrial Supplies, Materials, and Accessories (Award):** award the proposal for industrial supplies, materials, and accessories for the period beginning November 25, 2018 through November 24, 2019 with two one-year options to renew, at an estimated amount of \$90,000.00 based on prior year expenditures. The vendors are as follows:

- **Burton Companies** (Weslaco, TX)
- **Industrial Supplier Larey, Inc./dba International Industrial Supply Company** (Brownsville, TX)

- **MSC Industrial Supply Company** (Harlingen, TX)
- **Rex Supply Company** (Pharr, TX)

## **B. Technology Items**

- 2) Computers, Monitors, Laptops, and Tablets (Purchase):** purchase computers, monitors, laptops, and tablets from the State of Texas Department of Information Resources (DIR) approved vendors **Dell Marketing, Inc.** (Dallas, TX) and **Apple, Inc.** (Dallas, TX) and **GovConnection, Inc.** (Rockville, MD) a National Intergovernmental Purchasing Alliance (NIPA) approved vendor, at a total amount of \$79,331.52;
- 3) Microsoft Campus License Agreement (Renewal):** renew the Microsoft Campus License agreement with **Software House International Government Solution, Inc.** (Austin, TX), a State of Texas Department of Information Resources (DIR) approved vendor, for the period beginning November 1, 2018 through October 31, 2019, at a total amount of \$131,513.67;

## **C. Interlocal Agreement**

- 4) Graduation Facility (Lease Agreement):** lease the graduation facility from the **City of Hidalgo/ dba State Farm Arena** (Hidalgo, TX) through an interlocal license agreement from May 16, 2019 at 8:00 a.m. through May 19, 2019 at midnight, at an estimate amount of \$38,500.00;

## **D. Release of Contract**

- 5) Food Service – Starr County Campus (Release of Contract):** release Cactus Restaurant, the food service contractor at the Starr County Campus, from the contract as of September 27, 2018, as per their request, and authorize the advertisement of a new solicitation for these services.

Recommend Action - The total for all award of proposal, purchase, renewal, interlocal agreement, and release of contract is \$339,345.19.

**SOUTH TEXAS COLLEGE**  
**1. INDUSTRIAL SUPPLIES, MATERIALS, AND ACCESSORIES**  
**PROJECT NO. 18-19-1020**

<b>VENDOR</b>		Burton Companies	Industrial Supplier Larey, Inc./dba International Industrial Supply Company	MSC Industrial Supply Company	Rex Supply Company
<b>ADDRESS</b>		529 E Highway 83	3620 E 14th St	402 US 77 Frontage Rd	1313 West 495
<b>CITY/STATE/ZIP</b>		Weslaco, TX 78596	Brownsville, TX 78521	Harlingen, TX 78550	Pharr, TX 78577
<b>PHONE</b>		956-968-3121	956-982-1350	956-412-6500	956-781-7761
<b>FAX</b>		956-973-3228	956-982-1397	956-412-8131	956-781-1408
<b>CONTACT</b>		C. Scott Vaughan	Moises Lara	Javier Zamora	Ramiro Bernal
<b>#</b>	<b>Description</b>	<b>Proposed</b>	<b>Proposed</b>	<b>Proposed</b>	<b>Proposed</b>
1	Company List Price - Discount	50% Discount	0% Discount	15% Discount	5%-40% Discount
2	Will company deliver?	Yes	Yes	No	Yes
<b>Return Policy</b>					
3	Wrong Item Sent - Your Mistake	Will issue full credit.	Credit or replacement	R.A. sent along with UPS account so merchandise can be sent back. No restocking charge	Return and issue credit
4	Wrong Item Sent - Our Mistake	Will pick up and issue full credit for normal stock; special orders may have a restocking fee	Will be non refundable	R.A. sent along with UPS account so merchandise can be sent back. No restocking charge	Stock item return and issue credit
5	Defective Material	Will replace any items within the warranty period	Will replace	R.A. will be sent and replacement item will be resent	Return and issue credit
6	Duplicates	Will issue full credit and pick merchandise if duplication is our fault. If STC duplicates an order, we will issue full credit on normal stock; special orders may have a freight and restocking fee	We are not responsible for duplicate orders STC must pay	R.A. will be sent along with UPS account number for the return	Return and issue credit

**SOUTH TEXAS COLLEGE**  
**2. DISTRICT WIDE TECHNOLOGY REQUEST**  
**OCTOBER 30, 2018**

<b>COMPUTERS</b>					
#	Qty	Description	Unit Price	Extension	Requesting Department
1	1	Computer 3060 MT, i5-8400 Processor, 500GB Hard Drive, 8GB Memory Intel Integrated Graphics, 22" Monitor, Warranty	\$720.00	\$720.00	Art Program - Charles Neumann Replacement of non-working system for faculty
2	3	Computer 3060 MT, i5-8400 Processor, 500GB Hard Drive, 8GB Memory Intel Integrated Graphics, Warranty	\$585.00	\$1,755.00	Computer and Advanced Technologies Program - Meliton Replacement of obsolete systems for faculty
3	2	Computer 5820 Precision Tower, Intel Xeon W-2123, 500GB Hard Drive, 16GB Memory, 1GB Video Card, Warranty	\$1,403.68	\$2,807.36	Technology Support - Lucio Gonzalez New systems for new staff
4	2	Computer 3060 MT, i5-8400 Processor, 500GB Hard Drive, 8GB Memory Intel Integrated Graphics, 22" Monitor, Warranty	\$720.00	\$1,440.00	Kinesiology Program - Rebecca De Los Santos Replacement for 6 year old equipment for dept faculty
5	12	Computer 3060 MT, i5-8400 Processor, 500GB Hard Drive, 8GB Memory Intel Integrated Graphics, Warranty	\$585.00	\$7,020.00	HSI Grant - Academic Affairs - Dr. Anahid Petrosian New Systems for students at NAH and PCN Active Learning Classrooms
		<b>COMPUTER TOTAL</b>		<b>\$13,742.36</b>	
<b>MONITORS</b>					
6	42	Dell UltraSharp 24" Infinity Edge Monitor - U2417H 3 Years Advanced Exchange Service	\$225.00	\$9,450.00	Technology Support - Lucio Gonzalez (26) monitors for new systems, (16) replacement of obsolete equipment for staff
		<b>MONITOR TOTAL</b>		<b>\$9,450.00</b>	
<b>LAPTOPS</b>					
7	1	Laptop Latitude 5290, Intel Core i5-8350U, 256GB Hard Drive, Battery, 8GB Memory, Intel Dual Band Wireless Driver, Keyboard, Pen, Power Bank, Warranty	\$1,363.00	\$1,363.00	Business Office - Myriam Lopez New system for dept staff
8	11	Laptop Latitude 5520, Intel Core i7-7700HQ, 500GB Hard Drive, Battery, 32GB Memory, Intel Dual Band Wireless Driver, Warranty	\$2,108.09	\$23,188.99	Technology Support - Lucio Gonzalez Replacement of obsolete systems for staff
9	1	Laptop Latitude 5490 BTX, Intel Core i5-8350U, 256GB Hard Drive Battery, 8GB Memory, Intel Dual Band Wireless Driver, Warranty	\$1,070.00	\$1,070.00	Inst'l Effectiveness and Assessment - Fernando Chapa New system for dept staff



**SOUTH TEXAS COLLEGE**  
**2. DISTRICT WIDE TECHNOLOGY REQUEST**  
**OCTOBER 30, 2018**

#	Qty	Description	Unit Price	Extension	Requesting Department
10	1	Laptop Latitude 5490 BTX, Intel Core i5-8350U, 256GB Hard Drive	\$1,070.00	\$1,070.00	Medical Information Program - Irma Rodriguez
		Battery, 8GB Memory, Intel Dual Band Wireless Driver, Warranty			Replacement of outdated system for dept faculty
11	3	Laptop Latitude 7285, Intel Core i5-7Y57, 256GB Hard Drive, 8GB Memory	\$4,729.62	\$14,188.86	HSI Grant - Academic Affairs - Dr. Anahid Petrosian
		Intel Dual Band Wireless Driver, Keyboard & Pen, Power Companion, Warranty			New systems for students at NAH, Mid Valley and PCN
					Active Learning Classrooms
12	2	Dell Precision 5530 XCTO Base, Intel Core Xeon E-2176M, 1TB Hard Drive	\$3,314.28	\$6,628.56	Computer Science Program - Saeed Molki
		16GB Memory, Intel Dual Band Wireless Driver, Adapter, Briefcase, Warranty			New systems for dept faculty
13	2	Apple 13 inch MacBook Pro, 2.7Ghz, Intel Core i7, 512 Hard Drive	\$2,506.00	\$5,012.00	Computer Science Program - Saeed Molki
		16GB Memory, Extension cable, Power adapter, warranty			New systems for dept faculty
		<b>LAPTOP TOTAL</b>		<b>\$52,521.41</b>	
<b>TABLETS</b>					
#	Qty	Description	Unit Price	Extension	Requesting Department
14	25	Iconia B3-A40-K5E MT8167B Tablet, 1.3Ghz/2GB/32GB SSD/ ac /BT	\$129.59	\$3,239.75	Computer and Advanced Technologies Program - Meliton
		2xWC/10.1" WXGA MT/Android 7/White Acer, Warranty			New systems for student instructional purposes
15	1	Apple iPad Wi-Fi 32GB - Space Gray	\$378.00	\$378.00	Drama Program - Joel Rodriguez
		3 Year AppleCare+ for iPad			New system for students
		<b>TABLET TOTAL</b>		<b>\$3,617.75</b>	
		<b>COMPUTER/MONITOR/LAPTOP/TABLET TOTAL</b>		<b>\$79,331.52</b>	

**SOUTH TEXAS COLLEGE**  
**3. MICROSOFT CAMPUS LICENSE AGREEMENT**

<b>NAME</b>			Software House International Government Solution, Inc.	
<b>ADDRESS</b>			1301 S Mo-Pac Expway Ste 375	
<b>CITY/STATE/ZIP</b>			Austin, TX 78746	
<b>PHONE</b>			512-814-4101	
<b>CONTACT</b>			Valerie Soja	
#	Qty	Description	Unit Price	Extension
1	2023	Microsoft Desktop Education w/Enterprise CAL - License & Software Assurance Academic Campus EES-Win	\$ 53.93	\$ 109,100.39
2	100	Skype for Business Server Plus CAL - License & Software Assurance - 1 Device CAL Campus School Enterprise Select EES - Win	\$ 9.07	\$ 907.00
3	168	Microsoft Windows Server Datacenter Ed - License & Software Assurance - 2 Cores - Enterprise	\$ 39.19	\$ 6,583.92
4	20	Microsoft Visual Studio Professional w/MSDN - License & Software Assurance - 1 User - Select EES Win	\$ 55.69	\$ 1,113.80
5	2023	Microsoft Office 365 (Plan A2) - Subscription License - 1 User Hosted Academic Campus School EES	\$ -	\$ -
6	19474	Microsoft Office 365 (Plan A2) - Subscription License - 1 User Hosted Academic Campus School EES	\$ -	\$ -
7	19474	Microsoft Office 365 Pro Plus A - Subscription License - 1 User Academic Student Faculty Campus School EES - Win Mac	\$ -	\$ -
8	2023	Microsoft Office 365 Pro Plus A - Subscription License - 1 User Academic Student Faculty Campus School EES add-on to Office Pro Plus - Win Mac	\$ -	\$ -
9	364	Microsoft Windows Server Standard Ed - License & Software Assurance - 2 Cores Enterprise	\$ 5.54	\$ 2,016.56
10	400	Microsoft Windows Virtual Desktop Access - Subscription License - 1 Device Select-Select Plus EES Win	\$ 29.48	\$ 11,792.00
<b>TOTAL AMOUNT</b>			\$ 131,513.67	

**SOUTH TEXAS COLLEGE**  
**4. GRADUATION FACILITY**

<b>NAME</b>			City of Hidalgo/dba State Farm Arena	
<b>ADDRESS</b>			2600 N 10st St (Hwy 336)	
<b>CITY/STATE/ZIP</b>			Hidalgo, TX 78557	
<b>PHONE</b>			956-843-5539	
<b>CONTACT</b>			Glovía Tovar	
<b>#</b>	<b>Qty</b>	<b>Description</b>	<b>Unit Price</b>	<b>Extension</b>
1	1	Graduation Facility - Lease Agreement May 2018 Graduation Period: 5/16/19 - 5/19/19	\$ 38,500.00	\$ 38,500.00
<b>TOTAL AMOUNT</b>			\$ 38,500.00	

# **NO BACKUP FOR**

## **5. Food Service - Starr County Campus (Release of Contract)**

**Review and Recommend Action on Disposal/Recycle of Technology and Electronic Items with an Original Value of \$5,000 and Over**

Approval will be requested at the October 30, 2018 Board of Trustees meeting for dispose/recycle of technology and electronic items with an original value of \$5,000 and over through the Texas Department of Criminal Justice (TDCJ), a state of Texas agency approved to properly recycle technology and electronic items is requested.

Purpose – The Fixed Asset/Inventory Department is requesting the disposal/recycle of technology and electronic items to be in compliance with the Environmental Protection Agency (EPA) regulations. TDCJ provides an environmentally sound way to dispose of surplus technology equipment.

Justification – As technology and electronic items become obsolete, out of warranty or not functioning, it is disposed of according to South Texas Board Policy #5135 Disposal of Surplus Property. TDCJ is the method of disposal to comply with all EPA regulations. They will clean data from all systems, recycle systems that can be repaired for inmate training or donation to schools and damaged systems are properly disposed of.

The technology and electronic items are located at the South Texas College, Technology Campus, Receiving Department, 3700 West Military Hwy Building D, McAllen, Texas.

Reviewers – These items have been inspected by the Information Technology, Educational Technologies, and approved by the Vice President for Information Services, Planning and Strategic Initiatives to be disposed after Board approval.

Enclosed Documents - A listing of the technology and electronic items to be disposed/recycled follows in the packet for Committee's information and review.

Mary Elizondo, Vice President for Finance and Administrative Services, Dr. David Plummer, Vice President for Information Services, Planning and Strategic Initiatives, and Becky Cavazos, Director of Purchasing, will be present at the October 9, 2018 Finance, Audit, and Human Resources Committee meeting to address any questions by the committee.

It is requested that the Finance, Audit, and Human Resources Committee recommend for Board approval at the October 30, 2018 Board meeting, the disposal/recycle of technology and electronic items with an original value of \$5,000 and over through the Texas Department of Criminal Justice (TDCJ), a State of Texas agency approved to properly recycle technology and electronic items as presented.

**SOUTH TEXAS COLLEGE**  
**TECHNOLOGY AND ELECTRONICS FOR DISPOSAL/RECYCLE VALUED AT \$5,000 AND OVER - List #39**  
**SEPTEMBER 28, 2018**

Pallet	Qty	Description	Serial Number	Silver Tag	Green Tag	Purchase Date	Ptag	Amount	Net Book Value	Condition
2	1 ea	Telephone PBX Unit (Avaya Uninterruptible Power Supply)	TV121A0666	0000000153		8/31/1993	000001169	\$73,005.34	\$ -	Incomplete
1	1 ea	Dell 2600 Server (Power Edge)	BFG3551	0000009310		7/9/2004	000009892	\$10,347.29	\$ -	Obsolete
2	1 ea	Compaq EVA500 Server	E7577A2AAQFOAA	0000011328		8/31/2004	000010116	\$89,439.32	\$ -	Obsolete
2	1 ea	Cath Sim with Monitor and Power Supply Bundled	54500041626	10160	50000005445	12/9/2004	000010831	\$17,500.00	\$ -	Incomplete
2	1 ea	Extron System 5IP Switcher	0005A6002B41	0000010942		12/15/2004	000012296	\$ 5,207.55	\$ -	Obsolete
2	1 ea	IQ100 Intel Clock Bio-Metric (Finger Sensor)	12126488	20544		12/13/2005	N00012811	\$ 3,977.00	\$ -	Obsolete
2	1 ea	IQ100 Intel Clock Bio-Metric (Finger Sensor)	06143216	26867		12/13/2005	N00012812	\$ 3,977.00	\$ -	Obsolete
2	1 ea	Laerdal Computer System (Hardware & Software)	280VV02060014A	17426		4/7/2006	N00012883	\$10,336.50	\$ -	Incomplete
2	1 ea	Intel IQ1000 Clocks and Ethernet Modules	2130954	21551		6/16/2006	N00014669	\$ 3,977.00	\$ -	Obsolete
29	1 ea	Laerdal Computer System(Hardware & Software)	1247691	17479	50000005921	7/4/2006	N00012775	\$10,378.29	\$ -	Obsolete
2	1 ea	Scala Certified Media Player, NEC Blue Fire VC 300	15241	KO-1117500022		8/25/2006	N00014732	\$ 5,865.41	\$ -	Obsolete
30	1 ea	Cisco 3750 Catalyst	CAT1039NLH8	15141		4/12/2007	N00016070	\$ 5,696.71	\$ -	
29	1 ea	Dell Power Edge 2950 Server	89182005290	16095		5/24/2007	N00015571	\$ 5,126.00	\$ -	Obsolete
2	1 ea	Panasonic 6000 ANSI Lumen 3 Chip Projector	SW754002R	13952		3/3/2008	N00016823	\$19,602.27	\$ -	Obsolete
2	1 ea	Panasonic PT D5700 Projector	SH7550066R	13930		5/13/2008	N00016733	\$ 7,757.18	\$ -	Obsolete
2	1 ea	Panasonic PT-D5700 Projector	SH7550025R	13931		5/13/2008	N00016734	\$ 7,757.18	\$ -	Obsolete
1	1 ea	925161 LSCAN Guardian USB w/Laptop	C91SML1	18749		3/10/2010	N00017867	\$ 8,730.00	\$ -	Obsolete
2	1 ea	Cisco 3750 Series Catalyst	FDO1420Z05P	18979		8/13/2010	N00018513	\$ 5,127.30	\$ -	Obsolete
1	1 ea	Refurbished Dell Poweredge R900 (Dell Power Edge R900 Server)	7MFWVN1	20790		8/23/2010	N00018482	\$14,000.00	\$ -	Obsolete
2	1 ea	IQ 1000 Bio Metric Time Clocks	6143217	25854		1/16/2014	N00021529	\$ 4,172.00	\$ 347.85	Obsolete
2	1 ea	IQ 1000 Bio Metric Time Clocks	12135812	17293		1/16/2014	N00021527	\$ 4,172.00	\$ 347.85	Obsolete
2	1 ea	IQ 1000 Bio Metric Time Clocks	12135811	27489		1/16/2014	N00021528	\$ 4,172.00	\$ 347.85	Obsolete
2	1 ea	Intel IQ1000 Clocks and Ethernet Modules		19901		1/16/2014	N00014666	\$ 3,977.00	\$ -	Obsolete

Grant Funded Asset

### **Review and Recommend Action to Revise Policy #5120: Investment Policy and Investment Strategy Statement**

Approval to revise Policy #5120: *Investment Policy* and Investment Strategy Statement will be requested at the October 30, 2018 Board meeting.

Purpose – The Public Funds Investment Act (PFIA), Chapter 2256.005 (e) and the College's Policy requires the governing body of an investing entity to review its Investment Policy and Investment Strategy Statement not less than annually. The governing body must adopt a written instrument by rule, order, ordinance, or resolution stating that it has reviewed the Investment Policy and Investment Strategy Statement and that the written instrument so adopted shall record any changes made to either the Investment Policy or Investment Strategy Statement.

Justification – Revisions to Policy #5120: *Investment Policy* and Investment Strategy Statement were last approved and authorized on October 24, 2017. The administration brings the Investment Policy and Investment Strategy Statement to the Board of Trustees annually, as required, with recommended revisions.

Background – The College's Investment Policy and Investment Strategy Statement was submitted and reviewed by the Government Treasurers' Organization of Texas (GTOT). In July 2016, the College was awarded the Certificate of Distinction by the Government Treasurers' Organization of Texas (GTOT) for the Investment Policy. This Certificate is for a two-year period ending August 31, 2018.

Reviewers – The Investment Policy and the Investment Strategy Statement have been reviewed by staff and by South Texas College's legal counsel, Valley View Consulting, LLC (Investment Advisor) and Carr, Riggs & Ingram, LLC (external auditors).

The revisions recommended by the Investment Advisor are necessary to update the Investment Policy and Investment Strategy Statement to comply with changes made to the PFIA by the 85<sup>th</sup> Legislation. The revisions also include minor changes to wording in an effort to provide clarification.

The minor revisions included in the Investment Policy are as follows:

	Section	From	To
1	On page 11, Section III G 5		added "The annual compliance audit performed by the College's independent auditor shall include a review of all quarterly reports."
2	On page 12, Section III G 9		added "The annual compliance audit performed by the College's independent auditor shall include a review of all quarterly reports."



Enclosed Documents – The revised Policy follows in the packet for the Committee's information and review. The additions to the Policy are in italics and highlighted in yellow and the deletions are designated with a red strikeout.

Dr. Shirley A. Reed, President, and Mary Elizondo, Vice President for Finance and Administrative Services, will be present at the October 9, 2018 Finance, Audit, and Human Resources Committee meeting to address any questions by the committee.

It is requested that the Finance, Audit, and Human Resources Committee recommend for Board approval at the October 30, 2018 Board meeting, the revisions to Policy #5120: Investment Policy and Investment Strategy Statement as presented and which supersedes any previously adopted Board Policy.

## MANUAL OF POLICY

<b>Title</b>	<b>Investment Policy</b>	<b>5120</b>
<b>Legal Authority</b>	<b>Approval of the Board of Trustees</b>	<b>Page 1 of 12</b>
<b>Date Approved by Board</b>	<b>Board Minute Order Dated October 12, 1995</b>	
<b>Date Amended by Board</b>	<b>As Amended by Board Minute Order Dated August 8, 1996</b>	
	<b>As Amended by Board Minute Order Dated December 11, 1997</b>	
	<b>As Amended by Board Minute Order Dated October 15, 1998</b>	
	<b>As Amended by Board Minute Order Dated October 17, 2002</b>	
	<b>As Amended by Board Minute Order Dated October 16, 2003</b>	
	<b>As Amended by Board Minute Order Dated October 21, 2004</b>	
	<b>As Amended by Board Minute Order Dated November 17, 2005</b>	
	<b>As Amended by Board Minute Order Dated October 19, 2006</b>	
	<b>As Amended by Board Minute Order Dated February 15, 2007</b>	
	<b>As Amended by Board Minute Order Dated October 18, 2007</b>	
	<b>As Amended by Board Minute Order Dated October 13, 2008</b>	
	<b>As Amended by Board Minute Order Dated June 25, 2009</b>	
	<b>As Amended by Board Minute Order Dated November 23, 2009</b>	
	<b>As Amended by Board Minute Order Dated October 25, 2010</b>	
	<b>As Amended by Board Minute Order Dated October 27, 2011</b>	
	<b>As Amended by Board Minute Order Dated October 30, 2012</b>	
	<b>As Amended by Board Minute Order Dated October 28, 2013</b>	
	<b>As Amended by Board Minute Order Dated October 28, 2014</b>	
	<b>As Amended by Board Minute Order Dated October 27, 2015</b>	
	<b>As Amended by Board Minute Order Dated October 25, 2016</b>	
	<b>As Amended by Board Minute Order Dated October 24, 2017</b>	
	<b><i>As Amended by Board Minute Order Dated October 30, 2018</i></b>	

### PREFACE

It is the policy of South Texas College that, giving due regard to the safety and risk of investment, all available funds shall be invested in conformance with State and Federal Regulations, applicable Tax Exempt Bond Issue requirements, adopted Investment Policy and adopted Investment Strategy Statement.

Effective cash management is recognized as essential to good fiscal management. Aggressive cash management and effective investment strategy development will be pursued to take advantage of interest earnings as viable and material revenue to all South Texas College funds. The South Texas College portfolio shall be designed and managed in a manner responsive to the public trust and consistent with this Policy.

Investments shall be made with the primary objectives of:

- Preservation of capital and safety of South Texas College funds,
- Maintenance of sufficient liquidity,
- Maximization of return within acceptable risk constraints, and
- Diversification of investments.

## MANUAL OF POLICY

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### **I. PURPOSE**

#### **A. Formal Adoption**

This Investment Policy (hereinafter “Investment Policy” or “Policy”) is adopted by South Texas College in accordance with Chapter 2256, Texas Government Code, the Public Funds Investment Act (hereinafter the “Act,” “Public Funds Investment Act,” or “PFIA”) and shall be interpreted at all times to comply with the Act.

#### **B. Scope**

This Investment Policy applies to all financial assets of South Texas College and includes the following funds or fund types: Unrestricted, Auxiliary, Restricted, Loan, Endowment, Agency, Funds for Renewal and Replacement, Unexpended Plant Funds, Funds for Retirement of Indebtedness, and any other funds which have been contractually delegated to South Texas College for management purposes.

This Policy establishes guidelines for:

- 1) Designation of Investment Officers and Investment Committee to invest South Texas College funds,
- 2) Authorized investments, and
- 3) Review and oversight of investments.

In addition to this Policy, bond funds (as defined by the Internal Revenue Service) shall be managed in accordance with their issuing documentation and all applicable State and Federal Laws.

All investments made with South Texas College (hereinafter “South Texas College” or the “College”) funds prior to the adoption of this Investment Policy shall be held or liquidated as determined by the Investment Committee (defined hereinafter in Section III.G.1 of the Policy) to be in the best interest of the financial well-being of South Texas College.

#### **C. Review and Amendment**

This Policy shall be reviewed annually by the Board of Trustees. Amendments must be adopted by the Board of Trustees.

#### **D. Investment Strategy**

In conjunction with the annual Policy review, the Board of Trustees shall review the separate written investment strategy for each of South Texas College’s funds. The investment strategy must describe the investment objectives for each fund according to the following priorities:

- 1) understanding of the suitability of the investment to the financial requirements of South Texas College,
- 2) preservation and safety of principal,
- 3) liquidity,

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- 4) marketability of the investment if the need arises to liquidate the investment prior to maturity,
- 5) diversification of the investment portfolio, and
- 6) yield.

## II. INVESTMENT OBJECTIVES

### A. Safety of Principal

The primary objective of all investment activity is the preservation of capital and the safety of principal in the overall portfolio. Each investment transaction shall seek to ensure first that capital losses are minimized, whether they are from securities defaults or erosion of market value.

The objective will be to mitigate credit and interest rate risk.

- **Credit Risk:** In accordance with State law and the College's Investment Policy, the College limits its exposure to credit risk (the risk that the issuer of a debt security will not pay its pay value upon maturity) by limiting its investments to only those authorized in Section III.A in accordance with the PFIA. In Section III.E.1, the College's Investment Policy seeks to further minimize its concentration of credit risk by establishing maximum investment percentages of classes of securities and a diversification strategy for the total College portfolio.
- **Interest Rate Risk:** In accordance with its Investment Policy, the College limits its exposure to interest rate risk by investing in securities whose maturities will not exceed the anticipated cash flow requirements for the funds. College policy states that investments of all fund types, except for Unexpended Plant Funds and Funds for Retirement of Indebtedness, are limited to a weighted average maturity of 365 days for all investments, with a maximum allowable maturity of two years for any investment type. The investment maturities of Unexpended Plant Funds and of Funds for Retirement of Indebtedness are generally limited to the anticipated cash flow requirements of the funds.

### B. Maintenance of Adequate Liquidity

The investment portfolio will remain sufficiently liquid to meet the cash flow requirements that might be reasonably anticipated. Liquidity shall be achieved by matching investment maturity with forecasted cash flow requirements; investing in securities with active secondary markets; and maintaining appropriate portfolio diversification.

### C. Market Rate of Return (Yield)

The College's investment portfolio shall be designed with the objective of attaining a rate of return throughout budgetary and economic cycles, consistent with the College's investment risk constraints and the cash flow needs projected. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The core of investments is limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed. Weighted Average Yield to Maturity shall be the standard for calculating portfolio rate of return.

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**5120**

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### III. INVESTMENT POLICIES

#### A. Authorized Investments

Investments described below are authorized by the Public Funds Investment Act as eligible securities. South Texas College restricts its investments to the following, as authorized by the Public Funds Investment Act.

- 1) Obligations, including letters of credit, of the United States or its agencies and instrumentalities, including the Federal Home Loan Banks.
- 2) Direct obligations of the State of Texas, or its agencies and instrumentalities.
- 3) Other obligations, the principal and interest on which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the State of Texas or the United States or their respective agencies and instrumentalities, including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation or by the explicit full faith and credit of the United States.
- 4) Obligations of states, agencies, counties, cities, and other political subdivisions of any State rated as to investment quality by a nationally recognized investment rating firm not less than “A” or its equivalent. The College will take all prudent measures that are consistent with its Investment Policy to liquidate an investment that does not have the minimum rating.
- 5) Financial institution deposits issued by a depository institution that has its main office or branch in Texas and is:
  - a) guaranteed or insured by the Federal Deposit Insurance Corporation (FDIC) or its successors or the National Credit Union Share Insurance Fund or its successor;
  - b) secured by obligations that are described by the Public Funds Collateral Act (Chapter 2257, Texas Government Code), including mortgage backed securities directly issued by a federal agency or instrumentality that have a market value of not less than 102% of the principal amount plus accrued interest of the deposit less the applicable level of FDIC insurance, or by Letters of Credit issued by the Federal Home Loan Bank with a value of 100% of the principal amount plus accrued interest of the deposit less the applicable level of FDIC insurance; or
  - c) secured in any other manner and amount provided by law for deposits of the College.
  - d) Issued in a manner consistent with the Act that distributes the deposit among multiple financial institutions to effectively provide FDIC insurance for the entire deposit;
  - e) governed by a Depository Agreement, as described in E.4 of this section, that complies with Federal and State Regulation; and
  - f) solicited for bid orally, in writing, electronically, or any combination of those methods, unless acquired exclusively from the South Texas College depository.
- 6) No-load government money market mutual funds registered with and regulated by the Securities and Exchange Commission whose investment objectives seek to maintain a stable \$1.0000 net asset value and that comply with the requirements of State law.
- 7) Eligible investment pools organized and operating in compliance with the Public Funds Investment Act that have been authorized by the Board of Trustees by rule, order, ordinance, or resolution and whose investment philosophy and strategy is consistent with this Policy and South Texas College’s ongoing investment strategy. A public funds investment pool must be continuously rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service.

To the extent the bonds or other obligations of the College or a municipal bond insurance policy further limits the types of investments the College makes with funds pledged to the payment of those bonds or obligations, the provisions thereof shall govern.

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The College will maintain procedures to monitor rating changes in investments acquired with public funds and to address the liquidation of investments that fall below the required rating consistent with the provisions of Section III.D.

### **B. Existing Investments**

The College is not required to liquidate investments that were authorized investments at the time of the purchase.

### **C. Prohibited Investment**

In accordance with Texas state law, the following are not authorized investments:

- 1) Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
- 2) Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
- 3) Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and
- 4) Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

### **D. Credit Rating Review and Effect of Loss of Required Rating**

The College will seek to control the risk of loss due to failure of an investment issuer by monitoring the ratings of portfolio positions to ensure compliance with the rating requirements imposed by the Public Funds Investment Act. Not less than quarterly, the Investment Officers will obtain, from a reliable source, the current credit rating for each held investment that has a PFIA-required minimum rating. Any authorized investment that requires a minimum rating does not qualify during the period the investment does not have the minimum rating. All prudent measures will be taken to liquidate an investment that is downgraded to less than the required minimum rating.

### **E. Protection of Principal**

South Texas College shall seek to control the risk of loss due to the failure of a security issuer or grantor. Such risk shall be controlled by investing only in the safest types of securities as defined in the Policy; by qualifying the broker, dealer, and financial institution with whom the College will transact; by collateralization as required by law; and through portfolio diversification by maturity and type.

The purchase of individual securities shall be executed “delivery versus payment” (DVP) through the South Texas College Safekeeping Agent. By so doing, South Texas College’s funds are not released until South Texas College has received, through the Safekeeping Agent, the securities purchased.

#### **1. Diversification by Investment Type**

Diversification by investment type shall be maintained by ensuring an active and efficient secondary market in portfolio securities and by opportunity risks associated with specific security types.

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Diversification by investment type shall be established by the following maximum percentages of investment type to the total South Texas College investment portfolio at the time of each investment transaction:

- a. U.S. Treasury Bills/Notes/Bonds 100%
- b. U.S. Agencies and Instrumentalities 100%
- c. States, Counties, Cities, and Other 25%
- d. Financial Institution Deposits 100%
- e. Government Money Market Mutual Funds 25%
- f. Eligible Investment Pools 50%

Bond proceeds may be invested in a single security or investment if the Investment Committee determines that such an investment is necessary to comply with Federal arbitrage restrictions or to facilitate arbitrage record-keeping and calculations.

## **2. Diversification by Investment Maturity**

In order to minimize risk of loss due to interest rate fluctuations, investment maturities will not exceed the anticipated cash flow requirements of the funds. Maturity guidelines by fund are as follows: (Investment transactions made prior to the adoption of this Policy are not subject to these guidelines).

### **a) Unrestricted, Auxiliary, Restricted, Loan, Endowment, Agency and Plant Renewal and Replacement Funds**

The weighted average days to maturity for the portfolio of these funds shall be less than 365 days and the maximum allowable maturity shall be two years for any investment type.

### **b) Unexpended Plant Funds**

The investment maturity of Unexpended Plant Funds, allocable to a bond issue, shall generally be limited to the anticipated cash flow requirements or the "Temporary Period," as defined by the U.S. Tax Code and the regulations thereunder. During the Temporary Period, bond proceeds may be invested at an unrestricted yield. After the expiration of the Temporary Period, bond proceeds subject to yield restriction shall be invested consistent with the yield restrictions under the U.S. Tax Code and the regulations thereunder.

The weighted average days to maturity for the Unexpended Plant Funds not allocable to a bond issue shall be less than 365 days and the maximum allowable maturity shall be two years for any investment type.

### **c) Funds for Retirement of Indebtedness**

Funds, along with other available monies, shall be invested to ensure adequate funding for debt service payment. The Investment Officers shall ensure that the investments mature on dates such that the available monies and the anticipated receipts from investments will be sufficient to pay, when due, the principal, interest and call premiums, if any, of the outstanding obligations.

South Texas College's funds that are considered "bond proceeds" for arbitrage purposes will be invested using a more conservative approach than the standard investment strategy when arbitrage rebate rules

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require rebate of excess earnings. All earnings in excess of the allowable arbitrage earnings (“rebate liability”) will be segregated and made available for any necessary payments to the U.S. Treasury.

### **3. South Texas College Liquidity**

Liquidity shall be achieved by investing in securities with active secondary markets and by maintaining minimum balances in financial institution deposits, eligible money market mutual funds and eligible investment pools.

A security may be liquidated to meet unanticipated cash requirements, to redeploy cash into other investments expected to outperform current holdings, or to otherwise adjust the portfolio.

### **4. Depository Agreements**

Consistent with the requirements of State law, South Texas College requires all bank deposits to be federally insured or collateralized with eligible securities. Financial institutions serving as South Texas College’s Depositories will be required to sign a Depository Agreement (hereinafter “Agreement”) with South Texas College and South Texas College’s safekeeping agent.

The safekeeping portion of the Agreement shall define South Texas College’s rights to the collateral in case of default, bankruptcy, or closing and shall establish a perfected security interest in compliance with Federal and State regulations, including:

- the Agreement must be in writing;
- the Agreement has to be executed by the Depository and South Texas College contemporaneously with the acquisition of the asset;
- the Agreement must be executed in compliance with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and approved by the Board of Directors or the loan committee of the Depository and a copy of the meeting minutes must be delivered to South Texas College;
- the Agreement must be part of the Depository’s “official record” continuously since its execution; and
- the Agreement states the securities and collateral will be held in South Texas College’s name as evidenced by safekeeping receipts of the institution with which the securities are deposited.

#### **a) Allowable Collateral**

Eligible securities for collateralization of deposits are defined by the Public Funds Collateral Act, Chapter 2257, Texas Government Code, as amended, and those that meet the constraints of this Policy.

#### **b) Collateral Levels**

The market value of the principal portion of securities that are pledged as collateral must at all times be equal to or greater than 102%, or 100% for Letters of Credit issued by a Federal Home Loan Bank, of par value of the time and demand deposits plus accrued interest, less the applicable level of FDIC insurance.

#### **c) Monitoring Collateral Adequacy**



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South Texas College shall require monthly reports with market values of pledged securities from all financial institutions with which South Texas College has collateralized deposits. The bank shall be responsible and liable for monitoring and maintaining the collateral and collateral margins on a daily basis and for reporting these activities monthly. The Investment Officers will monitor adequacy of collateralization levels to verify market values and total collateral positions.

## **d) Additional Collateral**

If the market value of the securities pledged as collateral for a deposit falls below 102%, or 100% for Letters of Credit issued by a Federal Home Loan Bank, of par value of time and demand deposits plus accrued interest, less the applicable level of FDIC insurance, the institution holding the deposit will be notified by the Investment Officers and will be required to pledge additional allowable collateral as defined above no later than the end of the next succeeding business day.

## **e) Security Substitution**

Collateralized deposits often require substitution of securities. Any financial institution requesting substitution must contact the Investment Officers for approval and settlement. The substituted security's value will be calculated and substitution approved if the substitution maintains a pledged value equal to or greater than the required security level. An Investment Officer must provide written notification of the decision to the bank or the safekeeping agent holding the security prior to any security release. Substitution is allowable for all transactions, but should be limited, if possible, to minimize potential administrative problems and transfer expense. The Investment Officers may limit substitution and assess appropriate fees if substitution becomes excessive or abusive.

## **5. Safekeeping**

### **a) Safekeeping Agreement**

South Texas College shall contract with a bank or banks for the safekeeping and custody of securities either owned by South Texas College as a part of its investment portfolio or as part of its depository agreements or held as collateral to secure time and demand deposits. Securities and collateral will be held in South Texas College's name as evidenced by safekeeping receipts of the institution with which the securities are deposited.

### **b) Safekeeping of Deposit Collateral**

All collateral securing bank and savings and loan deposits must be held by a third-party banking institution acceptable to and under contract with South Texas College or by the Federal Reserve Bank.

## **6. Competitive Bidding**

The College will require at least three competitive offers or bids for all individual security purchases and sales (excluding those transactions with financial institution deposits, eligible money market mutual funds, and eligible investment pools (Section III.A) and require any investment advisor to do the same. Rather than relying solely on yield, investments in financial institution deposits, eligible money market mutual funds, and eligible investment pools shall be based on criteria determined by the Investment Officers.

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### **F. Investment Advisors and Investment Providers**

Investment Advisors shall adhere to the spirit, philosophy, and terms of this Policy and shall invest within the same “Standard of Care.” Investment Providers shall adhere to the spirit and philosophy of this Policy and shall avoid recommending or suggesting transactions outside that “Standard of Care.”

Selection of Investment Advisors and Investment Providers will be performed by the Board of Trustees. The Board of Trustees may contract with an investment management firm registered under the Investment Advisers Act of 1940 or with the State Securities Board to provide for the investment and management of public funds under its control. The contract period will be for a maximum of two years, and a renewal or extension of the contract must be made by the Board of Trustees by order, ordinance, or resolution. The criteria to evaluate Investment Advisors and Investor Providers include the following:

- a) Adherence to South Texas College’s policies and strategies,
- b) Investment performance and transaction pricing within accepted risk constraints,
- c) Responsiveness to South Texas College’s requests for services, information and open communication,
- d) Understanding of the inherent fiduciary responsibility of investing public funds, and
- e) Similarity in philosophy and strategy with South Texas College’s objectives.

Selected Investment Advisors and Investment Providers shall provide timely transaction confirmations and monthly activity reports.

Business organizations eligible to transact investment business with South Texas College shall be presented a written copy of this Investment Policy. Local Government Investment Pools and discretionary investment management firms seeking to transact investment business shall execute a written instrument substantially to the effect that the qualified representative has:

- 1) received and thoroughly reviewed this Investment Policy, and
- 2) acknowledged that the organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between South Texas College and the organization that are not authorized by the College’s Investment Policy, except to the extent that this authorization is dependent on an analysis of the makeup of the College’s entire portfolio or requires an interpretation of subjective investment standards, or relates to investment transactions that are not made through accounts or other contractual arrangements over which the business organization has accepted discretionary investment authority .

South Texas College shall not enter into an investment transaction with a Local Government Investment Pool or discretionary investment advisor prior to receiving the written instrument described above.

The Board of Trustees of South Texas College shall, at least annually, review, revise, and adopt a list of qualified Investment Providers (brokers/dealers/banks/pools) that are authorized to engage in investment transactions with the College.

### **G. Responsibility and Controls**

#### **1. Authority to Invest**

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South Texas College's "Investment Officers" are the Vice President for Finance and Administrative Services, the Comptroller, and one of South Texas College's elected officials (selected by the Board of Trustees). The Investment Officers are authorized to deposit, withdraw, invest, transfer, execute documentation, and otherwise manage South Texas College's funds according to this Policy. The Investment Officers may authorize one Investment Officer to deposit, withdraw, or transfer funds out of or into financial institution deposits, an investment pool or money market mutual fund in order to meet daily operating needs of South Texas College.

The Board of Trustees' Finance and Human Resources Committee shall be the Investment Committee. The Investment Committee shall review the investment portfolio's status and performance, determine and implement appropriate portfolio adjustments, review brokers/dealers/banks/pools and independent training sources, oversee South Texas College's Investment Advisor, monitor compliance with the Investment Policy and Investment Strategy Statement, and perform other duties as necessary to manage South Texas College's funds.

Each member of the Board of Trustees and the Investment Officers shall attend at least one training session, relating to the person's responsibilities under the Act within six months after taking office or assuming duties. The Texas Higher Education Coordinating Board shall provide the training.

The Investment Officers shall receive not less than 10 hours of instruction within the first twelve months after taking office or assuming duties. The Investment Officer shall prepare a report on any changes in the Public Funds Investment Act and deliver the report to the Board of Trustees not later than the 180<sup>th</sup> day after the last day of each regular session of the legislature.

To ensure qualified and capable investment management, the Investment Officers shall attend an investment training session not less than once each state fiscal biennium, and receive not less than 10 hours of instruction relating to investment responsibilities that addresses investment controls, security risks, strategy risks, market risks, diversification of investment portfolio and compliance with the Public Funds Investment Act. The investment training session shall be provided by the following approved training sources: the Texas Higher Education Coordinating Board, the Government Finance Officers Association of Texas, the Government Treasurers Organization of Texas, the Texas Municipal League, or the University of North Texas Center for Public Management.

## **2. Prudent Investment Management**

The Investment Officers shall perform their duties in accordance with the adopted Investment Policy and internal procedures. In determining whether an Investment Officer has exercised prudence with respect to an investment decision, the investment of all funds over which the Investment Officer had responsibility, rather than the prudence of a single investment, shall be considered. Investment Officers acting in good faith and in accordance with these policies and procedures shall be relieved of personal liability.

## **3. Standard of Care**

The standard of care used by the College shall be the "prudent person rule" and shall be applied in the context of managing the overall portfolio within the applicable legal constraints. The Public Funds Investment Act states:

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“Investments shall be made with judgment and care, under circumstances then prevailing, that a person of prudence, discretion, and intelligence would exercise in the management of the person’s own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived.”

## 4. Standard of Ethics and Conflicts of Interest

The Investment Officers shall act as custodians of the public trust avoiding any transaction which might involve a conflict of interest, the appearance of a conflict of interest, or any activity which might otherwise discourage public confidence. Investment Officers shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. If the Investment Officer has a personal business relationship with a business organization offering to engage in an investment transaction with South Texas College, the Investment Officer shall file a statement disclosing that personal business interest. If the Investment Officer is related within the second degree by affinity or consanguinity, as determined under Chapter 573 of the Texas Government Code, to an individual seeking to sell an investment to South Texas College, the Investment Officer shall file a statement disclosing that relationship as stated in the Public Funds Investment Act Chapter 2256.005 (i). This disclosure statement must be filed with the Texas Ethics Commission and the Board of Trustees. An Investment Officer has a personal business relationship with a business organization if:

- a) the Investment Officer owns 10 percent or more of the voting stock or shares of the business organization or owns \$5,000 or more of the fair market value of the business organization;
- b) funds received by the Investment Officer from the business organization exceed 10 percent of the Investment Officer’s gross income for the previous year; or
- c) the Investment Officer has acquired from the business organization during the previous year investments with a book value of \$2,500 or more for the personal account of the Investment Officer.

## 5. Establishment of Internal Controls

South Texas College’s Investment Officers will maintain a system of internal controls over the investment activities of South Texas College.

South Texas College, in conjunction with its annual financial audit, shall perform a compliance audit of management controls on investments and adherence to South Texas College’s Investment Policy and Investment Strategy Statement. *The annual compliance audit performed by the College’s independent auditor shall include a review of all quarterly reports.*

## 6. Reporting

Investment performance will be monitored and evaluated by the Investment Officers. The Investment Officers shall submit an investment report to the Board of Trustees and the President quarterly. This investment report shall:

- 1) describe in detail the investment position of South Texas College;
- 2) be prepared jointly by all Investment Officers of the College;
- 3) be signed by each Investment Officer of the College;
- 4) contain a summary statement of each pooled fund group that states the:
  - a. beginning market value for the reporting period;

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- b. ending market value for the period; and
- c. fully accrued interest for the reporting period;
- 5) state the book value and market value of each separately invested asset at the end of the reporting period by the type of asset and fund type invested;
- 6) state the maturity date of each separately invested asset that has a maturity date;
- 7) state the account or fund or pooled group fund in the College for which each individual investment was acquired;
- 8) provide the credit rating for each separately invested asset that has a required minimum rating; and
- 9) state the compliance of the investment portfolio of the College as it relates to:
  - a) the investment strategy expressed in the College's Investment Policy; and
  - b) relevant provisions of the Act.

### **7. Methods used to Monitor the Market Price of Acquired Investments**

The methods/sources to be used to monitor the market price of investments that have been acquired with public funds shall be from sources deemed reliable by an Investment Advisor, including safekeeping agent, brokers/dealers, the Wall Street Journal, Bloomberg, or other market pricing services.

### **8. Investment Transactions must be Settled on a Delivery Versus Payment Basis**

Investment transactions will be settled on a delivery versus payment (DVP) basis with the exception of financial institution deposits, investment pool funds and mutual funds.

### **9. Review by Independent Auditor**

In conjunction with its annual financial audit, the auditor shall perform a compliance audit of management controls on investments and adherence to the College's established Investment Policy. *The annual compliance audit performed by the College's independent auditor shall include a review of all quarterly reports.* The results of the audit shall be reported to the College's Board of Trustees by the auditor.

If the College invests in other than money market mutual funds, investment pools or accounts offered by its depository bank in the form of certificates of deposit, or money market accounts or similar accounts, the reports prepared by the investment officers must be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the Board of Trustees by the auditor.

### **10. Investment Policy Adoption**

The Investment Policy and Investment Strategy Statement shall be reviewed annually by the Investment Committee and any modifications made thereto must be approved by the Board of Trustees. The Board of Trustees shall review the Investment Policy and Investment Strategy Statement not less than annually. The Board shall adopt a written instrument by rule, order, ordinance, or resolution stating that it has reviewed the Investment Policy and Investment Strategy Statement and that the written instrument so adopted shall record any changes made to either the Investment Policy or Investment Strategy Statement.

# INVESTMENT STRATEGY STATEMENT

## PAGE 1

### PREFACE

It is the policy of South Texas College that, giving due regard to the safety and risk of investment, all available funds shall be invested in conformance with State and Federal Regulations, applicable Bond Resolution requirements, adopted Investment Policy and adopted Investment Strategy Statement.

In accordance with the Public Funds Investment Act, South Texas College's investment strategies shall address the following priorities (in order of importance):

- \* Understanding of the suitability of the investment to the financial requirements of South Texas College,
- \* Preservation and safety of principal,
- \* Liquidity,
- \* Marketability of the investment if the need arises to liquidate the investment prior to maturity,
- \* Diversification of the investment portfolio, and
- \* Yield

Effective investment strategy development coordinates the primary objectives of South Texas College's Investment Policy and cash management procedures to enhance interest earnings and reduce investment risk. Aggressive cash management will increase the available "investment period" and subsequently interest earnings. Maturity selections shall be based on cash flow and market conditions to take advantage of various interest rate cycles. South Texas College's portfolio shall be designed and managed in a manner responsive to the public trust and consistent with the Investment Policy.

Each major fund type has varying cash flow requirements and liquidity needs. Therefore specific strategies shall be implemented considering the fund's unique requirements. South Texas College's funds shall be analyzed and invested according to the following fund types:

- a) Unrestricted,
- b) Auxiliary,
- c) Restricted,
- d) Loan,
- e) Endowment,
- f) Agency,
- g) Funds for Renewal and Replacement,
- h) Unexpended Plant Funds, and
- i) Funds for Retirement of Indebtedness

### INVESTMENT STRATEGY

In order to minimize risk of loss due to interest rate fluctuations, investment maturities will not exceed the anticipated cash flow requirements of the fund. Investment guidelines for all fund-types are as follows:

#### A. Funds

South Texas College's funds include:

- Unrestricted Fund
- Auxiliary Fund
- Restricted Fund
- Loan Fund
- Endowment Fund
- Agency Fund
- Funds for Renewal and Replacement

# INVESTMENT STRATEGY STATEMENT

## PAGE 2

Unexpended Plant Funds  
Funds for Retirement of Indebtedness

**Suitability:** Any investment eligible in the Investment Policy is suitable for all fund types.

**Safety of Principal:** All investments shall be of high quality with no perceived default risk. Market price fluctuations will occur, however by managing the weighted average days to maturity for all fund types, except for Unexpended Plant Funds and Funds for Retirement of Indebtedness, to less than 365 days for all investments and restricting the maximum allowable maturity to two years for any investment type, the price volatility of the overall portfolio will be minimized. Unexpended Plant Funds investments should be as per Section III.E.2.b and Funds for Retirement of Indebtedness investments should be as per Section III.E.2.c.

**Marketability:** Securities with active and efficient secondary markets are necessary in the event of an unanticipated cash requirement. Historical market “spreads” between the bid and offer prices of a particular security-type of less than a quarter of a percentage point shall define an efficient secondary market. Unexpended Plant Funds investment should be as per Section III.E.2.b and Funds for Retirement of Indebtedness investment should be as per Section III.E.2.c.

**Liquidity:** All fund types, except for Unexpended Plant Funds and Funds for Retirement of Indebtedness require the greatest short-term liquidity of any of the fund types. Short-term investment pools, bank deposits, and eligible money market mutual funds shall provide daily liquidity and may be utilized as a competitive yield alternative to fixed maturity investments.

**Diversification:** Investment maturities shall be staggered throughout the budget cycle to provide cash flow based on the anticipated operating needs of South Texas College. Market cycle risk will be reduced by diversifying the appropriate maturity structure out over two years.

**Yield:** Attaining a competitive market yield for comparable security-types and portfolio restrictions is the desired objective. The yield of a, rolling three months Treasury bill portfolio shall be the minimum yield objective.

### **Review and Discussion on Contracting for Electric Power Services**

Review and discussion with the Finance, Audit, and Human Resources Committee on the procurement method for contracting electric power services is requested for feedback.

In the past, the College has procured the electric power services via a State Contract with the State of Texas, General Land Office, or by advertising a Request for Proposal (RFP).

The College's current contract for electric power services with Cavallo Energy Texas through the General Land Office was entered into on June 1, 2014 and will expire on May 31, 2019.

Purpose – The Vice President for Finance and Administrative Services, Director for Operations and Maintenance, and Director of Purchasing are requesting the review of the procurement options for electric power services.

Justification – A procurement method for electric services must be selected to secure a contract for the electric power services prior to the end of the existing contract.

Background - The following reflects South Texas College's electric service contracts since FY 2002:

<b>Procurement Method</b>	<b>Service Provider</b>	<b>Period</b>	<b>Electricity Rate per kWh</b>
General Land Office	Reliant Energy	4/1/02 – 3/31/04	\$0.03944
General Land Office	Reliant Energy	4/1/04 – 5/31/06	\$0.05397
Request for Proposal	Hino Electric	6/1/06 – 5/31/07	\$0.08099
Request for Proposal	Hino Electric	6/1/07 – 5/31/08	\$0.08650
Request for Proposal	Gexa Energy	6/1/08 – 5/31/11	\$0.08989
Request for Proposal / General Land Office	Cavallo Energy Texas	6/1/11 – 5/31/14	\$0.05676
General Land Office	Cavallo Energy Texas	6/1/14 – 5/31/19	\$0.05482

### **Request for Proposals**

The College contracted an energy consultant, RJ Covington, in FY 2006, FY 2007, FY 2008, and FY 2011. The consultant services included the preparation of the request for proposal (RFP) for energy providers, the analyzing and evaluating of the proposal rates, associated fees, taxes, and the review of the final service agreement. The consultant also provided a detailed report of the proposals received and established a short list of the energy providers for the Finance, Audit, and Human Resources Committee. After the short list was determined, the energy providers submitted their final and executable kWh rate to the Board of Trustees at the Board meeting.



The consultant was paid a one-time fee, that was independent of the electric power contract. The payment did not exceed \$10,000.00, which is below the purchasing threshold requiring bid solicitation.

### **State Contract**

In FY 2002, FY 2004, FY 2011, and FY 2014, the Board of Trustees elected to contract through an interagency contract with the Texas General Land Office. The current contract was entered into in FY 2011 with Cavallo Energy Texas.

When contracting with the state approved vendor, through the General Land Office, the gross receipts tax (GRT) is not charged, which amount to an approximate savings of \$82,000 annually.

South Texas College's current electricity rate per kWh is \$0.05482 and the contract agreement term is from June 01, 2014 through May 31, 2019. At the time of approval, the College was able to include all future bond construction projects with the fixed kWh rate of \$0.05482.

The differences between using the Texas General Land Office and South Texas College advertising a Request for Proposals (RFP) are as follows:

<b>Request for Proposals</b>	<b>State Contract</b>
Consultant Required	Consultant Not Required
Gross Receipt Tax Not Exempted	Gross Receipt Tax Exempted
Advertisement of RFP	No Advertisement of RFP
Consultant Fee	No Consultant Fee

No action is required from the Committee. This item is presented for information and feedback to staff.

**Review and Discussion on Governmental Accounting Standards Board (GASB) 75  
Impact, Other Post Employment Benefits Liability**

Review of implementation of new Governmental Accounting Standards Board (GASB) 75 pronouncement in financial statements for fiscal year ending August 31, 2018.

Purpose – To comply with new financial statement pronouncement regarding reporting of other Postemployment Benefits at the employer level and employer proportionate share.

Justification – South Texas College must comply with GASB 75 as an employer offering other postemployment benefits (OPEB) through Employees Retirement Services of Texas (ERS), for the liability related to the postemployment expense for retiring employees. OPEB are benefits other than pensions that the College provides to retirees. For South Texas College the benefits only consist of health insurance.

Background – In June 2015, the GASB approved Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*. The guidance contained in this Statement changes how governments calculate and report the costs and obligations associated with postemployment benefits other than pensions. It is designed to improve the decision-usefulness of reported pension information and to increase the transparency, consistency, and comparability of benefit information across governments. It is effective for fiscal years beginning on or after June 15, 2017. For the College, this pronouncement is effective for fiscal year 2017-2018.

GASB is the authoritative, standard setting body, which establishes Generally Accepted Accounting Principles (GAAP) for state and local governments.

GASB Statement 75 requires reporting entities to recognize their proportionate share of the net OPEB liability. On September 10, 2018, the State Comptroller of Public Accounts provided the following information regarding ERS and the College's OPEB liability:

Net OPEB Liability Calculation	
ERS' Total Net OPEB Liability as of 8/31/17	\$ 34,073,012,000
South Texas College's Allocation Percentage	0.03884268%
South Texas College's Net OPEB Liability	\$13,234,871

The unrestricted fund balance will decrease by an amount approximately equal to the OPEB liability, estimated to be \$13,234,871.

Board Policy #5350, Unrestricted Fund Balance, requires the College to maintain an unrestricted fund balance sufficient to cover no less than four months of budgeted expenditures. The College will remain in compliance with this Policy, after the GASB 75 OPEB liability and related activity are recorded as follows:

<b>Unrestricted Fund Balance - Reserve Requirement Policy #5350 Unrestricted Fund Balance</b>		
Current Unrestricted Undesignated Fund Balance as of August 31, 2017 (including GASB 75 estimate)	Fiscal Year 2019 Budgeted Unrestricted Expenditures (excluding transfers, contingencies, and other reserves)	Number of Months in Reserve
\$77,885,973	\$182,124,817	5.1 months

Reviewers – Requirements were reviewed by the Vice President for Finance and Administrative Services, and Comptroller.

Dr. Shirley A. Reed, President, and Mary Elizondo, Vice President for Finance and Administrative Services, will be present at the October 9, 2018 Finance, Audit, and Human Resources Committee meeting to address any questions by the committee.

No action is required from the Board. This item is presented for information and feedback to staff.

**Review and Discussion of Internal Audit Report in the Area of Time Keeping  
System Compliance**

Mr. Khalil Abdullah, Internal Auditor, will be attending the Committee meeting to discuss the procedures, findings, and recommendations of the internal audit report in the area of Time Keeping System Compliance

The Internal Audit Report follows in the packet for the Committee's review.

No action is required from the Committee. This item is presented for information and feedback to staff.



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## EXECUTIVE SUMMARY

The Time Keeping System Compliance Audit was included on the Finance, Audit, and Human Resources Committee's approved FY 2018 Audit Plan. The audit included a review of the College's time keeping system including several department's compliance with established controls promulgated by the Business Office.

The objective of the audit was to evaluate the adequacy and effectiveness of internal controls over South Texas College's Time Keeping System.

The scope of the audit includes payroll processes, transactions, and records from May 1, 2017, (the implementation date of the new TimeClock Plus system) through December 31, 2017.

The audit was not designed or intended to be a detailed study of every relevant control system, procedure, or transaction. Accordingly, the opportunities for improvement presented in this report may not be all-inclusive of areas where improvements could be made. The audit generally conformed to guidelines set forth by the Institute of Internal Auditor's Standards and South Texas College's Policy 5460 Internal Audit Function.

Overall, the department established an adequate system of internal controls. The audit identified the following areas where improvement could be made:

- Financial managers failed to timely submit electronic verifications of their employee's timecards;
- Of the financial managers who failed to electronically verify their employees' timecards, hard copy timecards were not retained by the department 75% of the time.
- Access to Banner was held by employees working within the Payroll Office that would allow them access to both create/modify employee files as well as make payroll adjustments.

## **BACKGROUND**

The "TimeForce" timekeeping and attendance system was purchased by the College on December 15, 2005. The system included the license, interface with Banner, project implementation, employee training, and system maintenance. The purpose of the timekeeping and attendance system was to improve the efficiency of collecting employee time and attendance data. The system improved the accuracy of employee information and labor data. This increased reliability, allowed management to make better decisions related to workforce productivity and performance. The system interfaced with Banner and enabled the College to collect real-time information and update payroll records without the use of time sheets, thereby providing better service to employees, account managers and administrators. After using "TimeForce" for approximately 10 years, the College sought to upgrade its time keeping system. The upgrade was deemed necessary in order to keep up with the College's growth and to provide more accurate tracking of hours, to automate manual processes, and to strengthen controls over employee timekeeping. On May 1, 2017 the College purchased a new time keeping system called "TimeClock Plus," (TCP).

All non-exempt, classified, and part-time employees use TCP and are required to log their time by clocking in and clocking out of the system. While exempt employees are not required to use TCP for tracking their working hours, they do utilize the system for requesting leave and to review/approve their employee's hours. Additionally, exempt employees use the system to track instances in which they work less than 40 hours a week. TCP allows detailed reporting on employee attendance, real-time processing, and improved controls which help to prevent employees from manipulating their working hours.

## **AUDIT OBJECTIVE**

The objective of the audit was to evaluate the adequacy and effectiveness of internal controls over South Texas College's Time Keeping System.

## **AUDIT SCOPE & METHODOLOGY**

The scope of the audit includes payroll processes, transactions, and records from May 1, 2017, (the implementation date of the new TimeClock Plus system) through December 31, 2017. To accomplish the audit objective, the auditors performed the following:

- Requested and reviewed the Human Resources Benefits and Payroll Manager responses to the internal control questionnaire;
- Requested and reviewed the Business Office Accounting Group Manager responses to the internal control questionnaire;
- Interviewed management and employees on the department's procedures and existing internal controls;
- Developed processes flowcharts from the Business Office and Human Resources related to their payroll activities;
- Obtained New Hire Process workflow diagrams from both areas performing payroll duties.
- Reviewed the Financial Manager's Handbook, the TimeClock Plus Manager/Supervisor and Employee Manuals in relation to their responsibilities for approving and reviewing their employee's timecards and leave request;
- Requested and reviewed written internal procedures for conducting daily activities for the payroll activity from both departments.

The audit generally conformed to guidelines set forth by the Institute of Internal Auditor's *Standards* and South Texas College's Policy 5460 *Internal Audit Function*.

## AUDIT RESULTS

### **Timekeeping System:**

The Business Office has implemented several procedures to assist Financial Managers and employees with adhering to the new system's requirements. For example, the Business Office provides weekly reports that include the following:

- Punch location detailed report;
- Pending time card verification exception summary report provided to both employees and supervisors; and
- Non-compliant employee and supervisor verification report

Additionally, the Business Office distributes a non-compliance report to Financial Managers on the 15<sup>th</sup> of the month that provides details on which supervisor/employees failed to complete a verification from the prior month's activity.



In order to verify compliance with the new timekeeping system, we randomly selected a sample of fifty (50) employees within the audit scope for testing and requested to review the related payroll support documentation. Based on testing we were able to verify the following:

- Employees had an approved notice of employment (NOE) or letter of appointment;
- Adequate documentation was maintained by the departments to support all time changes made to timecards (e.g. Time Adjustment forms);
- All overtime was properly authorized;
- Hours worked matched employee's timecards and that employee salaries agreed to their NOE or letter of appointment.

However, we identified 16 instances in which the manager/supervisor or the employee failed to timely (e.g. within 3 day after the end of pay week) verify their timecard. In such instance, TimeClock Plus procedures requires the financial manager/supervisor to print a hard copy timecard. Specifically, the TimeClock Plus Manager/Supervisor Manual states the following:

“Timecards are due 3 days after the end of the pay week. After the non-exempt employee has verified their timecard, the supervisor will then go in and review & verify the employee's timecard. If the employee did not or was not available to verify the timecard before the deadline, then the supervisor should print the timecard and it should be signed by both the employee and supervisor. This document must be kept for 4 years for non-grant funded employees and 10 years for grant funded employees.”

We followed up with each of the areas that we identified as being required to retain a hard copy of their employees' timecard. We found that in 12 out of 16 (75%) of the instances, the department was unable to demonstrate that they maintain a hard copy of the employees' timecards for each instance in which timely verification was not completed within the system.

**Recommendation:**

1. The Business Office should provide additional training to managers/supervisors related to the timekeeping system requirements, specifically related to the requirement to retain a hard copy employee timecard when either the employee or the supervisor fail to verify within the 3 days after the end of the pay week.

**Management Response:**

Accept audit recommendation as presented

1. The Business Office will continue to offer TimeClock Plus trainings to all employees and supervisors of the College (the payroll and human resources team conducted 79 trainings college-wide through 2017 and 2018) and emphasize the requirement to retain a hard copy of employee timecards.

Additional measures include non-compliance notifications sent to employees, supervisors, Financial Managers, and Vice Presidents on a regular basis.

**Responsible Individual:**

Comptroller

**Responsible Individual:**

Business Office Payroll and Position Control Accounting Group Mgr.

**Implementation Date:**

10/31/2018

**Separation of Duties:**

Establishing proper separation of duties requires that the job responsibilities related to modifying (e.g. adding/removing) employee files and the job duties associated with processing payroll information should be kept separate. No one employee should have the ability to make modifications to employee files and also have access to process payroll adjustments. Best practices require that employees with these separate job responsibilities work within different departments (e.g. Human Resources and Payroll). In order to reduce fraud risk associated to with payroll, it is critical that the College establish appropriate controls over separation of duties.

We interviewed Human Resources' employees responsible for making modifications to employee files. Similarly, we interviewed employees working at the Payroll Office to gain a better understanding of each of their job responsibilities. We requested a list of these employees' system access to Banner as well as their level of access to TimeClock Plus from the Business System Analyst and asked that the Business System Analyst provide details on what types of activities each level of access would grant to the end user.

Based on our review of the employees' system access we found that two (2) employees working in the Payroll Office held similar system access to Banner as the employees working within Human Resources. This access would allow them the opportunity to both modify employee files as well as make payroll adjustments. Each of the employees held Banner access to the following:

- PPAIDEN: BAN\_DEFAULT\_M
- PEAEMPL: BAN\_DEFAULT\_M

This access grants the user the ability to make changes to employee files within Banner. It is important to note that we did not identify any actual abuse of the employees' system access, only that they held access that would be incompatible with their current job responsibilities.

**Recommendation:**

2. Management should review employees' access to Banner and TimeClock Plus to ensure that access to those systems are appropriate given employees' job responsibilities and to ensure that no employees have access that would allow them to make changes to employee files and also allow them the to make payroll adjustments.

**Management Response:**

Accept audit recommendation as presented

2. The Business Office and Department of Human Resources are in the process of conducting a comprehensive review of all employees' banner access related to Finance and Human Resources payroll forms/processes. This review will be conducted on an annual basis.

The process will enhance the strong internal controls that are in place to detect and prevent unauthorized modifications to employee records.

**Responsible Individual:**

Comptroller

**Responsible Individual:**

Director of Human Resources

**Implementation Date:**

9/30/2018

### CONCLUSION

Overall it was determined that an adequate system of internal controls was established with respect to the Colleges Time Keeping System. Opportunities exist to strengthen internal controls by ensuring that both Financial Managers and employees timely verify their timecards and that hard copy timecards are printed, signed, and retained within the department in accordance with the TimeClock Plus Manager/Supervisor Manual. Lastly, employees' access to TimeClock Plus and Banner should be segregated based on employees' job responsibilities and employees should not have the ability to make changes to employee files while also having the ability to make payroll adjustments.



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Khalil M. Abdullah CPA, CIA, CGAP, MAcc  
Internal Auditor

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10/4/2018

Date