

TAX ABATEMENT AGREEMENT BETWEEN HIDALGO COUNTY, TEXAS

AND

WEST WILLACY WINDPOWER, LLC

This Tax Abatement Agreement (“**Agreement**”) is entered into effective as of December 21, 2018 by and between Hidalgo County, a political subdivision of the State of Texas (“**County**”) duly acting herein by and through its duly authorized representatives, pursuant to an order dated December 18, 2018, by the Hidalgo County Commissioners Court (“**Commissioners Court**”), and West Willacy Windpower, LLC, a Delaware limited liability company (“**Company**”).

WITNESSETH:

WHEREAS, on the 18th day of December, 2018, County adopted Guidelines and Criteria for Granting Tax Abatements in Hidalgo County, Texas, which are attached hereto as **Exhibit “A”** and incorporated herein for all purposes (the “**Guidelines and Criteria**”); and

WHEREAS, the Land (as defined below) is within an area designated as an Enterprise Zone under the Texas Enterprise Zone Act, Subchapter C, V.A.T.C., Texas Government Code §2303 et seq., as amended, which area is therefore designated as a reinvestment zone (“**Zone**”), by the Property Redevelopment and Tax Abatement Act, Subchapter C, V.A.T.C., Texas Tax Code §312 et seq., as amended (“**Act**”); and

WHEREAS, the Guidelines and Criteria govern tax abatement agreements to be entered into by County under the Act; and

WHEREAS, in order to maintain and enhance the commercial and industrial economic and employment base of County, it is in the best interest of County to enter into this Agreement in accordance with said Act; and

WHEREAS, Company intends to develop an approximately two hundred megawatt wind power project in Hidalgo, Willacy and Cameron Counties, Texas (the “**Monte Alto Wind Farm**”, and the portion of the Monte Alto Wind Farm located in Hidalgo County, the “**Project**”) on the property designated on the map included in Exhibit “C”, and has requested tax abatement in accordance with the provisions of the Guidelines and Criteria applicable to a Wind Farm Project (as such term is used in the Guidelines and Criteria); and

WHEREAS, based on information presented by the Company, Commissioners Court finds that the contemplated use of the Land, the contemplated improvements Company will construct on the Land, which will require expenditures by Company in the minimum amount as set forth in this Agreement and projected expenditures by Company in the County in excess of two hundred million dollars, and the other terms hereof are consistent with encouraging development of the Zone in accordance with the purposes for its creation and are in compliance with the Act; and

WHEREAS, Company has submitted evidence to the County that the economic life of the Facility and eligible property exceeds the duration of the proposed tax abatement, and based on such evidence and the representations contained herein Commissioners Court has determined, in accordance with the Guidelines and Criteria that the economic life of the Facility and eligible property exceeds the duration of the tax abatement granted herein; and

WHEREAS, Commissioners Court has determined that it would be in the best interest of County to enter into an agreement with Company, pursuant to the Act, to abate a portion of the value of the improvements Company constructs on the Land, as well as a portion of the value of all personal property located on the Land and used in connection with operations on the Land that is eligible for abatement under the Guidelines and Criteria, excluding the Land itself (such improvements and personal property eligible for abatement hereunder are hereafter referred to as the “**Facility**,” as described more specifically in **Exhibit “D”**).

NOW, THEREFORE, County for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged (which consideration includes the attraction of major investment in the Zone and the expansion of primary employment that contributes to the economic development of County and the enhancement of the tax base in County), and Company for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged (which consideration includes the tax abatement set forth herein, as authorized by the Act), do hereby contract, covenant and agree as follows:

ARTICLE I

GENERAL PROVISIONS

- 1.01 As used in this Agreement, the following terms shall have the meanings set out below:
- (a) “Abatement Period” has the meaning set forth in section 3.03 below.
 - (b) “Act” has the meaning set forth in the second recital above.
 - (c) “Agreement” has the meaning set forth in the introductory paragraph above.
 - (d) “Commissioners Court” has the meaning set forth in the introductory paragraph above.
 - (e) “Company” has the meaning set forth in the introductory paragraph above.
 - (f) “County” has the meaning set forth in the introductory paragraph above.
 - (g) “Cure Period” has the meaning set forth in section 5.03 below.
 - (h) “Estimated value of the abatement” has the meaning set forth in section 3.04 below.
 - (i) “Facility” has the meaning set forth in the eighth recital above.

- (j) “Guidelines and Criteria” has the meaning set forth in the first recital above.
- (k) “Land” has the meaning set forth in section 1.02 below.
- (l) “Project” has the meaning set forth in the fifth recital above.
- (m) “Tax Abatement Percentage” has the meaning set forth in section 3.04 below.
- (n) “Wind Farm” has the meaning set forth in the fifth recital above.
- (o) “Zone” has the meaning set forth in the second recital above.

Terms defined in the Guidelines and Criteria and used herein shall have the meaning given such terms in the Guidelines and Criteria unless otherwise defined herein.

1.02 Company represents and warrants that (i) Company is a Delaware limited liability company, in good standing with the state of organization; (ii) Company is the Owner (as such term is defined in the Guidelines and Criteria) of the Facility and (iii) Company has, or will have prior to commencement of the Abatement Period, long-term lease interests and easement rights in the land on which the Facility will be located (“**Land**”), which is legally described in **Exhibit “B”**, which is attached hereto and is made a part hereof for all purposes.

1.03 Notwithstanding anything to the contrary contained herein, the abatement granted in this Agreement only applies to the abatement of newly created value (as defined in the Guidelines and Criteria) resulting from improvements after the date hereof that Company makes to the Land and eligible personal property Company purchases and installs or builds upon the Land in constructing the Facility in accordance with the terms hereof, and excludes the value of the Land. The Project, the Facility and the Land are located within the Zone and are within County’s taxing jurisdiction.

1.04 Company understands that, in accordance with the Guidelines and Criteria, tax abatements for wind farm projects are granted by County based on the Capital Cost of the improvements made with respect to the Project on or after the date of execution of this Agreement by Company with respect to this Project and will vary based on the Newly Created Value as may be reasonably determined by the Hidalgo County Appraisal District and County. Company also understands that only Capital Cost attributable to the portion of Monte Alto Wind Farm that is within the County may be used to satisfy the requirements herein. The County Auditor’s determination as to all such attributions shall be final.

1.05 Company represents and warrants that the Land is not included in an improvement project financed either in whole or in part with tax increment bonds or notes.

1.06 This Agreement is entered into subject to the rights of holders of outstanding County bonds.

1.07 Company represents and warrants that no interest in the Land or the Facility is presently owned or leased by a member of Commissioners Court, and Company agrees that it shall not sell or lease an interest in the Land or the Facility to any County officer or employee, or any member

of the governing body of any taxing unit joining in or adopting this Agreement, until the earlier of the expiration of the Abatement Period or the termination of this Agreement.

1.08 Company represents and warrants as follows:

- (a) with respect to the Project, Company has not executed or received, as of the date of this Agreement, a tax abatement or other economic development incentive or agreement with or from any government body other than County;
- (b) Company filed the application for tax abatement with County prior to commencement of construction as defined in Section IV.A.(1)(a)-(f) of the Guidelines and Criteria and that such commencement has not yet occurred;
- (c) Company is duly qualified to conduct business in Texas, including, without limitation, building the improvements and operating the Facility;
- (d) this Agreement constitutes the valid and enforceable obligation of Company in accordance with its terms; and
- (e) Company has all necessary right, title, license and authority to enter into this Agreement and the execution and performance of this Agreement by Company have been duly authorized by all necessary laws, resolutions and corporate or other entity action.

1.09 Company has provided tax certificates verifying that no taxes are past due with respect to all real property owned by Company within the County and agrees not to allow any taxes on property it owns within the Zone to become past due, subject only to timely appeals during the pendency of such appeal, during the term hereof. The County is not requiring Company to produce tax certificates with respect to real property owned by other parties within the Zone and tax abatement is not being granted to any other parties hereunder.

1.10 Company acknowledges that the Base Year Value (as defined in the Guidelines and Criteria) is determined by the year in which this Agreement is executed, and not the year in which it is approved by Commissioners Court, and that if this Agreement is not executed by all parties hereto and delivered to the County no later than December 31, 2018, then 2018 will not be the base year for determining the Base Year Value.

1.11 The following exhibits are attached hereto and made a part hereof:

- Exhibit A Guidelines and Criteria
- Exhibit B Legal Description of Land
- Exhibit C Map of Project
- Exhibit D List of Property Improvements
- Exhibit E Tax Abatement Chart

ARTICLE II

IMPROVEMENTS; JOBS

2.01 (a) Company agrees to construct or cause to be constructed an Eligible Facility (as defined in the Guidelines and Criteria) on the Land, and to acquire, construct, or cause to be constructed real property improvements, machinery, and equipment necessary to operate the Facility.

(b) The cost of the personal property improvements Company proposes to make on the Land and that are eligible for abatement under this Agreement in accordance with the Guidelines and Criteria (which personal property is described in the definition of the Facility in Exhibit D hereto) shall be approximately One Hundred Seventy Two Million Dollars (\$172,000,000), at least One Hundred Seventy Two Million Dollars (\$172,000,000) of which is expected to be listed on Hidalgo County Appraisal District's tax rolls. For the avoidance of doubt, Company agrees that, at a minimum, Capital Costs (as that term is defined in the Guidelines and Criteria) of the Facility will exceed One Hundred Million Dollars (\$100,000,000) and qualifies as a Wind Farm Project (as such term is defined in the Guidelines and Criteria). The approximate location of the Facility is reflected on a preliminary site plan attached hereto as **Exhibit "C"** and made a part hereof for all purposes. Company reserves the right to revise the attached preliminary site plan as Company deems necessary and appropriate.

(c) Company represents and warrants that the Facility is expected to create ten (10) new Jobs (as defined in Article II of the Guidelines and Criteria). Company currently offers, and agrees to maintain during the Abatement Period, a competitive compensation and benefits package with respect to all jobs at the Facility, in accordance with wind energy industry practices.

2.02 Company shall submit, which may be through use of an agent, reports to County in accordance with Section IX.B. of the Guidelines and Criteria.

2.03 Company covenants and agrees that the Facility shall be a renewable energy facility. Attached hereto as **Exhibit "D"** is a schedule of improvements, equipment, machinery, and eligible personal property that Company will construct or purchase and install to develop the Facility, subject to improvements to facilitate power storage, and such non-substantive changes as Company may determine in its sole discretion are necessary during the course of construction of the Facility on the Land. Company agrees to continuously operate the Facility on the Land during the Abatement Period; provided, however, that failure to operate continuously due to a contingency, cause, action, or event described in Sections 5.02 (1), (4), (5), or 5.06 shall not constitute a breach of this Agreement except as may be provided in those provisions.

2.04 Company covenants and agrees to begin constructing the Facility in the Zone on or before December 31, 2019.

2.05 Company represents that the economic life of the Facility and eligible property will exceed ten years. Based on such representation and evidence submitted by Company to the

County, the County determines in accordance with the Guidelines and Criteria that the economic life of the Facility and eligible property exceeds ten years.

ARTICLE III

PROPERTY SUBJECT TO TAX ABATEMENT

RATE OF TAX ABATEMENT

TERM OF TAX ABATEMENT AND RELATED PROVISIONS

3.01 Subject to the terms of this Agreement, County shall abate Company's County ad valorem taxes within the Zone in each year of the Abatement Period in an amount equal to the Tax Abatement Percentage (as defined below) applicable for such year multiplied by the Facility's newly created value determined in accordance with the Guidelines and Criteria, but only to the extent that such newly created value is reflected on County's tax rolls in each such year.

3.02 In accordance with the Guidelines and Criteria, the applicable Tax Abatement Percentage under this Agreement shall be determined pursuant to Section 3.04 below based on the Newly Created Value, and shall be fixed by the parties through addendums to this Agreement after evidence of the Capital Cost of the improvements constructed or installed by the Company at the Facility is certified by the Company and approved by County and after the Newly Created Value for the year is determined by the Appraisal District and the County Auditor. Company agrees a list of the tax accounts to which the tax abatement will apply once those accounts are determined with the Appraisal District will also be added through an addendum to this Agreement.

3.03 The abatement of ad valorem taxes shall be for a period (the "**Abatement Period**") that shall

(a) commence on the commencement of the first ad valorem tax year after each of the following events have occurred:

(i) construction of the Facility has been completed,

(ii) Company has provided documentation confirming the Capital Cost of the Project and the number of Jobs created;

(iii) the Capital Cost meets or exceeds the minimum amount required by the Guidelines and Criteria for granting tax abatements to a Wind Farm Project; and

(iv) the Newly Created Value has been ascertained from the tax rolls of the Hidalgo County Appraisal District, and

(b) end on the earlier of:

- (i) ten (10) years following such commencement,
- (ii) December 31, 2031,
- (iii) the occurrence of any event which would terminate this Agreement by operation of law,
- (iv) Company's breach of any provision of this Agreement, which breach is not cured within the Cure Period, (as defined below), or
- (v) Company's failure to comply with any provision of the Guidelines and Criteria as discussed in Article V of this Agreement.

3.04 The percent of increase in Newly Created Value (as reflected in the tax rolls of the Hidalgo County Appraisal District) to be abated (the "**Tax Abatement Percentage**") is determined based on the chart set forth in **Exhibit "E"** attached hereto, and may vary each year of the Abatement Period. The estimated value of the abatement (as such term is defined below), based on the Company's good faith estimate of how the Hidalgo County Appraisal District will value the eligible improvements, is Seven Million Sixty Nine Thousand Three Hundred Ninety-Two Dollars and Fifty-Four Cents (\$7,069,392.54.00). "**Estimated value of the abatement**" means the additional property taxes that would be due to the County from the Company but for the tax abatement granted in this Agreement.

3.05 This Agreement does not change any right of Company to protest or contest, in accordance with applicable law, any and all appraisals of, or assessments of taxes on, the Facility, and the tax abatement provided for herein for such Facility shall be applied to the amount of taxes finally determined as a result of such protest or contest, to be due for such property. Any reduction in the appraised value may, however, result in a reduction in the applicable Tax Abatement Percentage (and possibly elimination of tax abatement) if the change results in the Newly Created Value decreasing below the minimum required for the previously determined Tax Abatement Percentage.

3.06 Company acknowledges that, in accordance with the Guidelines and Criteria, it will not receive tax abatement for any year of the Abatement Period for which it fails to timely provide all required reports or information to the County and the County Auditor (including the March 1 deadline in Section IX.B of the Guidelines and Criteria), and that subsequent delivery of such information, while it may cure the breach of the Agreement, will not result in the tax abatement being granted for the applicable year.

ARTICLE IV

FILING OF PLANS, CERTIFICATION OF COSTS, COUNTY ACCESS TO PREMISES AND USE OF PREMISES AND IMPROVEMENTS

4.01 Company shall file construction plans for the Facility with County by December 1, 2019. The construction plans as filed shall be deemed to be incorporated herein by reference and made

a part hereof for all purposes, and the Facility shall be completed in substantial conformity to said plans. Company may elect to amend or modify the construction plans, provided the amendments or modifications comply with all applicable codes, rules and ordinances, and are not otherwise contrary to this Agreement.

4.02 Upon completion of the Facility, Company shall file (i) “as built” construction plans with County, which plans shall detail improvements (which shall be certified by the architect if Company uses an architect) on the Land, including purchases of personal property and related expenditures made to construct the Facility, (ii) the manufacturer’s certificate of completion with respect to the manufacture of the wind turbines installed at the Facility and (iii) the general contractor’s certification as to the completion of construction of the Facility (including the detail specified above). At the time of filing the as built construction plans, Company shall also provide County with reports as required by Section IX.B. of the Guidelines and Criteria. On or before January 31, of each year of the Abatement Period (and the year immediately following the end thereof), Company shall provide County with reports supporting job creation as of December 31 of each year of the Abatement Period, as required by Section IX.B. of the Guidelines and Criteria. On an annual basis, Company shall also provide County a detailed list of Company’s eligible personal property at the Facility and the estimated value of each item.

4.04 Company agrees to supply audited reports to the County and the Hidalgo County Appraisal District to establish the construction cost of improvements constructed pursuant to this Agreement and/or the jobs created.

4.05 Company represents that it anticipates that appropriate personnel to escort County personnel will not always be available onsite to allow safe access to the Facility for inspections. In order to facilitate inspections, Company agrees to provide County employees and/or designated representatives of the County escorted access to the Facility during the term of this Agreement, including the Abatement Period, with at least two (2) business days’ advanced notice, to inspect the Facility and the Land to determine if Company is in compliance with the terms and conditions of the Agreement. Upon completion of construction, County has the right to annually evaluate the Facility to ensure compliance with the Agreement. Company shall provide County with an escort for all such inspections.

ARTICLE V

BREACH

5.01 In the event Company fails to commence constructing the Facility in the Zone on or before December 31, 2019, this Agreement shall terminate effective as of the original date of this Agreement and County shall be entitled to recapture and collect payment of all ad valorem taxes abated under this Agreement by any and all means allowed by law, and as provided herein.

5.02 In the event the Facility is completed and begins operation, and Company:

1. voluntarily ceases to operate the Facility for a continuous period of eighteen (18) months;

2. allows ad valorem taxes owed to County to become delinquent;
3. relocates the Facility or the job creating activity outside the Zone;
4. breaches or fails to comply with any material term, condition, or representation contained in this Agreement; or
5. uses or allows the use of the Facility for any purpose not related to the generation, storage and/or transmission of renewable energy for a period greater than 180 days in any calendar year of the Abatement Period,

County may elect to terminate this Agreement and recapture abated taxes in accordance with Section 5.05 of this Agreement and the Guidelines and Criteria, unless such breach is cured within the Cure Period, as defined in Section 5.03. Company shall pay recaptured taxes to County within sixty (60) days from the date the Agreement terminates.

5.03 Should County determine that Company has breached this Agreement or the Guidelines and Criteria, County shall notify Company in writing via certified or registered mail to the following address:

West Willacy Windpower, LLC
11455 El Camino Real, Suite 160
San Diego, CA 92130
Attn: Milton Howard
Email: MHoward@terra-gen.com
Phone: 858-764-3754
Mobile: 713-703-7044
Fax: 858-764-3721

or to such other address, or to the attention of such person, as Company may, from time to time, designate in writing. If such breach is not cured within sixty (60) days from the date of such notice (the “**Cure Period**”), then this Agreement may be terminated by order of the Commissioners Court.

5.04 If Company and County disagree as to whether a breach has occurred or been timely cured, venue for an action to determine Company’s and County’s rights will lie in Hidalgo County, Texas. The period for Company to cure any breach of this Agreement shall be tolled from the filing of any official action to resolve questions arising from an attempt at cure to the final resolution of any such action.

5.05 If County terminates this Agreement, County shall have the right to recapture a percentage of the total taxes previously abated in accordance with the recapture schedule in Section VIII of the Guidelines and Criteria.

5.06 Notwithstanding any other provision of this Agreement, County may not terminate this Agreement if Company’s breach is caused by force majeure and Company cures such breach within ninety (90) days following the end of the force majeure event. Force majeure means any contingency or cause beyond Company’s control, including, without limitation, acts of God or

public enemy, war, sabotage, vandalism, riot, civil commotion, insurrection, governmental acts, fires, storms, explosions, floods, tornadoes, strikes, and broad-based extraordinary economic events.

ARTICLE VI

SALE, ASSIGNMENT OR LEASE OF PROPERTY

6.01 It is contemplated by the parties hereto that the Company's purpose for making the improvements set forth in Article II is for the creation and operation of a renewable energy generation project.

6.02 In accordance with Section IX.C. of the Guidelines and Criteria, Company shall not have the right, without the written consent of County, to assign all or part of its interest in the Land, the Project, or this Agreement and maintain the tax abatement hereunder. Such consent shall not be unreasonably withheld. It shall be deemed reasonable for County to withhold consent with respect to any party that is delinquent in the payment of any taxes to County. Notwithstanding the foregoing, Company shall have the right without the consent of the County to collaterally assign its interest in the Land, Project, or this Agreement in connection with any financing of the Project; provided (i) such assignee is not delinquent in the payment of any taxes to the County, (ii) the County is given prompt notice of such assignment and (iii) Company remains liable under this Agreement.

ARTICLE VII

COMMISSIONERS COURT AUTHORIZATION

7.01 This Agreement was authorized by order of the Commissioners Court dated the 18th day of December, 2018, authorizing the County Judge to execute this Agreement on behalf of the County.

ARTICLE VIII

SEVERABILITY

8.01 In the event any section, subsection, paragraph, subparagraph, sentence, phrase or word herein is held invalid, illegal, or unenforceable, 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 section, subsection, paragraph, subparagraph, sentence, phrase, and word. In such event there shall be substituted for such deleted provision as similar in terms and in effect to such deleted provision as may be valid, legal, and enforceable.

ARTICLE IX

APPLICABLE LAW

9.01 This Agreement shall be construed under the laws of the State of Texas and is performable in Hidalgo County, Texas. Venue for any action related to this Agreement shall be in Hidalgo County, Texas.

ARTICLE X

COUNTERPART EXECUTION

10.01 This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which in the aggregate shall constitute one agreement.

[Signature page follows.]

EXECUTED and made effective as of this the 21st day of December, 2018.

HIDALGO COUNTY, TEXAS

ATTEST:

By: _____
Name: Ramon Garcia
Title: Hidalgo County Judge

Arturo Guajardo, Jr.
County Clerk

APPROVED AS TO FORM FOR COUNTY:

Atlas, Hall & Rodriguez, L.L.P

By: _____
Stephen L. Crain

WEST WILLACY WINDPOWER, LLC

By: _____
Name: _____
Title: _____

Exhibit A

2018 TAX ABATEMENT GUIDELINES AND CRITERIA

(See attached 27 pages)

Exhibit B

The Land

Exhibit C

Map

Exhibit D

Schedule of Building, Improvements, and Eligible Personal Property for the New Facility

- 61 Wind Turbines;
- 61 Wind Turbine Foundations

Exhibit E

Wind Farm Tax Abatement Chart

(See attached page)