

**Tax Abatement Agreement
between
Western Texas College and KCE
TX 13, LLC**

**State of Texas §
 §
County of Scurry §**

This Tax Abatement Agreement ("Agreement") is made and entered into by and between **Western Texas College (WTC)**, acting by and through its duly elected officers, and **KCE TX 13, LLC** a Delaware Limited Liability Company ("KCE TX 13") as owner of the Eligible Property (as hereinafter defined) to be located on the tract of land within the Dermott Electricity Area Reinvestment Zones shown on Exhibit A to this Agreement.

Recitals

WHEREAS, the taxing unit, Scurry County, has designated by order a reinvestment zone eligible for the abatement of real property ad valorem taxes;

WHEREAS, KCE TX 13 owns or will own real property located within the taxing jurisdiction of the taxing unit and within the aforementioned reinvestment zone, to which KCE TX 13 intends to make improvements as more specifically described herein;

WHEREAS, the taxing unit finds that the terms of this Agreement, the tax abatement and the property subject to this Agreement meet the **Western Texas College Guidelines and Criteria for Granting Tax Abatements** now in effect; and

WHEREAS, the taxing unit desires to abate certain of the ad valorem taxes assessed against the real property.

I. Authorization

This Agreement is authorized by Chapter 312 of the Texas Tax Code as it exists on the effective date of this Agreement and by the **Western Texas College Guidelines for Granting Tax Abatements** as they exist on the effective date of this Agreement.

II. Definitions

As used in this Agreement, the following terms shall have the meaning set forth below:

- A. "Abatement" means the full or partial exemption from ad valorem taxes of certain property in a Reinvestment Zone.

- B. "Certified Appraised Value" means the appraised value, for property tax purposes, of the property within the Reinvestment Zone as certified by Scurry County on each January 1st

- C. "Eligible Property" means property eligible for Abatement under the Western Texas College Guidelines and Criteria for Granting Tax Abatements, including 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 Western Texas College Guidelines and Criteria for Granting Tax Abatements. 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 located on the Real Property at any time before the period covered by the Agreement is not eligible for Abatement. Tangible personal property eligible for Abatement shall not include inventory or supplies.
- D. "Improvements" mean the Eligible Property meeting the definition for Improvements provided by Section 1.04, 3A of the Texas Tax Code and includes, but is not limited to, any building, structure, or fixture erected on or affixed to the land.
- E. "Owner" means KCE TX 13, LLC the entity which owns the real property for which abatement is being granted, and any assignee or successor in interest of KCE TX 13, LLC means and includes Owner.
- F. "Real Property" means Eligible Property meeting the description for Real Property provided by Chapter 1 of the Texas Tax Code.
- G. "Reinvestment Zone" means that certain Reinvestment Zone, as that term is defined by Chapter 312 of the Texas Tax Code, created by Scurry County by that certain resolution dated January 19, 2021 duly passed by the Scurry County Commissioners Court, a copy of which is attached hereto as Exhibit B.
- H. "Site" means the land in the Reinvestment Zone on which Owner makes the Improvements for which the Abatement is granted hereunder.

III. Improvements

Owner agrees to make the following Improvements in consideration for the Abatement set forth in Section IV of this Agreement:

- A. Owner desires to use commercially reasonable efforts to finance and construct a 50 MW utility scale battery energy storage system on the Site located in the Reinvestment Zone. Improvements will have an estimated initial market value of approximately twenty-seven million dollars (\$27,000,000), although the actual amount will depend upon annual appraisals and specific decisions to be made by Owner in the future.
- B. Improvements also shall include any other property in the Reinvestment Zone meeting the definition of "Eligible Property" that will be used at the site to support the battery storage facility and perform other functions related to the distribution, and transmission of electric power. WTC agrees that the battery enclosures, batteries, transmission lines, substations, and other related materials affixed to the land are fixtures that will constitute Improvements under this Agreement.
- C. Owner contemplates that construction of the Improvements will begin by June 30, 2021 or earlier and shall be completed by April 30, 2022. WTC recognizes that the above dates are "best estimates" at the time of this Agreement.

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

- D. Unless terminated earlier as provided elsewhere herein, this Agreement shall be effective January 1st, 2022, following execution of this Agreement, and shall continue in effect until December 31st, 2031.

- B. WTC and Owner specifically agree and acknowledge that the property in the Reinvestment Zone shall be taxable in the following ways before and during the term of this Agreement.**
- 1. Property not eligible for Abatement, if any, shall be fully taxable;**
 - 2. The Certified Appraised Value of property existing in the Reinvestment Zone prior to execution of this Agreement shall be fully taxable for the full term of this Agreement; and**
 - 3. One Hundred Percent (100%) of property taxes levied on the Certified Appraised Value of Eligible Property shall be abated as set forth in Article IV (C) (1) below.**
- C. WTC and Owner specifically agree and acknowledge that this Agreement shall provide for tax Abatement, under the conditions set forth herein, of all WTC property taxes as follows:**
- 1. Beginning January 1st, 2022, and ending upon the conclusion of ten (10) full calendar years, Abatement is granted as follows:**
 - a. 100% of property taxes on the Certified Appraised Value of all Improvements constructed in the Reinvestment Zone (and actually in place in the Reinvestment Zone) are abated; and**
 - b. 100% of property taxes on the Certified Appraised Value of any and all otherwise Eligible Property, including but not limited to eligible personal property owned by Owner and located in the Reinvestment Zone, are abated:**
 - 2. The base year value for the proposed Improvements is zero.**
- D. A portion or all of the Improvements may be eligible for complete or partial exemption from ad valorem taxes as a result of existing law or future legislation. This Agreement is not to be construed as evidence that any such exemptions shall not apply to the Improvements.**
- E. As additional consideration for this Abatement, Owner agrees to pay to WTC the following:**
- 1. Annually for the term of the abatement (10 years), five hundred ten dollars (\$510) per installed megawatt storage capacity within the reinvestment zone; the first such payment shall be due on October 31st, 2022.**
- F. Owner will demonstrate, in a form acceptable to WTC, the actual installed megawatt capacity within the reinvestment zone on or before the beginning of the abatement period.**

V. Representations

WTC and the Owner make the following representations:

- A. Owner represents and agrees that if constructed (i) Owner, its successors and/or assigns, will have a taxable interest with respect to Improvements to be placed on the property; (ii) the proposed Improvements will be constructed by the Owner, its successors and/or assigns and/or its contractors or subcontractors, (iii) use of the property in the Reinvestment Zone is limited to that which is consistent with the general purpose of encouraging development or**

redevelopment of the area during the period of the Abatement, and (iv) all representations made in the Application for the Abatement are true and correct to the best of Owner's knowledge.

- B. WTC represents that (i) the Scurry County Reinvestment Zone and this Agreement have been created in accordance with Chapter 312 of the Texas Tax Code and the Western Texas College Guidelines for Granting Tax Abatements as both exist on the effective date of this Agreement; (ii) this agreement has been executed in accordance with Chapter 312 of the Texas Tax Code, WTC's Guidelines for Granting Tax Abatements and other relevant Texas law; and (iii) the property within Scurry County Reinvestment Zone is located within the legal boundaries of the County; and (iv) the County has made and will continue to make all required filings with the Office of the Comptroller of Public Accounts and other governmental entities concerning Reinvestment Zone and this Agreement.

VI. Access to and Inspection of Property by County Employees

- A. Owner shall allow WTC's employee's access to the Improvements for the purpose of inspecting any Improvements erected to ensure that the same are completed and maintained in accordance with the specifications of Section III of this Agreement and to ascertain compliance with the terms and conditions of this Agreement. All such inspections shall be made only after giving the Owner seventy two (72) 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 the Owner in attendance in accordance with all applicable safety standards.
- B. Owner shall, within ninety (90) days preceding each April 15th during the term hereof, certify annually to WTC its compliance with this Agreement by providing written testament of the same to WTC President.

VII. Default

- A. WTC may declare a default if the Owner violates any material term of this Agreement. If WTC declares a default of this Agreement, this Agreement shall terminate, after notice and opportunity to cure as provided below, or WTC may modify the Agreement upon mutual agreement with Owner. If Owner believes that such termination was improper, Owner may file suit in the proper court challenging such termination.

WTC shall not declare a default when the circumstances are the result of 'force majeure.' 'Force majeure' means any contingency or cause beyond the reasonable control of Owner including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omissions of Owner), fires, tornadoes, explosions or floods, and strikes.

- B. WTC shall notify the Owner of any default in writing in the manner prescribed herein. The notice shall specify the basis for the declaration of default, and the Owner shall have ninety (90) days from the date of such notice to cure any default, except that where fulfillment of any obligation requires activity over a period of time, performance shall be commenced within

ninety (90) days after the receipt of notice, and such performance shall be diligently continued until the default is cured. KCE TX 13 shall maintain the right to cure any defect, including any defect caused by an assignee of KCE TX 13, and WTC shall provide notice of default to KCE TX 13 when any such notice is provided to Owner.

- C. An agreement made under Sections 312.205 (a)(4) and 312.205 (a)(7) of the Texas Tax Code must: "provide for recapturing property tax revenue lost as a result of the Agreement if the owner of the property fails to make the Improvements or repairs as provided by the Agreement; and provide that the governing body of the municipality may cancel or modify the Agreement if the property owner fails to comply with the Agreement", subject to the above provisions regarding notice and right to cure. Therefore, such rights and remedies as provided in the referenced Texas Tax Code are hereby incorporated herein.
- D. Cancellation or modification of the Agreement and/or recapture of property taxes, as appropriate under Section 312.205 of the Texas Tax Code, along with any reasonably incurred costs and fees, shall be the WTC's sole remedy in the event Owner fails to make the specified Improvements or take other action required by this Agreement.
- E. 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 WTC. FAILURE TO CURE THIS DEFAULT WITHIN NINETY DAYS OF NOTICE OR OTHERWISE CURE THE DEFAULT AS PROVIDED BY THE AGREEMENT SHALL RESULT IN TERMINATION OF THE TAX ABATEMENT AGREEMENT AND, IF THE DEFAULT INVOLVES FAILURE TO MAKE IMPROVEMENTS UNDER THE AGREEMENT, 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 the Owner to comply with any order, rule, statute or regulation of the County or the State of Texas.

IX. Assignment of Agreement

The parties agree that this Agreement may be assigned, in whole or in part, by Owner, to one or more Assignees, provided such assignment shall not be effective until twenty (20) days after Owner provides WTC with written notice of any such assignment. 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.

X. Notice

All notices shall be in writing and mailed by certified or registered mail. Any notice of communications shall be deemed to be received three (3) days after the date of deposit in the United States mail. Unless otherwise provided in this Agreement, all notices shall be mailed to the following addresses:

To the Owner:	To the County:
KCE TX 13, LLC	Western Texas College
Key Capture Energy; Attn: Legal Dept	President or CFO
25 Monroe, St, Ste 300	6200 College Avenue
Albany, NY 12210	Snyder, Texas 79549

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

XI. Severability

In the event any section or other part of this agreement is held invalid, illegal, 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 section or other part. In the event that (i) the term or amount 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 overbroad, and for the portion of the term of the Abatement not deemed excessive.

XII. Applicable Law

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

XIII. Amendment

Except as otherwise provided herein, this Agreement may be modified by the parties hereto upon mutual 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. WTC acknowledges that, at the request of Owner, this Agreement may be deferred, subject to WTC approval, for a period not to exceed eighteen (18) months. Such approval from WTC for the deferral shall not be unreasonably withheld. A deferral under this Agreement will not extend the abatement period more than ten (10) years.

XIV. Dispute Resolution

WTC and the Owner may mutually agree to attempt to resolve any dispute arising under this contract through an alternative dispute resolution procedure under the Texas Alternative Dispute Resolution Procedures Act, Chapter 154, Texas Civil Practice and Remedies Code.

XV. Entire Agreement

This Agreement contains the entire and integrated Tax Abatement Agreement between WTC and Owner, and supersedes 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 Scurry County labor, services and supplies purchased from Scurry County businesses in the course of performing under this Agreement, as is further described in the Local Spending Plan attached to this Agreement as Exhibit C. 2

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by WTC as authorized by Western Texas College Board of Trustees on April ____, 2021 and by the Owner on April ____, 2021 and is effective upon the execution of both parties hereto.

ATTEST/SEAL:

Western Texas College

Owner: KCE TX 13, LLC

By: _____

By: _____

Printed Name: Eddie Peterson
Title: Vice-President, Board of
Trustees

Printed Name:

Attest:

Executed by Western Texas College, _____ on the __ day of April,
2021

Melanie Schwertner, WTC

Exhibit A

Project Area in Reinvestment Zone

All of the West One-half of the Northwest Quarter (W/2 NW/4) of Section No. 437 Block No. 97, of the H&TC Ry. Co. Survey, Patent Vol. 40-B, No. 36, Scurry County, Texas containing 81.16 acres, more or less.

Exhibit B

ORDER DESIGNATING REINVESTMENT ZONE

Co Clerk
16:05

M Appleton Scurry Co Clerk
JAN 19 2021 16:06

STATE OF TEXAS

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COUNTY OF SCURRY

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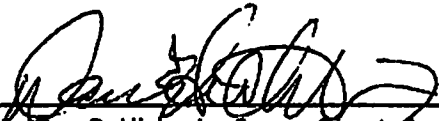
ORDER DESIGNATING REINVESTMENT ZONE

WHEREAS, Notice of a proposed Designation of a Reinvestment Zone was published in accordance with the Texas Tax Code and whereas Scurry County desires to create a Reinvestment Zone in Scurry County.

It is **HEREBY ORDERED** that the County designates the property located in Scurry County having the legal description attached to the Order as Exhibit "A" as Dermott Electricity Area Reinvestment Zone under the Scurry County Guidelines and Criteria for Granting Tax Abatements in Reinvestment Zones, having determined that the designation will contribute to the retention of expansion of primary employment and will attract major investment in the zone that will benefit the zone and will contribute to the economic development of the County; and

That the County declares eligible for property tax abatement all eligible property now or hereafter located in the Dermott Electricity Area Reinvestment Zone as authorized by the Scurry County Guidelines and Criteria for Granting Tax Abatements in Reinvestment Zones and Chapter 312 of the Texas Tax Code.

Passed and approved at the Scurry County Commissioners' Court meeting, at which a quorum was present on the 19th day of January, 2021.

By: 
Name: Dan R. Hicks, Jr., Scurry County Judge

Attest:


Melody Appleton, County Clerk

Exhibit "A"

DERMOTT ELECTRICITY AREA
REINVESTMENT ZONE

All of the West One-half of the Northwest Quarter (W/2 NW/4) of Section No. 437 Block No. 97, of the H&TC Ry. Co. Survey, Patent Vol. 40-B, No. 36, Scurry County, Texas, containing 81.16 acres, more or less.

Exhibit C
LOCAL SPENDING PLAN

- A. In connection with the construction and operation of the Improvements in Scurry County (the "Project"), KCE TX 13, LLC ("Owner") and the Owner's primary contractor(s) ("Primary Contractor(s)") responsible for overseeing construction and/or operation of the Improvements will use commercially reasonable efforts to use services, materials, and supplies purchased from Scurry County individuals and businesses, provided that nothing in this paragraph shall require Owner or the Primary Contractor(s) to use services, materials and supplies provided by Scurry County residents.**
- B. In filling employment vacancies in connection with the Project, Owner and the Primary Contractor(s) will use commercially reasonable efforts to use Scurry County labor, provided that nothing in this paragraph shall require Owner or the Primary Contractor(s) to employ Scurry County residents.**
- C. In no event shall Owner or the Primary Contractor(s) discriminate against Scurry County residents in employment or in the purchase of goods and services.**
- D. Owner or the Primary Contractor(s) shall designate a Coordinator of Local Hiring and Services who will act as a liaison between all contractors and any individual or business residing in Scurry County who is interested in obtaining information about (1) employment, or (2) commercial services or supplies expected to be purchased by a contractor.**
- E. Owner or the Prime Contractor shall hold a job and contracting information session prior to beginning physical construction of the project at which information will be provided regarding the construction and hiring needs of the Project. Such information also will be provided on a continuing basis through the Coordinator of Local Hiring and Services.**