

Tax Abatement Agreement
between
Western Texas College and Flatland Solar, 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 Flatland Solar, LLC a Texas Limited Liability Company ("Flatland") as owner of the Eligible Property (as hereinafter defined) to be located on the tract of land within the Canyon Wind Reinvestment Zone # 1 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, Flatland owns or will own real property located within the taxing jurisdiction of the taxing unit and within the aforementioned reinvestment zone, to which Flatland intends to make improvements as more specifically described herein;

WHEREAS, Flatland intends to develop and construct a 141 MWAC utility-scale solar project within the Site (the "Solar Project");

WHEREAS, the taxing unit finds that the terms of this Agreement, the tax abatement and the property subject to this Agreement meet the WTC 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 WTC 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 WTC 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 WTC 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. "Lender" means any entity or person providing, directly or indirectly, with respect to the Improvements or project or any portion thereof any of (a) senior or subordinated construction, interim or long-term debt financing or refinancing, whether that financing or refinancing takes the form of private debt, public debt, or any other form of debt (including debt financing or refinancing), (b) a leasing transaction, including a sale leaseback, inverted lease, or leveraged leasing structure, (c) tax equity financing, (d) any interest rate protection agreements to hedge any of the foregoing obligations, and/ or any energy hedge provider. There may be more than one Lender. Owner, at its election, may send written notice to WTC with the name and notice information for any Lender.
- F. "Nameplate Capacity" means the net alternating current ("AC") megawatt capacity of the Solar Project as defined in Exhibit C of the Interconnection Agreement between Flatland and Oncor Electric Delivery Company.
- G. "Owner" means Flatland the entity which owns the real property for which abatement is being granted, and any assignee or successor in interest of Flatland means and includes Owner.
- H. "Real Property" means Eligible Property meeting the description for Real Property provided by Chapter 1 of the Texas Tax Code.
- I. "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 **August 7, 2018** duly passed by the Scurry County Commissioners Court, a copy of which is attached hereto as Exhibit B.
- J. "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 Improvements on the Site with a currently anticipated capacity of approximately 141 megawatts-AC of Nameplate Capacity solar power located in the Reinvestment Zone. Improvements will have an estimated initial market value of approximately one-hundred-twenty-one million, eight-hundred-thirty-two thousand dollars (\$121,832,000),

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 to produce solar power and perform other functions related to the production, distribution, and transmission of electric power. WTC agrees that the solar panels, racking system, inverters, balance of plant, solar facility step-up transformer and switchgear, 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 **November 30, 2019** or earlier and shall be completed by **December 31, 2020**. WTC recognizes that the above dates are "best estimates" at the time of this Agreement. WTC also recognizes that Improvement may be constructed in phases.

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

- A. Unless terminated earlier as provided elsewhere herein, this Agreement shall be effective **January 1, 2021**, following execution of this Agreement, and shall continue in effect until **December 31, 2031**.
- B. The 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 1, 2021**, 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 the WTC the following:

- I. Annually for years one (1) through ten (10) of the Abatement, one-thousand and twenty dollars (\$1020) per installed megawatt of Nameplate Capacity within the reinvestment zone; the first such payment shall be due on **October 31st, 2021**, with the remaining nine (9) payments due annually thereafter; and
- F. Owner will demonstrate, as described in Exhibit C of the ERCOT Standard Generating Interconnection Agreement between Flatland and Oncor, the actual installed megawatt Nameplate 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, or Lender 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 Scurry County 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, the County'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; (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; and (v) to the best of its knowledge this Agreement is in compliance with all applicable laws and is a valid, binding, and fully enforceable agreement in accordance the terms hereof.

VI. Access to and Inspection of Property by County Employees

- A. Owner shall allow the County's employees 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 the WTC.

VII. Default

- A. The 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.

The 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 and any Lender (but only if WTC has been provided with the name and notice information of the Lender) of any default in writing in the manner prescribed herein. The notice shall specify the basis for the declaration of default, and the Owner or Lender 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. Flatland Owner or Lender shall maintain the right to cure any default, including any default caused by an assignee of Flatland, and WTC shall provide notice of default to Flatland when any such notice is provided to Owner or Lender.
- 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. Subject to Article VIII, 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 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; provided however, if any order, rule, statute, or regulation is passed after the effective date of the Agreement that alters the value of the tax abatement granted or increases the payment obligations of Owner to WTC as set forth in Article IV, the Parties agree to amend this Agreement so that the value of the Abatement to Owner and the payment obligations of the Owner to

WTC are the same as the original values and obligations set forth in Article IV of this Agreement as of the effective date.

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. This Agreement may also be assigned, upon written notice to WTC, by Owner to a Lender or by a Lender to a third party after the Lender has exercised a right of foreclosure with respect to the Improvements or the project.

The Parties agree that a transfer of all or a portion of the ownership interests in Owner to a third party shall not be considered an assignment under the terms of this Agreement. But, if after such a transaction is consummated, the corporate name of the Owner is changed or the locally-known name of the project is changed, Owner shall provide notice of such changes to WTC.

In addition to its rights under the preceding paragraph, Owner may mortgage, pledge, or otherwise encumber its interest in this Agreement or the Improvements or project to a Lender for the purpose of financing the operations of the Improvements or constructing the Improvements or acquiring additional equipment following any initial phase of construction. Owner's encumbering its interest in this Agreement may include an assignment of Owner's rights and obligations under this Agreement for purposes of granting a security interest in the Agreement. In the event Owner takes any of the actions permitted by this paragraph, it may provide written notice of such action to WTC with such notice to include the name and notice information of the Lender. If Owner does not provide the name and notice information of a Lender to WTC, then such Lender shall not have the notice rights of a Lender under this Agreement.

WTC shall provide such assistance as Owner or assignee may reasonably request in connection with obtaining financing for the Improvements, the project or any portion thereof. WTC agrees that it shall make available to Owner, assignee and any Lender information relating to the Tax Abatement Agreement, and such other related matters as Owner or Assignee may reasonably request. WTC shall furnish such consents to assignment, estoppel certificates, certifications and representations and opinions of counsel addressed to Owner or Assignee and such Lenders, as may be reasonably requested by Owner, Assignee or Lender, and all reasonable costs incurred by WTC in executing and delivering such documents shall be borne by Owner or Assignee, if applicable. At Owner's or Assignee's request, WTC shall cooperate with the independent engineer or other advisors if any, of any Lender.

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 WTC:
c/o Richard Grosdidier and General Counsel	Dr. Barbara Beebe, President
17300 Dallas Parkway, Suite 2020	6200 College Avenue
Dallas, Texas 75248	Snyder, TX 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. County 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

The 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 commercially reasonable 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.

XVII. Road Maintenance

During construction of the Improvements, Owner agrees to use commercially reasonable efforts to minimize the disruption to County roads caused by the construction process and to repair any damage caused to County roads by Owner or its agents during the construction period. After construction, Owner will leave such County roads in a state of equal or better condition than they were prior to construction, excepting normal wear and tear.

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

ATTEST/SEAL:
Western Texas College

Owner:

By: _____

By: _____

Printed Name: Mr. Lee Presswood
Title: President, Board of Trustees

Printed Name:

Attest:

Executed by, _____ on the day of

EXHIBIT A
Project Area in Reinvestment Zone

Description of 14,500 acres (more or less) of land located in Scurry County, Texas, said land being more particularly described as follows.

The following sections in H&TC RR Co Survey, Block 97:

All of sections 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 166, 167, 168, 169, 170, 174, 175, 176 and 177 being in Scurry County, Texas;

Approximately 320 acres of land in the South half of Section 171.

EXHIBIT B
Order Designating Reinvestment Zone

[Reserved]

EXHIBIT C
LOCAL SPENDING PLAN

- A. In connection with the construction and operation of the Improvements in Scurry County (the "Project"), Flatland Solar, 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.