

ORDINANCE NO. 2006-02

AN ORDINANCE OF THE CITY OF RIESEL, TEXAS, DESIGNATING TAX ABATEMENT REINVESTMENT ZONE NO. 1 (SANDY CREEK); PROVIDING ELIGIBILITY OF THE ZONE FOR COMMERCIAL-INDUSTRIAL TAX ABATEMENT; CONTAINING FINDINGS THAT THE AREA QUALIFIES TO BE DESIGNATED AS A REINVESTMENT ZONE AND THAT THE IMPROVEMENTS SOUGHT ARE FEASIBLE AND PRACTICABLE AND OF BENEFIT TO THE LAND AND THE CITY; PROVIDING FOR THE APPROVAL OF THE TAX ABATEMENT AGREEMENT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Riesel, Texas, has caused notice to be published in a newspaper having general circulation in the City and has delivered such notice to the presiding officer of the governing body of each taxing unit that includes in its boundaries the real property described herein; and

WHEREAS, the City Council of the City of Riesel, Texas, has conducted a public hearing on the designation of the area described herein as a reinvestment zone;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIESEL, MCLENNAN COUNTY, TEXAS THAT:

SECTION 1: That the City Council of the City of Riesel, Texas finds that the area described herein will, if designated as a Tax Abatement Reinvestment Zone, be reasonably likely to contribute to the retention or expansion of primary employment, or to attract major investment in the zone that will be of benefit to the property and contribute to the economic development of the City. The City Council further finds that the improvements sought are feasible and practicable and would be of benefit to the land to be included in the zone and to the City after the expiration of a tax abatement agreement. The City Council further finds that the area described and the tax abatement agreement approved herein meet the Guidelines For Tax Abatement approved by the City Council.

SECTION 2. That pursuant to the provisions of Section 312.201 of the Texas Tax Code, the property described in Exhibit "A" attached hereto and made a part hereof for all purposes is hereby designated as a Tax Abatement Reinvestment Zone and for identification shall be known as "Reinvestment Zone No. 1." (Sandy Creek).

SECTION 3. That the property within Reinvestment Zone No. 1 is eligible for commercial-industrial tax abatement commencing with the 2006 tax year.

SECTION 4 The Agreement attached hereto as Exhibit "B" having been reviewed by the City Council and found to be acceptable and in the best interests of the City and its citizens, is hereby approved, and the Mayor is hereby authorized to execute the Agreement on behalf of the City of Riesel, Texas.

SECTION 5. If any article, paragraph or subdivision, clause or provision of this ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so decided to be invalid or unconstitutional.

SECTION 6. That all provisions of ordinances of the City of Riesel, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 7. This ordinance shall take effect immediately from and after its passage.

DULY PASSED by the City Council of the City of Riesel, Texas, on the 3rd day of
January, 2006.

APPROVED:


MAYOR

ATTEST:


CITY SECRETARY

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 1

barnett surveying / engineering

7703 BAGBY AVENUE
WACO, TEXAS 76712
254.666.9800
FAX 254.666.9801

Field Notes describing 466.16 Acres of land in the J.D. SANCHEZ GRANT, Abstract No. 36, in McLennan County, Texas, and being that portion of that certain tract conveyed to Dead River Ranch Partners, LP., by deed of record in Instrument No. 2001030040 of the Official Public Records of McLennan County, Texas, which lies within the City Limits of the City of Riesel. Said 466.16 acre tract being shown on the attached plat and being more particularly described by metes and bounds as follows:

Beginning at a ½" iron rod found at the southwest corner of said Dead River Ranch tract, being in the north line of W. Frederick Street (F.M. Highway No. 1860), being in the approximate center line of a gravel road known as Rattlesnake Road, for the southwest corner of the herein described tract of land;

Thence along the west line of said Dead River Ranch tract, along said Rattlesnake Road, and part of the way along the City Limit Line of the City of Riesel, the following two courses and distances:

1. N 30 degrees 49 minutes 37 seconds W – 1502.91 feet to a found nail, and
2. N 29 degrees 41 minutes 41 seconds W – 1239.08 feet to a point;

Thence N 62 degrees 29 minutes 34 seconds E – 6115.43 feet along said City Limit Line to a point in an east line of said Dead River Ranch tract, being the west line of that called 109.33 acre tract described in a Contract of Sale and Purchase to Robert J. Shaw, of record in Volume 811, Page 455 of the Deed Records of said county, for the most westerly northeast corner of the herein described tract of land;

Thence S 27 degrees 46 minutes 42 seconds – 601.90 feet along the east line of said Dead River Ranch tract and along the west line of said Shaw tract to a ½" iron rod found at its southwest corner, for a corner of the herein described tract of land;

Thence N 60 degrees 28 minutes 46 seconds E, along the south line of said Shaw tract, at a distance of 2147.61 feet passing a ½" iron rod found in the west line of said Rattlesnake Road for reference, and continuing for a total distance of 2167.61 feet to a ½" capped iron rod placed at the southeast corner of said Shaw tract, being the most easterly northeast corner of said Dead River Ranch tract, and being in the approximate center line of said road, for the most easterly northeast corner of the herein described tract of land;

Thence S 29 degrees 27 minutes 30 seconds E – 1976.46 feet along said Rattlesnake Road to a ½" iron rod found at the southeast corner of said Dead River Ranch tract, being the north line of that tract of land conveyed to Pearl Havis, by deed of record in Instrument No. 2002029066 of said Official Public Records, for the southeast corner of the herein described tract of land;

Thence S 59 degrees 27 minutes 32 seconds W – 454.20 feet along the south line of said Dead River Ranch tract, part of the way along said Rattlesnake Road, to a ½" iron rod found at the intersection of said south line with the north line of said West Frederick Street (FM Highway No. 1860), for a corner of the herein described tract of land;

Thence along the north line of said W. Frederick Street, and along the south line of said Dead River Ranch tract the following five courses and distances:

1. 320.33 feet along a curve to the left having a radius of 954.93 feet and a long chord bearing S 69 degrees 28 minutes 37 seconds W – 318.83 feet, to a ½" iron rod found for corner,
2. S 60 degrees 35 minutes 20 seconds W – 2342.86 feet to a ½" iron rod found for corner,
3. S 60 degrees 15 minutes 42 seconds W – 3526.65 feet to a ½" iron rod found for corner,
4. S 61 degrees 05 minutes 58 seconds W – 1543.80 feet to a ½" iron rod found for corner, and
5. S 63 degrees 08 minutes 06 seconds W – 38.60 feet to the POINT OF BEGINNING.

NOTE: This survey was conducted using a Global Positioning System (GPS) and bearings are referenced to Geodetic North!

Surveyed June 10, 2005

Gale Arnold, R.P.L.S. No. 3879
WO #44743



barnett surveying / engineering

7703 BAGBY AVENUE
WACO, TEXAS 76712
254.666.9800
FAX 254.666.9801

Field Notes describing 231.73 Acres of land in the J.D. SANCHEZ GRANT, Abstract No. 36, in McLennan County, Texas, and being that part of that certain tract conveyed to Dead River Ranch Partners, LP., by deed of record in Instrument No. 2001030040 of the Official Public Records of McLennan County, Texas, that lies outside the city limits of the City of Riesel. Said 231.73 acre tract being shown on the attached plat and being more particularly described by metes and bounds as follows:

Beginning at a point in the west line of said Dead River Ranch tract, bearing N 30 degrees 49 minutes 37 seconds W – 1502.91 feet and N 29 degrees 41 minutes 41 seconds W – 1239.08 feet from a ½" iron rod found at the southwest corner of said Dead River Ranch tract, being in the approximate center line of a gravel road known as Rattlesnake Road, and being in the City Limit Line of the City of Riesel, for the southwest corner of the herein described tract of land;

Thence N 29 degrees 41 minutes 41 seconds W – 810.10 feet along said road to a nail found for a corner of the herein described tract of land;

Thence N 29 degrees 20 minutes 09 seconds W – 533.71 feet part of the way along the approximate center line of said road, and continuing to a ½" iron rod found on the west line of said road at the most westerly northwest corner of said Dead River Ranch tract, , for a corner of the herein described tract of land;

Thence N 16 degrees 59 minutes 49 seconds E – 286.41 feet along the west line of said road to a ½" iron rod found at the most northerly northwest corner of said Dead River Ranch tract, for the most northerly northwest corner of the herein described tract of land;

Thence along the north line of said Dead River Ranch tract, the following five courses and distances:

1. N 60 degrees 24 minutes 55 seconds E – 1971.57 feet part of the way along the projected center line of said Rattlesnake Road, then along said Rattlesnake Road to a ½" iron rod found for a corner of the herein described tract of land;
2. N 59 degrees 00 minutes 28 seconds E – 1943.05 feet along said road to a railroad spike found for corner;
3. N 62 degrees 11 minutes 54 seconds E – 901.06 feet along said road to a ½" iron rod found for corner,
4. N 71 degrees 57 minutes 17 seconds E – 929.34 feet along said road to a ½" iron rod found for corner, and
5. N 60 degrees 04 minutes 26 seconds E – 227.78 feet along said road to a 5/8" iron rod found at the most northerly northeast corner of said Dead River Ranch tract, being the northwest corner of that called 109.33 acre tract described in a Contract of Sale and Purchase to Robert J. Shaw, of record in Volume 811, Page 455 of the Deed Records of said county, for the most northerly northeast corner of the herein described tract of land;

Thence S 27 degrees 46 minutes 42 seconds E, at a distance of 21.81 feet passing a ½" iron rod found for reference in the south line of said road, and continuing for a total distance of 1598.29 feet along an east line of said Dead River Ranch tract and along the west line of said Shaw tract to a point in the City Limit Line of said City of Riesel, for the southeast corner of the herein described tract of land;

Thence S 62 degrees 29 minutes 34 seconds W – 6115.43 feet along said City Limit Line to the POINT OF BEGINNING.

NOTE: This survey was conducted using a Global Positioning System (GPS) and bearings are referenced to Geodetic North!

Surveyed June 10, 2005

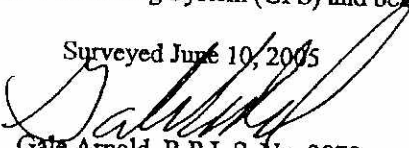

Gale Arnold, R.P.L.S. No. 3879
WO #44743



EXHIBIT B
TAX ABATEMENT AGREEMENT

**TAX ABATEMENT AGREEMENT
BETWEEN THE CITY OF RIESEL, TEXAS
AND SANDY CREEK ENERGY ASSOCIATES, L.P.**

This Tax Abatement Agreement (hereinafter "Agreement") is entered into by and between the City of Riesel, Texas (hereinafter "City") and Sandy Creek Energy Associates, L.P., a limited partnership, authorized to do business in the State of Texas (hereinafter "Sandy Creek").

WHEREAS, the City is authorized to enter into Tax Abatement Agreements pursuant to Chapter 312 of the *Texas Property Tax Code* (the "Tax Code"), and

WHEREAS, Sandy Creek has entered into an option to purchase agreement, to purchase the Land (hereinafter defined), and has applied for abatement of ad valorem taxes on the increase and/or addition to the appraised value of certain property described below, and

WHEREAS, the City has adopted a resolution stating that it elects to be eligible to participate in tax abatement, has adopted Tax Abatement Guidelines, and has conducted a public hearing, all as required by the Tax Code; and

WHEREAS, the City Council of the City has enacted an Ordinance establishing Tax Abatement Reinvestment Zone No. 1 (the "Reinvestment Zone") for commercial and industrial tax abatement as authorized by the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Tax Code ; and

WHEREAS, the Land is located within the Reinvestment Zone; and

WHEREAS, the City Council finds that the improvements and additions will benefit the economy of the City and the State of Texas, create jobs and increase the local tax base; and

WHEREAS, a copy of this Agreement has been furnished, in the manner prescribed by the Tax Code, to the presiding officers of the governing bodies of each of the taxing units in which the Premises (hereinafter defined) is located; and

WHEREAS, the City Council finds that the Improvements (hereinafter defined) sought are feasible and practicable and would be of benefit to the Land to be included in the Zone, and the taxing units with jurisdiction over the land, after expiration of this Agreement; and

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual obligations and promises set forth below, and for good and other valuable consideration, the adequacy and receipt of which are hereby acknowledged, the City and Sandy Creek agree as follows:

1. **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

a. "Certified Appraised Value" means the appraised value, for property tax purposes, as certified by the McLennan County Appraisal District.

b. "Start Date" means the earlier of January 1 of the calendar year immediately following the Completion Date, and August 1, 2013.

c. "Completion Date" means the date that the construction and installation of the Improvements and the Personal Property on the Land are substantially complete and Sandy Creek is able to commence commercial operation as certified by Sandy Creek to the City.

d. "Employment Positions" shall mean non-temporary full time employment positions (including management and professional staff personnel) of Sandy Creek and its affiliates, at the Premises, including but not limited to, employees of contractors assigned to the Premises and the operator of the Premises. Two (2) or more part time employees totaling thirty-two (32) hours or more per week may be substituted for one (1) full time employee, as long as the part-time employees have benefits substantially similar to full time employees.

e. "Force Majeure" means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such party), fires, explosions or floods, strikes, slowdowns or work stoppages.

f. "Reinvestment Zone" means Reinvestment Zone No. 1 created by the City.

g. "Improvements" means a pulverized coal-fired electric generation plant and facilities to be constructed on the Land including but not limited to buildings and structures as further described in Exhibit "B", and any additions or modifications thereto, but, for purposes of the tax abatement provided herein, excluding pollution control property that is exempt from ad valorem taxation.

h. "Premises" collectively means the Land and the Improvements.

i. "Personal Property" means tangible personal property machinery, furniture, equipment and fixtures, (not including inventory and supplies) but for purposes of the tax abatement provided herein, excludes pollution control property exempt from ad valorem taxation. The term does not include Personal Property located on the Land at the time of execution of this Agreement.

j. "Land" means the tract(s) of land described in Exhibit "A" attached hereto and incorporated herein for all purposes.

k. "Base Year" means the 2006 tax year.

2. **Term of Agreement.**

Unless terminated sooner as provided elsewhere herein, the term of this Agreement shall commence on the last date of execution hereof (the "Effective Date") and continue for a period of ten (10) tax years from the Start Date. The tax abatement provided hereunder shall not exceed a total of ten (10) tax years, subject to any period of suspension as allowed under Section 4.2 for casualty repairs. The period set out in this section is hereinafter referred to as "the Term of this Agreement."

3. **Grant of Abatement.**

3.1 Subject to the terms and conditions of this Agreement, City hereby grants Sandy Creek an abatement of taxes on the Certified Appraised Value of the Premises and the Personal Property for a period of ten (10) tax years commencing on the Start Date in accordance with the schedule set forth in paragraph 3.3 below and as applied in accordance with paragraph 3.4 below. Nothing in this Agreement shall obligate Sandy Creek to construct the Improvements on the Land, or to locate Personal Property on the Land, but said actions are conditions precedent to tax abatement pursuant to this Agreement. Should Sandy Creek in its sole determination elect not to proceed with construction of the Improvements and has provided written notice of such determination to the City, either Party may then cancel this Agreement.

3.2 The Completion Date shall be, subject to events of Force Majeure and casualty, on or before August 1, 2013, unless otherwise agreed by the parties in writing by amendment to this Agreement. If Sandy Creek has not commenced commercial operation on or before August 1, 2013 (or such later date as results from a day-for-day extension for events of Force Majeure or casualties), the tax abatement period shall begin to run, and such date shall become the Start Date. If Sandy Creek has not commenced construction by August 1, 2013 (or such later date as results from a day-for-day extension for events of Force Majeure or casualties), this Agreement may be cancelled by the City.

3.3 Commencing on the Start Date and continuing thereafter during the Term of this Agreement, Sandy Creek shall be entitled to an abatement of City taxes on the percentage of the Certified Appraised Value of the Premises and the Personal Property as set forth in the schedule below:

<u>Year of Abatement</u>	<u>Percentage(%) of Abatement for Certified Appraised Value above \$500 Million*</u>	<u>Percentage (%) of Abatement for Certified Appraised Value between \$400 Million and \$500 Million* **</u>
1	98%	98%
2	92%	91%
3	86%	84%
4	80%	77%
5	74%	70%
6	68%	63%
7	62%	56%
8	56%	49%
9	50%	42%
10	44%	35%

* The abatement percentage will be reduced in the next tax year immediately following Sandy Creek’s failure to provide the number of employment positions required in §4.1(b) below, as follows:

- Abatement percentage reduced by 1% for every five (5) positions not created and filled below the minimum average of 100 positions. There shall be no proportionate abatement percentage reduction for positions not created and filled below multiples of five.
- Abatement percentage reduced by 1% for each position not created and filled below 80 positions.

** In the event the combined Certified Appraised Value of the Premises and the Personal Property (**excluding** pollution control equipment) as of the Completion Date is less than \$ 400 Million Dollars, the percentage of abatement set forth in the third column of the schedule above shall be decreased by the fraction the numerator of which is the difference between \$400 Million and the Certified Appraised Value of the Premises and the Personal Property and the denominator of which is \$400 Million Dollars. For illustration purposes only, assume that the combined Certified Appraised Value of the Premises and Personal Property (excluding pollution control equipment) as of the Completion Date is \$ 350 Million Dollars, the amount of the tax abatement applicable for each year of tax abatement as set forth in the schedule above would be reduced by 12.5% and thus the percentage of abatement or the first year of abatement would be eighty-five and 1/2 percent (85.5%).

The abatement hereunder shall apply to leased equipment so long as such leased equipment is primarily used at the Premises for the useful life of such leased equipment.

In the event Sandy Creek does not create and fill Employment Positions required in Section 4.1(b) below during the tenth (10th) tax year of the abatement as evidenced in the applicable Annual Certification Statement referenced in Section 3.6, such that there is no subsequent tax year immediately following such failure to apply the percentage reduction in abatement as set forth herein, Sandy Creek shall pay to the City an amount equal to the difference between: (i) the ad valorem taxes assessed against the Premises and Personal Property with the applicable abatement for the tenth (10th) year of abatement; and (ii) the ad valorem taxes that would have been assessed against the Premises and the Personal Property had the applicable percentage reduction in abatement been applied to the tenth (10th) year of abatement for such Employee Position adjustment. Such payment to be made on or before the delinquency date for the payment of the ad valorem taxes assessed the Premises and Personal Property for the tenth (10th) year of abatement.

3.4 The property tax abatement provided in this Agreement shall extend only to City taxes on the Premises and the Personal Property located within the Reinvestment Zone. The property tax abatements herein are subject to the rights of holders of outstanding bonds of the City as of the date of this Agreement. The abatement of taxes on the Certified Appraised Value hereunder is determined for a tax year by application of the applicable percentage for the year as set forth above to:

- a. the increase of the Certified Appraised Value of the Premises located in the Reinvestment Zone over the Certified Appraised Value of the Land in the Base Year, and
- b. the increase of the Certified Appraised Value of the Personal Property located on the Land in the Reinvestment Zone over the Certified Appraised Value of the Personal Property on the Land in the Base Year.

3.5 No abatement is granted for any improvements made to the Land before the date of this Agreement, or for any tangible personal property existing on the Land prior to the date of this Agreement. Inventory is not eligible for abatement under this Agreement.

3.6 This Agreement shall be administered by the Mayor of the City. Except as otherwise provided below, on or before January 31st of each year following the Start Date, Sandy Creek will submit in writing to the Mayor an Annual Certification Statement which:

- a. Certifies that Sandy Creek has complied with the terms of this Agreement, and
- b. Contains such other information as the City may reasonably request in writing. (This will include information substantiating the number of employment positions, and the wage rates for those positions).

- c. For the tenth (10th) year of abatement provided herein, Sandy Creek shall provide the information substantiating the number of employment positions, and the wage rates for the positions on or before December 31 of the tenth (10th) year of abatement.

4. Sandy Creek's Obligations.

4.1 As a condition precedent to the full tax abatement as set forth in this Agreement, Sandy Creek shall, subject to events of Force Majuere and casualty where applicable:

- a. Erect, construct, install and add Improvements and Personal Property, including pollution control equipment, having a combined market value as certified by the appraisal district of at least Half a Billion Dollars (\$500,000,000) including pollution control property, as of the Completion Date, (provided however the failure to have such combined Market Value shall not be an event of default, but may result in a reduction of the percentage of abatement in accordance with the Certified Appraised Value as described in Section 3.3 above);

- b. Following the Start Date create and maintain and/or cause its affiliates, agents or representatives at the Premises, including but not limited to, employees of contractors, managers and the operator assigned to the Premises, to create and maintain Employment Positions at the Premises so that there is at least an average of 100 Employment Positions at the Premises each calendar year that tax abatement is provided herein (provided however the failure to establish such average number of Employment Positions shall not be considered an event of default, but the percentage of tax abatement shall be subject to the reduction of tax abatement as set forth in §3.3 above); and Sandy Creek shall provide copies of reports, if any required by the Texas Workforce Commission, or other records requested by the City to substantiate such Employment Positions;

- c. Offer jobs, and/or cause its affiliates, agents or representatives at the Premises, including but not limited to, employees of contractors, managers and the operator assigned to the Premises, to offer jobs, at the Premises, with wages and benefits competitive with other power plants and industrial projects in this region generally considered as of the date of this Agreement to average approximately \$24 per hour, inclusive of benefits for all employees of such plant. This minimum compensation level will be adjusted annually to reflect increases or decreases in the Consumer Price Index for Labor, provided, however, the average wage for employees assigned to the Premises shall never fall below \$24.00 per hour, inclusive of benefits.

- d. Comply with all certification and reporting requirements set forth in this Agreement;

e. Allow access to the Premises, at reasonable times and with reasonable notice, by (i) City representatives for the purpose of inspecting the Improvements or verifying Employment Positions, and to determine compliance with this Agreement, and (ii) Appraisal District employees and contractors for appraisal purposes; and

f. Along with its contractors and independent operators contracting for goods and services related to the Improvements agree to consider, to the extent reasonable and logistically practical, contracting with companies and businesses located within the City that are economically competitive and qualified to provide such goods and services.

4.2 A. Casualty. In the event the Improvements, or any part thereof, are destroyed by fire or any other casualty to the extent that Sandy Creek's commercial operations thereon are substantially curtailed, Sandy Creek may elect to repair, replace, remodel or renovate the Improvements in accordance with the original plans or modified plans, or terminate this Agreement, without any repayment of any abated taxes, penalty and interest. If Sandy Creek pursues such repair, restoration and/or renovation with reasonable diligence, the abatement of taxes as provided for in this Agreement shall, at the election of Sandy Creek, either continue uninterrupted or be suspended beginning January 1 of the calendar year immediately following such casualty and continuing during the time that the Improvements are being repaired, replaced, remodeled or renovated. When the repair, replacement, remodeling or renovation is completed, the abatement from taxation for the remaining years of abatement pursuant to this Agreement, if suspended, shall commence as of January 1 of the calendar year following such renovation. Sandy Creek is entitled to a suspension of the abatement beginning January 1 of the calendar year following Sandy Creek's notice of election of suspension, in the event of a casualty loss which requires operational shut down for repair. During such suspension, Sandy Creek shall periodically provide the City with progress reports as to the completion of the work. If the work is not pursued with reasonable diligence, the City may terminate the suspension of the abatement if such failure continues for ninety (90) days after written notice to Sandy Creek of the City's request that corrective action be taken, or, if such action cannot be performed in such ninety (90) days; without commencement of such action and the diligent prosecution and subsequent completion promptly thereafter. Any termination of suspension shall take effect on January 1 of the calendar year immediately following such termination. In the event of an abatement suspension the term of this Agreement shall be extended by such period of suspension. In event Sandy Creek elects not to repair, replace, remodel or renovate the damaged Improvements, then the abatement from taxation as provided for in this Agreement shall terminate as of January 1, of the calendar year following such casualty without repayment of any taxes abated pursuant to this Agreement, penalty and interest. Within a reasonable period of time from the date of such casualty to the Improvements, Sandy Creek shall submit written notice of intent to the City setting forth, if applicable, the dates Sandy Creek anticipates starting and completing the repair, replacement, remodeling or renovation of the damaged Improvements, and whether a suspension of the abatement shall be implemented.

B. Condemnation. If title to, use of, or an interest in the Plant, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental unit or agency, or by any person, firm or corporation acting under governmental authority or statutory authority, other than a taxing unit that assesses or could assess ad valorem taxes against the Premises, a local or county governmental entity having taxing jurisdiction over the subject property or another party acting under such governmental entity's authority, Sandy Creek shall pay as a first and priority obligation to the City out of the condemnation proceeds the same pro rata portion of the condemnation proceeds as would have been paid to the City under §6.9 below if the transfer was an agreed sale to a tax exempt entity.

4.3 Maintenance of Premises. Sandy Creek shall, during the term of this Agreement, maintain the Premises in accordance with all applicable federal, state or local laws or regulations (or valid waiver thereof). The Premises should be maintained so as not to constitute a nuisance, and operations thereon shall be conducted in such a manner as not to constitute a nuisance. Sandy Creek shall comply with all applicable governmental regulations in its operations on the premises.

4.4 A. Payment of Taxes Prior to Start Date. Taxes assessed prior to the Start Date are not to be abated, and shall be paid by Sandy Creek, once it acquires title to the Land, prior to such taxes becoming delinquent, subject to the right of Sandy Creek to timely and properly protest such taxes in accordance with Tax Code, Chapter 42 or its successor. Sandy Creek shall notify City in writing of any such protest, and keep the City informed of the results thereof. If the protest is denied, Sandy Creek shall have the right to appeal the matter to state district court, but shall pay the taxes under protest pursuant to Tax Code, Section 42.08 or its successor. If a final determination of an appeal that decreases Sandy Creek's tax liability occurs after Sandy Creek has paid the taxes, the City may, rather than provide a refund of such overpayment, credit the amount of such overpayment to the subsequent year's tax liability.

Valuation of Improvements prior to the Start Date will be on the basis prescribed by the Appraisal District in accordance with the appraisal methodologies, policies and procedures prescribed by the Tax Code. Sandy Creek shall provide truthful and complete information to the City and the Appraisal District as to the percentage of completion of the Improvements and materials on site.

B. Payment of Non- Abated Taxes During the Term of This Agreement. Sandy Creek shall during the term of this Agreement pay all non-abated property taxes prior to such property taxes becoming delinquent, subject to the right of Sandy Creek to timely and properly protest and/or contest such property taxes. Sandy Creek shall notify the City in writing of any such protest and/or contest and the results thereof.

4.5 Temporary Closure. In the event Sandy Creek's permit(s) or other State of Texas authorization to operate the Plant is suspended, and Sandy Creek (or its assignee) is required by any applicable State permitting agency to cease operation due to

a permit violation for a period of thirty (30) days or more (“Temporary Closure”), Sandy Creek shall not be in default under this Agreement, but shall forfeit and repay any tax abatements received or to be received for the tax year or tax years in which the Plant was closed for a portion of the year of 30 or more days.

4.6 Temporary Closure- Non-regulatory. Without limiting the obligations of Sandy Creek with respect to Employment Positions set for in Section 4.1(b), if Sandy Creek ceases maintaining the plant in a state of readiness for generating electricity for ninety (90) days or more during a tax year, and such is not covered by Section 4.5, and is not due to casualty loss or Force Majeure, Sandy Creek shall forfeit and repay any tax abatement received or to be received for that tax year. If unusual maintenance requirements are all or a substantial part of the reason Sandy Creek ceases maintaining the plant in a state of readiness for generating electricity for ninety (90) days or more during a tax year, Sandy Creek may seek approval from the City for additional time under this provision for that tax year, which request shall not be unreasonably denied by the City. However, such additional time shall be reasonable in duration and the need, therefore, must be documented.

In the event of a forfeiture, the abatement percentage shall resume according to the schedule set forth in Section 3.3 herein in the tax year following any such forfeiture.

5. Default, Remedies and Recapture.

5.1 Upon breach by Sandy Creek of any material obligation under this Agreement, the City shall notify Sandy Creek in writing, which shall have sixty (60) days from receipt of the notice in which to cure any such breach. If the breach cannot reasonably be cured within a sixty (60) day period, and Sandy Creek has diligently pursued such remedies as shall be reasonably necessary to cure such default, then the City shall extend the period in which the breach must be cured for an additional sixty (60) days. If Sandy Creek fails to cure the breach within the time provided as specified above or, as such time period may be extended, then the City, at its sole option, shall have the right to terminate this Agreement by written notice to Sandy Creek.

5.2 In the event of a breach by Sandy Creek, the City, in addition to any notice to Sandy Creek, shall promptly provide written notice of such breach to any lender or representative of such entity that has previously been identified and described in writing by Sandy Creek to the City. Any lenders shall have the right to cure such breach in accordance with the provisions of this Agreement, provided that no cure period shall commence until receipt of written notice of breach from City by such lenders. Sandy Creek and its lenders shall provide written notice of any assignment of a financing obligation. Absent such notice of assignment, notice to the last known lender(s) shall be effective.

5.3 In the event of termination by the City because of an uncured breach, Sandy Creek shall pay to the City the taxes for the year in which the breach occurs that would have been otherwise paid to City had Sandy Creek's taxes not been reduced under the terms of the Agreement, plus interest at the rate provided for delinquent taxes in accordance with the Tax Code. Such payment of taxes and interest shall be due within thirty (30) days after Sandy Creek's receipt of notice of termination and the amount of taxes and interest due from the City. The taxes and interest become delinquent and incur penalties as provided by law for ad valorem taxes imposed by City if not paid before February 1st of the calendar year following the year in which the termination of this Agreement occurs.

6. Miscellaneous Terms And Conditions.

6.1 Attorney's Fees. If on account of any breach or default by either party of its obligations under the terms, conditions, or covenants of this Agreement, it shall be necessary for the other party to employ an attorney or attorneys to enforce or defend any of the rights or remedies hereunder, and should the party prevail, the party shall be entitled to any reasonable attorney's fees, costs, or expenses it incurs in connection herewith.

6.2 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, unless such would destroy a material benefit of the bargain to either party.

6.3 Texas Law to Apply. This Agreement shall be construed under and in accordance the laws of the State of Texas and all obligations of the parties created hereunder are performable in McLennan County, Texas, and venue of all disputes shall lie in a court of competent jurisdiction in McLennan County, Texas.

6.4 Prior Agreements Superseded. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter hereof.

6.5 Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

6.6 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

6.7 No Waiver. No waiver by a party in any event of default, or breach of any covenant, condition or stipulation herein contained shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation hereof.

6.8 Assignment. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement may be assigned by Sandy Creek upon written notice to the City and written assumption of the obligations hereunder by such assignee. Such assignment is subject to approval of the City, which shall not be unreasonably withheld or delayed. The approval of the City shall be deemed to have occurred if the City fails to take action with respect to any such assignment within thirty (30) days after receipt of notice of such assignment. In addition, Sandy Creek shall have the right, without the City's approval, to assign its interest in the Agreement in whole or in part to its lenders for collateral security purposes in connection with obtaining construction or permanent financing of the Premises, however, any rights of the lender(s) are subject to the same provisions as set forth in this Agreement.

6.9 Transfers. In the event Sandy Creek sells or voluntarily transfers taxable title to the Premises and/or the Personal Property, in whole or in part, to an entity exempt from ad valorem taxation, the tax abatement with respect to such sold or transferred property shall terminate on the date of such sale or transfer without further action by the City, provided however, this Agreement shall remain, in full force and effect for the remainder of the property that is not sold or voluntarily transferred to such ad valorem tax exempt entity. Furthermore, in the event of a sale or voluntary transfer of the Premises and/or the Personal Property or portion thereof to an entity exempt from ad valorem taxation, Sandy Creek shall, within thirty (30) days of such sale or transfer: (i) repay to the City 80% of the total taxes previously abated prior to the date of the transfer pursuant to this Agreement for such property, or portion of property provided such transfer occurs following the Start Date and (ii) make a payment representing 100% of the then present value of the estimated property taxes that would have been paid to the City for such property sold or transferred, less the amount of taxes that would have been abated had the tax abatement not been terminated for such property, for a twenty (20) year period following the Start Date. In determining the future Certified Appraised Value (to be used in estimating future property taxes) of the Premises and/or Personal Property the depreciation schedule attached hereto as Exhibit C shall be used. In determining the present value of said future tax payments, a discount rate of nine percent (9%) shall be used.

6.10 No Conflicts. Sandy Creek represents and warrants that no member of the City Council has an interest in the property subject to this Agreement and such property is not owned or leased by any member of the City Council.

6.11 No Joint Venture. The City, by approving the application and this Agreement, assumes no liability or responsibility therefore or for any defect in any additions made to the Land. The relationship between City and Sandy Creek at all times shall not be deemed a partnership or joint venture for purposes of this Agreement.

6.12 Other Exemptions. It is further understood that this is not a joint agreement between taxing units as contemplated under Tex. Tax Code Ann. § 312.210, as amended, and Sandy Creek shall not be entitled to any additional exemption from City thereunder or otherwise. Should Sandy Creek receive or be adjudged entitled to any additional exemption under § 312.210 or otherwise, the amount of the exemption under this Agreement shall be reduced by the amount of such additional exemption.

6.13 Approvals. Assuming Sandy Creek is not in breach of this Agreement, any approvals required to be obtained from the City under this Agreement shall not be unreasonably withheld, denied or delayed by the City.

6.14 Notices. All notices required by this Agreement shall be addressed to the following, or other such other party or address as either party designates in writing, by certified mail, postage prepaid, or by hand or overnight delivery:

If intended for Sandy Creek, to:

Attn: General Counsel
Sandy Creek Energy Associates, L.P.
c/o LS Power Development, LLC
Two Tower Center, 20th Floor
East Brunswick, N.J. 08816

With copy to:

Project Manager
Sandy Creek Energy Associates, LP
400 Chesterfield Center, Suite 110
St. Louis, Mo. 63017

If intended for City, to:

City of Riesel
Attention: Bill McLelland, City Administrator
Riesel City Hall
104 North Memorial
Riesel, Texas 76682

6.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

6.16 Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement

6.17 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.18 Authorizations.

(a) This Agreement was entered into by Sandy Creek pursuant to authority granted by one or more of its officers to execute this Agreement on behalf of Sandy Creek.

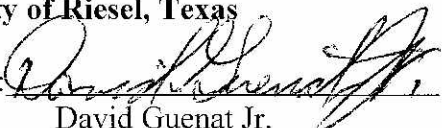
(b) This Agreement was authorized by ordinance of the City Council of the City of Riesel, Texas, authorizing the Mayor to execute the Agreement on behalf of the City.

6.19 Conditions Precedents. The tax abatement provided herein is expressly subject to Sandy Creek closing its purchase of the Land.

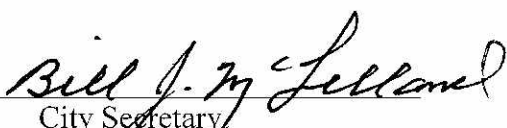
The tax abatement provided herein is conditioned on Sandy Creek obtaining all applicable government and regulatory approvals for the proposed improvements and operations.

EXECUTED in duplicate originals this 3rd day of January, 2006.

City of Riesel, Texas

By: 
David Guenat Jr.
Mayor

ATTEST:

By: 
City Secretary

EXECUTED in duplicate originals this the 7TH day of FEB., 2006.

Sandy Creek Energy Associates, L.P.
BY: SANDY CREEK GP, INC., GENERAL PARTNER

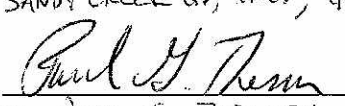
By: 
Name: PAUL G. THESSSEN
Title: EXECUTIVE VP

EXHIBIT A
LAND DESCRIPTION

Exhibit "A" is composed of this cover page and the three pages following this cover page.

The first page following this cover page is a survey of the 466.16 acre portion of the Land that is located inside the incorporated boundaries of the City of Riesel.

The second page following this cover page is a survey of the 231.73 acre portion of the Land that is located in the extraterritorial jurisdiction of the City of Riesel.

The third page following this cover page is a map depicting the 466.16 acre portion of the Land and the 231.73 acre portion of the Land.

The Land is 697.89 acres, consisting of the 466.16 acre portion and the 231.73 acre portion.

barnett surveying / engineering

7703 BAGBY AVENUE

WACO, TEXAS 76712

254.666.9800

FAX 254.666.9801

Field Notes describing 466.16 Acres of land in the J.D. SANCHEZ GRANT, Abstract No. 36, in McLennan County, Texas, and being that portion of that certain tract conveyed to Dead River Ranch Partners, LP., by deed of record in Instrument No. 2001030040 of the Official Public Records of McLennan County, Texas, which lies within the City Limits of the City of Riesel. Said 466.16 acre tract being shown on the attached plat and being more particularly described by metes and bounds as follows:

Beginning at a ½" iron rod found at the southwest corner of said Dead River Ranch tract, being in the north line of W. Frederick Street (F.M. Highway No. 1860), being in the approximate center line of a gravel road known as Rattlesnake Road, for the southwest corner of the herein described tract of land;

Thence along the west line of said Dead River Ranch tract, along said Rattlesnake Road, and part of the way along the City Limit Line of the City of Riesel, the following two courses and distances:

1. N 30 degrees 49 minutes 37 seconds W – 1502.91 feet to a found nail, and
2. N 29 degrees 41 minutes 41 seconds W – 1239.08 feet to a point;

Thence N 62 degrees 29 minutes 34 seconds E – 6115.43 feet along said City Limit Line to a point in an east line of said Dead River Ranch tract, being the west line of that called 109.33 acre tract described in a Contract of Sale and Purchase to Robert J. Shaw, of record in Volume 811, Page 455 of the Deed Records of said county, for the most westerly northeast corner of the herein described tract of land;

Thence S 27 degrees 46 minutes 42 seconds – 601.90 feet along the east line of said Dead River Ranch tract and along the west line of said Shaw tract to a ½" iron rod found at its southwest corner, for a corner of the herein described tract of land;

Thence N 60 degrees 28 minutes 46 seconds E, along the south line of said Shaw tract, at a distance of 2147.61 feet passing a ½" iron rod found in the west line of said Rattlesnake Road for reference, and continuing for a total distance of 2167.61 feet to a ½" capped iron rod placed at the southeast corner of said Shaw tract, being the most easterly northeast corner of said Dead River Ranch tract, and being in the approximate center line of said road, for the most easterly northeast corner of the herein described tract of land;

Thence S 29 degrees 27 minutes 30 seconds E – 1976.46 feet along said Rattlesnake Road to a ½" iron rod found at the southeast corner of said Dead River Ranch tract, being the north line of that tract of land conveyed to Pearl Havis, by deed of record in Instrument No. 2002029066 of said Official Public Records, for the southeast corner of the herein described tract of land;

Thence S 59 degrees 27 minutes 32 seconds W – 454.20 feet along the south line of said Dead River Ranch tract, part of the way along said Rattlesnake Road, to a ½" iron rod found at the intersection of said south line with the north line of said West Frederick Street (FM Highway No. 1860), for a corner of the herein described tract of land;

Thence along the north line of said W. Frederick Street, and along the south line of said Dead River Ranch tract the following five courses and distances:

1. 320.33 feet along a curve to the left having a radius of 954.93 feet and a long chord bearing S 69 degrees 28 minutes 37 seconds W – 318.83 feet, to a ½" iron rod found for corner,
2. S 60 degrees 35 minutes 20 seconds W – 2342.86 feet to a ½" iron rod found for corner,
3. S 60 degrees 15 minutes 42 seconds W – 3526.65 feet to a ½" iron rod found for corner,
4. S 61 degrees 05 minutes 58 seconds W – 1543.80 feet to a ½" iron rod found for corner, and
5. S 63 degrees 08 minutes 06 seconds W – 38.60 feet to the POINT OF BEGINNING.

NOTE: This survey was conducted using a Global Positioning System (GPS) and bearings are referenced to Geodetic North!

Surveyed June 10, 2005

Gale Arnold, R.P.L.S. No. 3879
WO #44743



barnett surveying / engineering

7703 BAGBY AVENUE

WACO, TEXAS 76712

254.666.9800

FAX 254.666.9801

Field Notes describing 231.73 Acres of land in the J.D. SANCHEZ GRANT, Abstract No. 36, in McLennan County, Texas, and being that part of that certain tract conveyed to Dead River Ranch Partners, LP., by deed of record in Instrument No. 2001030040 of the Official Public Records of McLennan County, Texas, that lies outside the city limits of the City of Riesel. Said 231.73 acre tract being shown on the attached plat and being more particularly described by metes and bounds as follows:

Beginning at a point in the west line of said Dead River Ranch tract, bearing N 30 degrees 49 minutes 37 seconds W – 1502.91 feet and N 29 degrees 41 minutes 41 seconds W – 1239.08 feet from a ½" iron rod found at the southwest corner of said Dead River Ranch tract, being in the approximate center line of a gravel road known as Rattlesnake Road, and being in the City Limit Line of the City of Riesel, for the southwest corner of the herein described tract of land;

Thence N 29 degrees 41 minutes 41 seconds W – 810.10 feet along said road to a nail found for a corner of the herein described tract of land;

Thence N 29 degrees 20 minutes 09 seconds W – 533.71 feet part of the way along the approximate center line of said road, and continuing to a ½" iron rod found on the west line of said road at the most westerly northwest corner of said Dead River Ranch tract, for a corner of the herein described tract of land;

Thence N 16 degrees 59 minutes 49 seconds E – 286.41 feet along the west line of said road to a ½" iron rod found at the most northerly northwest corner of said Dead River Ranch tract, for the most northerly northwest corner of the herein described tract of land;

Thence along the north line of said Dead River Ranch tract, the following five courses and distances:

1. N 60 degrees 24 minutes 55 seconds E – 1971.57 feet part of the way along the projected center line of said Rattlesnake Road, then along said Rattlesnake Road to a ½" iron rod found for a corner of the herein described tract of land;
2. N 59 degrees 00 minutes 28 seconds E – 1943.05 feet along said road to a railroad spike found for corner;
3. N 62 degrees 11 minutes 54 seconds E – 901.06 feet along said road to a ½" iron rod found for corner,
4. N 71 degrees 57 minutes 17 seconds E – 929.34 feet along said road to a ½" iron rod found for corner, and
5. N 60 degrees 04 minutes 26 seconds E – 227.78 feet along said road to a 5/8" iron rod found at the most northerly northeast corner of said Dead River Ranch tract, being the northwest corner of that called 109.33 acre tract described in a Contract of Sale and Purchase to Robert J. Shaw, of record in Volume 811, Page 455 of the Deed Records of said county, for the most northerly northeast corner of the herein described tract of land;

Thence S 27 degrees 46 minutes 42 seconds E, at a distance of 21.81 feet passing a ½" iron rod found for reference in the south line of said road, and continuing for a total distance of 1598.29 feet along an east line of said Dead River Ranch tract and along the west line of said Shaw tract to a point in the City Limit Line of said City of Riesel, for the southeast corner of the herein described tract of land;

Thence S 62 degrees 29 minutes 34 seconds W – 6115.43 feet along said City Limit Line to the POINT OF BEGINNING.

NOTE: This survey was conducted using a Global Positioning System (GPS) and bearings are referenced to Geodetic North!

Surveyed June 10, 2005

Gale Arnold, R.P.L.S. No. 3879

WO #44743



Exhibit B
Description of the Improvements

The improvements will generally include, but not be limited to, the following equipment:

1. Pulverized coal fired boiler.
2. Multiple shell condensing steam turbine generator.
3. Multiple steam surface condenser.
4. Mechanical draft cooling tower.
5. Auxiliary boiler.
6. Coal unloading and handling facilities.
7. Ash handling facilities.
8. Air emission control and handling equipment.
9. Solid waste handling and storage facilities.
10. Turbine building/structure.
11. Water treatment building, equipment and tanks.
12. Administrative/maintenance building.
13. Electric Switchyard/substation.
14. Various auxiliary equipment and facilities associated with a pulverized coal fired boiler electric generating facility.

Exhibit C

Depreciation Schedule	
Year (begins at the Start Date)	Depreciation Factor
1	1.000
2	0.965
3	0.930
4	0.895
5	0.860
6	0.825
7	0.790
8	0.755
9	0.720
10	0.685
11	0.650
12	0.615
13	0.580
14	0.545
15	0.510
16	0.475
17	0.440
18	0.405
19	0.370
20	0.300