

ORDINANCE NO. 2005-10

AN ORDINANCE OF THE CITY OF RIESEL, TEXAS, DESIGNATING AN AREA OF LAND IN THE CITY'S EXTRATERRITORIAL JURISDICTION AS AN INDUSTRIAL DISTRICT; PROVIDING FOR THE APPROVAL OF AN INDUSTRIAL DISTRICT AGREEMENT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Sections 42.044 and 212.172 of the Texas Local Government Code authorize a municipality to designate an area of land in its extraterritorial jurisdiction as an industrial district, to treat such area in a manner considered by the governing body to be in the best interests of the municipality; and to enter into agreements with the owners of land in such district; and,

WHEREAS, pursuant to said authority, the City Council of the City of Riesel has determined that it is in the best interests of the City to establish an industrial district in the City's extraterritorial jurisdiction, and to enter into an industrial district agreement with the owners of land in the district;

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

SECTION 1. That the area of land described in Exhibit "A", located in the extraterritorial jurisdiction of the City of Riesel, is hereby designated an industrial district.

SECTION 2. That the Industrial District Agreement, in substantially the same form as 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 3. 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 4. 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ordinances of the City of Riesel, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.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 5. This ordinance shall take effect immediately from and after its passage.

PASSED AND APPROVED by the City Council of the City of Riesel, Texas, on this 19th day of July, 2005.

APPROVED:

A handwritten signature in cursive script, appearing to read "David L. ...", is written over a horizontal line. Below the line, the word "MAYOR" is printed in a serif font.

MAYOR

ATTEST:

A handwritten signature in cursive script, appearing to read "B. J. ...", is written over a horizontal line. Below the line, the words "CITY SECRETARY" are printed in a serif font.

CITY SECRETARY

EXHIBIT "A"
LEGAL DESCRIPTION OF INDUSTRIAL DISTRICT

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;

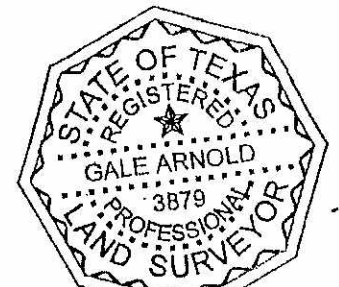
Thence S 27 degrees 46 minutes 42 seconds E, at a distance of 21.81 feet passing a ½” iron rod found for reference in the south line of said road, and continuing for a total distance of **1598.29 feet** along an east line of said Dead River Ranch tract and along the west line of said Shaw tract to a 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



THE STATE OF TEXAS §
 §
COUNTY OF MCLENNAN §

INDUSTRIAL DISTRICT AGREEMENT

THIS INDUSTRIAL DISTRICT AGREEMENT (this "Agreement") is made as of August 2, 2005, between the City of Riesel, Texas (the "City"), and Sandy Creek Energy Associates, L.P., a Delaware limited partnership (the "Developer").

RECITALS

WHEREAS, Sections 42.044 and 212.172 of the Local Government Code authorize a municipality to designate any part of its extraterritorial jurisdiction ("ETJ") as an industrial district, to treat such area in a manner considered by the governing body to be in the best interests of the municipality, and to enter into agreements with owners of land in the district. Such agreements may guarantee the continuation of the extraterritorial status of the district and its immunity from annexation for a period not to exceed 15 years, as may be renewed or extended for successive periods not to exceed 15 years each, and may contain such other terms and considerations that the parties agree to be reasonable and appropriate and not unduly restrictive of business activities.

WHEREAS, the Developer intends to develop the property described in Exhibit A hereto (the "Site"), through the construction, operation, and maintenance of an electric generating station (the "Facility"). The Facility, together with the Site, is hereinafter referred to as the "Project".

WHEREAS, the Site is comprised of the ETJ Parcel and the City Parcel, as such terms are defined in Exhibit A.

WHEREAS, in order to protect the health, safety, and welfare of persons and property in areas within and adjacent to the City, in order to encourage the growth and development of industrial facilities, and in order to promote economic development in such areas and in this State, the City desires to enter into this Agreement.

WHEREAS the Developer desires to enter into this Agreement in order to provide for, among other things, the continuation of the ETJ Parcel as part of the ETJ and the immunity of the ETJ Parcel from annexation for the period of time set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants of the parties, the City and the Developer agree as follows:

Article 1
Industrial District

1.01 The City hereby designates the ETJ Parcel as an industrial district within the meaning of Section 42.044, Local Government Code. The City agrees that the ETJ Parcel shall remain an industrial district throughout the term of this Agreement.

1.02 The City agrees that the ETJ Parcel shall be immune from annexation by the City for the period of time set forth in Section 2.01.

Article 2
Immunity From Annexation and Zoning Changes

2.01 The City agrees that it will not annex the ETJ Parcel, and that the ETJ Parcel will be immune from annexation for a period of fifteen (15) years from the Date of this Agreement and during any Extension Term (hereinafter defined). ("Date of this Agreement" shall mean the date specified in the first paragraph of this Agreement.)

2.02 The City and the Developer agree, following the expiration of the fifteen (15) year period specified in Section 2.01 above, to extend the term of this Agreement for the Extension Term unless earlier terminated in accordance with Article 9 of this Agreement. The City may seek annexation of the ETJ Parcel at the expiration of the Extension Term or on such other date as provided in this Section and, in such case, the Developer will, in accordance with this Agreement, cooperate with the City in connection with the annexation. In order to facilitate the annexation of the ETJ Parcel, the Developer agrees, at the expiration of the Extension Term, or upon the termination of this Agreement by the City pursuant to Section 9.01 or Section 9.03, to execute and submit to the City a petition for annexation, substantially in the form attached hereto as Exhibit B, and to furnish such other documentation as reasonably required or reasonably requested in order to enable the City to legally annex the ETJ Parcel at such time.

2.03 The City shall not adopt or enact any ordinance, including without limitation, any zoning ordinance, that prohibits the use of the ETJ Parcel and/or the City Parcel for the Project or that otherwise provides that use of the ETJ Parcel or City Parcel for the Project is not a permitted or lawful use under the ordinances of the City. To the extent this Agreement specifically requires the Developer or the Project to comply with zoning ordinances or other City Regulations which, in the absence of this Agreement, would not be applicable to the Project as a result of its location outside city limits (the "City Regulations") the Developer's obligation shall apply only to the City regulations in the form in which they are in effect on this date and shall not apply to amendments to such City Regulations adopted after the date hereof through the date of annexation of the Project.

2.04 The City Regulations or other regulations applied by the City to the Project shall not be construed to or applied in a manner that would prohibit the construction, maintenance, or operation of electric generating facilities and associated

equipment (including, but not limited to, transmission facilities) at the Site, it being the intent of this Agreement to provide for the reasonable regulation of the Site consistent with its development as an electric generating facility.

2.05 The City agrees that this Agreement shall constitute a permit under Chapter 245 Texas Local Government Code, as amended.

Article 3
Payments In Lieu Of Taxes

3.01 Commencing on the anniversary of the Construction Start Date (as defined in Section 5.01) through to the date of commercial operation of the Facility, the Developer shall make payments in lieu of taxes with respect to the ETJ Parcel (each, a "PILOT") in an annual amount of \$200,000.

3.02 From the date of commercial operation of the Facility to the date of termination of this Agreement, the Developer shall pay a PILOT in an annual amount of \$125,000.

3.03 If commercial operation of the Facility occurs on a date other than an anniversary of the Construction Start Date, PILOT for such year shall be prorated so that the City receives a PILOT at the rate of \$200,000 per year to the date of commercial operation and \$125,000 per year following the date of commercial operation.

3.04 PILOT shall be paid to the City on each anniversary of the Construction Start Date. The last payment of PILOT shall be due on the anniversary of the Construction Start Date following the date of expiration or earlier termination of this Agreement. No PILOT shall be payable with respect to any year for which the City levies property taxes on the ETJ Parcel.

3.05 Following the execution of this Agreement, the City will submit to the Developer an invoice to reimburse the City for actual reasonable attorneys' fees incurred by the City in connection with the Project, including the preparation and negotiation of this Agreement. It is agreed that the amount of such fees to be reimbursed by the Developer shall not exceed \$10,000. The Developer shall pay such invoice within thirty (30) days.

ARTICLE 4
Water System Improvement Fee

4.01 The Developer shall pay the City the amount of Seven Hundred Fifty Thousand Dollars (\$750,000) within one hundred eighty (180) days following the Construction Start Date to be used by the City for the construction of any improvements to its municipal water utility system it deems necessary. In the event the Developer

requests the provision of water from the City, the City and the Developer agree to negotiate in good faith for the provision of such water by the City.

ARTICLE 5

Land Conveyance, Grant for Park, and Scholarship Fund

5.01 Within 30 days following the date of commencement of construction (for purposes of this Agreement, "construction" shall mean continuous physical on-site construction) of the Project ("Construction Start Date"), the Developer shall provide to the City notice of its intent to convey to the City, on an as-is basis, approximately twenty (20) acres for a use as determined by the City and compatible with the Project. The notice shall include all title information and environmental information in the Developer's possession relating to the twenty (20) acre tract. The location of such tract must be described in such notice. Such tract shall be located at or near the Site and the location shall be selected by the Developer with the consultation of the City. However, the final determination as to such location shall be in the sole judgment of the Developer. Within sixty (60) days following the receipt of such notice, during which time the City shall be permitted to conduct all reasonable inspections of the tract as the City shall deem appropriate in making its decision, the City shall provide notice to the Developer either (i) accepting the conveyance, in which case the Developer shall proceed to convey the tract by special warranty deed with "AS, IS" language to the City, or (ii) objecting to the conveyance, in which case the Developer's obligation to convey the real property to the City under this Agreement shall be cancelled, and the conveyance shall not take place. In the event the City fails to provide notice to the Developer within the time period prescribed above, the City shall be deemed to have objected to the conveyance, the Developer's obligation to convey to the real property under this Agreement shall be cancelled, and the conveyance shall not take place.

5.02 Within 30 days following the Construction Start Date, the Developer shall pay to the City \$50,000, to be used by the City for park purposes.

5.03 Commencing on the first anniversary of the Construction Start Date, and on each anniversary of the Construction Start Date thereafter during the term of this Agreement, the Developer shall make an annual contribution of \$20,000 into a scholarship fund. The scholarship fund shall be used to grant scholarships to graduates of Riesel High School for education at universities, colleges, community colleges or technical schools. A committee of three (3) individuals shall develop rules governing the manner in which money from the fund should be expended, the fund should be structured, the duties of the committee members and money in the fund should be held and maintained pending distribution to graduates (the "Scholarship Fund Committee"). The Scholarship Fund Committee shall be appointed by the City, the Riesel Independent School District, and the Developer, each of which shall have the right to appoint one individual to serve on the Committee.

Article 6
Bridge Construction

6.01 Developer anticipates constructing a railroad spur, to cross Rattlesnake Road, in connection with the Project. In the event such a railroad spur is constructed, the Developer shall provide for the construction of a bridge, in order to prevent the creation of any at grade railroad crossing on Rattlesnake Road, meeting either TXDOT or McLennan County standards, applicable railroad standards, and any other applicable regulatory standards.

6.02 Upon completion of construction of the bridge and acceptance by the City or McLennan County, as applicable, the bridge shall be dedicated by the Developer and accepted by the City for use as part of the public roadway. The City shall, in a timely manner, accept the bridge for ownership, operation and maintenance. The City shall assume all responsibility, costs and liabilities associated with the City's maintenance of the bridge following acceptance of the bridge by the City or McLennan County as the case may be. Such responsibility, costs and liabilities associated with the City's maintenance of the bridge (i) shall be equivalent to, no greater than, and no different than the City's responsibilities, costs, and liabilities associated with the City's maintenance activities in relation to other City streets located inside the City's incorporated boundaries (ii) is not intended as an indemnity obligation and (iii) is not intended as a waiver of the City's sovereign immunity to tort liability, such liability being limited to the extent allowed under the Texas Tort Claims Act.

Article 7
General Requirements Relating To The Project

7.01 The Project will comply with all applicable local, state and federal rules and regulations and obtain and maintain in effect all required permits, licenses, and approvals.

7.02 Prior to the Construction Start Date, the Developer and the City will cooperate to schedule and conduct meetings for the purpose of reaching agreement on a reasonable set of procedures for addressing such matters as noise control, dust control, resident concerns, police protection, and similar matters that may arise during construction and operation of the Facility. Such meetings shall be scheduled in advance at reasonably convenient times at the request of either party. The agreement will include reasonable procedures under which the City may have access to the Site to monitor compliance with this Agreement and with such agreed upon procedures.

7.03 Prior to the Construction Start Date, the Developer will designate a representative who shall report bi-monthly during construction to the City Council of the City and advise as to the status of the Project. Following commencement of commercial operation, the Developer shall provide an annual operations report to the City Council.

Developer's designated representative will also be responsible for dealing with any issues or concerns that may arise during the construction and operation of the Project.

7.04 In the event streets, water lines, or other facilities owned, operated or maintained by the City are damaged as a direct result of the ordinary and customary use of trucks, trains or other machinery associated with the construction, maintenance or operation of the Project, or associated with the delivery of equipment, materials, or fuel required for the Project, the Developer shall repair such damaged facilities or pay to the City the funds reasonably required to repair such damage or, if necessary, replace such facilities. The City hereby agrees that to the extent the Developer shall actually make any payments hereunder to the City, Developer shall be subrogated to all rights the City may have had to recover such payments from another (other than from a City official, agent, or employee). The City shall do nothing to prejudice Developer's right to pursue such right of subrogation.

7.05 The City shall cooperate and assist the Developer in securing the necessary permits and governmental approvals for the design and construction of the bridge described in Section 6.01. However, the City's duty to provide such cooperation and assistance shall not obligate the City to make any expenditure. Rather, all costs of obtaining such permits and governmental approvals shall be borne by the Developer.

Article 8

Term

8.01 This Agreement shall have an initial term of fifteen (15) years commencing on the Date of this Agreement. Following the expiration of the initial fifteen (15) year term, and to the extent permitted by law, this Agreement shall renew automatically for an additional ten (10) years (the "Extension Term") unless terminated earlier in accordance with Article 9

Article 9

Early Termination and Remedies

9.01 Upon the twentieth (20th) anniversary following the Construction Start Date, the City may terminate this Agreement upon ninety (90) days notice and seek annexation of the ETJ Parcel, provided that (i) the City and the Developer, or its successors or assigns have entered into a valid and enforceable tax abatement agreement for the City Parcel (regardless if same has expired prior to such twentieth (20th) anniversary) ; (ii) the Site may be continuously used for the Project, and the City shall take such action as is lawful and reasonable to declare that such use shall be deemed a lawful use of the Site under applicable City ordinances; (iii) the City does not take any action to terminate such use of the Site so long as the use of the Site shall otherwise be lawful; (iv) the use of the Site for the Project shall continue to be considered a lawful use of property notwithstanding the City's adoption of any ordinance, including without limitation, any zoning ordinance, or City Regulations subsequent to the date of this Agreement that would create any unreasonable costs or other unreasonable burdens on

the Developer in addition to those regulations that are applicable to the Site on the Date of this Agreement; and (v) the City does not assess the Project with any special fees and/or taxes that are not common to all taxpayers of the City.

9.02 In the event of a breach of this Agreement, each party shall have all of the rights and remedies that may be available at law or in equity.

9.03 a. In the event a party violates a material provision of this Agreement (a "Defaulting Party"), the other party (the "Non-Defaulting Party") shall provide to the Defaulting Party notice of such breach. Thereafter, the Defaulting Party shall have sixty (60) days to cure the breach. If the breach is not cured within such sixty (60) day period (or in the event the breach cannot be cured within such period, the Defaulting Party has not commenced to cure the breach within such period and diligently pursued such cure to completion), the Non-Defaulting Party, in addition to the rights and remedies in Section 9.02, may terminate the Agreement by providing to the Defaulting Party at least thirty (30) days notice of termination.

b. In the event of a breach by Developer, the City, in addition to any notice to Developer, shall promptly provide written notice of such breach to any Lender (as defined hereafter in Section 11.02) or representative of such entity that has previously been identified and described by Developer 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 the City by such Lenders.

9.04 In the event the Developer is unable to construct the Project due to regulatory, financial, or other reasons as determined in the Developer's good faith sole discretion, the Developer may terminate this Agreement by providing to the City at least thirty (30) days notice and by paying to the City all amounts due under this Agreement through the date of termination. Upon such termination, the parties shall have no further obligation to each other.

9.05 Notwithstanding any other provisions in this Agreement to the contrary, in the event the Construction Start Date does not occur on or before August 1, 2008 this Agreement shall terminate, provided, however, the date by which the Construction Start Date must occur shall be extended for a period of one year until August 1, 2009 upon the receipt by the City of the sum of Twenty-Five Thousand Dollars (\$25,000) from the Developer on or before August 1, 2008; and further provided that such date shall be extended for a period of one additional year until August 1, 2010 upon the receipt by the City of the sum of Fifty Thousand Dollars (\$50,000) from the Developer on or before August 1, 2009. Extension of the date by which the Construction Start Date must occur under this Section shall not preclude the City, in the event of a breach of this Agreement, from terminating the Agreement under Section 9.03.

Article 10
City Funding Obligations

10.01 To the extent (if any) that this Agreement would obligate the City to make a payment or make an expenditure, the obligation shall be payable solely from revenues received by the City from the sale of services to the Project or from funds to be paid by the Developer under this Agreement, it being the intention of the parties that no obligation of the City in this Agreement shall constitute a debt of the City within the meaning of Article XI, Section 5 or 7 of the Texas Constitution.

Article 11
Assignment

11.01 This Agreement and the covenants and obligations set forth herein shall be considered to constitute covenants running with the land and shall extend to any person, company, or other entity to which the Site may be subsequently transferred, leased or conveyed. The City agrees to execute appropriate documentation in regard to the effect on this Agreement of any such transfer, lease, or conveyance in form and substance reasonably acceptable to the Developer and to the City and in recordable form to be recorded in the land records of McLennan County, Texas.

11.02 The Developer shall be entitled to assign this Agreement and its rights herein to any of the Developer's affiliates that has a direct or indirect interest in the Project or to any person or entity obtaining an ownership interest in the Project or to which the Project is transferred, leased, or conveyed. In addition, the City consents to the granting of a security interest in and an assignment by the Developer of this Agreement and its rights herein to any bank or other lender, its successors, assigns, and designees (the "Lender") in connection with any financing or refinancing related to the development, construction, operation or maintenance of the Project. In furtherance of the foregoing, the City acknowledges that the Lender may under certain circumstances assume the interests and rights of the Developer under this Agreement.

11.03 The City acknowledges that the Lender may under certain circumstances foreclose upon and sell, or cause the Developer to sell or lease the Project and cause any new lessee or purchaser of the Project to assume all of the interests, rights and obligations of the Developer arising under this Agreement. In such event, the City agrees to the assignment by the Developer or the Lender of this Agreement and its rights herein to such purchaser or lessee and, provided that all amounts due at that time under this Agreement are fully paid and all other obligations arising hereunder are satisfied, shall release the Lender and Developer from all obligations hereunder upon any such assignment.

11.04 In the event the Developer, its successors or assigns, during the term of this Agreement, conveys the Project to a governmental or other entity that is exempt from payment of property taxes, the Developer or its successors or assigns as the case may be

shall pay to the City a lump sum payment in the amount of \$1 million. If only an undivided interest or other partial interest is conveyed to such a governmental or other property tax exempt entity, then the foregoing payment shall be reduced proportionately consistent with the percentage interest conveyed. For example, if a 25% undivided interest in the Project is so conveyed by the Developer, the payment to the City would be \$250,000. The lump sum payment, which shall be paid to the City on the date title to the Project or an interest therein is so transferred, shall not be in lieu of PILOT and shall not relieve the purchaser (in the event the entire Project is transferred to the purchaser) or the Developer and the purchaser (in the event less than the entire Project is so transferred) from making PILOT payments to the City for the remainder of the term of this Agreement.

11.05 In conjunction with the assignment of this Agreement as permitted above, the non-assigning party agrees to execute and deliver, in mutually agreed upon forms, such consents, written information, certificates, opinions, affidavits and other like documents as the other party may reasonably request. In addition, each party shall promptly execute any additional documents, as may be mutually agreed upon in form and substance, that are reasonably requested by any Lender.

11.06 Except as provided in this Article 11, neither party may assign this Agreement or any covenants or obligations set forth herein without the consent of the other party.

Article 12 Severability

12.01 Subject to Section 12.03, the provisions of this Agreement are severable and if, for any reason, any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal or unenforceable provision had never been contained in the Agreement.

12.02 Subject to Section 12.03, in the event any provision of this Agreement is declared invalid, illegal, or unenforceable, the parties shall, upon the request of a party, promptly renegotiate in good faith a new provision to eliminate the invalidity and to restore this Agreement as nearly as possible to its original intent and effect. In the event agreement cannot be reached in such renegotiation, this Agreement shall continue in force and effect as if it had been executed without the invalid provision.

12.03 Any party may, following at least thirty (30) days prior written notice to the other party, terminate this Agreement in the event a court or regulatory authority having jurisdiction, by final non-appealable judgment or order, invalidates or declares unenforceable: (i) the obligation of the Developer to make PILOT payments; (ii) the right of the Developer to avoid termination of the Agreement under Section 9.01 in the event of the City's failure to refrain from adopting ordinances or city regulations that impose

unreasonable costs or unreasonable burdens on the Project not otherwise in effect as of the Date of this Agreement; (iii) the water system improvement fee provided under Section 4.01 or (iv) the obligation of the City to refrain from annexation of the Site during the term of this Agreement. The right of termination in this Section 12.03 may not be exercised, and such notice of termination may not be delivered, later than ninety (90) days following the date such judgment or order becomes final and non-appealable. In the event of such termination neither party shall have any further liability or obligation to the other party under this Agreement in recordable form.

Article 13
Notices

13.01 Notices given under this Agreement shall be in writing and are deemed to have been duly delivered if hand delivered or sent by United States certified mail, return receipt requested, postage prepaid, to:

(a) If to the City:

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

(b) If to the Developer:

Sandy Creek Energy Associates, L.P.
Attention: Michael F. Vogt, Director, Project Development
400 Chesterfield Center, Suite 110
St. Louis, Missouri 63017

13.02 The names, titles, and addresses of either party in Section 13.01 may be changed by written notification to the other.

Article 14
Further Assurances

14.01 Each party will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the other party may reasonably request, in order to protect any right or interest granted by the provisions of this Agreement or to enable the other party to exercise and enforce its rights and remedies hereunder. Without limiting the foregoing, in the event it is necessary or useful in order for Developer to obtain financing in relation to the Project, the Parties agree to negotiate in good faith in an effort to make reasonable changes to this

Agreement or to execute such additional documents or assurances which may be requested of the parties or of Developer by financial institutions or other financing parties provided that such additional documents or assurances do not (i) render the basic purposes of this Agreement illegal, invalid or unenforceable or (ii) otherwise materially and adversely affect the utility or financial parameters of this Agreement to the party being requested to execute or issue the additional documents or assurances.

Article 15
Entire Agreement

15.01 This Agreement constitutes the entire agreement between the parties respecting the subject matter hereof and supersedes any prior understanding or written or oral agreements concerning same.

Article 16
Governing Law

16.01 This Agreement, and the rights and obligations of the parties under or pursuant to this Agreement, shall be governed by the laws of the State of Texas.

Article 17
Miscellaneous

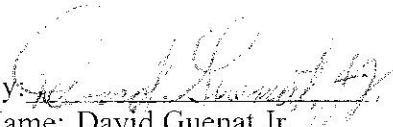
17.01 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

17.02 Any representations, warranties, covenants and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

17.03 The parties agree to execute appropriate documentation in form and substance mutually acceptable and in recordable form to be prepared and filed by Developer in the land records of McLennan County.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

CITY OF RIESEL, TEXAS

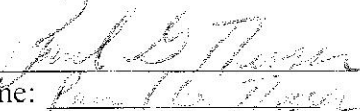
By: 

Name: David Guenat Jr.

Title: Mayor

SANDY CREEK ENERGY
ASSOCIATES, L.P.

By: SANDY CREEK SP, INC.
General Partner

By: 

Name: Paul G. Thorsen

Title: President

EXECUTIVE VICE PRESIDENT

THE STATE OF TEXAS §
§
COUNTY OF MCLENNAN §

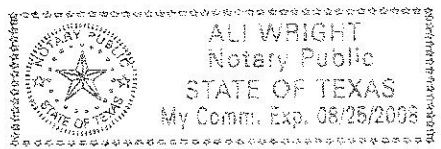
BEFORE ME, the undersigned authority, on this day personally appeared David Guenat Jr., Mayor of the City of Riesel, Texas, a municipal corporation of the State of Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 2nd day of August, 2005.

Ali Wright

Notary Public in and for the State of Texas
Ali Wright
Name (Printed or Typed)
My Commission Expires: 8/25/2008

Missouri
THE STATE OF TEXAS §
§
COUNTY OF St. Louis §



BEFORE ME, the undersigned authority, on this day personally appeared Frank B. Bova, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in the capacity stated, as the act of the limited partnership, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 3rd day of August, 2005.

Joann R. Bova

Notary Public in and for the State of Texas *Missouri*
Joann R. Bova
Name (Printed or Typed)
My Commission Expires: November 3 2008

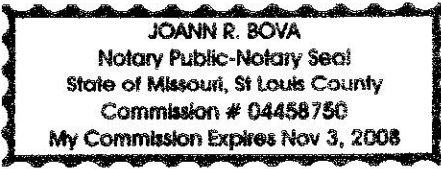


EXHIBIT A
SITE DESCRIPTION

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 Site that is located inside the incorporated boundaries of the City of Riesel. The "City Parcel", referred to in the Recitals in the Industrial District Agreement to which this Exhibit "A" is a part, is hereby defined as this 466.16 acre portion of the Site.

The second page following this cover page is a survey of the 231.73 acre portion of the Site that is located in the extraterritorial jurisdiction of the City of Riesel. The "ETJ Parcel", referred to in the Recitals in the Industrial District Agreement to which this Exhibit "A" is a part, is hereby defined as this 231.73 acre portion of the Site.

The third page following this cover page is a map depicting the City Parcel and the ETJ Parcel.

The Site is 697.89 acres, consisting of the City Parcel and the ETJ Parcel.

**AMENDMENT NO.1
TO
INDUSTRIAL DISTRICT AGREEMENT**

THIS AMENDMENT NO.1 TO INDUSTRIAL DISTRICT AGREEMENT (this "Amendment No.1") is made as of January 08, 2008, by and between the City of Riesel, Texas (the "City"), Sandy Creek Energy Associates, L.P., a Delaware limited partnership ("SCEA"), and Brazos Sandy Creek Electric Cooperative, Inc., a Texas electric cooperative corporation ("BSCEC").

RECITALS

WHEREAS, the City and SCEA entered into that certain Industrial District Agreement (the "Agreement") dated August 2, 2005; and

WHEREAS, on August 30, 2007, SCEA assigned to BSCEC an undivided 25% of SCEA's ownership interest ("Acquired Ownership Interest") in the Agreement, as permitted by Section 11.02 of the Agreement (SCEA and BSCEC being hereinafter collectively referred to as the "Developer" and the City and the Developer being referred to hereinafter individually as a "Party" and together as the "Parties");

WHEREAS, on August 30, 2007, the Developer retained Sandy Creek Services, LLC (and its successors or assigns) as its project management company ("Project management Company") for the Project, and delegated to the Project Management Company authority to act for and on behalf of the Developer with respect to the administration of the Agreement; and

WHEREAS, the Parties desire to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto, intending to be legally bound, agree as follows:

1. Capitalized terms used in this Amendment No.1 that are not defined herein shall have the meanings ascribed to the in the Agreement.
2. Section 4.01 of the Agreement shall be deleted in its entirety and replaced with the following:

"Within sixty (60) days following the Construction Start Date, the City shall establish a bank account with a bank (the "Bank") and name the account "City of Riesel - water System Improvement Account" (referred to herein as the "WSI Account"). The WSI Account shall be in the name of the city but shall always and irrevocably require two signatures in order to affect any withdrawal of funds. One signatory shall be appointed by the City, and the other signatory shall be appointed by the Developer (by written notice from the Developer to the City).

Either the City or the Developer may at any time and from time to time change its appointed signatory by written notice to the other Party, and the City shall effect any such change with the Bank. The funds in the WSI Account shall be used solely for expenditures directly related to the construction of improvements to the City's municipal water utility system deemed necessary or advisable by the City ("Approved WSI Expenditures"). Once the City has established the WSI Account in accordance with the foregoing requirements and notified the Developer of such (including the name and address of the Bank, the Bank's ABA routing number, and the WSI Account number), the Developer shall, within the later of (i) one hundred sixty (160) days following receipt of such notice and (ii) one hundred eighty (180) days following the Construction Start Date, deposit the amount of Seven Hundred Fifty Thousand Dollars (\$750,000) into the WSI Account. The Developer agrees that its appointed signatory to the WSI Account will authorize withdrawals to pay any Approved WSI Expenditures upon reasonable advance notice from the City. The City will pay all fees charged by the Bank with respect to the WSI Account. The City will close the WSI Account upon the earlier to occur of (i) all funds being depleted from the WSI Account and (ii) May 31, 2012. In the event that the WSI Account is to be closed pursuant to the foregoing sentence and unspent funds remain therein, all such remaining funds shall be returned to the Developer. In the event the Developer requests the provision of water from the City, the City and the Developer agree to negotiate in good faith for the provision of such water by the City."

3. Section 5.01 of the Agreement shall be deleted in its entirety and replaced with the following:

"For purposes of this Agreement, the Developer and the City agree that construction of the Project shall be deemed to have commenced on the date that the Developer designates as the start of construction date by notice to the Texas Commission on Environmental Quality (the "Construction Start Date"). Developer shall give the City written notice of the Construction Start Date. Within ninety (90) days following the Construction Start Date, the City shall establish a bank account with the Bank and name the account "City of Riesel - Land Account" (referred to herein as the "Land Account"). The Land Account shall be in the name of the City but shall always and irrevocably require two signatures in order to affect any withdrawal of funds. One signatory shall be appointed by the City, and the other signatory shall be appointed by the Developer (by written notice from the Developer to the City). The City and the Developer may at any time and from time to time change its appointed signatory by written notice to the other Party, and the City shall effect any such change with the Bank. The funds in the Land Account shall be used solely for expenditures directly related to the purchase by the City of approximately twenty (20) acres of land for use as determined by the City, (such expenditures to be called the "Approved Land Expenditures"). Once the City has established the Land Account in accordance with the foregoing requirements and notified the Developer of such (including the name and address of the Bank, the Bank's ABA routing number,

and the Land Account number), the Developer shall, within the later of (i) one hundred sixty (160) days following such notice and (ii) one hundred eighty (180) days following the Construction Start Date, deposit the amount of Sixty Thousand Dollars (\$60,000) into the Land Account. The Developer agrees that its appointed signatory to the Land Account will authorize withdrawals to pay any Approved Land Expenditures upon reasonable advance notice from the City. The City will pay all fees charged by the Bank with respect to the Land Account. The City will close the Land Account upon the earlier to occur of (i) all funds being depleted from the Land Account and (ii) May 31, 2012. In the event that the Land Account is to be closed pursuant to the foregoing sentence and unspent funds remain therein, all such remaining funds shall be returned to the Developer. If such property purchased by the City is adjacent to the Project, the City's use thereof shall be compatible with the Project."

4. The first sentence of Section 7.03 of the Agreement shall be deleted in its entirety and replaced with the following:

"The Developer's designated representative is Mike Herfurth. The Developer may change its designated representative at any time and from time to time upon written notice to the City. Monthly during the construction of the Project, the Developer's designated representative shall report in writing to the City Counsel of the City regarding the status of the Project."

5. Subsection 13.01(b) shall be deleted in its entirety and replaced with the following:

"(b) If to the Developer:

Sandy Creek Services, LLC
c/o Dynegy, Inc.
1000 Louisiana, Suite 5800
Houston, Texas 77002
Attention: Mike Herfurth

With a copy to:

Sandy Creek Energy Associates, L.P.
c/o LS Power Development, LLC
Two Tower Center, 11th Floor
East Brunswick, New Jersey 08816

And:

Brazos Sandy Creek Electric Cooperative, Inc.
2404 LaSalle Avenue
Waco, Texas 76702

Attention: Executive Vice President and General Manager”

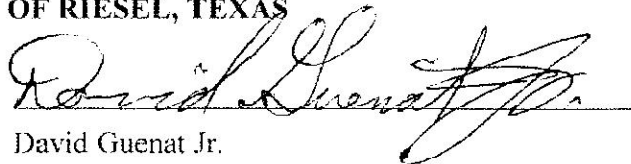
6. All terms and conditions of the Agreement, except as expressly amended herein, shall remain the same, and the Agreement, as amended hereby, shall remain in full force and effect.
7. This Amendment No. 1 may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
8. City agrees that the acts of the Project Management Company with respect to the Agreement shall be deemed to be the acts of the Developer, and that all contract claims and causes of action other than claims arising from the gross negligence or willful misconduct of the Project Management Company arising therefrom shall be asserted only against the Developer. City acknowledges that the liability of SCEA and BSCEC is several (to the extent of its ownership interest in the Project), and not joint.

[signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 1 to be executed effective as of the date first set forth above.

CITY OF RIESEL, TEXAS

By:



David Guenat Jr.
Mayor

SANDY CREEK SERVICES, LLC

By:



Name: Mike Herfurth
Title: Project Director, Sandy Creek Energy Station