

## **VII. Default, Remedies and Limitation of Liability**

- A. The County may declare a default if Owner breaches any material term or condition of this Agreement. If the County declares a default of this Agreement, this Agreement shall terminate, after notice and opportunity to cure as provided for below, or the County may modify this Agreement upon mutual agreement with Owner. If Owner believes that such termination was improper, Owner may file suit in the proper court challenging such termination. In the event of default, the County may pursue the remedies provided for in Section VII(C) below or the preceding Section IV(E), as applicable. The County shall not declare a default, and no default will be deemed to have occurred, when the circumstances giving rise to such declaration are the result of Force Majeure. Notwithstanding any other provision of this Agreement to the contrary, in the event a party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement (other than any obligation to make payment of any amount when due and payable hereunder), the obligation of such party, so far as it is affected by such Force Majeure, shall be suspended during the continuance of any condition or event of Force Majeure, but for no longer period, and such condition or event shall so far as possible be remedied with all reasonable dispatch. The party prevented or hindered from performing shall give prompt (but in no event later than twenty (20) business days after the occurrence of such event) notice and reasonably full particulars of such event to the other party and shall take all reasonable actions within its power to remove the basis for nonperformance (including securing alternative supply sources) and after doing so shall resume performance as soon as possible. The settlement of strikes or lockouts or resolution of differences with workers shall be entirely within the discretion of the affected party, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts or differences by acceding to the demands of the opposing party in such strike, lockout or difference when such course is inadvisable in the reasonably exercised discretion of the affected party.
- B. The County shall notify Owner and any Lender for which Owner has provided contact information to the County of any default in writing in the manner prescribed herein. All contact information for purposes of a notice of default shall be provided to the County Judge. The notice shall specify the basis for the declaration of default, and Owner shall have sixty (60) days from the date of such notice to cure any default, except that where the default is incapable of being cured within sixty (60) days using reasonable business efforts, Owner shall commence performance of the cure within thirty (30) days after receipt of notice and diligently pursue those efforts until the default is cured. Any Lender of which the County has notice shall maintain the right to cure any defect, including any defect caused by an assignee or contractor of Owner during the same cure period identified in the foregoing sentence.
- C. As required by section 312.205 of the Texas Tax Code, if Owner fails to make the Improvements as provided for by this Agreement or fails to cure a default after proper notice and the expiration of the provided cure period, the County shall be entitled to cancel this Agreement and recapture property tax revenue lost as a result of this Agreement, less any PILOTs paid by Owner to the County, subject to the above provisions regarding notice and right to cure.

D. LIMITATION OF LIABILITY: CANCELLATION OF THIS AGREEMENT (RESULTING IN A FORFEITURE OF ANY RIGHT TO ABATEMENT HEREUNDER BEYOND THE CANCELLATION DATE), RECAPTURE OF PROPERTY TAXES ABATED (BUT LESS ALL PAYMENTS IN LIEU OF TAXES PAID BY OWNER) ONLY AS PROVIDED FOR AND ONLY UNDER THE CIRCUMSTANCES DEFINED IN SECTION VII(C) OF THIS AGREEMENT, AND/OR RECOVERY OF THE AMOUNTS PROVIDED FOR IN SECTION IV(E) ONLY AS PROVIDED FOR AND ONLY UNDER THE CIRCUMSTANCES DEFINED IN SECTION IV(E), ALONG WITH ANY REASONABLY INCURRED COSTS AND FEES, SHALL BE THE COUNTY'S SOLE REMEDY, AND OWNER'S SOLE LIABILITY, IN THE EVENT OWNER FAILS TO MAKE THE SPECIFIED IMPROVEMENTS OR TAKE OTHER ACTION REQUIRED BY THIS AGREEMENT, INCLUDING ANY FAILURE TO PAY AMOUNTS OWED UNDER THIS AGREEMENT. OWNER AND THE COUNTY AGREE THAT THE LIMITATIONS CONTAINED IN THIS PARAGRAPH ARE REASONABLE AND REFLECT THE BARGAINED FOR RISK ALLOCATION AGREED TO BY THE PARTIES. IN THE EVENT OF A BREACH OF THIS AGREEMENT, ANY AMOUNTS DUE FROM OWNER SHALL BE SUBJECT TO ANY AND ALL STATUTORY RIGHTS FOR THE PAYMENT AND COLLECTION OF TAXES IN ACCORDANCE WITH THE TEXAS TAX CODE.

E. Any notice of default under this Agreement shall prominently state the following at the top of the notice:

**NOTICE OF DEFAULT UNDER TAX ABATEMENT AGREEMENT**

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING DEFAULT UNDER YOUR TAX ABATEMENT AGREEMENT WITH THE COUNTY. FAILURE TO CURE THIS DEFAULT WITHIN SIXTY (60) DAYS OF NOTICE OR OTHERWISE CURE THE DEFAULT AS PROVIDED BY THIS AGREEMENT SHALL RESULT IN TERMINATION OF THE TAX ABATEMENT AGREEMENT AND MAY INCLUDE RECAPTURE OF TAXES ABATED PURSUANT TO THAT AGREEMENT.

**VIII. Compliance with State and Local Regulations**

Nothing in this Agreement shall be construed to alter or affect the obligations of Owner to comply with any order, rule, statute or regulation of the County or the State of Texas.

**IX. Assignment of Agreement**

A. The rights and responsibilities of Owner hereunder may be assigned in their entirety to an Affiliate without County's prior consent. Owner shall provide notice to the County of any assignment to an Affiliate. Owner's assignment of the Agreement to an Affiliate shall be final only after the execution of a formal assignment document between Owner and the assignee and the delivery of notice of the execution of such assignment agreement to the County.



- B. The rights and responsibilities of Owner hereunder may be assigned in their entirety to a party other than an Affiliate, but only after obtaining the County's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Any assignment by Owner to a party other than an Affiliate without first obtaining the written consent of the County shall be a default under this Agreement subject to the notice provisions, cure provisions, remedies, and other terms and conditions of Article VII above. Owner shall give the County forty-five (45) days' written notice of any intended assignment to a party other than an Affiliate, and the County shall respond with its consent or refusal within thirty-five (35) days after receipt of Owner's notice of assignment. If the County responds to Owner's notice of assignment with a refusal, the parties agree to work together in good faith to resolve the County's objections to the assignment. Owner's assignment of the Agreement shall be final only after the execution of a formal assignment document between Owner and the assignee and the delivery of notice of the execution of such assignment agreement to the County. Neither Owner's notice of an intended assignment nor the County's formal consent to an intended assignment shall constitute an assignment of the Agreement, and Owner's request for a consent to assignment shall not obligate Owner to assign the Agreement.
- C. No assignment under Paragraph IX(A) or IX(B) shall be allowed if (a) the County has declared a default hereunder that has not been cured within all applicable notice and cure periods, or (b) the assignee is delinquent in the payment of ad valorem taxes owed to the County or any other taxing jurisdiction in the County. Consent to a transfer or assignment requested under Paragraph IX(B) will be subject to the County approving the financial capacity of the transferee/assignee and subject to all conditions and obligations in this Agreement being assumed and guaranteed by the transferee/assignee. The County shall not unreasonably withhold consent to a transfer or an assignment under Paragraph IX(B). The transfer or assignment shall be presumed to be reasonable where the proposed transferee/assignee demonstrates to the County its financial capacity to meet the terms of this Agreement, agrees to be bound by all conditions and obligations stated herein, and is not in default under any other agreement with the County.
- D. The parties agree that a transfer of all or a portion of the ownership interests in Owner to a third party shall not be considered an assignment under the terms of this Agreement and shall not require any consent of the County.
- E. Upon any assignment and assumption under Paragraph IX(A) or IX(B) of Owner's entire interest in the Agreement, Owner shall have no further rights, duties or obligations under the Agreement. No partial assignments are permitted by Owner without County's prior written consent.
- F. In addition to its rights under Paragraph IX(A) and IX(B), Owner may, without obtaining the County's consent, mortgage, pledge, or otherwise encumber its interest in this Agreement or the Project to a Lender for the purpose of financing the operations of the Project or constructing the Project or acquiring additional equipment following any initial phase of construction. Owner's encumbering its interest in this Agreement may include an assignment of Owner's rights and obligations under this Agreement for

purposes of granting a security interest in this Agreement. In the event Owner takes any of the actions permitted by this subparagraph, it may provide written notice of such action to the County with such notice to include the name and notice information of the Lender. If Owner provides the name and contact information of a Lender to the County, then the County shall be required to provide a copy to such Lender of all Notices delivered to Owner at the same time that the Notice is delivered to Owner. If Owner does not provide the name and contact information of a Lender to the County in writing, then such Lender shall not have the notice rights or other rights of a Lender under this Agreement.

## **X. Notice**

All notices, demands, or other communications of any type (collectively, “**Notices**” and each individually, a “**Notice**”) given shall be given in accordance with this Section. All Notices shall be in writing and delivered, by commercial delivery service to the office of the person to whom the Notice is directed (provided that that delivery is confirmed by the courier delivery service); by United States Postal Service (USPS), postage prepaid, as a registered or certified item, return receipt requested in a proper wrapper and with proper postage; by recognized overnight delivery service as evidenced by a bill of lading, or by facsimile transmission. Notices delivered by commercial delivery service shall be deemed delivered on receipt or refusal; Notices delivered by USPS shall be deemed to have been given upon deposit with the same; facsimile Notice shall be effective upon receipt by the sender of an electronic confirmation. Regardless of the method of delivery, in no case shall Notice be deemed delivered later than actual receipt. In the event of a notice of default given pursuant to Article VII, such Notice shall be given by at least two (2) methods of delivery and consistent with Section VII(E). All Notices shall be mailed or delivered to the following addresses:

To Owner:

ZSS Power, LLC  
Attn: Texas Development  
700 Universe Boulevard  
Juno Beach, FL 33408

To the County:

Knox County Judge  
Knox County Courthouse  
P.O. Box 77  
Benjamin, Texas 79505

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

## **XI. Severability**

In the event any section or other part of this Agreement is held invalid, illegal, factually insufficient, unconstitutional or otherwise unenforceable, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid, illegal, factually insufficient, unconstitutional or otherwise unenforceable section(s) or



other part(s). In the event that (i) the term of the Abatement with respect to any property is longer than allowed by law or (ii) the Abatement applies to a broader classification of property than is allowed by law, then the Abatement shall be valid with respect to the classification of property not deemed overly broad, and for the portion of the term of the Abatement not deemed excessive. Any provision required by the Tax Code to be contained herein that does not appear herein is incorporated herein by reference.

## **XII. Applicable Law and Venue**

This Agreement shall be construed under and governed by the laws of the State of Texas. This Agreement, in its entirety, shall be performable in Knox County, Texas. As part of the consideration for entering into this Agreement, both the County and Owner agree that any litigation to construe or enforce the terms or conditions of this Agreement shall be brought solely in the state or federal district courts having jurisdiction in Knox County, Texas.

## **XIII. Amendment**

Except as otherwise provided, this Agreement may be modified by the parties hereto upon mutual written consent to include other provisions which could have originally been included in this Agreement or to delete provisions that were not originally necessary to this Agreement pursuant to the procedures set forth in Chapter 312 of the Texas Tax Code.

## **XIV. Guidelines and Criteria**

This Agreement is entered into by the parties consistent with the Guidelines. To the extent this Agreement modifies any requirement or procedure set forth in the Guidelines, the Guidelines are deemed amended for purposes of this Agreement only.

## **XV. Entire Agreement**

This Agreement contains the entire and integrated Tax Abatement Agreement between the County and Owner, and supersedes any and all other negotiations and agreements, whether written or oral, between the parties. This Agreement has not been executed in reliance upon any representation or promise except those contained herein.

## **XVI. Coordination of Local Hiring and Services**

- A. Owner shall use reasonable commercial efforts to maximize its use of County labor and services and supplies purchased from County businesses in the course of performing under this Agreement, as is further described in the Local Spending and Support Plan attached to this Agreement as Attachment B.
- B. For every year during the Term, Owner, its contractors, and their respective affiliates will collectively employ at least one (1) full-time Project employee in the County.
- C. Upon request by Owner, County shall provide a written statement certifying that Owner is then in compliance (or has fully complied) with the Local Spending and Support

Plan; if County cannot make such statement, County will provide an explanation to Owner of its determination.

D. Within 90 days following the COD, Owner shall provide the County with a written project summary showing its good faith and commercially reasonable efforts to comply with the requirements set forth in the Local Spending and Support Plan (in the form of Attachment B), which summary shall include all reasonably available local spending information collected by Owner in the ordinary course of business including (among other information):

1. Summary of Local services/materials/supplies purchased within the County;
2. Proof that Owner designated a Coordinator of Local Hiring Services (per Attachment B, Section D); and
3. Proof that Owner used commercially reasonable efforts to utilize the County Labor Force by conducting a job and contracting information session within 60 days of beginning physical construction of the Project (per Attachment B, Section E).

#### **XVII. Road and Bridge Maintenance**

During construction of the Improvements, Owner agrees to use commercially reasonable efforts to minimize the disruption to County roads (for purposes of this paragraph, the term "roads" includes, without limitation, all adjacent ditches and rights-of-way), culverts, and bridges and agrees to repair any damage caused to County roads, culverts, or bridges by Owner or its agents. After construction, Owner will leave such County roads, culverts, and bridges in a state of equal or better condition than they were in prior to construction, excepting normal wear and tear. Any upgrade or requirement to upgrade any road, culvert, or bridge used or necessary for Owner's operations will be borne solely by Owner. After construction, the County will only be responsible for the normal routine maintenance of the County roads, culverts, and bridges, and Owner will be responsible for any extraordinary repair or maintenance of County roads, culverts, and/or bridges that becomes necessary or appropriate due to the use of such roads, culverts, and bridges by Owner or its agents. All repairs, maintenance, replacements, and upgrades will be made in accordance with County standards and specifications, and Owner will only use such materials in repairing, maintaining, replacing, and upgrading County roads, culverts, and bridges as are acceptable to the County, in the County's sole discretion.

#### **XVIII. Site Maintenance**

Owner shall maintain the Site free from accumulation of objectionable, unsightly, or unsanitary matter, debris, waste material, rubbish, tumbleweeds, and noxious weeds.

#### **XIX. Indemnity**

Owner agrees to indemnify, defend, and hold the County, each of its elected officials, all of its servants, agents, and employees, any person or legal entity designated by the County to perform any function required under the Guidelines, under the tax abatement application, or by the terms of this Agreement, and the Appraisal District, its officers, directors, servants,



agents and employees (collectively, the “**Indemnitees**”) harmless from any and all claims, demands, liabilities, losses, costs, actions, causes of action, and attorneys’ fees incurred by or alleged against the Indemnitees arising from or in any way relating to the tax abatement application, the terms, covenants, and conditions contained in this Agreement, and the actions contemplated by this Agreement.

## **XX. Reimbursement of Expenses**

Within thirty (30) days of the date of receipt of an invoice, Owner agrees to reimburse the County for or pay directly to the County’s attorneys, as applicable, the reasonable and necessary attorney’s fees and expenses incurred, directly or indirectly, by the County in connection with the negotiation and formalization of the Abatement and this Agreement in an amount not to exceed Ten Thousand Dollars (\$10,000.00).

## **XXI. Estoppel Certificates.**

Each party on written request from the other party shall provide an estoppel certificate that shall certify, as of the date of the certificate: (i) that this Agreement is in full force and effect without default if such is the case, (ii) the remaining term of this Agreement, and (iii) such other matters as may be agreed upon by the parties, a party’s consent to inclusion of other matters not to be unreasonably withheld. A party shall provide the estoppel certificate or an explanation of why the party is not willing to provide the certificate within thirty (30) days of receiving a request.

## **XXII. Employment of Undocumented Workers.**

During the term of this Agreement, Owner agrees not to knowingly employ any undocumented workers as defined in Section 2264.001 of the Texas Government Code. If Owner is convicted after exhaustion of all rights of appeal of a violation under 8 U.S.C. §1324a(f), Owner shall repay the amount of the abatements and any other funds received by Owner from the County as of the date of such violation, not later than one hundred and twenty (120) days after the date Owner is notified by the County of a violation of this section, plus interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the County) as its prime or base commercial lending rate. The payment of interest shall be as if it had been accruing from the dates the abatements were granted to Owner until the date the amount due is repaid to the County.

## **XXIII. No Boycott.**

In accordance with Section 2270.002 of the Texas Government Code (as added by Tex. H.B. 89, 85th Leg., R.S. (2017)), Owner verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement.

## **XXIV. Not a Listed Company.**

In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S. B. 252, 85th Leg., R.S. (2017), the Parties covenant and agree that Owner is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

**XXV. No Firearms Boycott.**

To the extent Texas Government Code Chapter 2274 applies to this Agreement, Owner represents that: (i) Owner does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) Owner will not discriminate during the term against a firearm entity or firearm trade association.

**XXVI. No Energy Company Boycott.**

To the extent Texas Government Code Chapter 2276 applies to this Agreement, Owner represents that: (i) Owner does not boycott energy companies; and (ii) Owner will not boycott energy companies during the term.

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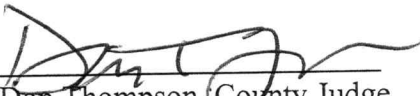



IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the County as authorized by the County Commissioners Court and executed by Owner on the respective dates shown below and is effective on the Effective Date.

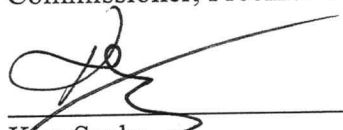
ATTEST/SEAL:


**KNOX COUNTY, TEXAS**

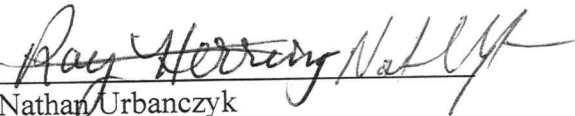
Date: February 10, 2025

  
Don Thompson, County Judge

  
Louis Baty  
Commissioner, Precinct 1

  
Kim Sealy  
Commissioner, Precinct 2

  
Ray Herring  
Commissioner, Precinct 3

  
Nathan Urbanczyk  
Commissioner, Precinct 4

Attest:

  
Lisa Cypert, Knox County Clerk

**ZSS POWER LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_



## **Attachment A**

Attached is the Reinvestment Zone created by resolution dated November 14, 2022, duly passed by the County Commissioners Court and referred to as the ZSS Power Reinvestment Zone.