

UNDERWOOD

FRED STORMER
Phone: 806.379.0306
Fax: 806.379.0316
www.uwlaw.com
Fred.Stormer@uwlaw.com

ADDRESS:
500 S. Taylor Street
Suite 1200, LB 233
Amarillo, TX 79101-2446
MAILING ADDRESS:
P.O. Box 9158
Amarillo, TX 79105-9158

July 25, 2017

Ms. Michelle Luera
Research Analyst
Economic Analysis
Local Government Assistance and Economic Development Division
Texas Comptroller of Public Accounts
LBJ State Office Building
111 E. 17th Street
Austin, TX 78774

Via Email and Federal Express

Re: App 1136- Eden CISD and RES Cactus Flats Wind Energy, LLC

Dear Ms. Luera:

Enclosed please find a fully executed copy of Amendment No. 1 to the Limitation on Appraised Value Agreement between the above-noted parties. A CD containing this document is also enclosed.

Please feel free to contact us if you require anything further.

Sincerely,



Fred Stormer

FS/ph
Encl.
MGANWV9R0DENLI

**AMENDMENT NO. 1
TO AGREEMENT FOR LIMITATION ON APPRAISED VALUE
OF PROPERTY FOR SCHOOL DISTRICT MAINTENANCE AND
OPERATIONS TAXES BETWEEN EDEN CONSOLIDATED INDEPENDENT
SCHOOL DISTRICT AND RES CACTUS FLATS WIND ENERGY, LLC
APPLICATION NO. 1136**

This Amendment No. 1 to the Agreement For Limitation On Appraised Value Of Property For School District Maintenance And Operations Taxes, dated as of July 20, 2017 (“**Amendment No. 1**”), is executed and delivered by and between **EDEN CONSOLIDATED INDEPENDENT SCHOOL DISTRICT** (the “**District**”), a lawfully created independent school district of the State of Texas operating under and subject to the Texas Education Code, and **RES CACTUS FLATS WIND ENERGY, LLC**, a Delaware limited liability company, Texas Taxpayer Identification Number 32058765176 (“**Applicant**”). The Applicant and the District may hereafter be referred to together as the “**Parties**” and individually as a “**Party**.” Undefined capitalized terms herein shall have the meaning given to them in the Agreement.

WITNESSETH:

WHEREAS, on or about November 28, 2016, pursuant to Chapter 313 of the Texas Tax Code (the “**Code**”), after conducting a public hearing on the matter, the District made factual findings, and passed, approved, and executed that certain Agreement for Limitation on Appraised Value of Property for Maintenance and Operation Taxes between the District and the Applicant (the “**Agreement**”);

WHEREAS, pursuant to Section 10.2 of the Agreement, the District and the Applicant desire and have agreed to amend Section 2.3.D. (Tax Limitation Period) and Section 2.3.E (Final Termination Date) of the Agreement. The Tax Limitation Period for the Agreement should commence on January 1, 2019, which is January 1 of the first tax year after the expiration of the Qualifying Time Period. The changes to the Tax Limitation Period and Final Termination Date result in changes to Exhibit 5.

WHEREAS, the Parties notified the Comptroller of the Amended Application and the request for this Amendment No. 1 dated June 7, 2017, and the Comptroller issued its notice of completeness letter on June 13, 2017, issued its amended certification of the Amended Application on June 23, 2017, and approved the form of this Amendment No. 1 on June 23, 2017; and

WHEREAS, on July 20, 2017, after conducting a public hearing and providing interested persons an opportunity to be heard on the matter, the Board of Trustees determined that this Amendment No. 1 is in the best interest of the District and the State of Texas and is consistent with and authorized by Chapter 313 of the Code, and has hereby approved the form of this Amendment No. 1 and authorized the District’s representative, whose signature appears below, to execute and deliver this Amendment No. 1 to the Applicant;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which is hereby

acknowledged, the Parties, intending to be legally bound, do hereby covenant and agree to amend the Agreement as follows:

1. **Amendment.** The following provisions of the Agreement are hereby modified, revised, amended, supplemented, and replaced as follows:

a) Section 2.3.D. and E. of the Agreement are hereby amended to read as follows:

“D. The Tax Limitation Period for the Agreement:

- i. Starts on January 1, 2019, which is January 1 of the first Tax Year that begins after the end of the Qualifying Time Period; and,
- ii. Ends on December 31, 2028.

E. The Final Termination Date for this Agreement is December 31, 2033.”

b) Exhibit 5 (Agreement Schedule) is hereby amended and replaced by the Exhibit 5 attached to this Amendment.

2. **Effect.** Except as modified and amended by the terms of this Amendment No. 1, all of the terms, conditions, provisions and covenants of the Agreement are ratified and shall remain in full force and effect, and the Agreement and this Amendment No. 1 shall be deemed to constitute a single instrument or document. Should there be any inconsistency between the terms of this Amendment No. 1 and the Agreement; the terms of this Amendment No. 1 shall prevail. A copy of this Amendment No. 1 shall be delivered to the Concho County Appraisal District and to the Texas Comptroller to be posted to the Texas Comptroller’s internet website. A copy of this Amendment shall be recorded with the official Minutes of the meeting at which it has been approved and a copy of this Amendment shall also be recorded with the Findings of Fact in the official Minutes of the meeting of November 28, 2016.

3. **Binding on Successors and Assigns.** The Agreement, as amended by this Amendment No. 1, shall be binding upon and inure to the benefit of the Parties and each other person and entity having any interest therein during their ownership thereof, and their respective successors and assigns.

4. **Counterparts.** This Amendment No. 1 may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

IN WITNESS HEREOF, the District and Applicant have caused this Amendment No. 1 to be executed and delivered by their duly authorized representatives as of the Effective Date.

[signatures follow on next page]

APPROVED AND EFFECTIVE as of the 20th day of July, 2017.

RES CACTUS FLATS WIND ENERGY, LLC

EDEN CONSOLIDATED INDEPENDENT
SCHOOL DISTRICT

BY: 

BY: 

NAME: BRIAN EVANS

NAME: Shawn D. Click

TITLE: PRESIDENT

TITLE: Vice President

RES AMERICA DEVELOPMENTS INC

ATTEST:

BY: 

NAME: Kent Coker

TITLE: Superintendent

EXHIBIT 5

	<u>Year of Agreement</u>	<u>Date of Appraisal</u>	<u>School Year</u>	<u>Tax Year</u>	<u>Summary Description</u>
Limitation Pre-Year	1	January 1, 2016	2016-17	2016	Limitation Pre-Year
	2	January 1, 2017	2017-18	2017	Limitation Pre-Year, QTP begins January 1, 2017
	3	January 1, 2018	2018-19	2018	Limitation Pre-Year, QTP ends December 31, 2018
Limitation Period (10 Years)	4	January 1, 2019	2019-20	2019	\$20 million appraisal limitation
	5	January 1, 2020	2020-21	2020	\$20 million appraisal limitation
	6	January 1, 2021	2021-22	2021	\$20 million appraisal limitation
	7	January 1, 2022	2022-23	2022	\$20 million appraisal limitation
	8	January 1, 2023	2023-24	2023	\$20 million appraisal limitation
	9	January 1, 2024	2024-25	2024	\$20 million appraisal limitation
	10	January 1, 2025	2025-26	2025	\$20 million appraisal limitation
	11	January 1, 2026	2026-27	2026	\$20 million appraisal limitation
	12	January 1, 2027	2027-28	2027	\$20 million appraisal limitation
	13	January 1, 2028	2028-29	2028	\$20 million appraisal limitation
Maintain a Viable Presence (5 Years)	14	January 1, 2029	2029-30	2029	No appraisal limitation; must maintain a viable presence
	15	January 1, 2030	2030-31	2030	No appraisal limitation; must maintain a viable presence
	16	January 1, 2031	2031-32	2031	No appraisal limitation; must maintain a viable presence
	17	January 1, 2032	2032-33	2032	No appraisal limitation; must maintain a viable presence
	18	January 1, 2033	2033-34	2033	No appraisal limitation; must maintain a viable presence

Agreement for Limitation on Appraised Value
 Between Eden CISD and RES Cactus Flats Wind Energy, LLC
 (App No. 1136), July 20, 2017
 Exhibit 5

*Texas Economic Development Act Agreement
 Comptroller Form 50-826 (January 2016)*