
SARA LEON
& ASSOCIATES, LLC

October 9, 2019

Via Electronic Mail

Stephanie Jones
Senior Research Analyst – Team Lead
Data Analysis and Transparency
Texas Comptroller of Public Accounts
LBJ State Offices Building
111 East 17th Street
Austin, Texas 78774

Re: Application #1397 from Lunis Creek Solar Project II, LLC to Ganado
Independent School District – Amendment #002 Transmittal

Dear Ms. Jones:

Lunis Creek Solar Project, LLC requests that you review and accept the following changes to Application #1397. Enumerated below are the changes contained in Amendment #002:

1. **Section 9 Projected Timeline:** Question 4 First Year of Limitation has changed from January 1, 2022 to January 1, 2023
2. **Tab 14 Schedules-**Schedule C updated to reflect new First Year of Limitation

Thanks so much for your kind attention to this matter.

Respectfully submitted,



Sara Hardner Leon

Enclosures

cc: *Via Electronic Mail: jhardwick@ganadoisd.net*
Dr. John Hardwick, Jr., Superintendent of Schools, Ganado Independent School District

Via Electronic Mail: szeimetz@savionenergy.com
Mr. Scott Zeimetz, Vice President, Savion, LLC

Via Electronic Mail: wgungoll@savionenergy.com
Mr. Wade Gungoll, Vice President of Development, Savion, LLC

Via Electronic Mail: mfry@keatax.com
Mr. Mike Fry, Director-Energy Services, KE Andrews



September 27, 2019

Ganado Independent School District
Superintendent Dr. John Hardwick
cc. Texas Comptroller of Public Accounts
P.O. Box 1200
210 S. 6th Street
Ganado, Texas 77962

RE: Application #1397 Lunis Creek Solar Project II, LLC Amendment Two

Dear Dr. John Hardwick:

Please find attached amendment two for Lunis Creek Solar Project, LLC. We ask that you kindly review and consider acceptance of the following changes:

- Section 9 Project Timeline
 - 4. First Year of Limitation: Adjusted from January 1, 2022 to January 1, 2023
- Tab 14: Schedules

If you have any questions, please contact us. We appreciate your consideration of this request.

Sincerely,

Mike Fry, Director
mfry@keatax.com

SECTION 9: Projected Timeline

1. Application approval by school board _____
2. Commencement of construction _____
3. Beginning of qualifying time period _____
4. First year of limitation _____
5. Begin hiring new employees _____
6. Commencement of commercial operations _____
7. Do you propose to construct a new building or to erect or affix a new improvement after your application review start date (*date your application is finally determined to be complete*)? _____ Yes No
Note: Improvements made before that time may not be considered qualified property.
8. When do you anticipate the new buildings or improvements will be placed in service? _____

SECTION 10: The Property

1. Identify county or counties in which the proposed project will be located _____
2. Identify Central Appraisal District (CAD) that will be responsible for appraising the property _____
3. Will this CAD be acting on behalf of another CAD to appraise this property? _____ Yes No
4. List all taxing entities that have jurisdiction for the property, the portion of project within each entity and tax rates for each entity:
 County: _____ (Name, tax rate and percent of project) City: _____ (Name, tax rate and percent of project)
 Hospital District: _____ (Name, tax rate and percent of project) Water District: _____ (Name, tax rate and percent of project)
 Other (describe): _____ (Name, tax rate and percent of project) Other (describe): _____ (Name, tax rate and percent of project)
5. Is the project located entirely within the ISD listed in Section 1? _____ Yes No
 5a. If no, attach in **Tab 6** additional information on the project scope and size to assist in the economic analysis.
6. Did you receive a determination from the Texas Economic Development and Tourism Office that this proposed project and at least one other project seeking a limitation agreement constitute a single unified project (SUP), as allowed in §313.024(d-2)? _____ Yes No
 6a. If yes, attach in **Tab 6** supporting documentation from the Office of the Governor.

SECTION 11: Investment

NOTE: The minimum amount of qualified investment required to qualify for an appraised value limitation and the minimum amount of appraised value limitation vary depending on whether the school district is classified as Subchapter B or Subchapter C, and the taxable value of the property within the school district. For assistance in determining estimates of these minimums, access the Comptroller’s website at comptroller.texas.gov/economy/local/ch313/.

1. At the time of application, what is the estimated minimum qualified investment required for this school district? _____
2. What is the amount of appraised value limitation for which you are applying? _____
Note: The property value limitation amount is based on property values available at the time of application and may change prior to the execution of any final agreement.
3. Does the qualified investment meet the requirements of Tax Code §313.021(1)? _____ Yes No
4. Attach a description of the qualified investment [See §313.021(1).] The description must include:
 - a. a specific and detailed description of the qualified investment you propose to make on the property for which you are requesting an appraised value limitation as defined by Tax Code §313.021 (**Tab 7**);
 - b. a description of any new buildings, proposed new improvements or personal property which you intend to include as part of your minimum qualified investment (**Tab 7**); and
 - c. a detailed map of the qualified investment showing location of tangible personal property to be placed in service during the qualifying time period and buildings to be constructed during the qualifying time period, with vicinity map (**Tab 11**).
5. Do you intend to make at least the minimum qualified investment required by Tax Code §313.023 (or §313.053 for Subchapter C school districts) for the relevant school district category during the qualifying time period? _____ Yes No

Schedule A1: Total Investment for Economic Impact (through the Qualifying Time Period)

Date 6/18/2019
Applicant Name Lunis Creek Solar Project, LLC
ISD Name Ganado ISD

App#1397-Ganado ISD-Lunis Creek Solar Project II-Amendment Two-9_30_2019

Form 50-296A
 Revised May 2014

PROPERTY INVESTMENT AMOUNTS								
(Estimated Investment in each year. Do not put cumulative totals.)								
				Column A	Column B	Column C	Column D	Column E
	Year	School Year (YYYY-YYYY)	Tax Year (Fill in actual tax year below) YYYY	New investment (original cost) in tangible personal property placed in service during this year that will become Qualified Property	New investment made during this year in buildings or permanent nonremovable components of buildings that will become Qualified Property	Other new investment made during this year that will <u>not</u> become Qualified Property [SEE NOTE]	Other new investment made during this year that may become Qualified Property [SEE NOTE]	Total Investment (Sum of Columns A+B+C+D)
Investment made before filing complete application with district	--	2020-2021	2020	Not eligible to become Qualified Property			[The only other investment made before filing complete application with district that may become Qualified Property is land.]	
Investment made after filing complete application with district, but before final board approval of application								
Investment made after final board approval of application and before Jan. 1 of first complete tax year of qualifying time period								
Complete tax years of qualifying time period	QTP1	2021-2022	2021	\$ 60,850,000.00	\$ -			\$ 60,850,000.00
	QTP2	2022-2023	2022	\$ 200,000,000.00	\$ 500,000.00			\$ 200,500,000.00
Total Investment through Qualifying Time Period [ENTER this row in Schedule A2]				\$ 260,850,000.00	\$ 500,000.00			\$ 261,350,000.00
				Enter amounts from TOTAL row above in Schedule A2				
Total Qualified Investment (sum of green cells)				\$ 261,350,000.00				

For All Columns: List amount invested each year, not cumulative totals.

Column A: This represents the total dollar amount of planned investment in tangible personal property. Only include estimates of investment for "replacement" property if the property is specifically described in the application.

Only tangible personal property that is specifically described in the application can become qualified property.

Column B: The total dollar amount of planned investment each year in buildings or nonremovable component of buildings.

Column C: Dollar value of other investment that may affect economic impact and total value. Examples of other investment that will not become qualified property include investment meeting the definition of 313.021(1) but not creating a new improvement as defined by TAC 9.1051. This is proposed property that functionally replaces existing property; is used to maintain, refurbish, renovate, modify or upgrade existing property; or is affixed to existing property—described in SECTION 13, question #5 of the application.

Column D: Dollar value of other investment that may affect economic impact and total value. Examples of other investment that may result in qualified property are land or professional services.

Total Investment: Add together each cell in a column and enter the sum in the blue total investment row. Enter the data from this row into the first row in Schedule A2.

Qualified Investment: For the green qualified investment cell, enter the sum of all the green-shaded cells.

PROPERTY INVESTMENT AMOUNTS								
(Estimated Investment in each year. Do not put cumulative totals.)								
				Column A	Column B	Column C	Column D	Column E
	Year	School Year (YYYY-YYYY)	Tax Year (Fill in actual tax year below) YYYY	New investment (original cost) in tangible personal property placed in service during this year that will become Qualified Property	New investment made during this year in buildings or permanent nonremovable components of buildings that will become Qualified Property	Other investment made during this year that will <u>not</u> become Qualified Property [SEE NOTE]	Other investment made during this year that will become Qualified Property (SEE NOTE)	Total Investment (A+B+C+D)
Total Investment from Schedule A1*	--	TOTALS FROM SCHEDULE A1		\$ 260,850,000.00	500,000.00			\$ 261,350,000.00
Each year prior to start of value limitation period**	0	2019-2020	2019					
Each year prior to start of value limitation period**	0	2020-2021	2020					
Each year prior to start of value limitation period**	0	2021-2022	2021	\$ 60,850,000.00	\$ -			\$ 60,850,000.00
Each year prior to start of value limitation period**	0	2022-2023	2022	\$ 200,000,000.00	\$ 500,000.00			\$ 200,500,000.00
Value limitation period***	1	2023-2024	2023					
	2	2024-2025	2024					
	3	2025-2026	2025					
	4	2026-2027	2026					
	5	2027-2028	2027					
	6	2028-2029	2028					
	7	2029-2030	2029					
	8	2030-2031	2030					
	9	2031-2032	2031					
	10	2032-2033	2032					
Total Investment made through limitation				\$ 260,850,000.00	\$ 500,000.00			\$ 261,350,000.00
Continue to maintain viable presence	11	2033-2034	2033					
	12	2034-2035	2034					
	13	2035-2036	2035					
	14	2036-2037	2036					
	15	2037-2038	2037					
Additional years for 25 year economic impact as required by 313.026(c)(1)	16	2038-2039	2038					
	17	2039-2040	2039					
	18	2040-2041	2040					
	19	2041-2042	2041					
	20	2042-2043	2042					
	21	2043-2044	2043					
	22	2044-2045	2044					
	23	2045-2046	2045					
	24	2046-2047	2046					
	25	2047-2048	2047					

* All investments made through the qualifying time period are captured and totaled on Schedule A1 [blue box] and incorporated into this schedule in the **first row**.

** Only investment made during deferrals of the start of the limitation (after the end of qualifying time period but before the start of the Value Limitation Period) should be included in the "year prior to start of value limitation period" row(s). If the limitation starts at the end of the qualifying time period or the qualifying time period overlaps the limitation, no investment should be included on this line.

*** If your qualifying time period will overlap your value limitation period, do not also include investment made during the qualifying time period in years 1 and/or 2 of the value limitation period, depending on the overlap. Only include investments/years that were **not** captured on Schedule A1.

For All Columns: List amount invested each year, not cumulative totals. Only include investments in the remaining rows of Schedule A2 that were not captured on Schedule A1.

Column A: This represents the total dollar amount of planned investment in tangible personal property. Only include estimates of investment for "replacement" property if the property is specifically described in the application.

Only tangible personal property that is specifically described in the application can become qualified property.

Column B: The total dollar amount of planned investment each year in buildings or nonremovable component of buildings.

Column C: Dollar value of other investment that may affect economic impact and total value. Examples of other investment that will not become qualified property include investment meeting the definition of 313.021(1) but not creating a new improvement as defined by TAC 9.1051. This is proposed property that functionally replaces existing property; is used to maintain, refurbish, renovate, modify or upgrade existing property; or is affixed to existing property—described in SECTION 13, question #5 of the application.

Column D: Dollar value of other investment that may affect economic impact and total value. Examples of other investment that may result in qualified property are land or professional services.

Schedule B: Estimated Market And Taxable Value (of Qualified Property Only)

Date **6/18/2019**
 Applicant Name **Lunis Creek Solar Project, LLC**
 ISD Name **Ganado ISD**

App#1397-Ganado ISD-Lunis Creek Solar Project II-Amendment Two-9_30_2019

Form 50-296A

Revised May 2014

	Year	School Year (YYYY-YYYY)	Tax Year (Fill in actual tax year) YYYY	Qualified Property			Estimated Taxable Value		
				Estimated Market Value of Land	Estimated Total Market Value of new buildings or other new improvements	Estimated Total Market Value of tangible personal property in the new buildings or "in or on the new improvements"	Market Value less any exemptions (such as pollution control) and before limitation	Final taxable value for I&S after all reductions	Final taxable value for M&O after all reductions
Each year prior to start of Value Limitation Period	0	2019-2020	2019						
Each year prior to start of Value Limitation Period	0	2020-2021	2020						
Each year prior to start of Value Limitation Period	0	2021-2022	2021						
Each year prior to start of Value Limitation Period	0	2022-2023	2022			\$ 30,000,000.00	\$ 30,000,000.00	\$ 30,000,000.00	\$ 30,000,000.00
Value Limitation Period	1	2023-2024	2023		\$ 500,000.00	\$ 260,850,000.00	\$ 261,350,000.00	\$ 261,350,000.00	\$ 30,000,000.00
	2	2024-2025	2024		\$ 490,000.00	\$ 234,765,000.00	\$ 235,255,000.00	\$ 235,255,000.00	\$ 30,000,000.00
	3	2025-2026	2025		\$ 480,000.00	\$ 208,680,000.00	\$ 209,160,000.00	\$ 209,160,000.00	\$ 30,000,000.00
	4	2026-2027	2026		\$ 470,000.00	\$ 182,595,000.00	\$ 183,065,000.00	\$ 183,065,000.00	\$ 30,000,000.00
	5	2027-2028	2027		\$ 460,000.00	\$ 156,510,000.00	\$ 156,970,000.00	\$ 156,970,000.00	\$ 30,000,000.00
	6	2028-2029	2028		\$ 450,000.00	\$ 130,425,000.00	\$ 130,875,000.00	\$ 130,875,000.00	\$ 30,000,000.00
	7	2029-2030	2029		\$ 440,000.00	\$ 104,340,000.00	\$ 104,780,000.00	\$ 104,780,000.00	\$ 30,000,000.00
	8	2030-2031	2030		\$ 430,000.00	\$ 78,255,000.00	\$ 78,685,000.00	\$ 78,685,000.00	\$ 30,000,000.00
	9	2031-2032	2031		\$ 420,000.00	\$ 52,170,000.00	\$ 52,590,000.00	\$ 52,590,000.00	\$ 30,000,000.00
	10	2032-2033	2032		\$ 410,000.00	\$ 52,170,000.00	\$ 52,580,000.00	\$ 52,580,000.00	\$ 30,000,000.00
Continue to maintain viable presence	11	2033-2034	2033		\$ 400,000.00	\$ 52,170,000.00	\$ 52,570,000.00	\$ 52,570,000.00	\$ 52,570,000.00
	12	2034-2035	2034		\$ 390,000.00	\$ 52,170,000.00	\$ 52,560,000.00	\$ 52,560,000.00	\$ 52,560,000.00
	13	2035-2036	2035		\$ 380,000.00	\$ 52,170,000.00	\$ 52,550,000.00	\$ 52,550,000.00	\$ 52,550,000.00
	14	2036-2037	2036		\$ 370,000.00	\$ 52,170,000.00	\$ 52,540,000.00	\$ 52,540,000.00	\$ 52,540,000.00
	15	2037-2038	2037		\$ 360,000.00	\$ 52,170,000.00	\$ 52,530,000.00	\$ 52,530,000.00	\$ 52,530,000.00
Additional years for 25 year economic impact as required by 313.026(c)(1)	16	2038-2039	2038		\$ 350,000.00	\$ 52,170,000.00	\$ 52,520,000.00	\$ 52,520,000.00	\$ 52,520,000.00
	17	2039-2040	2039		\$ 340,000.00	\$ 52,170,000.00	\$ 52,510,000.00	\$ 52,510,000.00	\$ 52,510,000.00
	18	2040-2041	2040		\$ 330,000.00	\$ 52,170,000.00	\$ 52,500,000.00	\$ 52,500,000.00	\$ 52,500,000.00
	19	2041-2042	2041		\$ 320,000.00	\$ 52,170,000.00	\$ 52,490,000.00	\$ 52,490,000.00	\$ 52,490,000.00
	20	2042-2043	2042		\$ 310,000.00	\$ 52,170,000.00	\$ 52,480,000.00	\$ 52,480,000.00	\$ 52,480,000.00
	21	2043-2044	2043		\$ 300,000.00	\$ 52,170,000.00	\$ 52,470,000.00	\$ 52,470,000.00	\$ 52,470,000.00
	22	2044-2045	2044		\$ 290,000.00	\$ 52,170,000.00	\$ 52,460,000.00	\$ 52,460,000.00	\$ 52,460,000.00
	23	2045-2046	2045		\$ 280,000.00	\$ 52,170,000.00	\$ 52,450,000.00	\$ 52,450,000.00	\$ 52,450,000.00
	24	2046-2047	2046		\$ 270,000.00	\$ 52,170,000.00	\$ 52,440,000.00	\$ 52,440,000.00	\$ 52,440,000.00
	25	2047-2048	2047		\$ 260,000.00	\$ 52,170,000.00	\$ 52,430,000.00	\$ 52,430,000.00	\$ 52,430,000.00

Notes: Market value in future years is good faith estimate of future taxable value for the purposes of property taxation.
 Only include market value for eligible property on this schedule.

Schedule C: Employment Information

Date **6/18/2019**
 Applicant Name **Lunis Creek Solar Project, LLC**
 ISD Name **Ganado ISD**

Form 50-296A

Revised May 2014

	Year	School Year (YYYY-YYYY)	Tax Year (Actual tax year) YYYY	Construction		Non-Qualifying Jobs	Qualifying Jobs	
				Column A Number of Construction FTE's or man-hours (specify)	Column B Average annual wage rates for construction workers	Column C Number of non-qualifying jobs applicant estimates it will create (cumulative)	Column D Number of new qualifying jobs applicant commits to create meeting all criteria of Sec. 313.021(3) (cumulative)	Column E Average annual wage of new qualifying jobs
Each year prior to start of Value Limitation Period	0	2019-2020	2019	N/A	N/A	N/A	N/A	N/A
Each year prior to start of Value Limitation Period	0	2020-2021	2020	N/A	N/A	N/A	N/A	N/A
Each year prior to start of Value Limitation Period	0	2021-2022	2021	250 FTE	\$ 61,646.20	N/A	N/A	N/A
Each year prior to start of Value Limitation Period	0	2022-2023	2022	251 FTE	\$ 61,647.20	N/A	N/A	N/A
Value Limitation Period <i>The qualifying time period could overlap the value limitation period.</i>	1	2023-2024	2023	N/A	N/A	N/A	1	\$ 61,646.20
	2	2024-2025	2024	N/A	N/A	N/A	1	\$ 61,646.20
	3	2025-2026	2025	N/A	N/A	N/A	1	\$ 61,646.20
	4	2026-2027	2026	N/A	N/A	N/A	1	\$ 61,646.20
	5	2027-2028	2027	N/A	N/A	N/A	1	\$ 61,646.20
	6	2028-2029	2028	N/A	N/A	N/A	1	\$ 61,646.20
	7	2029-2030	2029	N/A	N/A	N/A	1	\$ 61,646.20
	8	2030-2031	2030	N/A	N/A	N/A	1	\$ 61,646.20
	9	2031-2032	2031	N/A	N/A	N/A	1	\$ 61,646.20
10	2032-2033	2032	N/A	N/A	N/A	1	\$ 61,646.20	
Years Following Value Limitation Period	11 through 25	2033-2047	2033-2047	N/A	N/A	N/A	N/A	N/A

Notes: See TAC 9.1051 for definition of non-qualifying jobs.
 Only include jobs on the project site in this school district.

- C1.** Are the cumulative number of qualifying jobs listed in Column D less than the number of qualifying jobs required by statute? (25) Yes No
 qualifying jobs in Subchapter B districts, 10 qualifying jobs in Subchapter C districts)
 If yes, answer the following two questions:
- C1a.** Will the applicant request a job waiver, as provided under 313.025(f-1)? Yes No
- C1b.** Will the applicant avail itself of the provision in 313.021(3)(F)? Yes No

Schedule D: Other Incentives (Estimated)

Date: 6/18/2019

Applicant Name: Lunis Creek Solar Project, LLC

ISD Name: Ganado ISD

Form 50-296A

Revised May 2014

State and Local Incentives for which the Applicant intends to apply (Estimated)						
Incentive Description	Taxing Entity (as applicable)	Beginning Year of Benefit	Duration of Benefit	Annual Tax Levy without Incentive	Annual Incentive	Annual Net Tax Levy
Tax Code Chapter 311	County:					
	City:					
	Other:					
Tax Code Chapter 312	County: Jackson	2022	10 Years	\$ 978,829.00	70%	\$ 293,648.70
	City:					
	Other: Jackson Hospital District	2022	10 Years	\$ 307,348.00	70%	\$ 92,204.40
Local Government Code Chapters 380/381	County:					
	City:					
	Other:					
Freeport Exemptions						
Non-Annexation Agreements						
Enterprise Zone/Project						
Economic Development Corporation						
Texas Enterprise Fund						
Employee Recruitment						
Skills Development Fund						
Training Facility Space and Equipment						
Infrastructure Incentives						
Permitting Assistance						
Other:						
Other:						
Other:						
Other:						
TOTAL				\$ 1,286,177.00	70%	\$ 385,853.10

Additional information on incentives for this project:

Texas Comptroller of Public Accounts

Data Analysis and Transparency Form 50-296-A

SECTION 16: Authorized Signatures and Applicant Certification

After the application and schedules are complete, an authorized representative from the school district and the business should review the application documents and complete this authorization page. Attach the completed authorization page in Tab 17. NOTE: If you amend your application, you will need to obtain new signatures and resubmit this page, Section 16, with the amendment request.

1. Authorized School District Representative Signature

I am the authorized representative for the school district to which this application is being submitted. I understand that this application is a government record as defined in Chapter 37 of the Texas Penal Code.

print here

John Hardwick, Jr Ed. D.

Print Name (Authorized School District Representative)

Superintendent G.I.S.D.

Title

sign here

[Handwritten Signature]

Signature (Authorized School District Representative)

8 Oct. /19

Date

2. Authorized Company Representative (Applicant) Signature and Notarization

I am the authorized representative for the business entity for the purpose of filing this application. I understand that this application is a government record as defined in Chapter 37 of the Texas Penal Code. The information contained in this application and schedules is true and correct to the best of my knowledge and belief.

I hereby certify and affirm that the business entity I represent is in good standing under the laws of the state in which the business entity was organized and that no delinquent taxes are owed to the State of Texas.

print here

SCOTT ZEMMETZ

Print Name (Authorized Company Representative (Applicant))

AUTHORIZED PERSON

Title

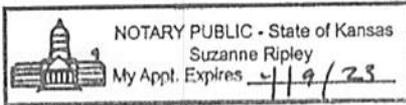
sign here

[Handwritten Signature]

Signature (Authorized Company Representative (Applicant))

9.30.19

Date



(Notary Seal)

GIVEN under my hand and seal of office this, the

30th day of September 2019

Suzanne Ripley Notary Public in and for the State of Kansas

My Commission expires: 4/9/23

If you make a false statement on this application, you could be found guilty of a Class A misdemeanor or a state jail felony under Texas Penal Code Section 37.10.

SECTION 16: Authorized Signatures and Applicant Certification

After the application and schedules are complete, an authorized representative from the school district and the business should review the application documents and complete this authorization page. Attach the completed authorization page in **Tab 17**. **NOTE:** If you amend your application, you will need to obtain new signatures and resubmit this page, Section 16, with the amendment request.

1. Authorized School District Representative Signature

I am the authorized representative for the school district to which this application is being submitted. I understand that this application is a government record as defined in Chapter 37 of the Texas Penal Code.

print
here →

Print Name (Authorized School District Representative) _____ Title _____

sign
here →

Signature (Authorized School District Representative) _____ Date _____

2. Authorized Company Representative (Applicant) Signature and Notarization

I am the authorized representative for the business entity for the purpose of filing this application. I understand that this application is a government record as defined in Chapter 37 of the Texas Penal Code. The information contained in this application and schedules is true and correct to the best of my knowledge and belief.

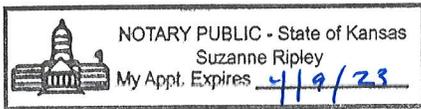
I hereby certify and affirm that the business entity I represent is in good standing under the laws of the state in which the business entity was organized and that no delinquent taxes are owed to the State of Texas.

print
here →

Print Name (Authorized Company Representative (Applicant)) SCOTT ZEMMETZ Title AUTHORIZED PERSON

sign
here →

Signature (Authorized Company Representative (Applicant)) [Signature] Date 9.30.19



(Notary Seal)

GIVEN under my hand and seal of office this, the

30th day of September, 2019

[Signature]
Notary Public in and for the State of Kansas

My Commission expires: 4/9/23

If you make a false statement on this application, you could be found guilty of a Class A misdemeanor or a state jail felony under Texas Penal Code Section 37.10.