

**AGREEMENT FOR LIMITATION ON APPRAISED VALUE  
OF PROPERTY FOR SCHOOL DISTRICT  
MAINTENANCE AND OPERATIONS TAXES**

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by and between

**GREGORY-PORTLAND INDEPENDENT SCHOOL DISTRICT**

and

**EC&R PAPALOTE CREEK II, LLC**

*(Texas Taxpayer ID # 32037132662)*

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Dated

December 15, 2009

**AGREEMENT FOR LIMITATION ON APPRAISED VALUE OF PROPERTY FOR  
SCHOOL DISTRICT MAINTENANCE AND OPERATIONS TAXES**

*STATE OF TEXAS* §

*COUNTY OF SAN PATRICIO* §

THIS AGREEMENT FOR LIMITATION ON APPRAISED VALUE OF PROPERTY FOR SCHOOL DISTRICT MAINTENANCE AND OPERATIONS TAXES, hereinafter referred to as this "Agreement," is executed and delivered by and between the **GREGORY-PORTLAND INDEPENDENT SCHOOL DISTRICT**, hereinafter referred to as the "District," a lawfully created independent school district within the State of Texas operating under and subject to the Texas Education Code, and **EC&R PAPALOTE CREEK II, LLC**, Texas Taxpayer Identification Number 32037132662 hereinafter referred to as the "Applicant." The Applicant and the District are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties." Certain capitalized and other terms used in this Agreement shall have the meanings ascribed to them in Section 1.3.

**RECITALS**

**WHEREAS**, on July 28, 2009, the Superintendent of Schools of the Gregory-Portland Independent School District, acting as agent of the Board of Trustees of the District (the "Board of Trustees"), received from the Applicant an Application for Appraised Value Limitation on Qualified Property, pursuant to Chapter 313 of the Texas Tax Code; and,

**WHEREAS**, on October 14, 2009, in response to a notice of deficiency from the Comptroller, the Superintendent of Schools of the Gregory-Portland Independent School District, acting as agent of the Board of Trustees of the District (the "Board of Trustees"), received from the Applicant a Supplemented Application for Appraised Value Limitation on Qualified Property, pursuant to Chapter 313 of the Texas Tax Code; and,

**WHEREAS**, the Board of Trustees has acknowledged receipt of the Application and the Supplemented Application along with the requisite application fee as established pursuant to Texas Tax Code § 313.025(a)(1) and Local District Policy CCG (Local); and,

**WHEREAS**, the Application was delivered to the Texas Comptroller's Office for review pursuant to Texas Tax Code § 313.025(d); and,

**WHEREAS**, the Application was reviewed by the Texas Comptroller's Office pursuant to Texas Tax Code § 313.025(d), and on November 23, 2009 the Comptroller's Office, via letter, recommended that the Application be approved; and,

**WHEREAS**, the Texas Comptroller of Public Accounts conducted an economic impact evaluation pursuant to Chapter 313 of the Texas Tax Code; and,

**WHEREAS**, the Board of Trustees has reviewed the economic impact evaluation pursuant to Texas Tax Code § 313.026 and has carefully considered such evaluation; and,

**WHEREAS**, the Application was reviewed by the San Patricio County Appraisal District established in San Patricio County, Texas (the "San Patricio County Appraisal District"), pursuant to Texas Tax Code § 6.01; and,

**WHEREAS**, on December 15, 2009, the Board of Trustees conducted a public hearing on the Application at which it solicited input into its deliberations on the Application from all interested parties within the District; and,

**WHEREAS**, on December 15, 2009, the Board of Trustees made factual findings pursuant to Texas Tax Code § 313.025(f), including, but not limited to findings that: (i) the information in the Application is true and correct; (ii) this Agreement is in the best interest of the District and the State of Texas; (iii) the Applicant is eligible for the Limitation on Appraised Value of the Applicant's Qualified Property; (iv) each criterion listed in Texas Tax Code § 313.025(e) has been met; and, (v.) if the job creation requirement set forth in Texas Tax Code § 313.051(b) (*i.e.*, 10 jobs) was applied, for the size and scope of the project described in the Application and in **EXHIBIT 3**, the required number of jobs would exceed the industry standard for the number of employees reasonably necessary for the operation of the facility; and,

**WHEREAS**, on December 15, 2009, the Board of Trustees determined that the Tax Limitation Amount requested by Applicant, and as defined in Sections 1.2 and 1.3, below, is consistent with the minimum values set out by Tax Code, §§ 313.022(b) and 313.052, as such Tax Limitation Amount was computed for the effective date of this Agreement; and,

**WHEREAS**, on December 15, 2009, pursuant to the provisions of Texas Tax Code § 313.025(f-1), the Board of Trustees waived the job creation requirement set forth in Texas Tax Code § 313.051(b); and,

**WHEREAS**, on December 15, 2009, the Board of Trustees approved the form of this Agreement for a Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes, and authorized the Board President and Secretary to execute and deliver such Agreement to the Applicant;

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants and agreements herein contained, the Parties agree as follows:

## ARTICLE I

### AUTHORITY, TERM, DEFINITIONS, AND GENERAL PROVISIONS

#### Section 1.1. AUTHORITY

This Agreement is executed by the District as its written agreement with the Applicant pursuant to the provisions and authority granted to the District in Texas Tax Code § 313.027.

#### Section 1.2. TERM OF THE AGREEMENT

This Agreement shall commence and first become effective for the ad valorem property valuations of the Qualified Property and Qualified Investments made pursuant to this Agreement beginning with the tax appraisals to be made as of January 1, 2010, which date is referred to herein as the "Commencement Date." The Parties acknowledge that the limitation on the local ad valorem property values shall not commence until the valuations are made as of January 1, 2012, the second anniversary of the Commencement Date. These first two Tax Years that begin on the Commencement Date (*i.e.*, the 2010 and 2011 Tax Years), which together with the period from the date of approval until January 1, 2010 are collectively referred to herein as the "Qualifying Time Period," as that term is defined in Texas Tax Code § 313.021(4). Unless sooner terminated as provided herein, the limitation on the local ad valorem property values shall terminate on December 31, 2019. Except as otherwise provided herein, this Agreement will terminate, in full, on December 31, 2022. The termination of this Agreement shall not (i) release any obligations, liabilities, rights and remedies arising out of any breach of, or failure to comply with, this Agreement occurring prior to such termination, or (ii) affect the right of a Party to enforce the payment of any amount to which such Party was entitled before such termination or to which such Party became entitled as a result of an event that occurred before such termination, so long as the right to such payment survives said termination.

Except as otherwise provided herein, the Tax Years for which this Agreement is effective are as set forth below and set forth opposite each such Tax Year are the corresponding year in the term of this Agreement, the date of the Appraised Value determination for such Tax Year, and a summary description of certain provisions of this Agreement corresponding to such Tax Year (it being understood and agreed that such summary descriptions are for reference purposes only, and shall not affect in any way the meaning or interpretation of this Agreement):

<b>Year of Agreement</b>	<b>Date of Appraisal</b>	<b>School Year</b>	<b>Tax Year</b>	<b>Summary Description of Provisions</b>
1	January 1, 2010	2010-11	2010	No limitation on value. Possible tax credit in future years.

<b>Year of Agreement</b>	<b>Date of Appraisal</b>	<b>School Year</b>	<b>Tax Year</b>	<b>Summary Description of Provisions</b>
2	January 1, 2011	2011-12	2011	No limitation on value. Possible tax credit in future years.
3	January 1, 2012	2012-13	2012	\$ 20 million property value limitation.
4	January 1, 2013	2013-14	2013	\$ 20 million property value limitation. Possible tax credit due to Applicant.
5	January 1, 2014	2014-15	2014	\$ 20 million property value limitation. Possible tax credit due to Applicant.
6	January 1, 2015	2015-16	2015	\$ 20 million property value limitation. Possible tax credit due to Applicant.
7	January 1, 2016	2016-17	2016	\$ 20 million property value limitation. Possible tax credit due to Applicant.
8	January 1, 2017	2017-18	2017	\$ 20 million property value limitation. Possible tax credit due to Applicant.
9	January 1, 2018	2018-19	2018	\$ 20 million property value limitation. Possible tax credit due to Applicant.
10	January 1, 2019	2019-20	2019	\$20 million property value limitation. Possible tax credit due to Applicant.
11	January 1, 2020	2020-21	2020	No tax limitation. Possible tax credit due to Applicant. Applicant obligated to Maintain Viable Presence if no early termination.

12	January 1, 2021	2021-22	2021	No tax limitation. Possible tax credit due to Applicant. Applicant obligated to Maintain Viable Presence if no early termination.
13	January 1, 2022	2022-23	2022	No tax limitation. Possible tax credit due to Applicant. Applicant obligated to Maintain Viable Presence if no early termination.

**Section 1.3. DEFINITIONS**

Wherever used herein, the following terms shall have the following meanings, unless the context in which used clearly indicates another meaning, to-wit:

“Act” means the Texas Economic Development Act set forth in Chapter 313 of the Texas Tax Code, as amended.

“Affiliate” means any entity that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Applicant. For purposes of this definition, control of an entity means (i) the ownership, directly or indirectly, of fifty (50) percent or more of the voting rights in a company or other legal entity or (ii) the right to direct the management or operation of such entity whether by ownership (directly or indirectly) of securities, by contract or otherwise.

“Affiliated Group” means a group of one or more entities in which a controlling interest is owned by a common owner or owners, either corporate or non-corporate, or by one or more of the member entities.

“Agreement” means this Agreement, as the same may be modified, amended, restated, amended and restated, or supplemented from time to time in accordance with Section 6.3.

“Annual Limit” means the maximum annual benefit which can be paid directly to the District as a Supplemental Payment under the provisions of Tex. Tax Code §313.027(i). For purposes of this Agreement the amount of the Annual Limit shall be Four Hundred Three Thousand Four Hundred Dollars (\$403,400.00) based upon the District’s 2008-09 Average Daily Attendance of 4,034.441, rounded to the nearest student.

“Applicant” means EC&R Papalote Creek II, LLC, (Texas Taxpayer ID # 32037132662), the company listed in the Preamble of this Agreement who, on July 28, 2009, filed the Original Application and on October 14, 2009 filed a Supplemental Application with the District for an Appraised Value Limitation on Qualified Property, pursuant to Chapter 313 of the Texas Tax

Code. The term "Applicant" shall also include the Applicant's assigns and successors-in-interest.

"Appraised Value" shall have the meaning assigned to such term in Section 1.04(8) of the Texas Tax Code.

"Applicable School Finance Law" means Chapters 41 and 42 of the Texas Education Code, the Texas Economic Development Act (Chapter 313 of the Texas Tax Code), Chapter 403, Subchapter M, of the Texas Government Code applicable to the District, and the Constitution and general laws of the State applicable to the independent school districts of the State, including specifically, the applicable rules and regulations of the agencies of the State having jurisdiction over any matters relating to the public school systems and school districts of the State, and judicial decisions construing or interpreting any of the above. The term also includes any amendments or successor statutes that may be adopted in the future that could impact or alter the calculation of the Applicant's ad valorem tax obligation to the District, either with or without the limitation of property values made pursuant to this Agreement.

"Application" means collectively the Application for Appraised Value Limitation on Qualified Property (Chapter 313, Subchapter B or C, of the Texas Tax Code) initially filed with the District by the Applicant on July 28, 2009, and the October 14, 2009 Supplemental Application filed with the District.

"Appraisal District" means the San Patricio County Appraisal District.

"Comptroller" means the Texas Comptroller of Public Accounts.

"Comptroller's Rules" means the applicable rules and regulations of the Comptroller set forth at Chapter 34 Texas Administrative Code, together with any court or administrative decisions interpreting same.

"County" means San Patricio County, Texas.

"District" or "School District" means the Gregory-Portland Independent School District, being a duly authorized and operating independent school district in the State, having the power to levy, assess, and collect ad valorem taxes within its boundaries and to which Subchapter C of the Act applies. The term also includes any successor independent school district or other successor governmental authority having the power to levy and collect ad valorem taxes for school purposes on the Applicant's Qualified Property or the Applicant's Qualified Investment.

"Force Majeure" means a failure caused by (a) provisions of law, or the operation or effect of rules, regulations or orders promulgated by any governmental authority having jurisdiction over the Applicant, the Applicant's Qualified Property or the Applicant's Qualified Investment or any upstream, intermediate or downstream equipment or support facilities as are necessary to the operation of the Applicant's Qualified Property or the Applicant's Qualified Investment; (b) any demand or requisition, arrest, order, request, directive, restraint or

requirement of any government or governmental agency whether federal, state, military, local or otherwise; (c) the action, judgment or decree of any court; (d) floods, storms, hurricanes, evacuation due to threats of hurricanes, lightning, earthquakes, washouts, high water, fires, acts of God or public enemies, wars (declared or undeclared), blockades, epidemics, riots or civil disturbances, insurrections, strikes, labor disputes (it being understood that nothing contained in this Agreement shall require the Applicant to settle any such strike or labor dispute), explosions, breakdown or failure of plant, machinery, equipment, lines of pipe or electric power lines (or unplanned or forced outages or shutdowns of the foregoing for inspections, repairs or maintenance), inability to obtain, renew or extend franchises, licenses or permits, loss, interruption, curtailment or failure to obtain electricity, gas, steam, water, wastewater disposal, waste disposal or other utilities or utility services, inability to obtain or failure of suppliers to deliver equipment, parts or material, or inability of the Applicant to ship or failure of carriers to transport electricity from the Applicant's facilities; or (e) any other cause (except financial), whether similar or dissimilar, over which the Applicant has no reasonable control and which forbids or prevents performance.

"Land" shall have the meaning assigned to such term in Section 2.2.

"Maintain Viable Presence" means the operation over the term of this Agreement of the facility or facilities for which the tax limitation is granted, as the same may from time to time be expanded, upgraded, improved, modified, changed, remodeled, repaired, restored, reconstructed, reconfigured, and/or reengineered and (ii) the retention over the term of this Agreement of not fewer than three (3) Qualifying Jobs to be located and performed within Applicant's entire Wind Energy Project that includes, but is not limited to, Applicant's Qualified Property, as set forth in the Application, when combined with all other jobs created by Applicant for this total Wind Energy Project, with the minimum salaries required by Texas Tax Code § 313.021(3)(E).

"Maintenance and Operations Revenue" or "M&O Revenue" means (i) those revenues which the District receives from the levy of its annual ad valorem maintenance and operations tax pursuant to Texas Education Code § 45.002 and Article VII § 3 of the Texas Constitution, plus (ii) all State revenues to which the District is or may be entitled under Chapter 42 of the Texas Education Code or any other statutory provision as well as any amendment or successor statute to these provisions, plus (iii) any indemnity payments received by the District under other agreements similar to this Agreement to the extent that such payments are designed to replace District M&O Revenue lost as a result of such similar agreements, less (iv) any amounts necessary to reimburse the State of Texas or another school district for the education of additional students pursuant to Chapter 41 of the Texas Education Code.

"Market Value" shall have the meaning assigned to such term in Section 1.04(7) of the Texas Tax Code.

"Qualified Investment" has the meaning set forth in Chapter 313 of the Texas Tax Code, as interpreted by the Comptroller's Rules, as these provisions existed on the date of this Agreement, applying any specific requirements for rural school districts imposed by Subchapter C of Chapter 313 of the Texas Tax Code and by the Comptroller's Rules.

"Qualified Property" has the meaning set forth in Chapter 313 of the Texas Tax Code, as interpreted by the Comptroller's Rules and the Texas Attorney General, as these provisions existed on the date of this Agreement, applying any specific requirements for rural school districts imposed by Subchapter C of Chapter 313 of the Texas Tax Code and by the Comptroller's Rules.

"Qualifying Time Period" means the period that begins on the date of approval of this Agreement by the District's Board of Trustees and ends on December 31st of the second Tax Year that begins after such date of approval as is defined in Texas Tax Code § 313.021(4)(A).

"Revenue Protection Amount" means the amount calculated pursuant to Section 3.2 of this Agreement.

"State" means the State of Texas.

"Tax Credit" means the tax credit, either to be paid by the District to Applicant, or to be applied against any taxes that the school district imposes in Qualified Property, as computed under the provisions of Subchapter D of the Act, and rules adopted by the Comptroller and/or the Texas Education Agency, provided that Applicant complies with the requirements under such provisions, including the timely filing of a completed application under Texas Tax Code § 313.103 and the duly adopted administrative rules.

"Tax Limitation Amount" means the maximum amount which may be placed as the Appraised Value on Qualified Property/Qualified Investment for years three (3) through ten (10) of this Agreement pursuant to Texas Tax Code § 313.054. That is, for each of the eight (8) Tax Years 2012, 2013, 2014, 2015, 2016, 2017, 2018, and 2019, the Appraised Value of the Applicant's Qualified Investment for the District's maintenance and operations ad valorem tax purposes shall not exceed, and the Tax Limitation Amount shall be, the lesser of:

- (a) the Market Value of the Applicant's Qualified Investment; or
- (b) Twenty Million Dollars (\$20,000,000.00).

This Tax Limitation Amount is based on the limitation amount for the category that applies to the District on the effective date of this Agreement, as set out by Tax Code, §313.022(b) or §313.052.

"Tax Year" shall have the meaning assigned to such term in Section 1.04(13) of the Texas Tax Code (*i.e.*, the calendar year).

"Taxable Value" shall have the meaning assigned to such term in Section 1.04(10) of the Texas Tax Code.

*“Texas Education Agency Rules”* means the applicable rules and regulations adopted by the Texas Commissioner of Education in relation to the administration of Chapter 313, Texas Tax Code, which are set forth at Chapter 19, Texas Administrative Code, together with any court or administrative decisions interpreting same.

*“Wind Energy Project”* means a renewable wind energy electric generation project as defined by Tex. Tax Code § 313.024(b)(5) that enters into an agreement for a limitation on appraised value pursuant to the Texas Economic Development Act (Chapter 313 of the Texas Tax Code).

## ARTICLE II

### PROPERTY DESCRIPTION

#### **Section 2.1. LOCATION WITHIN A QUALIFIED REINVESTMENT OR ENTERPRISE ZONE**

The Applicant’s Qualified Property upon which the Applicant’s Qualified Investment will be located is within an area designated as a reinvestment zone under Chapter 311 or 312 of the Texas Tax Code . The legal description of the reinvestment zone in which the Applicant’s Qualified Property is located is attached to this Agreement as **EXHIBIT 1** and is incorporated herein by reference for all purposes.

#### **Section 2.2. LOCATION OF QUALIFIED PROPERTY**

The location of the Applicant’s Qualified Property upon which the Applicant’s Qualified Investment will be located is described in the legal description which is attached to this Agreement as **EXHIBIT 2** and is incorporated herein by reference for all purposes. The Parties expressly agree that the boundaries of the Land may not be materially changed from its configuration described in **EXHIBIT 2** without the express authorization of each of the Parties.

#### **Section 2.3. DESCRIPTION OF QUALIFIED INVESTMENT**

The Qualified Investment and/or Qualified Property that is subject to the Tax Limitation Amount is described in **EXHIBIT 3**, which is attached hereto and incorporated herein by reference for all purposes (“Applicant’s Qualified Investment”). Property which is not specifically described in **EXHIBIT 3** shall not be considered by the District or the Appraisal District to be part of the Applicant’s Qualified Investment for purposes of this Agreement, unless pursuant to Texas Tax Code § 313.027(e) and Section 8.3 of this Agreement, the Board of Trustees, by official action, provides that such other property is a part of the Applicant’s Qualified Investment for purposes of this Agreement.

#### **Section 2.4. QUALIFYING USE**

The Applicant's Qualified Investment described above in Section 2.3 qualifies for a tax limitation agreement under Texas Tax Code § 313.024(b)(5) as a renewable energy generation facility.

### **Section 2.5. APPRAISED VALUE LIMITATION**

So long as Applicant makes a Qualified Investment in the amount Twenty Million Dollars (\$20,000,000.00), or greater, during the Qualifying Time Period; and unless this Agreement has been terminated as provided herein before such Tax Year, for each of the eight (8) Tax Years 2012, 2013, 2014, 2015, 2016, 2017, 2018, and 2019, the Appraised Value of the Applicant's Qualified Investment for the District's maintenance and operations ad valorem tax purposes shall not exceed the lesser of:

- (a) the Market Value of the Applicant's Qualified Investment; or
- (b) Twenty Million Dollars (\$20,000,000.00).

This Tax Limitation Amount is based on the limitation amount for the category that applies to the District on the effective date of this Agreement, as set out by Tax Code, §313.022(b) or §313.052.

## **ARTICLE III**

### **PROTECTION AGAINST LOSS OF FUTURE DISTRICT REVENUES**

#### **Section 3.1. INTENT OF THE PARTIES**

Subject to the limitations contained in this Agreement (including Section 5.1), it is the intent of the Parties that the District shall, in addition to the receipt of payments as set forth below in Article IV of this Agreement, be compensated by the Applicant for any loss that the District incurs in its Maintenance and Operations Revenue as a result of, or on account of, entering into this Agreement, after taking into account any payments to be made under this Agreement, other than payments as set forth in Article IV. Subject to the limitations contained in this Agreement (including Section 5.1), it is the intent of the Parties that the risk of any negative financial consequence to the District in making the decision to enter into this Agreement will be borne by the Applicant and not by the District.

#### **Section 3.2. CALCULATING THE AMOUNT OF LOSS OF REVENUES BY THE DISTRICT**

Subject to the provisions of Sections 5.1 and 5.2, the amount to be paid by the Applicant to compensate the District for loss of Maintenance and Operations Revenue resulting from, or on account of, this Agreement for each year during the term of this Agreement shall be determined in compliance with the Applicable School Finance Law in effect for such year and according to the following formula:

The M&O amount owed by the Applicant to District means the Original M&O Revenue *minus* the New M&O Revenue;

Where:

- i. Original M&O Revenue means the total State and local Maintenance & Operations Revenue that the District would have received for the school year under the Applicable School Finance Law had this Agreement not been entered into by the Parties and the Qualified Property and/or Qualified Investment been subject to the ad valorem maintenance & operations tax.
- ii. New M&O Revenue means the total State and local Maintenance & Operations Revenue that the District actually received for such school year.

In making the calculations required by this Section 3.2:

- i. The Taxable Value of property for each school year will be determined under the Applicable School Finance Law.
- ii. For purposes of this calculation, the tax collection rate on the Applicant's Qualified Property and/or the Applicant's Qualified Investment will be presumed to be one hundred percent (100%)
- iii. If, for any year of this Agreement, the difference between the Original M&O Revenue and the New M&O Revenue as calculated under this Section 3.2 results in a negative number, the negative number will be considered to be zero.
- iv. All calculations made for years three (3) through ten (10) of this Agreement under Section 3.2, Subsection *ii* of this Agreement will reflect the Tax Limitation Amount for such year.
- v. All calculations made under this Section 3.2 shall be made by a methodology which isolates only the revenue impact caused by this Agreement. Applicant shall not be responsible to reimburse the District for other revenue losses created by other agreements or any other factors.

### **Section 3.3. COMPENSATION FOR LOSS OF OTHER REVENUES**

In addition to the amounts determined pursuant to Section 3.2 above, and to the extent provided in Section 6.3, the Applicant, on an annual basis, shall also indemnify and reimburse the District for the following:

- a. all non-reimbursed costs it incurred by the District in paying or otherwise crediting to the account of Applicant, any applicable tax credit to which Applicant may be entitled pursuant to Chapter 313, Subchapter D of the Texas Tax Code, and for which the District does not receive reimbursement from the State pursuant to Texas Educ. Code § 42.2515, or other similar or successor statute.
- b. all non-reimbursed costs, certified by the District's external auditor to have been incurred by the District for extraordinary education-related expenses related to the project that are not directly funded in state aid formulas, including expenses for the purchase of portable classrooms and the hiring of additional personnel to accommodate a temporary increase in student enrollment attributable to the project.
- c. any other loss of District revenues which are, or may be attributable to the payment by Applicant to or on behalf any other third party beneficiary.

#### **Section 3.4. CALCULATIONS TO BE MADE BY THIRD PARTY**

All calculations under this Agreement shall be made annually by an independent third party (the "Third Party") jointly approved each year by the District and the Applicant. If the Parties cannot agree on the Third Party, then the Third Party shall be selected by the mediator provided in Section 7.8 of this Agreement.

#### **Section 3.5. DATA USED FOR CALCULATIONS**

The calculations for payments under this Agreement shall be initially based upon the valuations placed upon the Applicant's Qualified Investment and/or the Applicant's Qualified Property by the San Patricio County Appraisal District in its annual certified tax roll submitted to the District pursuant to Texas Tax Code § 26.01 on or about July 25 of each year of this Agreement. Immediately upon receipt of the valuation information by the District, the District shall submit the valuation information to the Third Party selected under Section 3.4. The certified tax roll data shall form the basis of the calculation of any and all amounts due under this Agreement. All other data utilized by the Third Party to make the calculations contemplated by this Agreement shall be based upon the best available current estimates. The data utilized by the Third Party shall be adjusted from time to time by the Third Party to reflect actual amounts, subsequent adjustments by the San Patricio County Appraisal District to the District's certified tax roll or any other changes in student counts, tax collections, or other data.

#### **Section 3.6. DELIVERY OF CALCULATIONS**

On or before November 1 of each year for which this Agreement is effective, the Third Party appointed pursuant to Section 3.4 of this Agreement shall forward to the Parties a certification containing the calculations required under Sections 3.2 and/or 3.3 of this Agreement in sufficient detail to allow the Parties to understand the manner in which the calculations were

made. The Third Party shall simultaneously submit his, her or its invoice for fees for services rendered to the Parties, if any fees are being claimed. Upon reasonable prior notice, the employees and agents of the Applicant shall have access, at all reasonable times, to the Third Party's offices, personnel, books, records, and correspondence pertaining to the calculation and fee for the purpose of verification. The Third Party shall maintain supporting data consistent with generally accepted accounting practices, and the employees and agents of the Applicant shall have the right to reproduce and retain for purpose of audit, any of these documents. The Third Party shall preserve all documents pertaining to the calculation and fee for a period of three (3) years after payment. The Applicant shall not be liable for any of Third Party's costs resulting from an audit of the Third Party's books, records, correspondence, or work papers pertaining to the calculations contemplated by this Agreement or the fee paid by the Applicant to the Third Party pursuant to Section 3.7, if such fee is timely paid.

### **Section 3.7. PAYMENT BY APPLICANT**

The Applicant shall pay any amount determined to be due and owing to the District under this Agreement on or before the January 31 next following the tax levy for each year for which this Agreement is effective. By such date, the Applicant shall also pay any amount billed by the Third Party plus any reasonable and necessary legal expenses paid by the District to its attorneys, auditors, or financial consultants for the preparation and filing of any financial reports, disclosures, or tax credit or other reimbursement applications filed with or sent to the State of Texas which are, or may be required under the terms or because of the execution of this Agreement. In no year shall the Applicant be responsible for the payment of any total expenses under this Section in excess of Ten Thousand Dollars (\$10,000.00).

### **Section 3.8. RESOLUTION OF DISPUTES**

Pursuant to Section 3.4 and Section 3.6, should the Applicant disagree with the certification containing the calculations, the Applicant may appeal the findings, in writing, to the Third Party within fifteen (15) days of receipt of the certification. Within fifteen (15) days of receipt of the Applicant's appeal, the Third Party will issue, in writing, a final determination of the certification containing the calculations. Any appeal by the Applicant of the final determination of the Third Party may be made, in writing, to the Gregory-Portland Independent School District Board of Trustees within fifteen (15) days of the final determination.

### **Section 3.9. EFFECT OF PROPERTY VALUE APPEAL OR OTHER ADJUSTMENT**

In the event that the Taxable Value of the Applicant's Qualified Investment and/or the Applicant's Qualified Property is changed after a final appeal of the valuation or is otherwise changed, once the determination of a new value becomes final, the calculations required by Sections 3.2 and 3.3 of this Agreement will be recomputed by the Third Party using the new valuations. Upon completion of the new calculations, the Third Party shall transmit the new calculations to the Parties. The Party owing funds to the other signatories to this Agreement shall pay any amounts owed within thirty (30) days of receipt of the new calculations from the Third Party.

### **Section 3.10. EFFECT OF STATUTORY CHANGES**

Notwithstanding any other provision in this Agreement, but subject to the limitations contained in Section 5.1, in the event that, by virtue of statutory changes to the Applicable School Finance Law, administrative interpretations by the Comptroller, Commissioner of Education, or the Texas Education Agency, or for any other reason attributable to statutory change, the District will receive less Maintenance and Operations Revenue, or, if applicable, will be required to increase its payment of funds to the State, because of its participation in this Agreement, Applicant shall make payments to the District, up to the revenue protection amount limit set forth in Section 5.1, that are necessary to offset any negative impact on the District as a result of its participation in this Agreement. Such calculation shall take into account any adjustments to the amount calculated for the current fiscal year that should be made in order to reflect the actual impact on the District.

## **ARTICLE IV**

### **SUPPLEMENTAL PAYMENTS**

#### **Section 4.1. AMOUNTS EXCLUSIVE OF INDEMNITY AMOUNTS**

In addition to undertaking the responsibility for the payment of all of the amounts set forth under Article III, and as consideration for the execution of this Agreement by the District, the Applicant shall also be responsible for the Supplemental Payments set forth in this Article IV. It is the express intent of the Parties that the obligation for Supplemental Payments under this Article IV are separate and independent of the obligation of the Applicant to pay the amounts described in Article III; provided, however, that payments under Articles III and IV are subject to the limitations contained in Section 5.1.

#### **Section 4.2. SUPPLEMENTAL PAYMENTS TO THE DISTRICT**

- (a) For each of years three (Tax Year 2012) through thirteen (Tax Year 2022) of this Agreement, the District shall be entitled to receive as Supplemental Payments an amount equal to forty percent (40%) of the net tax benefit received by the Applicant as a result of this Agreement.
- (b) For purposes of Section 4.2(a), the net tax benefit shall be calculated for each of years three (Tax Year 2012) through thirteen (Tax Year 2022) of this Agreement by determining for such Tax Year (i) the amount of maintenance and operations ad valorem taxes which the Applicant would have paid to the District for such Tax Year if this Agreement had not been entered into by the Parties, (ii) adding to the amount determined under clause (i) any Tax Credit received by the Applicant for such Tax Year, and (iii) subtracting from the sum of the amounts determined under clauses (i) and (ii) the sum of (A) all maintenance and operations ad valorem school taxes actually due to the District or any other governmental entity, including the State of Texas, for such Tax Year, plus (B) any payments due to the

District under Article III for such Tax Year. The remainder (which shall not be less than zero) shall be the net tax benefit, to be divided as provided in Section 4.2(a).

- (c) The net tax benefit shall be calculated by the Third Party selected pursuant to Section 3.4.
- (d) The net tax benefit calculations shall be made at the same time and on the same schedule as the calculations made pursuant to Section 3.6.
- (e) Payment of amounts due under this Section 4.2 shall be made at the time set forth in Section 3.7.

### **Section 4.3. RECALCULATION OF SUPPLEMENTAL PAYMENTS**

The Parties agree that the Supplemental Payment amount set forth in Section 4.2 will initially be calculated based upon the then most current estimate of tax savings to the Applicant, which will be made based upon assumptions of student counts, tax collections, and other applicable data. For each of years three (Tax Year 2012) through thirteen (Tax Year 2022) of this Agreement, the Parties shall adjust the Supplemental Payment based upon the following formula:

Taxable Value of the Applicant's Qualified Property for such Tax Year had this Agreement not been entered into by the Parties (i.e., the Taxable Value of the Applicant's Qualified Property used for the District's interest and sinking fund tax purposes for such Tax Year, or school taxes due to any other governmental entity, including the State of Texas, for such Tax Year);

*Minus,*

The Taxable Value of the Applicant's Qualified Property for such Tax Year after giving effect to this Agreement (i.e., the Taxable Value of the Applicant's Qualified Property used for the District's maintenance and operations tax purposes for such Tax Year, or school taxes due to any other governmental entity, including the State of Texas, for such Tax Year);

*Multiplied by,*

The District's maintenance and operations tax rate for such Tax Year, or the school tax rate of any other governmental entity, including the State of Texas, for such Tax Year;

*Plus,*

Any Tax Credit received by the Applicant with respect to such Tax Year;

*Minus,*

Any amounts previously paid to the District under Article III;

*Multiplied by,*

The number 0.40;

*Minus,*

Any amounts previously paid to the District under Sections 4.2 and 4.3 with respect to such Tax Year.

#### **Section 4.4. ANNUAL LIMITATION ON SUPPLEMENTAL PAYMENTS TO THE DISTRICT**

For each year of this Agreement, beginning with year one (Tax Year 2010) and continuing thereafter through year thirteen (Tax Year 2022), the District shall not be entitled to receive Supplemental Payments, computed under Sections 4.2 and 4.3, above, that exceeds the Annual Limit. For each year of this Agreement, the Annual Limit shall be computed as the sum of: (i) the Annual Limit of Four Hundred Three Thousand Four Hundred Dollars (\$403,400.00), and (ii) the difference, if any, between the Annual Limit amount for each prior year and the Supplemental Payments paid to the District under Sections 4.2 and 4.3, above, for all of the prior years of this Agreement.

### **ARTICLE V**

#### **ANNUAL LIMITATION OF PAYMENTS BY APPLICANT**

##### **SECTION 5.1. ANNUAL LIMITATION AFTER FIRST THREE YEARS**

Notwithstanding anything contained in this Agreement to the contrary, and with respect to each Tax Year during the term of this Agreement after the 2012 Tax Year, in no event shall (i) the sum of the maintenance and operations ad valorem taxes paid by the Applicant to the District for such Tax Year, plus the sum of all payments otherwise due from the Applicant to the District under Articles III and IV with respect to such Tax Year, exceed (ii) the amount of the maintenance and operations ad valorem taxes that the Applicant would have paid to the District for such Tax Year (determined by using the District's actual maintenance and operations tax rate for such Tax Year) if the Parties had not entered into this Agreement. The calculation and comparison of the amounts described in clauses (i) and (ii) of the preceding sentence shall be included in all calculations made pursuant to Section 3.4, and in the event the sum of the amounts described in said clause (i) exceeds the amount described in said clause (ii), then the

payments otherwise due from the Applicant to the District under Articles III and IV shall be reduced until such excess is eliminated.

### **Section 5.2. OPTION TO CANCEL AGREEMENT**

In the event that any payment otherwise due from the Applicant to the District under Article III and/or Section 4.2 with respect to a Tax Year is subject to reduction in accordance with the provisions of Section 5.1 above, then the Applicant shall have the option to terminate this Agreement. The Applicant may exercise such option to cancel this Agreement by notifying the District of its election in writing not later than the July 31 of the year next following the Tax Year with respect to which a reduction under Section 5.1 is applicable. Any cancellation of this Agreement under the foregoing provisions of this Section 5.2 shall be effective immediately prior to the second Tax Year next following the Tax Year in which the reduction giving rise to the option occurred. Upon such termination this Agreement shall terminate and be of no further force or effect; provided, however, that the Parties respective rights and obligations under this Agreement with respect to the Tax Year or Tax Years (as the case may be) through and including the Tax Year during which such notification is delivered to the District, shall not be impaired or modified as a result of such termination and shall survive such termination unless and until satisfied and discharged.

## **ARTICLE VI**

### **TAX CREDITS**

#### **Section 6.1. APPLICANT'S ENTITLEMENT TO TAX CREDITS**

The Applicant shall be entitled to tax credits from the District under and in accordance with the provisions of Subchapter D of the Act and Comptroller Rules, provided that the Applicant complies with the requirements under such provisions, including the filing of a completed Application under Section 313.103 of the Texas Tax Code and Comptroller Rules.

#### **Section 6.2. DISTRICT'S OBLIGATIONS WITH RESPECT TO TAX CREDITS**

The District shall timely comply and shall cause the District's collector of taxes to timely comply with their obligations under Subchapter D of the Act and Comptroller Rules, including, but not limited to, such obligations set forth in Section 313.104 of the Texas Tax Code and either Comptroller and/or Texas Education Agency Rules.

#### **Section 6.3. COMPENSATION FOR LOSS OF TAX CREDIT PROTECTION REVENUES**

If after the Applicant has actually received the benefit of a tax credit under Section 6.1, the District does not receive aid from the State pursuant to Texas Education Code § 42.2515 or other similar or successor statute with respect to all or any portion of such tax credit for reasons other than the District's failure to comply with the requirements for obtaining such aid, then the District shall notify the Applicant in writing thereof and the circumstances surrounding the State's failure to provide such aid to the District. The Applicant shall pay to the District the

amount of such tax credit for which the District did not receive such aid within thirty (30) calendar days after receipt of such notice, and such payment shall be subject to the same provisions for late payment as are set forth in Section 7.5 and 7.6. If the District receives aid from the State for all or any portion of a tax credit with respect to which the Applicant has made a payment to the District under this Section 6.3, then the District shall pay to the Applicant the amount of such aid within thirty (30) calendar days after the District's receipt thereof.

## **ARTICLE VII**

### **ADDITIONAL OBLIGATIONS OF APPLICANT**

#### **Section 7.1. DATA REQUESTS**

During the term of this Agreement, and upon the written request of one Party (the "Requesting Party"), the other Party shall provide the Requesting Party with all information reasonably necessary for the Requesting Party to determine whether the other Party is in compliance with its obligations, including any employment obligations which may arise under this Agreement. The Applicant shall allow authorized employees of the District and/or the San Patricio County Appraisal District to have access to the Applicant's Qualified Property and/or business records during the term of this Agreement, in order to inspect the project to determine compliance with the terms hereof or as necessary to properly appraise the Taxable Value of the Applicant's Qualified Property and any other tangible property on the premises. All inspections will be made at a mutually agreeable time after the giving of not less than forty-eight (48) hours prior written notice, and will be conducted in such a manner so as not to unreasonably interfere with either the construction or operation of the Applicant's Qualified Property. All inspections may be accompanied by one or more representatives of the Applicant, and shall be conducted in accordance with the Applicant's safety, security, and operational standards. Notwithstanding the foregoing, nothing contained in this Agreement shall require the Applicant to provide the District or the San Patricio County Appraisal District with any technical or business information that is private personnel data, proprietary, a trade secret or confidential in nature or is subject to a confidentiality agreement with any third party.

#### **Section 7.2. REPORTS TO OTHER GOVERNMENTAL AGENCIES**

Applicant shall timely make any and all reports that are or may be required under the provisions of law or administrative regulation, including but not limited to the annual report or certifications that may be required to be submitted by the Applicant to the Texas Comptroller of Public Accounts under the provisions of Texas Tax Code § 313.032. Applicant shall forward a copy of all such required reports or certifications to the District contemporaneously with the filing thereof. The obligation to make all such required filings shall be a material obligation under this Agreement.

### **Section 7.3 SUPPORT FOR DISTRICT TECHNICAL TRAINING PROGRAM**

Applicant shall, during the entire course of this Agreement, provide support for the District's technical training program for the education and development of technical skills necessary for individuals seeking employment in the wind energy industry. Such support shall, at a minimum, consist of:

- (a) Conferring with the District for the purpose of identifying opportunities for employees of Applicant to participate in technical training programs operated by the District for the benefit of its students, and programs sponsored by the District;
- (b) Disseminating technical information, at conferences with Applicant's employees to enhance the relevance of the District's training program;
- (c) Providing a reasonable opportunity for groups of students of the District to make Applicant sponsored tours of its facilities at times convenient to Applicant and the District and consistent with Applicant's safety and security policies; and,
- (d) Considering qualified graduates of the District's technical training program and/or graduates of programs sponsored by the District for available positions with Applicant.

### **Section 7.4. APPLICANT'S OBLIGATION TO MAINTAIN VIABLE PRESENCE**

By entering into this Agreement, the Applicant warrants that:

- (a) it will abide by all of the terms of the Agreement;
- (b) it will Maintain Viable Presence in the District through the termination date of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the Applicant shall not be in breach of, and shall not be subject to any liability for failure to Maintain Viable Presence to the extent such failure is caused by Force Majeure (as hereinafter defined), provided the Applicant makes commercially reasonable efforts to remedy the cause of such Force Majeure; and,
- (c) it will meet minimum eligibility requirements under Tax Code, Chapter 313 throughout the value limitation and tax-credit settle-up periods.

Applicant shall not be in breach of this Agreement for the Failure to Maintain a Viable Presence in the District for the failure to employ the required number of Qualified Employees, so long as Applicant, in the event of such failure, tenders and pays in a timely manner, the penalty imposed by the provisions of Tex. Tax Code § 313.0275.

**Section 7.5. CONSEQUENCES OF EARLY TERMINATION OR OTHER BREACH BY APPLICANT**

(a) In the event that the Applicant terminates this Agreement without the consent of the District, except as provided in Section 5.2, or in the event that the Applicant or its successor-in-interest fails to comply in any material respect with the terms of this Agreement or to meet any material obligation under this Agreement, after the notice and cure period provided by Section 7.7, then the District shall be entitled to the recapture of all ad valorem tax revenue lost as a result of this Agreement together with the payment of penalty and interest, as calculated in accordance with Section 7.6, on that recaptured ad valorem tax revenue. For purposes of this recapture calculation, the Applicant shall be entitled to a credit for all payments made to the District pursuant to Article III. Applicant shall also be entitled to a credit for any amounts paid to the District pursuant to Article IV.

(b) Notwithstanding Section 7.5(a), in the event that the District determines that the Applicant has failed to Maintain Viable Presence and provides written notice of termination of the Agreement, then the Applicant shall pay to the District liquidated damages for such failure within thirty (30) days after receipt of such termination notice. The sum of liquidated damages due and payable shall be the sum total of the District ad valorem taxes for all of the Tax Years for which a Tax Limitation was granted pursuant to this Agreement prior to the year in which the default occurs that otherwise would have been due and payable by the Applicant to the District without the benefit of this Agreement, including penalty and interest, as calculated in accordance with Section 7.6. For purposes of this liquidated damages calculation, the Applicant shall be entitled to a credit for all payments made to the District pursuant to Article III. The Applicant shall also be entitled to a credit for any amounts paid to the District pursuant to Article IV. Upon payment of such liquidated damages, Applicant's obligations under this Agreement shall be deemed fully satisfied, and such payment shall constitute the District's sole remedy.

**Section 7.6. CALCULATION OF PENALTY AND INTEREST**

In determining the amount of penalty or interest, or both, due in the event of a breach of this Agreement, the District shall first determine the base amount of recaptured taxes owed less all credits under Section 7.5 for each Tax Year during the term of this Agreement since the Commencement Date. The District shall calculate penalty or interest for each Tax Year during the term of this Agreement since the Commencement Date in accordance with the methodology set forth in Chapter 33 of the Texas Tax Code, as if the base amount calculated for such Tax Year less all credits under Section 7.5 had become due and payable on February 1 of the calendar year following such Tax Year. Penalties on said amounts shall be calculated in accordance with the methodology set forth in Texas Tax Code § 33.01(a), or its successor statute. Interest on said amounts shall be calculated in accordance with the methodology set forth in Texas Tax Code § 33.01(c), or its successor statute.

### **Section 7.7. DETERMINATION OF BREACH**

Prior to making a determination that the Applicant has failed to Maintain Viable Presence in the District as required by Section 7.4 of this Agreement, or has otherwise committed a material breach of this Agreement, the District shall provide the Applicant with a written notice of the facts which it believes have caused the material breach of this Agreement, and if cure is possible, the cure proposed by the District. After receipt of the notice, Applicant shall be given sixty (60) days to present any facts or arguments to the Board of Trustees showing that it is not in material breach of its obligations under the Agreement, or that it has cured or undertaken to cure any such material breach.

If the Board of Trustees is not satisfied with such response and/or that such breach has been cured, then the Board of Trustees shall, after reasonable notice to the Applicant, conduct a hearing called and held for the purpose of determining whether such breach has occurred and, if so, whether such breach has been cured. At any such hearing, the Applicant shall have the opportunity, together with their counsel, to be heard before the Board of Trustees. At the hearing, the Board of Trustees shall make findings as to whether or not a material breach of this Agreement has occurred, the date such breach occurred, if any, and whether or not any such breach has been cured. In the event that the Board of Trustees determines that such a breach has occurred and has not been cured, it shall also determine the amounts of recaptured taxes under Section 7.5 (net of all credits under Section 7.5), and the amount of any penalty and/or interest under Section 7.6 that are owed to the District.

After making its determination regarding any alleged breach, the Board of Trustees shall cause the Applicant to be notified in writing of its determination.

### **Section 7.8. DISPUTE RESOLUTION**

After receipt of notice of the Board of Trustee's determination of a material breach under Section 7.7, the Applicant shall have sixty (60) days in which either to tender payment or evidence of its efforts to cure, or to initiate mediation of the dispute by written notice to the District, in which case the District and the Applicant shall be required to make a good faith effort to resolve, without resort to litigation and within sixty (60) days after the Applicant's receipt of notice of the Board of Trustee's determination of breach under Section 7.7, such dispute through mediation with a mutually agreeable mediator and at a mutually convenient time and place for the mediation. If the Parties are unable to agree on a mediator, a mediator shall be selected by the senior state district court judge then residing in San Patricio County, Texas. The Parties agree to sign a document that provides the mediator and the mediation will be governed by the provisions of Chapter 154 of the Texas Civil Practice and Remedies Code and such other rules as the mediator shall prescribe. With respect to such mediation, (i) the District shall bear one-half of such mediator's fees and expenses and the Applicant shall bear one-half of such mediator's fees and expenses, and (ii) otherwise each Party shall bear all of its costs and expenses (including attorneys' fees) incurred in connection with such mediation.

In the event that any mediation is not successful in resolving the dispute or that payment is not received before the expiration of such sixty (60) days, the District shall have the remedies for the collection of the amounts determined under Section 7.7 as are set forth in Texas Tax Code Chapter 33, Subchapters B and C, for the collection of delinquent taxes. In the event that the District successfully prosecutes legal proceedings under this section, the Applicant shall also be responsible for the payment of attorney's fees and a tax lien on the Applicant's Qualified Property and the Applicant's Qualified Investment pursuant to Texas Tax Code § 33.07 to the attorneys representing the District pursuant to Texas Tax Code § 6.30.

In any event where a dispute between the District and the Applicant under this Agreement cannot be resolved by the Parties, after completing the procedures required above in this Section, either the District or the Applicant may seek a judicial declaration of their respective rights and duties under this Agreement or otherwise, in any judicial proceeding, assert any rights or defenses, or seek any remedy in law or in equity, against the other Party with respect to any claim relating to any breach, default, or nonperformance of any covenant, agreement or undertaking made by a Party pursuant to this Agreement.

#### **Section 7.9. LIMITATION OF OTHER DAMAGES**

Notwithstanding anything contained in this Agreement to the contrary, in the event of default or breach of this Agreement by the Applicant, the District's damages for such a default shall under no circumstances exceed the greater of either any amounts calculated under Sections 7.5 and 7.6 above, or the monetary sum of the difference between the payments and credits due and owing to the Applicant at the time of such default and the District taxes that would have been lawfully payable to the District had this Agreement not been executed. In addition, the District's sole right of equitable relief under this Agreement shall be its right to terminate this Agreement.

The Parties further agree that the limitation of damages and remedies set forth in this Section 7.9 shall be the sole and exclusive remedies available to the District, whether at law or under principles of equity.

#### **Section 7.10. BINDING ON SUCCESSORS**

In the event of a merger or consolidation of the District with another school district or other governmental authority, this Agreement shall be binding on the successor school district or other governmental authority.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

#### Section 8.1. INFORMATION AND NOTICES

Unless otherwise expressly provided in this Agreement, all notices required or permitted hereunder shall be in writing and deemed sufficiently given for all purposes hereof if (i) delivered in person, by courier (e.g., by Federal Express) or by registered or certified United States Mail to the Party to be notified, with receipt obtained, or (ii) sent by facsimile transmission, with "answer back" or other "advice of receipt" obtained, in each case to the appropriate address or number as set forth below. Each notice shall be deemed effective on receipt by the addressee as aforesaid; provided that, notice received by facsimile transmission after 5:00 p.m. at the location of the addressee of such notice shall be deemed received on the first business day following the date of such electronic receipt.

Notices to the District shall be addressed as follows:

Superintendent Dr. Paul Clore  
**GREGORY-PORTLAND INDEPENDENT SCHOOL DISTRICT**  
608 College Street  
Gregory-Portland, Texas 78390-2702  
Fax (361) 777-1093  
Email: [PClore@g-pisd.org](mailto:PClore@g-pisd.org)

Or at such other address or to such other facsimile transmission number and to the attention of such other person as the District may designate by written notice to the Applicant.

Notices to the Applicant shall be addressed to:

Robert Blunt, IV  
Director of Development  
EC&R PAPALOTE CREEK II, LLC  
812 San Antonio, Suite 201  
Austin, Texas 78701  
Fax: (512) 494-9581  
E-mail: [Bobby.Blunt@eon.com](mailto:Bobby.Blunt@eon.com)

or at such other address or to such other facsimile transmission number and to the attention of such other person as the Applicant may designate by written notice to the District.

#### Section 8.2. EFFECTIVE DATE, TERMINATION OF AGREEMENT

- (a) This Agreement shall be and become effective on the date of final approval of this Agreement by the District's Board of Trustees,

- (b) The obligation to Maintain Viable Presence under this Agreement shall remain in full force and effect through the termination in full date established in Section 1.2 of this Agreement.
- (c) In the event that Applicant fails to make a Qualified Investment in the amount of Twenty Million Dollars (\$20,000,000.00), or greater, during the Qualifying Time Period, this Agreement shall become null and void on December 31, 2011.

### **Section 8.3. AMENDMENTS TO AGREEMENT; WAIVERS**

This Agreement may not be modified or amended except by an instrument or instruments in writing signed by all of the Parties. Waiver of any term, condition or provision of this Agreement by any Party shall only be effective if in writing and shall not be construed as a waiver of any subsequent breach of, or failure to comply with, the same term, condition or provision, or a waiver of any other term, condition or provision of this Agreement. By official action of the Board of Trustees, this Agreement may be amended to include, in the Applicant's Qualified Investment, additional or replacement Qualified Property not specified in **EXHIBIT 3**, provided that the Applicant reports to the District, the Comptroller, and the Appraisal District, in the same format, style, and presentation as the Application, all relevant investment, value, and employment information that is related to the additional property. Any amendment of the Agreement adding additional or replacement Qualified Property pursuant to this Section 8.3 shall, (1) require that all property added by amendment be eligible property as defined by Tax Code, §313.024; (2) clearly identify the property, investment, and employment information added by amendment from the property, investment, and employment information in the original Agreement; and (3) define minimum eligibility requirements for the recipient of limited value. This Agreement may not be amended to extend the value limitation time period beyond its eight year statutory term.

### **Section 8.4. ASSIGNMENT**

The Applicant may assign this Agreement, or a portion of this Agreement, to an Affiliate or a new owner or lessee of all or a portion of the Applicant's Qualified Property and/or the Applicant's Qualified Investment, provided that the Applicant shall provide written notice of such assignment to the District. Upon such assignment, Applicant's assignee will be liable to the District for outstanding taxes or other obligations arising under this Agreement. A recipient of limited value under Tax Code, Chapter 313 shall notify immediately the District, the Comptroller, and the Appraisal District in writing of any change in address or other contract information for the owner of the property subject to the limitation agreement for the purposes of Tax Code §313.032. The assignee's or its reporting entity's Texas Taxpayer Identification Number shall be included in the notification.

### **Section 8.5. MERGER**

This Agreement contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence, and preliminary understandings between the Parties and others relating hereto are superseded by this Agreement.

### **Section 8.6. MAINTENANCE OF COUNTY APPRAISAL DISTRICT RECORDS**

When appraising the Applicant's Qualified Property and the Applicant's Qualified Investment subject to a limitation on Appraised Value under this Agreement, the Chief Appraiser of the San Patricio County Appraisal District shall determine the Market Value thereof and include both such Market Value and the appropriate value thereof under this Agreement in its appraisal records.

### **Section 8.7. GOVERNING LAW**

This Agreement and the transactions contemplated hereby shall be governed by and interpreted in accordance with the laws of the State of Texas without giving effect to principles thereof relating to conflicts of law or rules that would direct the application of the laws of another jurisdiction. Venue in any legal proceeding shall be in San Patricio County, Texas.

### **Section 8.8. AUTHORITY TO EXECUTE AGREEMENT**

Each of the Parties represents and warrants that its undersigned representative has been expressly authorized to execute this Agreement for and on behalf of such Party.

### **Section 8.9. SEVERABILITY**

If any term, provision or condition of this Agreement, or any application thereof, is held invalid, illegal or unenforceable in any respect under any Law (as hereinafter defined), this Agreement shall be reformed to the extent necessary to conform, in each case consistent with the intention of the Parties, to such Law, and to the extent such term, provision or condition cannot be so reformed, then such term, provision or condition (or such invalid, illegal or unenforceable application thereof) shall be deemed deleted from (or prohibited under) this Agreement, as the case may be, and the validity, legality and enforceability of the remaining terms, provisions and conditions contained herein (and any other application such term, provision or condition) shall not in any way be affected or impaired thereby. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement in an acceptable manner so as to effect the original intent of the Parties as closely as possible to the end that the transactions contemplated hereby are fulfilled to the extent possible. As used in this Section 8.9, the term "Law" shall mean any applicable statute, law (including common law), ordinance, regulation, rule, ruling, order, writ, injunction, decree or other official act of or by any federal, state or local government, governmental

department, commission, board, bureau, agency, regulatory authority, instrumentality, or judicial or administrative body having jurisdiction over the matter or matters in question.

#### **Section 8.10. PAYMENT OF EXPENSES**

Except as otherwise expressly provided in this Agreement, or as covered by the application fee, each of the Parties shall pay its own costs and expenses relating to this Agreement, including, but not limited to, its costs and expenses of the negotiations leading up to this Agreement, and of its performance and compliance with this Agreement.

#### **Section 8.11. INTERPRETATION**

When a reference is made in this Agreement to a Section, Article or Exhibit, such reference shall be to a Section or Article of, or Exhibit to, this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The words "include," "includes" and "including" when used in this Agreement shall be deemed in such case to be followed by the phrase ", but not limited to,". Words used in this Agreement, regardless of the number or gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context shall require. This Agreement is the joint product of the Parties and each provision of this Agreement has been subject to the mutual consultation, negotiation and agreement of each Party and shall not be construed for or against any Party.

#### **Section 8.12. EXECUTION OF COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

#### **Section 8.13. PUBLICATION OF DOCUMENTS**

The Parties acknowledge that the District is required to publish the Application and its required schedules, or any amendment thereto; all economic analyses of the proposed project submitted to the District; the approved and executed copy of this Agreement or any amendment thereto; and each application requesting tax credits under Tex. Tax Code § 313.103, as follows:

- a. Within seven days of such document, the school district shall submit a copy to the Comptroller for Publication on the Comptroller's Internet website.
- b. District shall provide on its website a link to the location of those documents posted on the Comptroller's website.
- c. This Section does not require the Publication of information that is confidential under Tex. Tax Code § 313.028.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties in multiple originals on this 15<sup>th</sup> day of December, 2009.

**EC&R PAPALOTE CREEK II, LLC**

By: \_\_\_\_\_

*Robert Blunt, IV*  
**ROBERT BLUNT, IV**  
VICE PRESIDENT DEVELOPMENT  
EC&R PAPALOTE CREEK II, LLC

**GREGORY-PORTLAND INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_

*Reynaldo Rojas*  
**REYNALDO ROJAS**  
President  
Board of Trustees

ATTEST:

*Becky Macha*  
\_\_\_\_\_  
**BECKY MACHA**  
Secretary  
Board of Trustees



## EXHIBIT 1

### DESCRIPTION OF QUALIFIED REINVESTMENT ZONE

The *San Patricio County Reinvestment Zone* was originally created on July 27, 2009 by action of the San Patricio County Commissioner's Court. A map of the *San Patricio County Reinvestment Zone* is attached as the last page of this **EXHIBIT 1**. The *San Patricio County Reinvestment Zone* includes real property within unincorporated San Patricio County, Texas, more specifically the following property and tracks.

- All of the real property located in San Patricio County and contained in sections 3, 4, 5, 6, 7, 8, 16, 17, 18, 19, 20, 21, 29, 30, 31, 32, 33, 34, 38, 42, 43, 44, 45, 46, 47, 50, 51, 52, 53, 54, 55, 57, 58, 59, 60, 61, 62, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 78, 79, 80, 81, 82, 83, 84, 90 George H. Paul Subdivision, Coleman Fulton Pasture Company Survey, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in lots 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, of the Drummond Subdivision, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, of the Roos Subdivision, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in Abstract 13 7, J.A.F. Gravis Survey; Abstract 133, S.S. Gillette Survey; Abstract 400, M. Hunt Survey; Abstract 168, Edward Nelson Survey; Abstract 206, William Martin Survey; Abstract 205, W.W. Bell Survey; Abstract 53, S.M. Edwards Survey; Abstract 112, H. Shelton Survey; Abstract 248, T.N. Seguin Survey; Abstract 247, G.W. Fulton Survey, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in Abstract 127 and Abstract A125, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, of the Second Addition of the Gregory-Portland Farm Lands Second Subdivision, San Patricio County, Texas
- All of the real property located in San Patricio County and contained in sections 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 of the Third Addition of the Gregory-Portland Farm Lands Third Subdivision, San Patricio County, Texas.

- All of the real property located in San Patricio County and contained in sections 26, 27, 28, 29 of the Fourth Addition of the Gregory-Portland Farm Lands Fourth Subdivision, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in sections 60, 61, 62, 63 of the Fifth Addition of the Gregory-Portland Farm Lands Fifth Subdivision, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in Block 3 of the First Addition of the Gregory-Portland Farm Lands First Subdivision, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in Blocks 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17 of the Gregory-Portland Farm Blocks, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in sections I, J, K, L, M, N of the George H. Paul Subdivision of Coleman-Fulton Pasture Company's Lands, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in Blocks A, D, E, F, H of the Gregory Farm Blocks, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in Lots 1, 2, 3, 5, 6, 7, 8, 9, 10 in Block B of the Gregory Farm Blocks, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in Lots 1, 2, in Block C of the Gregory Farm Blocks, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in Tracts 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 in the Rincon Subdivision of the George H. Paul Subdivision of Coleman-Fulton Pasture Company's Lands, San Patricio County, Texas.
- All the real property located in San Patricio County and contained in Blocks A, B1, B2, C, D, E, F, of the Resurvey of Partition of J.S.M. McKamey Estate, 3/39, P.R.S.P.C., San Patricio County, Texas
- All of the real property located in San Patricio County and contained in Abstract 209, John Orrick Survey; Abstract 259, Sam & G R.R. Survey; Abstract 135, John Gibbs Survey; Abstract 269, Geronimo Valdez Survey; Abstract 180, John Keating Survey; Abstract 394, John M. Swisher Survey; Abstract 231, George Sargent Survey; Abstract 113, Levi English Survey; Abstract 128, Maricelo Garcia; Abstract 158, C.C. Hornsby Survey; Abstract 192, P. Mahoney Survey; and Abstract 278, Robert M. Williamson Survey, San Patricio County, Texas

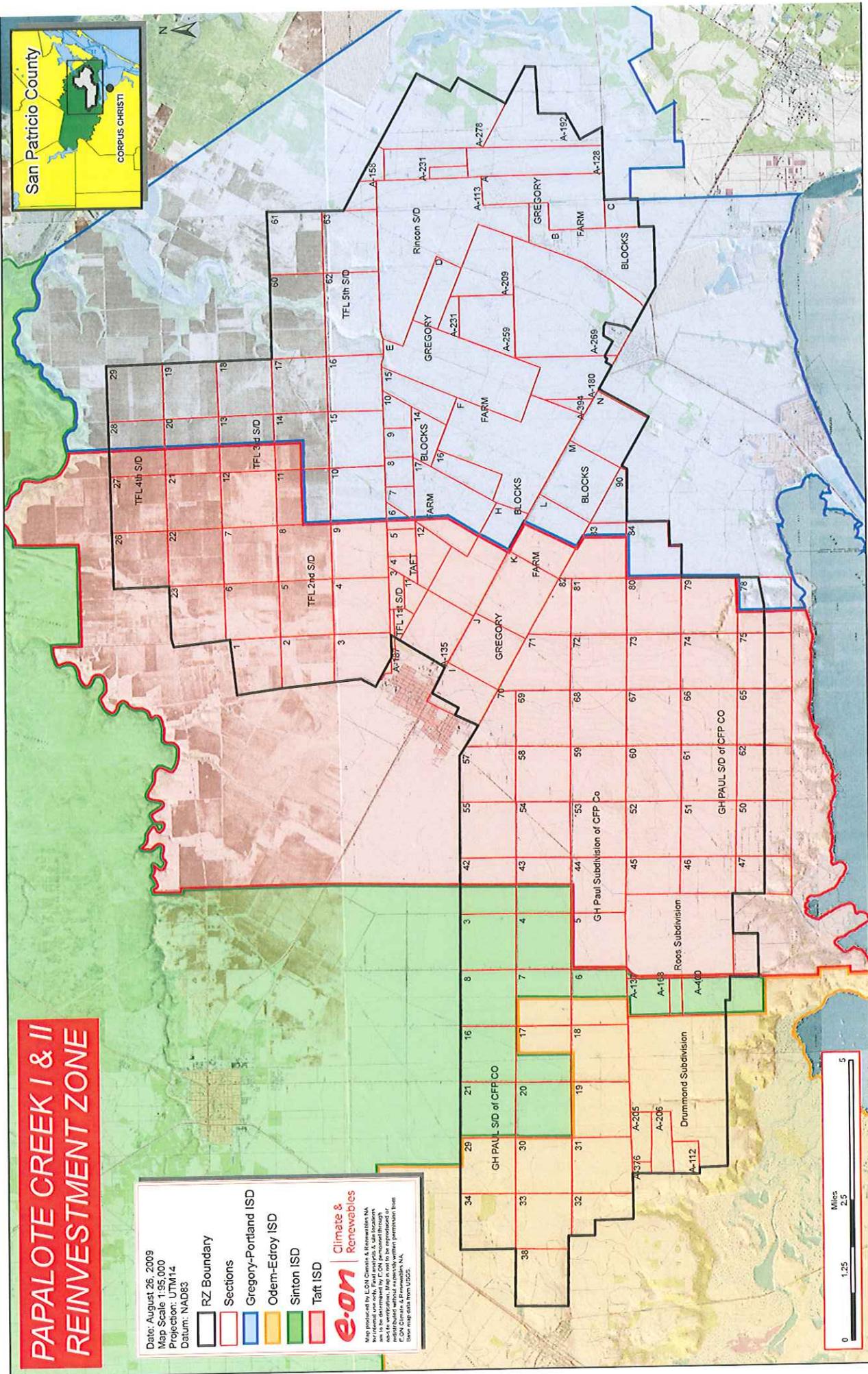
# PAPALOTE CREEK I & II REINVESTMENT ZONE

Date: August 26, 2009  
 Map Scale: 1:65,000  
 Projection: UTM14  
 Datum: NAD83

-  RZ Boundary
-  Sections
-  Gregory-Portland ISD
-  Odem-Edroy ISD
-  Sinton ISD
-  Taft ISD

**e-on** Climate & Renewables

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## EXHIBIT 2

### LOCATION OF QUALIFIED PROPERTY

All Qualified Property owned by Applicant and located within the boundaries of both the Gregory-Portland Independent School District and *San Patricio County Reinvestment Zone* will be included in and subject to this Agreement. Specifically, all Qualified Property of Applicant located in the following sections of land is included, to wit:

- All of the real property located in San Patricio County and contained in sections 3, 4, 5, 6, 7, 8, 16, 17, 18, 19, 20, 21, 29, 30, 31, 32, 33, 34, 38, 42, 43, 44, 45, 46, 47, 50, 51, 52, 53, 54, 55, 57, 58, 59, 60, 61, 62, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 78, 79, 80, 81, 82, 83, 84, 90 George H. Paul Subdivision, Coleman Fulton Pasture Company Survey, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in lots 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, of the Drummond Subdivision, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, of the Roos Subdivision, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in Abstract 13 7, J.A.F. Gravis Survey; Abstract 133, S.S. Gillette Survey; Abstract 400, M. Hunt Survey; Abstract 168, Edward Nelson Survey; Abstract 206, William Martin Survey; Abstract 205, W.W. Bell Survey; Abstract 53, S.M. Edwards Survey; Abstract 112, H. Sheltin Survey; Abstract 248, T.N. Seguin Survey; Abstract 247, G.W. Fulton Survey, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in Abstract 127 and Abstract A125, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, of the Second Addition of the Gregory-Portland Farm Lands Second Subdivision, San Patricio County, Texas
- All of the real property located in San Patricio County and contained in sections 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 of the Third Addition of the Gregory-Portland Farm Lands Third Subdivision, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in sections 26, 27, 28, 29 of the Fourth Addition of the Gregory-Portland Farm Lands Fourth Subdivision, San Patricio County, Texas.

- All of the real property located in San Patricio County and contained in sections 60, 61, 62, 63 of the Fifth Addition of the Gregory-Portland Farm Lands Fifth Subdivision, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in Block 3 of the First Addition of the Gregory-Portland Farm Lands First Subdivision, San Patricio County, Texas.
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- All of the real property located in San Patricio County and contained in Lots 1, 2, in Block C of the Gregory Farm Blocks, San Patricio County, Texas.
- All of the real property located in San Patricio County and contained in Tracts 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 in the Rincon Subdivision of the George H. Paul Subdivision of Coleman-Fulton Pasture Company's Lands, San Patricio County, Texas.
- All the real property located in San Patricio County and contained in Blocks A, B1, B2, C, D, E, F, of the Resurvey of Partition of J.S.M. McKamey Estate, 3/39, P.R.S.P.C., San Patricio County, Texas
- All of the real property located in San Patricio County and contained in Abstract 209, John Orrick Survey; Abstract 259, Sam & G R.R. Survey; Abstract 135, John Gibbs Survey; Abstract 269, Geronimo Valdez Survey; Abstract 180, John Keating Survey; Abstract 394, John M. Swisher Survey; Abstract 231, George Sargent Survey; Abstract 113, Levi English Survey; Abstract 128, Maricelo Garcia; Abstract 158, C.C. Hornsby Survey; Abstract 192, P. Mahoney Survey; and Abstract 278, Robert M. Williamson Survey, San Patricio County, Texas

### **EXHIBIT 3**

#### **DESCRIPTION OF THE APPLICANT'S QUALIFIED INVESTMENT**

The proposed project will consist of a facility designed to use wind power to generate electricity (commonly referred to as a wind farm). The property will include, but is not limited to, the following: up to approximately 47 – 2.3 megawatt wind power turbine generators; or equivalent; a reinforced concrete slab supporting the weight of each turbine tower; equipment and towers used to gather meteorological data; buried and overhead electrical conductor cables (including poles) used to transport electricity from each turbine tower to an electrical substation; the electrical substation and electrical conductor cables used to transport electricity off of the project site; one or more buildings used to hold maintenance supplies, replacement parts, and related equipment; and various appurtenant equipment and small items related to the above. All of the property for which the Applicant is seeking a limitation on appraised value will be owned by the Applicant or a valid assignee pursuant to this Agreement. The facility will also require a relatively insubstantial amount of personal property.



Attachment H

December 8<sup>th</sup>, 2009 EC&R Letter  
&  
Revised Finance Report



Climate &  
Renewables

December 8, 2009

Gregory-Portland ISD  
c/o Kevin O'Hanlon  
O'HANLON & ASSOCIATES  
808 West Ave.  
Austin, Texas 78701

**E.ON Climate & Renewables  
North America Inc.**  
812 San Antonio Street  
Suite 201  
Austin, TX 78701  
U.S.A.  
[www.eon.com](http://www.eon.com)

*Re: Application for Ch. 313 Appraised Value Limitation Agreement,  
as filed by EC&R Development, LLC (July 28, 2009)*

Dear Mr. O'Hanlon:

EC&R Development, LLC ("EON" or "we") hereby provides this notice of a modification to the wind turbine layout on the proposed wind energy project, Papalote Creek Phase II, which will result in an adjustment to the total investment amount that may be installed in the Gregory-Portland ISD.

Based on our most current construction planning, aviation and turbine efficiency considerations, the adjustments to the layout will, if constructed, result in a total of 30 wind turbine generators (69 MW at an estimated value of \$69.0 million) installed in your District.

Please feel free to contact me should you have any questions.

Respectfully submitted,

Bobby Blunt  
VP, Development  
512-482-4033



**SUMMARY OF FINANCIAL IMPACT OF THE PROPOSED EC&R  
PAPALOTE CREEK II, LLC PROJECT ON THE FINANCES OF  
GREGORY-PORTLAND ISD UNDER A REQUESTED CHAPTER  
313 PROPERTY VALUE LIMITATION**

**December 10, 2009**

**Final Report  
(Revised-\$69 million Investment)**

**PREPARED BY**



# Estimated Impact of the Proposed EC&R Papalote Creek II, LLC Project on the Finances of Gregory-Portland ISD under a Requested Chapter 313 Property Value Limitation

## Introduction

EC&R Papalote Creek II, LLC (EC&R) has requested that the Gregory-Portland Independent School District (G-PISD) consider granting a property value limitation under Chapter 313 of the Tax Code for a new renewable electric wind generation project. An application was submitted to G-PISD on July 28, 2009. In the original application, EC&R proposed to invest \$108.1 million to construct a new wind energy project in G-PISD. An EC&R letter dated December 8, 2009, however, revised the estimates for the G-PISD Papalote Creek II project. The current construction planning suggests that a total of 39 wind turbine generators will be installed at a total investment of \$69 million, not \$108.1 million. This report revises the initial school finance impact study conducted by Moak, Casey & Associates.

The EC&R project is consistent with the state's goal to "encourage large scale capital investments in this state." When enacted as House Bill 1200 in 2001, the original language in Chapter 313 of the Tax Code made companies engaged in manufacturing, research and development, and renewable electric energy production eligible to apply to school districts for property value limitations. Subsequent legislative changes expanded eligibility to clean coal projects, nuclear power generation and data centers, among others.

## School Finance Mechanics

Under the provisions of Chapter 313, G-PISD may offer a minimum value limitation of \$20 million. Based on the application and adjustments to the construction plans, the qualifying time period would begin with the 2010-11 school year. The full taxable value of the investment is expected to reach \$69 million in 2011-12, with depreciation expected to reduce the taxable value of the project over the course of the value limitation agreement.

The provisions of Chapter 313 call for the project to be fully taxable in the 2010-11 and 2011-12 school years, unless the District and the Company agree to an extension of the start of the qualifying time period. For the purpose of this analysis, it is assumed that the qualifying time period will be the 2010-11 and 2011-12 school years. Beginning in 2012-13, the project would go on the local tax roll at \$20 million and remain at that level of taxable value for eight years for maintenance and operations (M&O) taxes. The full taxable value of the project could be assessed for debt service taxes on voter-approved bond issues throughout the limitation period, with G-PISD currently levying a \$0.190 I&S tax rate.

Under the current school finance system, the property values established by the Comptroller's Office that are used to calculate state aid and recapture lag by one year, a practical consequence of the fact that the Comptroller's Office needs this time to conduct their property value study and

now the planned audits of appraisal district operations in alternating years. A taxpayer receiving a value limitation pays M&O taxes on the reduced value for the project in years 3-10 and receives a tax bill for I&S taxes based on the full project value. The school funding formulas use the Comptroller's property values that reflect a reduction due to the property value limitation in years 4-11 as a result of the one-year lag in property values.

Under the school finance system that operated prior to the approval of House Bill 1 (HB 1) in the 2006 special session, the third year was typically problematical for a school district that approved a Chapter 313 value limitation. Based on the data provided in the December 8<sup>th</sup> letter, EC&R indicates that \$69 million in taxable value would be in place in the second year under the agreement. In year three (2012-13) of the agreement, the project is expected to go on the tax roll at \$20 million or, if applicable, a higher value limitation amount approved by the G-PISD Board of Trustees. This difference would result in a revenue loss to the school district in the third year of the agreement that would not be reimbursed by the state, but require some type of compensation from the applicant in the revenue protection provisions of the agreement. In years 4-10, smaller revenue losses would be anticipated when the state property values are aligned with the minimum value established by the Board on both the local tax roll and the corresponding state property value study, assuming a similar deduction is made in the state property values.

HB 1 established a "target" revenue system per student that has the effect of largely neutralizing the third-year revenue losses associated with Chapter 313 property value limitations, at least up to a district's compressed M&O tax rate. The additional four to six cents of tax effort that a district may levy are subject to an enriched level of equalization (or no recapture in the case of Chapter 41 school district) and operate more like the pre-HB 1 system. A value limitation must be analyzed for any potential revenue loss associated with this component of the M&O tax levy. For tax effort in excess of the compressed plus six cents rate, equalization and recapture occur at the level of \$319,500 per weighted student in average daily attendance (WADA).

Under HB 3646—the school finance system changes approved by the Legislature in 2009—the starting point is the target revenue provisions from HB 1, that are then expanded through the addition of a series of school funding provisions that had operated previously outside the basic allotment and the traditional formula structure. An additional \$120 per WADA guarantee is then added to the recalculated target revenue amount.

School districts do have the potential to earn revenue above the \$120 per WADA level under HB 3646, up to a maximum of \$350 per WADA above current law. Initial estimates indicate that about 700 school districts are funded at the minimum \$120 per WADA level, while approximately 300 school districts are expected to generate higher revenue amounts per WADA. This is significant because changes in property values and related tax collections under a Chapter 313 agreement once again have the potential to affect a school district's base revenue, although probably not to the degree experienced prior to the HB 1 target revenue system.

One key element in any analysis of the school finance implications is the provision for revenue protection in the agreement between the school district and the applicant. In the case of the EC&R project, the agreement calls for a calculation of the revenue impact of the value limitation in years 3-10 of the agreement, under whatever school finance and property tax laws are in effect in each of those years. This meets the statutory requirement under Section 313.027(f) (1) of the Tax Code to provide school district revenue protection language in the agreement.

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## **Underlying Assumptions**

There are several approaches that can be used to analyze the future revenue stream of a school district under a value limitation. Whatever method is used, a reasonable analysis requires the use of a multi-year forecasting model that covers the years in which the agreement is in effect. The Chapter 313 application now requires 15 years of data and analysis on the project being considered for a property value limitation.

The approach used here is to maintain static enrollment and property values in order to isolate the effects of the value limitation under the school finance system. While the new target revenue system appears to limit the impact of property value changes for a majority of school districts, changes in underlying property value growth have the potential to influence the revenue stream of a number of school districts.

Student enrollment counts are held constant at 3,819 students in average daily attendance (ADA) in analyzing the effects of the EC&R project on the finances of G-PISD. This represents about a 200-student decrease from the 2008-09 school year, in part a function of the closing of the nearby Naval Station Ingleside. (The original estimates of enrollment decreases due to the Base closure totaled nearly 600 students.) The District's local tax base reached \$1.2 billion for the 2009 tax year. While the district's tax base has experienced steady growth in recent years, it appears to be slowing and the underlying \$1.2 billion taxable value for 2009-10 is maintained for the forecast period in order to isolate the effects of the property value limitation. G-PISD is not a property-wealthy district, with wealth per weighted ADA or WADA expected to average \$225,167 for the 2010-11 school year. These assumptions are summarized in Table 1.

## **School Finance Impact**

A baseline model was prepared for G-PISD under the assumptions outlined above through the 2024-25 school year. Beyond the 2010-11 school year, no attempt was made to forecast the 88<sup>th</sup> percentile or Austin ISD yields that influence future state funding. In the analyses for other districts and applicants on earlier projects, these changes appeared to have little impact on the revenue associated with the implementation of the property value limitation, since the baseline and other models incorporate the same underlying assumptions.

Under the proposed agreement, a second model is established to make a calculation of the "Baseline Revenue" by adding the value of the proposed EC&R project to the model, but without assuming that a value limitation is approved. The results of the model are shown in Table 2.

A third model is developed which adds the EC&R value but imposes the proposed property value limitation effective in the third year, which in this case is the 2012-13 school year. The results of this model are identified as "Value Limitation Revenue Model" under the revenue protection provisions of the proposed agreement (see Table 3). An M&O tax rate of \$1.17 is used throughout this analysis.

A summary of the differences between these models is shown in Table 4. The model results show approximately \$28 million a year in net General Fund revenue, after property wealth equalization and other adjustments have been made.

Under these assumptions, G-PISD would experience a revenue loss as a result of the implementation of the value limitation in the 2012-13 school year (-\$134,075). There are two major sources of this reduction: (1) a reduction of \$77,523 in M&O tax collections for tax effort

above the \$1.00 M&O compressed rate; and (2) reduced state aid of \$56,552 in response to the lower M&O tax effort that results from the implementation of the value limitation. These differences begin to roughly balance out in 2013-14 and in the years that follow under the value limitation.

One change that has been incorporated into these models is a more precise estimate of the deduction from the property value study conducted by the Comptroller's Office. At the school district level, a taxpayer benefiting from a property value limitation has two property values assigned by the local appraisal district for their property covered by the limitation: (1) a reduced value for M&O taxes; and (2) the full taxable value for I&S taxes. This situation exists for the eight years that the value limitation is in effect.

Under the property value study conducted by the Comptroller's Office, a single deduction amount is calculated for a property value limitation and the same value is assigned for the M&O and I&S calculations under the school funding formulas. This methodology has been incorporated into these estimates and a typical result is an increase in the hold-harmless formula amounts owed to the school district by the company that receives the value limitation. The extent to which this affects a school district's finances appears to be influenced by the scale of the value limitation reduction relative to the district's underlying tax base, as well as its I&S tax rate. In the case of G-PISD, the calculated lower reduction in the state property value relative to the M&O benefit to be received by the taxpayer does not appear to be substantial. In large part this results because the underlying tax base is substantially larger than the proposed project.

### **Impact on the Taxpayer**

Table 5 summarizes the impact of the proposed property value limitation in terms of the potential tax savings under the property value limitation agreement. The focus of this table is on the M&O tax rate only. As noted previously, the property is fully taxable in the first two years under the agreement. A \$1.17 per \$100 of taxable value M&O rate is assumed in 2010-11 and thereafter.

Under the assumptions used here, the potential tax savings from the value limitation total \$3.5 million over the life of the agreement. In addition, EC&R would be eligible for a tax credit for taxes paid on value in excess of the value limitation in each of the first two years. The credit amount is paid out slowly through years 4-10 due to statutory limits on the scale of these payments over these seven years, with catch-up payments permitted in years 11-13, if necessary. The tax credits for the EC&R project are expected to total approximately \$573,300 over the life of the agreement, with no unpaid tax credits anticipated. (Tax credits to the company are reimbursed by the state.) The key G-PISD revenue losses are associated with changes in enrichment funding for tax effort in excess of the \$1.00 compressed M&O tax rate, as noted previously, which are expected to total approximately -\$199,377 over the course of the agreement. The potential total net tax benefits are estimated to reach \$3.9 million over the life of the agreement.

### **Facilities Funding Impact**

The EC&R project remains fully taxable for debt services taxes, with G-PISD currently levying a \$0.190 I&S rate. The value of the EC&R project is expected to depreciate over the life of the agreement and beyond, but full access to the additional value will add to the District's projected wealth per ADA. The additional value is expected to reduce the district's I&S tax rate by less than \$0.01 to \$0.185. The property wealth per WADA for G-PISD with this value still falls

below the equalization provided by the \$35 yield provided for under the Existing Debt Allotment (EDA).

The EC&R project is not expected to affect G-PISD in terms of enrollment. Continued expansion of the renewable energy industry could result in additional employment in the area and an increase in the school-age population, but this project is unlikely to have much impact on a stand-alone basis. In terms of school facilities, the closure of Naval Station Ingleside is expected to prompt some reduction in enrollment in G-PISD, although it is hoped that this phenomenon is short-lived.

### Conclusion

The proposed EC&R wind energy project enhances the tax base of G-PISD. It reflects continued capital investment in renewable electric energy generation, one of the goals of Chapter 313 of the Tax Code, also known as the Texas Economic Development Act.

Under the assumptions outlined above, the potential tax benefits under a Chapter 313 agreement could reach an estimated \$3.9 million over the course of the agreement. This amount is net of any anticipated revenue losses for the District. The additional value is expected to reduce the District's I&S tax rate by less than \$0.01 to \$0.185 in the 2011-12 school year.

**Table 1 – Base District Information with EC&R Papatote Creek II, LLC Project Value and Limitation Values**

School Year	ADA	WADA	M&O Tax Rate	I&S Tax Rate	CAD Value with Project	CAD Value with Limitation	CPTAD with Project	CPTAD With Limitation	CPTAD Value with Project per WADA	CPTAD Value with Limitation per WADA
2010-11	3,819.00	4,890.12	\$1.1700	\$0.1900	\$1,156,862,116	\$1,156,862,116	\$1,101,093,542	\$1,101,093,542	\$225,167	\$225,167
2011-12	3,819.00	4,890.12	\$1.1700	\$0.1780	\$1,225,862,116	\$1,225,862,116	\$1,114,091,161	\$1,114,091,161	\$227,825	\$227,825
2012-13	3,819.00	4,890.12	\$1.1700	\$0.1950	\$1,223,147,362	\$1,176,862,116	\$1,183,091,161	\$1,183,091,161	\$241,935	\$241,935
2013-14	3,819.00	4,890.12	\$1.1700	\$0.1950	\$1,220,492,492	\$1,176,862,116	\$1,180,376,407	\$1,140,703,339	\$241,380	\$233,267
2014-15	3,819.00	4,890.12	\$1.1700	\$0.1950	\$1,217,950,737	\$1,176,862,116	\$1,177,721,537	\$1,140,324,072	\$240,837	\$233,189
2015-16	3,819.00	4,890.12	\$1.1700	\$0.1950	\$1,215,508,789	\$1,176,862,116	\$1,175,179,782	\$1,139,960,964	\$240,317	\$233,115
2016-17	3,819.00	4,890.12	\$1.1700	\$0.1950	\$1,213,159,994	\$1,176,862,116	\$1,172,737,834	\$1,139,612,114	\$239,818	\$233,044
2017-18	3,819.00	4,890.12	\$1.1700	\$0.1950	\$1,210,911,007	\$1,176,862,116	\$1,170,389,039	\$1,139,276,572	\$239,337	\$232,975
2018-19	3,819.00	4,890.12	\$1.1700	\$0.1950	\$1,208,748,519	\$1,176,862,116	\$1,168,140,052	\$1,138,955,288	\$238,877	\$232,909
2019-20	3,819.00	4,890.12	\$1.1700	\$0.1950	\$1,206,672,531	\$1,176,862,116	\$1,165,977,564	\$1,138,646,361	\$238,435	\$232,846
2020-21	3,819.00	4,890.12	\$1.1700	\$0.1950	\$1,204,676,388	\$1,204,676,388	\$1,163,901,576	\$1,138,349,792	\$238,011	\$232,786
2021-22	3,819.00	4,890.12	\$1.1700	\$0.1950	\$1,202,766,745	\$1,202,766,745	\$1,161,905,433	\$1,161,905,433	\$237,603	\$237,603
2022-23	3,819.00	4,890.12	\$1.1700	\$0.1950	\$1,200,930,293	\$1,200,930,293	\$1,159,995,790	\$1,159,995,790	\$237,212	\$237,212
2023-24	3,819.00	4,890.12	\$1.1700	\$0.1950	\$1,199,167,034	\$1,199,167,034	\$1,158,159,338	\$1,158,159,338	\$236,836	\$236,836
2024-25	3,819.00	4,890.12	\$1.1700	\$0.1950	\$1,197,476,967	\$1,197,476,967	\$1,156,396,079	\$1,156,396,079	\$236,476	\$236,476

\*Tier II Yield: \$48.19; AISD Yield: \$59.97; Equalized Wealth: \$481,900 per WADA

**Table 2-- "Baseline Revenue Model"--Project Value Added with No Value Limitation**

School Year	M&O Taxes @ Compressed Rate	State Aid	Additional State Aid-Hold Harmless	Excess Formula Reduction	Recapture Costs	Additional Local M&O Collections	State Aid From Additional M&O Tax Collections	Recapture from the Additional Local Tax Effort	Total General Fund
2010-11	\$11,037,316	\$13,882,948	\$0	\$0	\$0	\$1,875,698	\$1,608,036	\$0	\$28,403,999
2011-12	\$11,721,252	\$13,752,884	\$0	\$0	\$0	\$1,991,927	\$1,626,801	\$0	\$29,092,864
2012-13	\$11,689,002	\$13,062,850	\$72,426	\$0	\$0	\$1,986,446	\$1,449,087	\$0	\$28,259,811
2013-14	\$11,662,836	\$13,089,999	\$71,442	\$0	\$0	\$1,982,000	\$1,453,727	\$0	\$28,260,004
2014-15	\$11,637,785	\$13,116,549	\$69,943	\$0	\$0	\$1,977,743	\$1,458,333	\$0	\$28,260,353
2015-16	\$11,613,718	\$13,141,968	\$68,591	\$0	\$0	\$1,973,653	\$1,462,733	\$0	\$28,260,664
2016-17	\$11,590,569	\$13,166,388	\$67,320	\$0	\$0	\$1,969,719	\$1,466,959	\$0	\$28,260,955
2017-18	\$11,568,404	\$13,189,877	\$65,997	\$0	\$0	\$1,965,952	\$1,471,037	\$0	\$28,261,267
2018-19	\$11,547,091	\$13,212,368	\$64,818	\$0	\$0	\$1,962,330	\$1,474,932	\$0	\$28,261,540
2019-20	\$11,526,631	\$13,233,994	\$63,653	\$0	\$0	\$1,958,853	\$1,478,682	\$0	\$28,261,813
2020-21	\$11,506,957	\$13,254,755	\$62,565	\$0	\$0	\$1,955,510	\$1,482,279	\$0	\$28,262,067
2021-22	\$11,488,136	\$13,274,718	\$61,423	\$0	\$0	\$1,952,311	\$1,485,751	\$0	\$28,262,340
2022-23	\$11,470,037	\$13,293,815	\$60,425	\$0	\$0	\$1,949,235	\$1,489,062	\$0	\$28,262,575
2023-24	\$11,452,659	\$13,312,181	\$59,438	\$0	\$0	\$1,946,282	\$1,492,249	\$0	\$28,262,809
2024-25	\$11,436,002	\$13,329,814	\$58,461	\$0	\$0	\$1,943,451	\$1,495,314	\$0	\$28,263,043

**Table 3-- "Value Limitation Revenue Model"--Project Value Added with Value Limit**

School Year	M&O Taxes @ Compressed Rate	State Aid	Additional State Aid-Hold Harmless	Excess Formula Reduction	Recapture Costs	Additional Local M&O Collections	State Aid From Additional M&O Tax Collections	Recapture from the Additional Local Tax Effort	Total General Fund
2010-11	\$11,037,316	\$13,882,948	\$0	\$0	\$0	\$1,875,698	\$1,608,036	\$0	\$28,403,999
2011-12	\$11,721,252	\$13,752,884	\$0	\$0	\$0	\$1,991,927	\$1,626,801	\$0	\$29,092,864
2012-13	\$11,232,828	\$13,062,850	\$528,599	\$0	\$0	\$1,908,924	\$1,392,535	\$0	\$28,125,737
2013-14	\$11,232,828	\$13,486,749	\$104,700	\$0	\$0	\$1,908,924	\$1,515,215	\$0	\$28,248,417
2014-15	\$11,232,828	\$13,490,542	\$100,907	\$0	\$0	\$1,908,924	\$1,516,354	\$0	\$28,249,556
2015-16	\$11,232,828	\$13,494,173	\$97,276	\$0	\$0	\$1,908,924	\$1,517,445	\$0	\$28,250,647
2016-17	\$11,232,828	\$13,497,662	\$93,787	\$0	\$0	\$1,908,924	\$1,518,494	\$0	\$28,251,695
2017-18	\$11,232,828	\$13,501,018	\$90,431	\$0	\$0	\$1,908,924	\$1,519,503	\$0	\$28,252,705
2018-19	\$11,232,828	\$13,504,231	\$87,218	\$0	\$0	\$1,908,924	\$1,520,471	\$0	\$28,253,672
2019-20	\$11,232,828	\$13,507,320	\$84,129	\$0	\$0	\$1,908,924	\$1,521,401	\$0	\$28,254,602
2020-21	\$11,506,957	\$13,510,286	\$0	\$0	\$0	\$1,955,510	\$1,551,666	\$0	\$28,524,419
2021-22	\$11,488,136	\$13,274,718	\$61,423	\$0	\$0	\$1,952,311	\$1,485,751	\$0	\$28,262,340
2022-23	\$11,470,037	\$13,293,815	\$60,425	\$0	\$0	\$1,949,235	\$1,489,062	\$0	\$28,262,575
2023-24	\$11,452,659	\$13,312,181	\$59,438	\$0	\$0	\$1,946,282	\$1,492,249	\$0	\$28,262,809
2024-25	\$11,436,002	\$13,329,814	\$58,461	\$0	\$0	\$1,943,451	\$1,495,314	\$0	\$28,263,043

**Table 4 – Value Limit less Project Value with No Limit**

School Year	M&O Taxes @ Compressed Rate	State Aid	Additional State Aid-Hold Harmless	Excess Formula Reduction	Recapture Costs	Additional Local M&O Collections	State Aid From Additional M&O Tax Collections	Recapture from the Additional Local Tax Effort	Total General Fund
2010-11	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2011-12	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2012-13	-\$456,173	\$0	\$456,173	\$0	\$0	-\$77,523	-\$56,552	\$0	-\$134,075
2013-14	-\$430,008	\$396,750	\$33,258	\$0	\$0	-\$73,076	\$61,488	\$0	-\$11,588
2014-15	-\$404,957	\$373,993	\$30,964	\$0	\$0	-\$68,819	\$58,021	\$0	-\$10,798
2015-16	-\$380,890	\$352,205	\$28,685	\$0	\$0	-\$64,729	\$54,712	\$0	-\$10,017
2016-17	-\$357,741	\$331,274	\$26,467	\$0	\$0	-\$60,795	\$51,535	\$0	-\$9,260
2017-18	-\$335,575	\$311,141	\$24,434	\$0	\$0	-\$57,028	\$48,466	\$0	-\$8,562
2018-19	-\$314,263	\$291,863	\$22,400	\$0	\$0	-\$53,406	\$45,538	\$0	-\$7,868
2019-20	-\$293,802	\$273,326	\$20,476	\$0	\$0	-\$49,929	\$42,719	\$0	-\$7,210
2020-21	\$0	\$255,531	-\$62,565	\$0	\$0	\$0	\$69,386	\$0	\$262,352
2021-22	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2022-23	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2023-24	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2024-25	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**Table 5 - Estimated Financial impact of the EC&R Papalote Creek II, LLC Project Property Value Limitation Request Submitted to G-PISD at \$1.17 M&O Tax Rate**

School Year	Project Value	Estimated Taxable Value	Value Savings	Taxes Before Value Limit	Taxes after Value Limit	Tax Savings @ Projected M&O Rate	Tax Credits for First Two Years Above Limit	Tax Benefit to Company Before Revenue Protection	School District Revenue Losses	Estimated Net Tax Benefits
2010-11	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2011-12	\$69,000,000	\$69,000,000	\$0	\$807,300	\$807,300	\$0	\$0	\$0	\$0	\$0
2012-13	\$66,285,246	\$20,000,000	\$46,285,246	\$775,537	\$234,000	\$541,537	\$0	\$541,537	-\$134,075	\$407,463
2013-14	\$63,630,376	\$20,000,000	\$43,630,376	\$744,475	\$234,000	\$510,475	\$81,900	\$592,375	-\$11,588	\$580,788
2014-15	\$61,088,621	\$20,000,000	\$41,088,621	\$714,737	\$234,000	\$480,737	\$81,900	\$562,637	-\$10,798	\$551,839
2015-16	\$58,646,673	\$20,000,000	\$38,646,673	\$686,166	\$234,000	\$452,166	\$81,900	\$534,066	-\$10,017	\$524,049
2016-17	\$56,297,878	\$20,000,000	\$36,297,878	\$658,685	\$234,000	\$424,685	\$81,900	\$506,585	-\$9,260	\$497,325
2017-18	\$54,048,891	\$20,000,000	\$34,048,891	\$632,372	\$234,000	\$398,372	\$81,900	\$480,272	-\$8,562	\$471,710
2018-19	\$51,886,403	\$20,000,000	\$31,886,403	\$607,071	\$234,000	\$373,071	\$81,900	\$454,971	-\$7,868	\$447,103
2019-20	\$49,810,415	\$20,000,000	\$29,810,415	\$582,782	\$234,000	\$348,782	\$81,900	\$430,682	-\$7,210	\$423,471
2020-21	\$47,814,272	\$47,814,272	\$0	\$559,427	\$559,427	\$0	\$0	\$0	\$0	\$0
2021-22	\$45,904,629	\$45,904,629	\$0	\$537,084	\$537,084	\$0	\$0	\$0	\$0	\$0
2022-23	\$44,068,177	\$44,068,177	\$0	\$515,598	\$515,598	\$0	\$0	\$0	\$0	\$0
2023-24	\$42,304,918	\$42,304,918	\$0	\$494,968	\$494,968	\$0	\$0	\$0	\$0	\$0
2024-25	\$40,614,851	\$40,614,851	\$0	\$475,194	\$475,194	\$0	\$0	\$0	\$0	\$0
<b>Totals:</b>				<b>\$8,791,396</b>	<b>\$5,261,570</b>	<b>\$3,529,826</b>	<b>\$573,300</b>	<b>\$4,103,126</b>	<b>-\$199,377</b>	<b>\$3,903,748</b>
<b>Tax Credit for Value Over Limit in First 2 Years</b>						<b>2010</b>	<b>2011</b>	<b>Max Credits</b>		
						\$0	\$573,300	\$573,300		
						Credits Earned		\$573,300		
						Credits Paid		<u>\$573,300</u>		
						Excess Credits Unpaid		\$0		