LIMITATION ON APPRAISED VALUE AGREEMENT

LAMESA INDEPENDENT SCHOOL DISTRICT

and

MESQUITE CREEK WIND, LLC

Comptroller Application Number 316

November 8, 2013

THIS LIMITATION ON APPRAISED VALUE AGREEMENT, ("Agreement") is executed and delivered by and between Lamesa Independent School District (the "District"), with its central administrative office located in Dawson County, Texas ("County"), a lawfully created independent school district of the State of Texas operating under and subject to the Texas Education Code ("TEC"), and Mesquite Creek Wind, LLC, a Texas limited liability company, ("Applicant") and relates to a limitation of the Appraised Value of qualified property for the District's maintenance and operation taxes pursuant to Chapter 313 of the Texas Tax Code (the "Code"). The District and Applicant are collectively referred to herein as the "Parties" and each individually as a "Party."

RECITALS

WHEREAS, the Superintendent of Schools of the District, acting as agent for the District's Board of Trustees ("Board of Trustees"), timely received from Applicant a completed Application for an Appraised Value Limitation on Qualified Property pursuant to 34 Texas Administrative Code §9.1053 ("Application"), on or about July 17, 2013 (the "Completed Application Date"); and,

WHEREAS, the District received the application fee as required by §313.025(a)(1) of the Code and the District Policy CCG (LOCAL), if any, on or about the Completed Application Date thus establishing the effective filing date of such Application as of July 17, 2013; and,

WHEREAS, the District timely delivered the requisite number of copies of the Application to the Texas Comptroller of Public Accounts ("Comptroller") on or about July 17, 2013, for its review pursuant to §313.025(a-1) and (b) of the Code. The Comptroller deemed the Application complete and thereafter began its analysis of the Application on August 23, 2013 (the "Application Review Start Date"); and,

WHEREAS, the Comptroller conducted an economic impact evaluation of the Application pursuant to §313.025(b) of the Code; and,

WHEREAS, pursuant to §313.025(b-1) of the Code, the Comptroller delivered to the Texas Education Agency ("TEA") a copy of the Application and the TEA then timely submitted a written report addressing the effects of the Application on the number or size of the District's instructional facilities to the Comptroller; and,

WHEREAS, pursuant to §313.025(d) of the Code, the Board of Trustees timely received the October 14, 2013 recommendation of the Comptroller and a report indicating that the Application was in compliance with the provisions of the Texas Economic Development Act, Code §§313.001, *et seq.*, and that the Application be approved (the "Recommendation"); and,

WHEREAS, the Board of Trustees has conducted a public hearing on the Application, at which time it solicited input from all interested parties, carefully considered the school finance information, together with the Recommendation and information provided by the Comptroller, including the economic impact evaluation; and,

WHEREAS, pursuant to §313.025(f-1) of the Code, the Board of Trustees at its Board meeting held on November 8, 2013 waived the Qualifying Job creation requirements set forth in

Section 313.051(b) of the Code based on a factual finding that if the number of jobs required by law was applied in this project, given its size and scope as described in the Application and Schedule 2.3 herein, the number of jobs will exceed the industry standard of the number of employees reasonably necessary for the operation of the project; and,

WHEREAS, pursuant to §313.025(e) of the Code, the Board of Trustees at its Board meeting held on November 8, 2013 made written factual findings as required by §313.025(f) and based on the criteria set out in §313.026 of the Code, a copy of which has been delivered to the Applicant; and,

WHEREAS, pursuant to §313.025(f) of the Code, the Board of Trustees at its Board meeting held on November 8, 2013 further found that: (a) the information in the Application is true and correct; (b) the Board agrees with the Comptroller's Recommendation; (c) this Agreement is in the best interest of the State of Texas and the District; (d) the Applicant is eligible for the limitation on Appraised Value of the Qualified Property; and (e) the relevant job creation requirement set forth in Chapter 313 of the Code should be waived; and,

WHEREAS, on November 4, 2013, the District received written notice of the Comptroller's review and approval of the form of this Agreement, pursuant to 34 TAC § 9.1055 (e)(2)(A); and,

WHEREAS, the Board of Trustees, at its Board meeting on November 8, 2013, approved the form of this Agreement for a Limitation on Appraised Value of Property and authorizes the execution and delivery of such Agreement by the District's authorized to the Applicant.

NOW, THEREFORE, for and in consideration of the promises, including the foregoing recitals, and the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

ARTICLE 1 - AUTHORITY, TERM AND DEFINITIONS

Section 1.1 DISTRICT 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 under §313.051 of the Code.

Section 1.2 TERM

1.2.1 This Agreement shall commence and first become effective on November 8, 2013, the date this Agreement was approved by the District's Board of Trustees and executed by the District's authorized representative, for the ad valorem property valuations assessed against the Qualified Property and investments made pursuant to this Agreement (the "Commencement Date"). The limitation on the local ad valorem property values shall terminate on December 31 of the tenth (10th) full calendar year of this Agreement, as set out on Schedule 1.2 attached hereto[1], unless sooner terminated as herein provided. The early termination of this Agreement

[1] All references to Agreement years shall be as shown on Schedule 1.2.

shall not release any obligation, right, or remedy arising from any failure to comply with any term of this Agreement prior to such termination. Each Party shall have the right to enforce the payment of any amount owed before the termination of this Agreement.

1.2.2 The Parties acknowledge that the limitation on the local ad valorem property values shall not commence until January 1 following the end of the second full year that begins after the Commencement Date or such later date as reflected herein. The period that begins on the Commencement Date and ends on December 31 of the second full year that begins after the Commencement Date shall be referred to herein as the "Qualifying Time Period" as that term is defined in §313.021(4) of the Code.

1.2.3 For three (3) years after December 31 of the tenth (10th) year of this Agreement, Applicant shall (a) Maintain a Viable Presence in the District, as that term is defined herein; and (b) make any payments in lieu of taxation as provided in Article 4. Unless sooner terminated, this Agreement shall end on December 31 of the thirteenth (13th) year of this Agreement. Nothing contained in this Agreement shall extend the tax limitation beyond ten (10) full calendar years from the Commencement Date.

1.2.4 The years for which this Agreement is effective, unless sooner terminated, are set forth in Schedule 1.2 of this Agreement, which is incorporated herein by reference.

Section 1.3 <u>DEFINITIONS</u>

Capitalized terms used herein and not specifically defined shall have the definitions as set forth in Schedule 1.3 of this Agreement, which is incorporated herein by reference.

ARTICLE 2- PROPERTY AND USE DESCRIPTIONS

Section 2.1 <u>REINVESTMENT ZONE OR ENTERPRISE ZONE</u>

The property upon which the Qualified Investment will be located is entirely within a Reinvestment Zone, so designated under Chapter 311 or 312 of the Code, or an Enterprise Zone under Chapter 2303 of the Texas Government Code. The description of the Reinvestment Zone or Enterprise Zone and maps showing the location thereof are attached to this Agreement as Schedule 2.1, which is incorporated herein by reference.

Section 2.2 <u>QUALIFIED PROPERTY</u>

Applicant's Qualified Property is described in Schedule 2.3, which is incorporated herein by reference. The Parties expressly agree that the location of the Qualified Property shall be within the Reinvestment Zone as set out in Schedule 2.1. The Parties acknowledge Applicant may determine it is necessary to re-configure and change certain aspects as construction progresses, and District agrees not to unreasonably withhold consent to such changes that do not change the Qualified Investment.

Section 2.3 QUALIFIED INVESTMENT

2.3.1 Applicant's Qualified Investment is described in Schedule 2.3, which is incorporated herein by reference. Property not specifically referenced in Schedule 2.3 and not otherwise meeting the requirements of Chapter 313 and this Agreement shall not be considered to be a Qualified Investment for purposes of this Agreement and will not be subject to this Agreement.

2.3.2 Schedule 2.3 may be amended by adding or removing Qualified Property as allowed by law, which at the time of execution of this Agreement includes: (a) the provisions of Comptroller's Rule 9.1055; and (b) approval by the District's Board of Trustees pursuant to §313.027(e) of the Code, which approval shall not be unreasonably withheld by the District.

2.3.3 Property owned by Applicant which is not described in Schedule 2.3 may not be considered to be Qualified Property unless the Applicant (a) submits to the District and the Comptroller a written request to add property to the limitation agreement, which request shall include a specific description of the additional property to which the Applicant requests that the limitation apply; (b) notifies the District and the Comptroller of any other changes to the information that was provided in the Application approved by the District; and (c) provides any additional information reasonably requested by the District or the Comptroller for the purpose of re-evaluating the new or changed conditions.

2.3.4 In the event that Applicant fails to make a Qualified Investment of at least Ten Million Dollars ($10,000,000.00) during the Qualifying Time Period, this Agreement shall become null and void on January 1, 2016.

Section 2.4 EXISTING IMPROVEMENTS AND PERSONAL PROPERTY

Certain improvements and personal property may have existed in the Reinvestment Zone or Enterprise Zone prior to the Application Date. The Parties understand and agree that the Taxable Value of real estate improvements and/or business personal property which existed prior to the Completed Application Date may not be considered Qualified Property under Chapter 313 of the Code or this Agreement. Further, the Parties understand and agree that the Taxable Value of real estate improvements and/or business personal property which existed prior to the approval of this Agreement by the Parties may not be considered part of the required Qualified Investment under Chapter 313 of the Code or this Agreement.

Section 2.5 INVENTORY OF QUALIFIED PROPERTY

2.5.1 Upon any change to the Qualified Property, or upon the reasonable request of the District, the Comptroller, or the Appraisal District, Applicant shall provide to the District, the Comptroller, and the Appraisal District all information and data necessary to assess the value and identity of all Qualified Property including, but not limited to, a specific and detailed description of the tangible personal property, buildings, or permanent, nonremovable building components on the Qualified Property to which the value limitation applies. Such description shall include maps or surveys detailed enough to locate all such property within the boundaries of the real property subject to this Agreement.

2.5.2 At the end of the Qualifying Time Period, Applicant shall provide to the District, the Comptroller, and the Appraisal District all information and data necessary to assess the value and identity of all Qualified Property including, but not limited to, a specific and detailed description of the tangible personal property, buildings, or permanent, nonremovable building components (including any affixed to or incorporated into real property) on the Qualified Property to which the value limitation applies, including maps or surveys of sufficient detail and description to locate all such described property within the boundaries of the real property subject to this Agreement.

Section 2.6 QUALIFYING USE

Applicant's property which is the subject of a limitation on the local ad valorem property values under this Agreement is eligible for a tax limitation as a renewable energy electric generation facility under §313.024(b)(5) of the Code.

Section 2.7 APPRAISAL LIMITATION

Upon Applicant's Qualified Investment in the amount of $10,000,000.00 or more during the Qualifying Time Period, and unless this Agreement is terminated as herein provided, the Appraised Value of the Applicant's Qualified Property for the District's maintenance and operations ad valorem tax purposes shall not exceed the lesser of the Market Value of the Qualified Property or $10,000,000.00 for the third (3rd) through the tenth (10th) full calendar years of the tax limitation under this Agreement, as provided in Chapter 313 of the Code.

ARTICLE 3– PROTECTION OF DISTRICT REVENUES

Section 3.1 INTENT OF THE PARTIES

The Parties understand and agree that the Applicant shall compensate the District for any loss in District Funding Revenue incurred because of District's participation in this Agreement. Such reimbursement shall be in addition to the receipt of payments in lieu of taxation or payment of Extraordinary Education-Related Expenses reasonably incurred by the District, subject to any limitation as may be set forth in Article 4 of this Agreement. APPLICANT UNDERSTANDS AND AGREES THAT IT SHALL BEAR ANY NEGATIVE FINANCIAL CONSEQUENCE SUFFERED BY THE DISTRICT AS A RESULT OF THE DISTRICT ENTERING INTO THIS AGREEMENT. THE PURPOSE OF THIS SECTION 3.1 IS TO ENSURE THAT THE RISK OF ANY NEGATIVE FINANCIAL CONSEQUENCE TO THE DISTRICT IS BORNE BY THE APPLICANT AND NOT BY THE DISTRICT.

Section 3.2 CALCULATING LOSS OF DISTRICT REVENUES

Any compensation paid by the Applicant to the District for loss of District Funding Revenues shall be determined in accordance with then-current School Finance Law. Any calculation to make the District whole after a loss under this Article 3 shall be made in accordance with Schedule 3.2 of this Agreement, which is incorporated herein by reference, and subject to the provisions of Article 5 herein.

Section 3.3 COMPENSATION FOR LOSS OF OTHER REVENUES

To the extent not included in the amounts calculated pursuant to Schedule 3.2, Applicant, on an annual basis, shall also pay to the District all non-reimbursed costs incurred in paying or otherwise crediting amounts for the benefit of Applicant, including, but not limited to (a) any Maintenance and Operations Revenue or Tax Credit to which the Applicant may be entitled pursuant to Chapter 313 of the Code for which the District does not receive reimbursement from the State, whether pursuant to TEC §42.2515 or otherwise; (b) all non-reimbursed costs incurred by the District for Extraordinary Education-Related Expenses related to the project, which do not exceed any limitations set forth in Article 4 of this Agreement, and not otherwise 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 loss incurred by the District resulting from successful judicial challenge to this Agreement; (d) any reasonable attorneys' fees or other costs incurred by the District due to any legal defense, enforcement or interpretation of this Agreement, irrespective of whether or not this Agreement is ultimately determined to be valid; and (e) any non-reimbursed costs incurred by the District and related to this Agreement, either directly or indirectly.

Section 3.4 THIRD PARTY CALCULATIONS

All calculations made pursuant to this Agreement shall be verified annually by one or more independent third parties ("Consultant") selected by the District, with Applicant's consent, which consent shall not be unreasonably withheld, delayed or conditioned. Applicant will be solely responsible for the payment of Consultant's fees up to Six Thousand Five Hundred Dollars, ($6,500.00) for the first year of this Agreement. This amount may be increased each year of this Agreement by not more than five percent (5%) from the prior year. All calculations shall initially be based upon good-faith estimates using all available information and shall be adjusted to reflect "near final" or "actual" data for the applicable year as the data becomes available.

Section 3.5 DATA FOR CALCULATIONS

The initial calculations for any payments owing under this Agreement shall be based upon the valuations placed upon the Qualified Property by the Appraisal District in its annual certified tax roll submitted to the District pursuant to §26.01 of the Code in or about July of each year of this Agreement. The certified tax roll data shall form the basis from which any and all amounts due under this Agreement are calculated, and the data utilized by the Consultant will be adjusted as necessary to reflect any subsequent adjustments by the Appraisal District to the District's tax roll. Any estimates used by the Consultant to make calculations as required by this Agreement shall be based on the best and most current information available. The Consultant shall from time to time adjust the data utilized to reflect actual amounts, subsequent adjustments by the Dawson County Appraisal District to the District's certified tax roll, or any other relevant changes to material items such as student counts or tax collections.

Section 3.6 DELIVERY OF CALCULATIONS

3.6.1 All calculations required under Article 3 or Article 4 shall be made by the Consultant on or before December 1 of each year for which this Agreement is effective. The Consultant shall forward such calculations to the Parties in sufficient detail to allow the Parties to understand the manner in which the calculations were made. The Consultant shall maintain supporting data consistent with generally accepted accounting practices. The Consultant shall preserve all documents and data related to all calculations required under this Agreement for a period of three (3) years. Employees and agents of the Parties shall have reasonable access to the Consultant's offices, personnel, books, and records pertaining to all calculations and fees.

3.6.2 In the event the District receives the Consultant's invoice for services rendered, the District shall forward to Applicant such invoice, which Applicant shall pay within thirty (30) days of receipt.

Section 3.7 PAYMENT BY APPLICANT

On or before the January 31 next following the tax levy for each year for which this Agreement is effective, and subject to the limitations contained in Section 5.1, the Applicant shall pay all amounts determined to be due and owing to the District (subject to final settle up), all amounts billed by the Consultant, and all reasonable and necessary expenses paid by the District to its attorneys, auditors, or financial consultants for work resulting from the District's participation in this Agreement.

Section 3.8 CHALLENGING CALCULATION RESULTS

The Applicant may appeal the Consultant's results, in writing, within fifteen (15) days of receipt of such results. The Consultant will issue a final determination of the calculations within 15 days of receiving Applicant's appeal. The Applicant may appeal the final determination of the Consultant to the District within 15 days of its receipt, pursuant to District Policy GK (LOCAL).

Section 3.9 EFFECT OF PROPERTY VALUE APPEAL OR ADJUSTMENT

In the event that the Taxable Value of the Qualified Property is changed after an appeal of its valuation, or the Taxable Value is otherwise altered for any reason, the calculations required under Article 3 of this Agreement shall be recalculated by the Consultant at Applicant's sole expense using the revised property values. The Consultant shall transmit the revised calculations to the Parties and any Party owing funds to the other Party shall pay such funds within thirty (30) days after receipt of the new calculations.

Section 3.10 EFFECT OF STATUTORY OR OTHER LEGAL CHANGES

If the District will receive less District Funding Revenue, or, if applicable, will be required to increase its payment of funds to the State due to the District's participation in this Agreement because of changes to School Finance Law or administrative or legal interpretations by the office of the Comptroller, the Commissioner of Education, the Texas Education Agency, the Courts of the State of Texas, or any other authority having proper jurisdiction over the District or Texas school finance, then the Applicant shall make payments to the District within

thirty (30) days of receipt of written notice, up to the limit on the revenue protection amount set forth in Section 5.1 below. The Parties understand and agree that the foregoing payments to the District are necessary to (a) offset any negative impact on the District as a result of its participation in this Agreement; and (b) secure for the District an amount of District Funding Revenue not less than that what the District would have received from State and local funds had the District not entered into this Agreement.

ARTICLE 4- PAYMENTS IN LIEU OF TAXATION

Section 4.1 SEPARATE AND INDEPENDENT INDEMNITY AMOUNTS

In addition to payment of the amounts set forth under Article 3 of this Agreement, and as consideration for the execution of this Agreement by the District, Applicant shall be responsible to the District for payments in lieu of taxation ("PILOT") and payments for Extraordinary Education-Related Expenses ("PEERE"), as set forth in this Article 4. Any and all obligations for any PILOT and PEERE payments shall be separate and independent of Applicant's obligations under Article 3 of this Agreement.

Section 4.2 CALCULATION OF PAYMENTS IN LIEU OF TAXATION

4.2.1 Subject to Section 5.1, for each of years one (1) through thirteen (13) of this Agreement, the District shall be entitled to receive the maximum amount of payments in lieu of taxation as allowed by law, which is currently One Hundred Dollars ($100.00) per Student in Average Daily Attendance (ADA), as determined for that particular school year in accordance with Texas Tax Code § 313.027(i).

4.2.2 In the event Chapter 313 is modified or amended to allow the District to receive payments in lieu of taxation in excess of the foregoing ADA limitation, Applicant agrees to cooperate with District in amending this Agreement to allow District to receive the maximum amount of payments in lieu of taxation as allowed by law; provided however, the total payments in lieu of taxation for any given year of this Agreement shall not exceed the greater of forty percent (40%) of Applicant's Net Tax Savings under this Agreement in such year or $100 per student in ADA, as determined for that school year. This Section shall only apply if Texas Tax Code § 313.027(i) is amended so that the District is permitted to receive payments in lieu of taxation greater than as described in Section 4.2.1 above; otherwise, Section 4.2.1 shall apply.

4.2.3 Payment of amounts due under this Section shall be made annually as set forth in Section 3.7 of this Agreement and is subject to the limitations contained in Sections 4.4 and 5.1, as applicable. Entitlements to supplemental payments made under this Article 4 shall not exceed the Aggregate Limit.

Section 4.3 PAYMENT OF EXTRAORDINARY EDUCATION-RELATED EXPENSES

4.3.1 Applicant agrees and acknowledges that construction and installation of its Qualified Property may bring an extraordinary influx of workers into the District. Applicant further agrees and acknowledges that these workers may cause an undetermined increase in enrollment for the District, and that such increase in students may subject the District to Extraordinary Education-Related Expenses that are not directly funded in school financing

funding formulas. Accordingly, Applicant agrees to reimburse the District any documented Extraordinary Education-Related Expenses paid by the District arising from Applicant's Qualified Investment.

4.3.2 In the event that the District incurs reimbursable Extraordinary Education-Related Expenses, the District will notify Applicant and provide a detailed explanation for such expenses prior to reimbursement by Applicant.

4.3.3 Payments of amounts due under this Section shall be made as set forth in Section 3.7 of this Agreement.

Section 4.4 <u>PAYMENT IN LIEU OF TAXATION (PILOT) AND LIMITATION FROM NET TAX SAVINGS</u>

4.4.1 During years one (1) and two (2) of this Agreement, the Applicant shall be required to pay taxes on the full value of the Qualified Property, and the amount of the District's PILOT to which it is entitled under Section 4.2.1 above shall exceed Applicant's Net Tax Savings. Accordingly, the parties agree that Applicant shall make partial PILOT in years one (1) and two (2) as follows:

(a) Year one (1) partial PILOT = $0

(b) Year two (2) partial PILOT = $100,000

The difference between the amount of District's PILOT for which it is entitled under 4.2.1 for years one (1) and two (2) and the amount of the partial PILOT actually paid as set out herein, shall be carried forward from year-to-year (the "Deferred PILOT"). Beginning in year three (3) of the Agreement, and in addition to the PILOT for that year, all Deferred PILOT owed to the District shall be paid by Applicant to the extent all payments from Applicant to the District for that year do not exceed Applicant's Net Tax Savings for that same year. Any amount of Deferred PILOT that remains unpaid shall be carried forward from year to year until paid in full.

4.4.2 Should Applicant fail to make the minimum Qualified Investment during the Qualifying Time Period causing this Agreement to become null and void as set out in Section 2.3.4 herein, Applicant's obligation to make any Deferred PILOT that was carried over by operation of Section 4.4.1, shall be cancelled. Applicant's obligation to make a partial PILOT to the District for year 2 shall survive termination of the Agreement and remain until satisfied, as set out in Section 5.2.4.

ARTICLE 5- LIMITATION OF PAYMENTS BY APPLICANT

Section 5.1 <u>LIMITATION AFTER FIRST THREE YEARS</u>

5.1.1 For each of the years, other than years one (1) through three (3), and notwithstanding anything to the contrary in this Agreement, in no event shall the sum of the maintenance and operations ad valorem taxes paid by the Applicant to the District plus the sum of all payments otherwise due from the Applicant under Articles 3 and 4 with respect to such year exceed the amount of the maintenance and operations ad valorem taxes that the Applicant

would have paid to the District for such year if the Parties had not entered into this Agreement.

5.1.2 A comparison of (a) the sum of the maintenance and operations ad valorem taxes paid by the Applicant to the District plus the sum of all payments otherwise due from the Applicant under Articles 3 and 4 with respect to such year; and (b) the taxes Applicant would have paid to the District if this Agreement had not been entered into shall be included in the Consultant's calculations made pursuant to Section 3.4 of this Agreement. The Consultant shall include a credit for the amount of taxes actually paid by the Applicant on the Qualified Property when making this comparison.

5.1.3 During years four (4) through ten (10), should the sum of the Applicant's maintenance and operations ad valorem taxes plus the sum of all payments otherwise due from the Applicant under Article 3 and Article 4 exceed the maintenance and operations ad valorem taxes that the Applicant would have paid if the Parties had not entered into this Agreement, then the payments due from the Applicant to the District under Articles 3 and 4 shall be reduced until such excess is eliminated. In no event shall the supplemental payments to the District exceed the greater of: (a) the maximum amount allowed by law, not to exceed forty percent (40%) Net Tax Savings, or (b) One Hundred Dollars ($100.00) per Student in Average Daily Attendance (ADA), as determined for that particular school year.

Section 5.2 <u>OPTION TO CANCEL AGREEMENT</u>

5.2.1 For years four (4) through ten (10) of this Agreement, in the event that payments by Applicant to the District become limited as described in Section 5.1 above, the Applicant shall have the option to terminate this Agreement. Applicant may exercise such option by notifying the District of its election in writing not later than July 31 of any year next following the year in which the payments were limited. Upon receipt of such written notice, this Agreement shall terminate effective December 31 of the year in which the notice is received by the District.

5.2.2 For years three (3) through ten (10) of this Agreement, the Applicant shall have the option to terminate this Agreement in the event that the Appraised Value of the Qualified Property falls below the Tax Limitation Amount. The Applicant may exercise such option by notifying the District and the Appraisal District of its election in writing not later than November 31 of any year. The cancellation of this Agreement under this Subsection shall be effective immediately, and Applicant's ad valorem tax shall be assessed based on the actual Appraised Value of the Qualified Property.

5.2.3 The Applicant shall have the right to terminate this Agreement in the event of a change in the School Finance Law, administrative interpretations by the Comptroller, Commissioner of Education, or the Texas Education Agency, or for any other statutory or regulatory change which materially reduces the Net Tax Savings to Applicant under this Agreement. Applicant may exercise such option by notifying the District and the Appraisal District of its election in writing. Upon receipt of such written notice, this Agreement shall terminate effective December 31 of the year in which the notice is received by the District.

5.2.4 Except as expressly stated in Section 4.4.2 of this Agreement, the rights and obligations of the Parties under this Agreement through and including the year during which notice of termination of this Agreement is delivered shall survive such termination and remain until satisfied.

ARTICLE 6– TAX CREDITS

Section 6.1 TAX CREDIT DESCRIPTION AND ELIGIBILITY

6.1.1 Upon the Applicant's compliance with all requirements of Chapter 313 of the Code and the Comptroller, and in addition to the limitation on the Appraised Value of the Qualified Property as described in Article 2 above, the Applicant shall be entitled to a Tax Credit from the District in an amount equal to the amount of ad valorem taxes paid to the District on that portion of the Appraised Value of the Qualified Property that exceeds the amount of the limitation agreed to by the Parties in each year of the Qualifying Time Period, subject to any limitation or reduction required by law.

6.1.2 The application for a Tax Credit as described in this Article 6 shall be made in accordance with §313.103 of the Code and is solely the Applicant's responsibility.

Section 6.2 DISTRICT OBLIGATIONS REGARDING TAX CREDITS

6.2.1 The District shall timely comply with and, to the extent possible, cause the timely compliance by the Appraisal District of all District obligations regarding Tax Credits under the Code and Comptroller Rules.

6.2.2 The Board of Trustees shall grant Applicant's application for the tax credit as provided in §313.104 of the Code as well as Comptroller and/or TEA rules.

Section 6.3 TAX CREDIT PROTECTION REVENUE LOSS

If the District does not receive aid pursuant to §42.2515 of the Texas Education Code (or similar or successor statute) after Applicant receives a Tax Credit as described under this Article 6, and such failure is not the result of District's failure to comply with the requirements of obtaining such aid, then the District shall so notify the Applicant in writing. The Applicant shall, within thirty (30) days after notice, pay to the District the amount of such aid the District did not receive. Conversely, the District shall refund to the Applicant the amount of state aid the District received that was solely attributable to any portion of such state aid paid by Applicant to the District.

ARTICLE 7- ADDITIONAL OBLIGATIONS OF APPLICANT

Section 7.1 INFORMATION REQUESTS

7.1.1 Upon written request, Applicant shall be obligated to provide the District and the Appraisal District with all information and data necessary to determine whether all obligations under this Agreement are being met. In the event that the District requests information which the Applicant regards as being technical or business information which is proprietary, a trade secret

or confidential in nature or is subject to a confidentiality agreement with any third party, and subject to §313.028 of the Code, Applicant shall inform the District of its concerns and suitable arrangements shall be made for the District to have access to the information in a manner which does not compromise the confidentiality of the information to other third parties.

7.1.2 Applicant shall be obligated to provide the Comptroller, Appraisal District, or other governmental agency with all information required for such agency to complete any reports, appraisal or analysis pursuant to the Texas Tax Code, Comptroller or TEA rule, or other law or administrative regulation.

7.1.3 Applicant shall allow authorized employees of the District and Appraisal District access to all property that is subject to a limitation on the local ad valorem property values called for under this Agreement during the term of this Agreement for the purposes of appraisal or determination of compliance with this Agreement. All inspections or appraisals will be made at a mutually agreeable time after no less than forty-eight (48) hours prior written notice.

7.1.4 Applicant shall timely make any reports that may be required under law or administrative regulation, including but not limited to the annual report or certifications that may be required by the Comptroller under the provisions of the Comptroller's Rules or the Texas Tax Code, including §313.032 of the Code. Applicant shall forward a copy of all such required reports or certifications to the District at the time of such filing. Timely performance of all required filings shall be a material obligation under this Agreement.

Section 7.2 <u>MAINTAINING VIABLE PRESENCE</u>

By entering into this Agreement, Applicant represents, covenants, and warrants that it will abide by all of the terms of this Agreement and that it will Maintain a Viable Presence in the District as defined in this Agreement for a period of at least three (3) years after the termination of the limitation on the local ad valorem property values called for under this Agreement. Applicant shall not be in breach of this covenant to Maintain a Viable Presence to the extent such failure is caused by an event of Force Majeure, provided Applicant makes commercially reasonable efforts to Maintain a Viable Presence at the conclusion of any period of Force Majeure.

ARTICLE 8- BREACH

As stated in Section 2.3.4 above, the failure by Applicant to make a Qualified Investment of at least Ten Million Dollars ($10,000,000.00) during the Qualifying Time Period shall result in this Agreement being null and void as of January 1, 2016. This Article 8 shall control in all other instances of Applicant's failure to perform according to the terms of this Agreement.

Section 8.1 <u>DISTRICT'S DETERMINATION OF BREACH</u>

8.1.1 In the event Applicant terminates this Agreement without the consent of the District, except as provided in Section 5.2, or should Applicant or Applicant's successor in interest fail to comply with any material term or meet any material obligation of this Agreement, after the notice and cure period provided herein, District shall be entitled to: (a) the recapture of all ad valorem tax revenue that would have been due from Applicant without the benefit of this

Agreement; and (b) all penalty and interest as calculated under Section 8.4. For purposes of the recapture calculation, the Applicant shall be entitled to a credit for all payments made under Article 3 and Article 4.

8.1.2 Notwithstanding Section 8.1.1, in the event the District determines that the Applicant has failed to Maintain a Viable Presence and provides written notice of termination, Applicant shall pay to District liquidated damages equal to the total of the District ad valorem taxes that would have been due from Applicant without the benefit of this Agreement for all of the years for which a Tax Limitation was granted pursuant to this Agreement, plus penalty and interest. Applicant shall be entitled to a credit for all payments made to the District pursuant to Article 3 and Article 4.

8.1.3 Prior to making a determination that Applicant has committed a material breach of this Agreement, the District shall provide the Applicant with a written notice of the facts which the District believes constitute the material breach and, if a cure is feasible, the cure proposed by the District. After receipt of the notice, Applicant shall have thirty (30) days to present any facts or argument to the Board of Trustees showing that it is not in material breach of its obligations under this Agreement or that it has cured any such material breach.

8.1.4 Upon the expiration of Applicant's opportunity to respond, the Board of Trustees shall conduct a hearing as provided in District Policy GF (LOCAL) to determine whether or not a material breach of this Agreement has occurred and, if so, the date such material breach occurred. Applicant shall have the opportunity to be heard before the Board of Trustees at such hearing. In the event that the Board of Trustees determines that a material breach has occurred, it shall also determine the amounts of recaptured taxes to be paid by Applicant to District under Section 8.2 below.

8.1.5 After a determination under Section 8.1.2, the Board of Trustees shall notify Applicant, in writing, of its determination and the amount of recaptured taxes owed by Applicant, if any.

Section 8.2 <u>REMEDIES AFTER BREACH</u>

8.2.1 In the event of default or breach by Applicant, the District's damages shall not exceed the greater of (a) any amounts of recaptured taxes plus penalty and interest; or (b) the sum of the difference between the payments and credits due and owing to the Applicant at the time of default and the District taxes that would have been payable to the District had this Agreement not been executed.

8.2.2 The District's sole right of equitable relief under this Agreement shall be its right to terminate this Agreement.

8.2.3 In accordance with §313.0275 of the Code, for any full year beginning after the project has become operational, Applicant shall cure those material breaches defined in 8.3(d), 8.3(e), or 8.3(f), below, without the termination of this Agreement. In order to cure its noncompliance with 8.3(d), 8.3(e), or 8.3(f) for the particular year of noncompliance only,

Applicant may pay liquidated damages as required by §313.0275(b) of the Code, in accordance with §313.0275(c).

Section 8.3 MATERIAL BREACH BY APPLICANT

Any one of the following acts or omissions shall constitute a material breach of this Agreement by Applicant:

(a) Applicant is determined to have failed to meet its obligations to have made accurate representations of fact in submission of its Application.

(b) Applicant fails to Maintain a Viable Presence in the District, as required by this Agreement, through the final termination date of this Agreement.

(c) Applicant fails to timely make any payment required under Articles 3 or 4 of this Agreement.

(d) Applicant fails to create and maintain, at a minimum, the number of New Jobs it committed to create in its Application.

(e) Applicant fails to create and maintain, at a minimum, the number of Qualifying Jobs it committed to create and maintain on Schedule C, Column E of its Application.

(f) Applicant fails to create and maintain at least Eighty Percent (80%) of all New Jobs created on the project as Qualifying Jobs.

(g) Applicant makes any payments to the District or to any other person or entity in any form for the payment or transfer of money or any other thing of value in recognition of, anticipation of or consideration for this Agreement for limitation on appraised value made pursuant to Chapter 313 of the Code, in excess of the amounts allowed by law, as set out in §313.027(i) as it currently exists or may be amended hereafter. Voluntary donations made by Applicant to the District after the date of execution of this Agreement, and not mandated by this Agreement or not made in recognition of or consideration for this Agreement are not barred by this provision.

(h) Applicant fails to comply in a material respect with any other term of this Agreement, or Applicant fails to meet its obligations under the applicable Comptroller's Rules or Chapter 313 of the Code.

Section 8.4 CALCULATION OF PENALTY AND INTEREST

In determining the amount of penalty and interest due in the event of a breach of this Agreement, the District shall determine the base amount of taxes owed less any Tax Credit under Article 6 of this Agreement for each year during the term of this Agreement since the Commencement Date. The District shall calculate penalty or interest for each 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 years less all credits under Article 6 had become due and payable on February 1 of the calendar year following such year. Penalties on said amounts shall be calculated in accordance with the methodology set forth in the Code §33.01(a) or its successor statute provided however, that no penalties shall accrue until thirty (30) days after Applicant has received written notice from the District stating the amount due to the District. Interest on said amounts shall be calculated in accordance with the methodology set forth in the Code §33.01(c), or its successor statute.

Section 8.5 DISPUTE RESOLUTION

8.5.1 After the Applicant receives notice of breach from District as set out under Section 8.1.5, the Applicant shall have thirty (30) days to either (a) tender payment, (b) submit evidence of its efforts to cure, or (c) submit to the District written notice of dispute mediation. The mediation shall be conducted by a mutually agreeable mediator at a mutually convenient time and place. If no mediator is agreed upon by the Parties, a mediator shall be appointed by the judge of a state district court in the judicial district containing the administrative offices of the District. 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. The Parties shall each bear one-half of the mediation fees and expenses.

8.5.2 In the event that any mediation is not successful in resolving the dispute or that payment is not received before the expiration of such thirty (30) days, the District shall have the remedies for the collection of the amounts determined under Section 8.2 and as set forth in Chapter 33, Subchapters B and C of the Code. 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 §§6.30 and 33.07 of the Code, or other applicable law.

8.5.3 In any event where a dispute between the Parties cannot be resolved, and after completing the mediation procedures required above, 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, except as may be limited by this Agreement, 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.

ARTICLE 9- MISCELLANEOUS PROVISIONS

Section 9.1 NOTICES

All notices required to be sent under this Agreement shall be given in writing via certified mail, return receipt requested to the Parties hereto as follows:

To the District:		With a copy to:
Name:	Lamesa Independent School District	Underwood Law Firm, P.C.
Attn:	John Ramos, Superintendent (or the successor superintendent)	Attn: Fred Stormer
Address:	PO Box 261	P.O. Box 9158
City/Zip:	Lamesa, Texas 79331	Amarillo TX 79105-9158
Phone #:	(806) 872-5461	Phone #: 806-379-1306
Fax #:	(806) 872-6220	Fax #: 806-379-0316
Email:	jramos@lamesaisd.net	fred.stormer@uwlaw.com

To the Applicant:

Name:	Mesquite Creek Wind, LLC c/o BNB Renewable Energy Holdings, LLC Attn: Orlando Puig
Address:	371 Gordon Drive
City/Zip:	Exton, PA 19341
Phone #:	(832) 746-6682
Fax #:	(281) 335-9522
Email:	opuig@msn.com

Section 9.2 AMENDMENT

This Agreement may not be modified, amended, or terminated except by written mutual agreement of the District and the Applicant. No amendment to this Agreement shall be effective until the same is approved, accepted, and signed by the Parties.

Section 9.3 ASSIGNMENT

The Applicant may assign this Agreement, or a part 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 or collaterally assign the Agreement to any party providing financing to the Applicant or its Affiliate provided that the Applicant shall provide written notice of such assignment to the District. Upon such assignment Applicant shall remain liable to the District for all outstanding taxes and other obligations accrued under this Agreement prior to the date of such assignment and the Applicant's assignor shall be liable to the District for all outstanding taxes and other obligations accruing after the date of the assignment.

Section 9.4 ENTIRE AGREEMENT

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

Section 9.5 MAINTENANCE OF APPRAISAL DISTRICT RECORDS

When appraising an Applicant's Qualified Property subject to a limitation on Appraised Value under this Agreement, the chief appraiser(s) of the Appraisal District(s) shall determine the market value of the property and include both the market value and the appropriate value under this Agreement in its appraisal records.

Section 9.6 GOVERNING LAW AND VENUE

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 rules that would direct the application of the laws of another jurisdiction. The exclusive venue for any action between the Parties shall be in state district court in the judicial district where the District's central administrative office is located.

Section 9.7 AUTHORITY TO EXECUTE AGREEMENT

By signing below, each of the Parties expressly warrants that he or she has been authorized to execute this Agreement for and on behalf of the respective Party.

Section 9.8 SEVERABILITY

Every provision of this Agreement is intended to be severable. If any term or provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement unless the invalidity of any provision(s) would have a material adverse effect on the purpose and intent of this Agreement. If the invalidity has a material adverse effect, the Parties shall make a good faith effort to renegotiate the terms of this Agreement consistent with the purpose and intent of the Parties prior to bringing any action.

Section 9.9 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 one and the same instrument.

Section 9.10 ACCURACY OF REPRESENTATIONS IN APPLICATION

The Parties acknowledge that this Agreement has been negotiated, and is being executed, in reliance upon the information contained in the Application. Applicant warrants that all information, facts, and representations contained therein are true and correct, to the best of Applicant's knowledge. The Parties agree that the Application and all related schedules and attachments are included by reference in this Agreement as if fully set forth herein. It is expressly understood and agreed that this Agreement shall be void and of no further effect if any material misrepresentations were made in the Application.

Section 9.11 <u>BINDING ON SUCCESSORS</u>

In the event the District should merge or consolidate with another school district or other governmental entity, this Agreement shall be binding on the successor school district or governmental entity, and the duties and obligations of Applicant shall inure to the benefit of such successor school district or governmental entity.

Section 9.12 <u>PUBLICATION</u>

The Parties hereby acknowledge that certain documentation relating to the Application, including this Agreement and all economic analyses submitted to the District, are to be published for public inspection. Only information that is confidential under §313.028 of the Code may be excepted from publication.

[*the remainder of this page is intentionally left blank*]

IN WITNESS WHEREOF, this Agreement has been executed by the District and the Applicant in duplicate originals on this 8th day of November, 2013.

MESQUITE CREEK WIND, LLC
Texas Taxpayer ID No. 32038854884

By: _____ Date: 11/5/13

Printed Name: Jonathan Butcher

LAMESA INDEPENDENT SCHOOL DISTRICT
AUTHORIZED REPRESENTATIVE

By Sonya Raney Date: 11/8/13
Signature

Sonya Raney - President
Printed Name and Title Board of Trustees

Attest:

By Rebecca H Gonzales
Signature

Rebecca H Gonzales vice president
Printed Name and Title

SCHEDULE 1.2

Year of Agreement	Date of Appraisal	School Year	Tax Year	Summary Description
0	January 1, 2013	2013-14	2013	No appraisal limitation.
1	January 1, 2014	2014-15	2014	No appraisal limitation.
2	January 1, 2015	2015-16	2015	No appraisal limitation.
3	January 1, 2016	2016-17	2016	$10 million appraisal limitation.
4	January 1, 2017	2017-18	2017	$10 million appraisal limitation. Possible tax credit for Applicant.
5	January 1, 2018	2018-19	2018	$10 million appraisal limitation. Possible tax credit for Applicant.
6	January 1, 2019	2019-20	2019	$10 million appraisal limitation. Possible tax credit for Applicant.
7	January 1, 2020	2020-21	2020	$10 million appraisal limitation. Possible tax credit for Applicant.
8	January 1, 2021	2021-22	2021	$10 million appraisal limitation. Possible tax credit for Applicant.
9	January 1, 2022	2022-23	2022	$10 million appraisal limitation. Possible tax credit for Applicant.
10	January 1, 2023	2023-24	2023	$10 million appraisal limitation. Possible tax credit for Applicant.
11	January 1, 2024	2024-25	2024	No appraisal limitation. Possible tax credit for Applicant. Applicant must Maintain a Viable Presence.
12	January 1, 2025	2025-26	2025	No appraisal limitation. Possible tax credit for Applicant. Applicant must Maintain a Viable Presence.
13	January 1, 2026	2026-27	2026	No appraisal limitation. Possible tax credit for Applicant. Applicant must Maintain a Viable Presence.

SCHEDULE 1.3

DEFINITIONS

Wherever used in this Agreement, the following terms shall have the following meanings, unless the context in which the term is used clearly indicates a different meaning:

"Affiliate" means any person or entity which, directly or indirectly, through one or more entities, controls or is controlled by or is under direct or indirect common control of any such person or entity. For purposes of this definition "control" when used with respect to any person or entity, means (i) the ownership directly or indirectly, of fifty percent (50%) or more of the voting securities of such person or entity or (ii) the right to direct the management or operations of such person or entity, directly or indirectly, whether through the ownership (directly or indirectly) of securities, by contract or otherwise.

"Aggregate Limit" means, for any year of this Agreement, the total of the Annual Limit amount for the current year and all previous years of the Agreement, less amounts paid by the Applicant to or on behalf of the District under Article 4.

"Agreement" means this Agreement.

"Annual Limit" means the maximum annual supplemental payment benefit that can be paid directly to the District as payment in lieu of taxation ("PILOT") under the provisions of Texas Tax Code §313.027(i). For purposes of this Agreement, the amount of the Annual Limit shall be calculated for each year by multiplying the District's Average Daily Attendance for the applicable school year, as calculated pursuant to Texas Education Code §42.005, times the greater of $100, or any larger amount allowed by Texas Tax Code §313.027(i), if such limit amount is increased for any future year of this Agreement. The Annual Limit shall first be computed for the first year of the Qualifying Time Period under this Agreement.

"Applicant" means the company listed in the Preamble of this Agreement, who filed its Application with the District for a Limitation on Qualified Property on the Application Date, pursuant to Chapter 313 of the Code. The term shall also include the Applicant's permitted successors in interest.

"Application" means the Application for Appraised Value Limitation on Qualified Property (Chapter 313, Subchapter B or C, Property Tax Code) which filing with the District by Applicant was completed on the Application Date (unless otherwise specified in the Recitals) by the tender of its Application fee. The term includes all Amendments and Supplements thereto submitted by Application and provided to the Comptroller.

"Appraisal District" means the Dawson County Appraisal District.

"Appraised Value" has the same meaning as in Section 1.04(8) of the Texas Tax Code.

"Completed Application Date" means the date as set forth in the Recitals.

"Comptroller" means the Texas Comptroller of Public Accounts.

“Comptroller’s Rules” means the applicable rules and regulations of the Comptroller set forth in title 34 of the Texas Administrative Code or Chapter 313 of the Texas Tax Code, together with any court or administrative decisions interpreting same.

”County” means the County identified in the Preamble of this Agreement, which shall be the county in which the School District’s administrative offices are located.

“District” or ”School District” means the Lamesa Independent School District listed in the Preamble of this Agreement, being a duly incorporated and operating independent school district in the State of Texas, having the power to levy, assess, and collect ad valorem taxes within its boundaries.

“District Funding Revenue” means those revenues which the District receives from the levy of its annual ad valorem maintenance and operations tax pursuant to TEC §45.002 and Article VII §3 of the Texas Constitution. The term also includes all State revenues to which the District is or may be entitled under Chapters 41 and 42 of the TEC or any other statutory provision as well as any amendment or successor statute to these provisions. The term shall exclude 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 TEC.

“Enterprise Zone” means the District’s enterprise zone, if any, created pursuant to Chapter 2303 of the Texas Government Code and as further described by the legal description attached hereto as Schedule 2.1.

“Extraordinary Education-Related Expenses” means those additional expenses that the District incurs related to the project that are not directly funded in state aid formulas including, but not limited to, expenses for portable classrooms and hiring additional personnel attributable to increased enrollment due to project personnel.

“Force Majeure” means a failure caused by a provision of law, rules, regulations, or orders of any governmental authority having jurisdiction over the Applicant or the Qualified Investment, or any arrest, restraint, or decree of any court, natural disaster, riot, war, labor dispute, act of God, act of terrorism, or any other cause which inhibits performance and over which Applicant has no reasonable control.

“Maintain a Viable Presence” means the operation over the life of this Agreement of the facility, facilities, or property for which the tax limitation agreement is granted and the retention over the entire term of this Agreement, as defined in Section 1.2 above, of not fewer than the number of Qualifying Jobs and New Jobs required by the Code, or as found by the District’s Board of Trustees to exceed the industry standard for number of jobs. Applicant shall be deemed to have maintained a viable presence following an event of Force Majeure that halts facility operations so long as Applicant commences repairs and/or reconstruction of the damaged within one hundred eighty (180) days after the event of Force Majeure. In the event of a closure due to environmental reasons, Applicant will be deemed to have maintained a viable presence so long as it commences remediation or otherwise acts in accordance with the order of the court or environmental agency.

"Maintenance and Operations Revenue" means those revenues which the District receives from the levy of its annual ad valorem maintenance and operations tax pursuant to §45.002 of the Texas Education Code and Article VII § 3 of the Texas Constitution, plus 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.

"Net Tax Savings" means an amount equal to (but not less than zero): (i) the sum of (A) the amount of maintenance and operations ad valorem taxes which the Applicant would have paid to the District for all years during the term of this Agreement if this Agreement had not been entered into by the Parties; plus (B) any Tax Credits received by Applicant under this Agreement; minus, (ii) an amount equal to 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 all years during the term of this Agreement, plus (B) any and all payments due to the District under Article III of this Agreement.

"New Jobs" means the jobs defined by 34 Tex. Admin. Code §9.1051 and which Applicant will create by and through the project which is the subject of its Application. Under Texas Tax Code §313.024(d), Eighty Percent (80%), of all New Jobs created by Applicant on the project shall also be Qualifying Jobs, as defined below.

"Qualified Investment" has the meaning as that term is defined in §313.021(1) of the Code.

"Qualified Property" has the meaning as that term is defined in §313.021(2) of the Code.

"Qualifying Job" means the number of New Jobs Applicant will create by and through the project that is the subject of this Application and which meet the requirements of Texas Tax Code §313.021(3).

"Qualifying Time Period" has the meaning as that term is defined in §313.021(4) of the Code.

"Reinvestment Zone" means the District's Reinvestment Zone created pursuant to Code §312.0025 by action of the Board of Trustees or by the County and as further described by the description and/or depiction of said Reinvestment Zone attached hereto as Schedule 2.1, which is incorporated herein by reference for all purposes.

"School Finance Law" means Chapters 41 and 42 of the TEC, the Texas Economic Development Act (Chapter 313, Code), Chapter 403, Subchapter M, 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 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 Applicant's ad valorem tax obligation to the District either with or without the limitation of property values made pursuant to this Agreement.

"State" means the State of Texas.

"Tax Credit" means the credit to be received by the Applicant as computed under the provisions of Subchapter D of the Texas Economic Development Act and 34 Tex. Admin. Code §9.1056, provided that the Applicant timely complies with the requirements under such provisions, including the filing of a completed application under §313.103 of the Code and 34 Tex. Admin. Code §9.1054.

"Tax Limitation Amount" means the amount of Ten Million Dollars ($10,000,000.00), for the purposes of this Agreement and §313.027 of the Code.

"Taxable Value" has the same meaning as in Section 1.04(10) of the Texas Tax Code.

SCHEDULE 2.1

DESCRIPTION AND MAP OF REINVESTMENT ZONE and/or ENTERPRISE ZONE

Legal Description of Reinvestment Zone

4/18/2010

Survey	Alternate Survey Name	Abstract #	AREA
D&SE RR CO			
Block 34			
Section 101		241	644
		Acres this Survey	644
EL&RR RR CO			
Block 10			
Section 34		73	34
Section 34		72	29
Section 34	SIMPSON, M M	1375	33
Block 32 T&N			
Section 6	SHRUM, C F	1027	50
Section 6	HUGHES, F	1004	123
Section 7		74	21
Block 8			
Section 59		993	374
Section 60	RUSSELL, E C	1305	158
Section 60	DULIN, W C	894	159
Section 60	SOLSBERRY, A L	912	164
Section 60	RUSSELL, E C	754	161
Section 61		1064	679
Section 62	BARROW, E R	1087	152
Section 62	SIMMONS, K D & J B	1028	158
Section 62	WALK, J J	765	155
Section 62	LEE, J M	1328	122
Section 62	CHRISTOPHER, J M	985	42
Section 63		1065	633
Section 64	MILES, J B	482	618
Section 65		1066	617
Section 66	CASKEY, J S & J	951	141
Section 66	CLAYTON, M	1059	63
Section 66	CLAYTON, P	1038	80
Section 66	CLAYTON, S	927	159
Section 66	KEITH, W C	481	159
		Acres this Survey	5,084
H&GN RR CO			
Block 2			
Section 34	EVANS, R L	429	644
		Acres this Survey	644
H&OB RR CO			
Block 2			
Section 11		184	641
Section 12	EVANS, F B	424	643

Page 1 of 8

Survey	Alternate Survey Name	Abstract #	AREA
		Acres this Survey	1,284
HE&WT RR CO			
Block			
Section 11		224	641
Block 33 T7N			
Section 1		223	644
Section 10	WALK, J J	764	643
Section 13		221	634
Section 14	BEALL, H	448	639
Section 17		220	635
Section 18	MILES, J B	1141	161
Section 18	MILES, J B	1142	163
Section 18	HART, C O	726	160
Section 18	MILES, J B	1143	161
Section 19		339	330
Section 2	HODGE, S B	1139	159
Section 2	RUSSELL, E C	755	164
Section 2	HARRIS, D E	1138	154
Section 2	AUSTIN, R E & M C	1129	152
Section 20	AUSTIN, T W	946	163
Section 20	TRAMMELL, P M	760	157
Section 5		338	638
Section 6	BETENBOUGH, N G	783	95
Section 6	MC CUSH, I	1216	90
Section 6	BETENBAUGH, D J	1250	85
Section 6	BETENBAUGH, R E	1249	92
Section 6	FULTON, H W	1187	182
Section 6	BETENBAUGH, C G	1248	86
Section 9		222	640
Block 34			
Section 12	EVANS, W H	1319	155
Section 12	EVANS, W H	1317	167
Section 12	EVANS, W H	428	161
Block 34 T6N			
Section 12	EVANS, W H	1286	160
		Acres this Survey	8,313
POITEVENT, J			
Block 1			
Section 1		1012	861
Section 10	GILLESPIE, A	1290	162
Section 10	GILLESPIE, A	1321	124
Section 10	YEISER, G W	778	200
Section 10	GILLESPIE, A	1322	157
Section 11		1014	640
Section 12	HOWELL, E W	1003	123
Section 12	HOWELL, E W	1355	182
Section 12	HOWELL, E W	1295	158
Section 12	SUITS, W	1094	161
Section 13		1015	466
Section 14	YEISER, G W	781	492
Section 14	BERRY, M G	1197	157
Section 15		1016	627
Section 16	GILLESPIE, A	1136	325
Section 16	BETENBOUGH, N G	782	309
Section 17		1	622

Survey	Alternate Survey Name	Abstract #	AREA
Section 18	EVANS, W H	427	646
Section 19		187	646
Section 2	WALK, J J	763	569
Section 2	RICHARDSON, S M	1145	61
Section 20	KENNEDY, L F	731	637
Section 21		2	653
Section 22	MILLER, W H	751	647
Section 23		1017	658
Section 24	TARRANCE, A O	1030	299
Section 25		1018	133
Section 26	MILLER, W H	749	648
Section 27		1019	633
Section 28	MURRAY, L B	752	636
Section 29		7	634
Section 3		1013	642
Section 30	EVANS, R L	431	640
Section 31		189	646
Section 32	KENNEDY, L F	732	652
Section 33		1020	654
Section 34	MILLER, W H	750	646
Section 35		1021	618
Section 36	OLIVER, J D	1011	452
Section 39		1022	628
Section 4	BETENBOUGH, N G	1281	329
Section 4	WALK, J J	766	314
Section 40	MILLER, W H	748	633
Section 41		6	631
Section 42	EVANS, F B	423	634
Section 43		191	643
Section 44	KENNEDY, L F	733	647
Section 45		1023	650
Section 46	BROWN, T W	708	651
Section 47		1024	300
Section 5		3	639
Section 6	BEALL, H	449	648
Section 7		186	654
Section 8	BEALL, H	446	632
Section 9		4	644
Block 2			
Section 1		8	633
Section 2	BEALL, F L	442	201
Section 2	POOL, A E	1116	443
		Acres this Survey	**28,594**

PSL			
Block CC41			
Section 1	FURLOW, O	1409	33
Section 1	BARNETT, J B	1182	125
Section 1	TOWNZEN, L F	1195	123
Section 1	TOWNZEN, F M	1196	108
Section 1	MAHONEY, J T	1299	134
Section 2	BAILEY, MRS S T	699	328
Section 3	BAILEY, MRS S T	700	648
Section 4	BAILEY, MRS S T	701	707
Section 5	SEWALT, J V	757	356
Section 6	SEWALT, J V	758	153
Section 6	WEEMS, J J	915	119
Section 7	WEEMS, C D	1033	288
Section 7		996	168
Section 8		995	382

Survey	Alternate Survey Name	Abstract #	AREA
		Acres this Survey	**3,664**
STATE OF TEXAS			
Block 1			
Section 36		75	8
		Acres this Survey	**8**
T&P RR CO			
Block 33 T3N			
Section 6	BOALE, A J	984	31
Section 6	HARVEY, O	1002	1
Block 33 T4N			
Section 17		13	496
Section 18	GOOD, F	451	634
Section 19		14	627
Section 20	CRANFILL, W L	987	345
Section 30	CRANFILL, W L	986	388
Section 30	LOONEY, R H	1008	419
Section 31		16	614
Section 32	CRANFILL, W L	988	19
Section 4	LOONEY, W B	1007	180
Section 42	GRAVES, L D	989	463
Section 43		18	298
Section 5		10	640
Section 6	GOOD, F	433	659
Section 7		11	647
Section 8	GOOD, F	997	314
Section 8	GOOD, F	998	315
Section 9		12	25
Block 33 T5N			
Section 10	ELLIS, H	991	607
Section 11		23	4
Section 15		24	453
Section 16	JONES, S G	584	627
Section 17		25	628
Section 19		26	655
Section 2	ELLIS, H	992	135
Section 20	JONES, S G	585	657
Section 21		27	668
Section 22	RUSSELL, G L	1025	269
Section 27		28	100
Section 28	JONES, S G	586	660
Section 29		29	647
Section 3		19	634
Section 30	MULLINS, J W C	610	739
Section 31		30	743
Section 32	WARE, R C	676	658
Section 33		31	597
Section 34	BEDWELL, W A	982	11
Section 4	JONES, S G	583	630
Section 40	GREEN, W H	1000	449
Section 41		32	635
Section 42	MULLINS, J W C	609	687
Section 43		33	738
Section 44	GREEN, W H	476	603
Section 45		34	329
Section 5		20	648

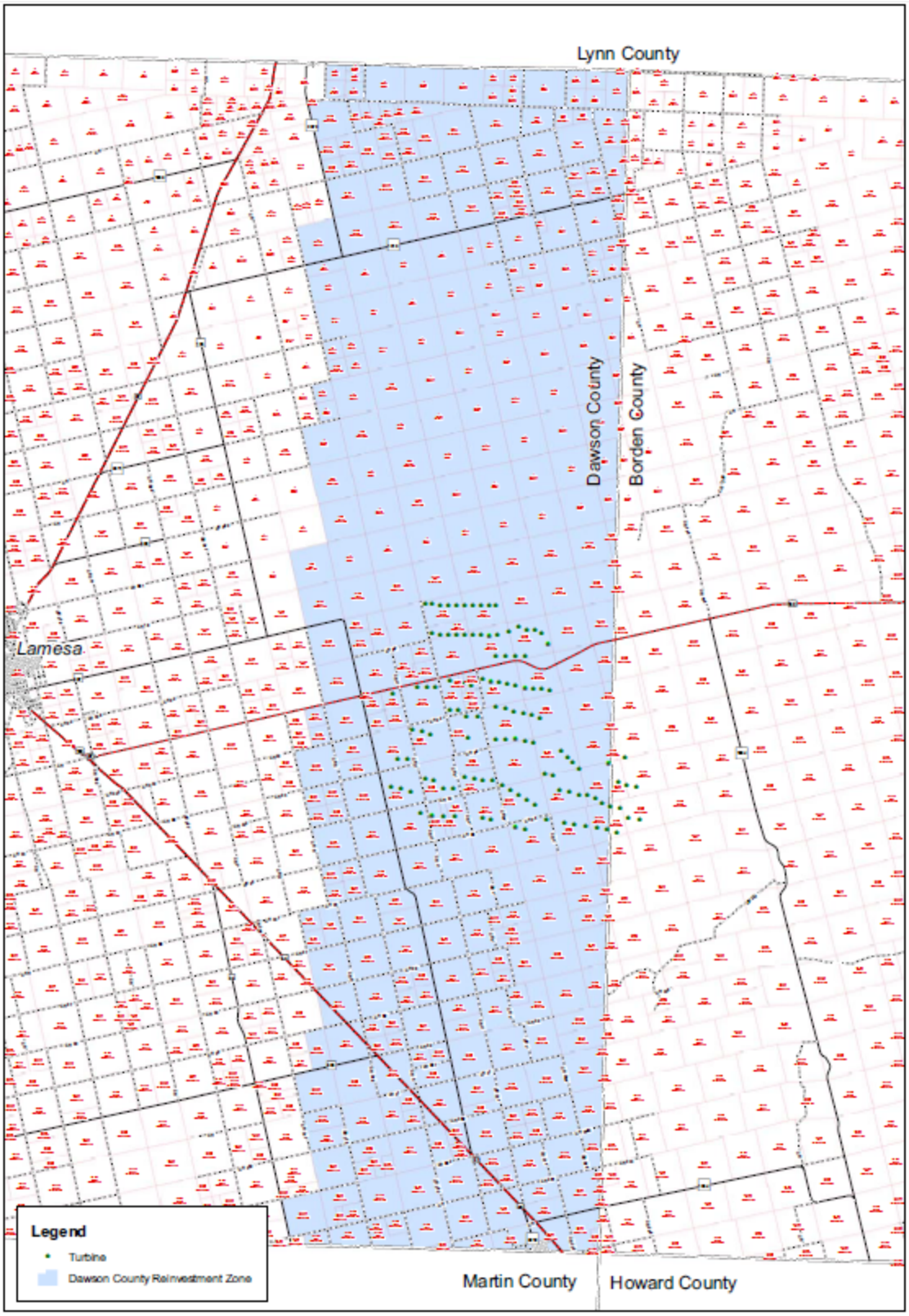
Survey	Alternate Survey Name	Abstract #	AREA
Section 6	EVANS, F B	450	642
Section 7		21	699
Section 8	SMOOT, J H	463	646
Section 9		22	635
Block 33 T7N			
Section 8	TANKERSLEY, J D	655	637
Block 34 T3N			
Section 1		35	632
Section 10	WRIGHT, N L	697	367
Section 11		39	634
Section 12	SINK, C W	1149	61
Section 12	BENNETT, T B	983	418
Section 13		1032	18
Section 2	PREWITT, C P	1379	321
Section 2	SHIFFLETTE, W B	759	315
Section 3		36	646
Section 4	WRIGHT, N L	698	641
Section 5		37	636
Section 6	CURLEE, J J	530	347
Section 6	SPECKELS, G G	1399	347
Section 6	SPECKELS, A F	1029	164
Section 8	WRIGHT, N L	1076	40
Section 9		38	198
Block 34 T4N			
Section 1		40	449
Section 10	WEST, J B	689	639
Section 11		45	462
Section 12	WEST, J B	692	153
Section 12	WASSON, A L	1363	161
Section 12	WASSON, A L	1364	91
Section 12	WASSON, A L	1344	234
Section 13		46	477
Section 14	GOOD, T	561	175
Section 14	MENKE, MRS M	965	325
Section 14	WASSON, I E	1057	141
Section 15		47	647
Section 16	SHUMAKE, J K	877	161
Section 16	GOOD, T	559	162
Section 16	RICHARDSON, M B	909	163
Section 16	SHUMAKE, J K	1339	159
Section 17		48	643
Section 18	RENDLEMAN, A M	647	640
Section 19		49	640
Section 2	GOOD, T	558	633
Section 20	MONTEITH, G W	850	159
Section 20	REID, J E	866	158
Section 20	JACKSON, R J	582	163
Section 20	GARREN, J W	830	160
Section 21		50	646
Section 22	MC WHORTER, J E	907	320
Section 22	WEST, J B	690	321
Section 23		51	486
Section 24	WEST, J B	691	487
Section 24	WASSON, A L & I E	1312	162
Section 25		52	501
Section 26	GARTIN, W H	556	639
Section 27		53	631
Section 28	KEY, J H	1054	323
Section 28	REID, B B	1066	159
Section 28	GRAVES, J	567	159

Survey	Alternate Survey Name	Abstract #	AREA
Section 29		54	635
Section 3		41	640
Section 30	RENDLEMAN, A M	644	643
Section 31		55	646
Section 32	JACKSON, R J	579	159
Section 32	WENNER, C J	1075	160
Section 32	JACKSON, R J	1261	318
Section 33		56	643
Section 34	GARTIN, W H	555	172
Section 34	MC CLURE, W L	1335	453
Section 35		57	512
Section 36	GRAVES, J	568	641
Section 37		58	520
Section 38	INGRAM, J R	1203	163
Section 38	JACKSON, R J	581	158
Section 38	WHITACRE, C N	1221	162
Section 38	RISHER, H M	1304	158
Section 39		59	638
Section 4	GOOD, T	560	324
Section 4	WASSON, A L	1047	313
Section 40	GRAVES, J	569	313
Section 40	SKINNER, M W	1147	78
Section 40	DECKARD, MRS M R	1377	50
Section 40	SKINNER, MRS M	1372	200
Section 41		60	641
Section 42	WESTFALL, S B	1220	162
Section 42	SHEPPARD, W A	1046	79
Section 42	SPARKS, H C	1093	84
Section 42	RENDLEMAN, A M	646	321
Section 43		61	633
Section 44	GARTIN, W H	554	639
Section 45		62	643
Section 46	GARTIN, W H	1320	166
Section 46	GARTIN, W H	553	168
Section 46	GARTIN, W H	1289	306
Section 47		63	527
Section 48	GRAVES, J	566	639
Section 5		42	658
Section 6	RENDLEMAN, A M	645	331
Section 6	SENTER, R M	910	158
Section 6	MORGAN, A F	966	173
Section 7		43	635
Section 8	JACKSON, R J	580	643
Section 9		44	641
Block 34 T5N			
Section 1		64	650
Section 10	TOWNS, F E	1243	138
Section 10	MC WHORTER, J E	623	223
Section 10	ROBERTS, MRS R T	1193	277
Section 11		69	639
Section 12	MC CARTY, W S	1334	439
Section 12	NUNN, H J	624	206
Section 13		70	645
Section 14	FOSTER, G J	826	298
Section 14	CHILDERS, H S	515	164
Section 14	DAVIS, M M	1253	20
Section 14	BROOKIN, W J	816	160
Section 15		71	642
Section 16	MC WHORTER, J E	622	644
Section 2	BIRD, L S	472	649
Section 20	DAVIDSON, D C	955	161
Section 20	NUNN, H J	626	161
Section 21		74	643

Survey	Alternate Survey Name	Abstract #	AREA
Section 22	PIERCE, E	1398	160
Section 22	SMITH, MRS D	1401	156
Section 22	PIERCE, MRS M A	1395	159
Section 22	NUNN, H J	625	152
Section 22	PIERCE, L J	1400	6
Section 23		75	642
Section 24	DYESS, J	1256	101
Section 24	NUNN, H J	627	94
Section 24	LANGHAM, T W	840	319
Section 24	MC CARTY, M	1266	38
Section 24	COLE, N	1252	87
Section 25		76	564
Section 26	GOOD, J	565	637
Section 27		77	635
Section 28	LYONS, C	936	336
Section 28	GOOD, J	563	309
Section 29		78	639
Section 3		65	638
Section 32	BARTLETT, L R	921	159
Section 32	BARTLETT, J A	922	161
Section 32	BARTLETT, E J	1373	161
Section 32	CHILDERS, H S	513	159
Section 33		80	640
Section 34	CHILDERS, H S	514	637
Section 35		81	606
Section 36	COLLINS, M	952	323
Section 36	CHILDERS, H S	512	316
Section 37		82	580
Section 38	CROSSETT, A H	528	219
Section 38	CROSSETT, A H	1229	97
Section 38	CORNELL, G W	953	323
Section 39		83	638
Section 4	BIRD, L S	473	643
Section 40	GOOD, J	564	652
Section 41		84	645
Section 44	CROSS, J	1050	159
Section 44	STOVALL, W P	1392	159
Section 44	SIMPSON, R C	1307	159
Section 44	CROSSETT, A H	529	159
Section 45		86	659
Section 46	CROSSETT, A H	527	650
Section 47		87	596
Section 48	GOOD, J	562	642
Section 9		68	642
Block 35 T3N			
Section 1		88	355
Section 2	KELLY, C C	602	140
Block 35 T4N			
Section 24	COOKSEY, W F	524	320
Section 25		101	641
Section 36	ADAMS, A T	809	319
Section 36	COOKSEY, W F	525	323
Section 37		107	640
Section 47		112	644
Section 48	FISH, C	543	419
Section 48	BARKOWSKY, A	948	160
Section 48	BARKOWSKY, A	947	61
Block 35 T5N			
Section 18	SMOOT, J H	464	646

Survey	Alternate Survey Name	Abstract #	AREA
		Acres this Survey	67,074
TT RR CO			
Block			
Section 13		345	647
Section 14	BEALL, H	447	638
Block 2			
Section 1		182	649
Section 10	EVANS, R L	430	640
Section 2	O'KEEFE, C A	386	642
Section 22	EVANS, W H	1287	167
Section 22	EVANS, W H	1318	158
Section 23		197	634
Section 24	EVANS, W H	425	648
Section 25		198	647
Section 26	EVANS, R L	432	642
Section 27		199	649
Section 3		183	633
Section 35		192	642
Section 36	EVANS, F B	422	646
Section 4	BIRD, L S	471	636
Block 33 T7N			
Section 11		226	644
Section 12	BEALL, F L	445	640
Section 15		344	327
Section 16	ROBINSON, MRS M C	1240	164
Section 16	TRAMMELL, P M	484	159
Section 3		227	630
Section 4	RUSSELL, E C	756	640
Section 7		225	639
		Acres this Survey	**13,165**
		Total Acres in Area of Abatement	149,074

All information based on GIS data supplied by TNRIS through the Texas General Land Office.
Acreage is approximate and based upon map as supplied which may not accurately reflect recorded patented acreage for survey.



1:62,000

0 2.5 5 Miles

Mesquite Creek Wind, LLC
Project Area

SCHEDULE 2.3

DESCRIPTION OF QUALIFIED INVESTMENT AND/OR QUALIFIED PROPERTY

The property for which the Applicant is requesting an appraised value limitation shall include, but is not limited to, the following:

> Mesquite Creek Wind, LLC plans to construct a 200.6 MW wind farm in Dawson and Borden Counties. Approximately one hundred and ten (110) wind turbines will be located in Dawson County all of which will be located in Lamesa ISD. The remaining eight (8) will be located in Borden County and Borden County ISD. Turbine selection is ongoing at this time and has not been finalized. For purposes of this application, the project anticipates using 1.7 MW turbines manufactured by GE, although final turbine selection may change. Mesquite Creek Wind is also constructing approximately 5 miles of generation transmission tie line in Dawson County and Lamesa ISD.
>
> This application covers all qualified property within Lamesa ISD necessary for the commercial operations of the wind farm. Qualified Investment and qualified property includes, but is not limited to, turbines, turbine transformers (pad-mounts), towers, foundations, underground collection systems, electrical substation(s), generation transmission tie lines, electrical interconnections, met towers, roads, operations & maintenance buildings, spare parts, and control systems necessary for commercial generation of electricity.

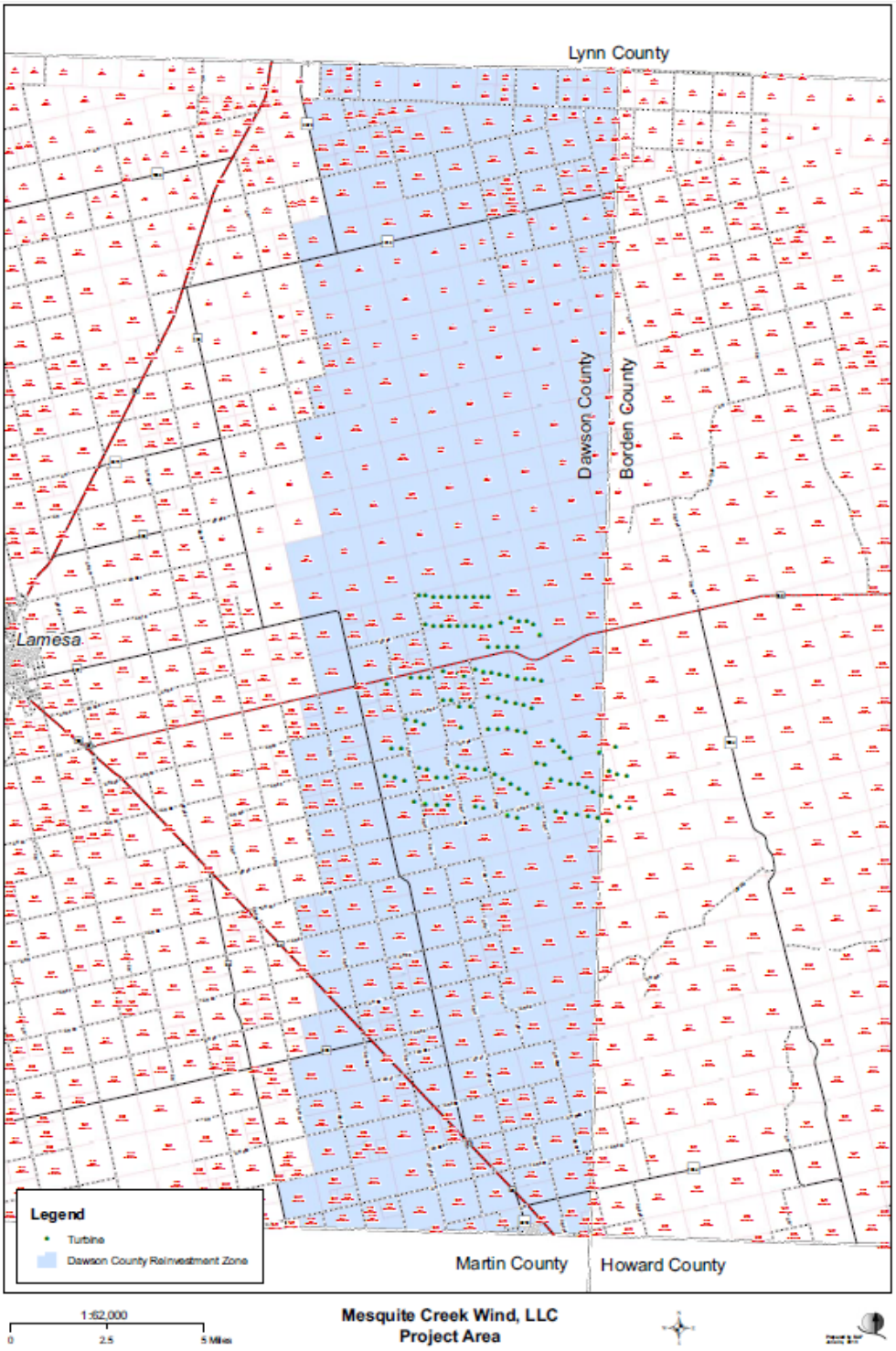
All of the improvements that make up the qualified investment and/or qualified property will be made within the project area, which is completely within the reinvestment zone as shown in Schedule 2.1.

None of the foregoing listed property is covered under an existing County Appraisal District account number.

All of the property for which the Applicant is seeking a limitation of appraised value will be owned by the Applicant or a valid assignee pursuant to this Agreement.

EXHIBIT A
to
SCHEDULE 2.3

MAP OF QUALIFIED PROPERTY/PROJECT AREA



SCHEDULE 3.2

CALCULATIONS FOR LOSS OF REVENUES BY DISTRICT

The District Funding Revenue amount owed by Applicant to District will equal:

(a) Original District Funding Revenue minus New District Funding Revenue, where;

i. "Original District Funding Revenue" means the total State and local District Funding Revenue that the District would have received for the school year under the School Finance Law absent this Agreement, effective for said school year.

ii. "New District Funding Revenue" means the total State and local District Funding Revenue that the District actually received under the School Finance Law for said school year.

(b) In making the calculations required by this Schedule 3.2:

i. The Taxable Value of property for each school year will be determined under the School Finance Law.

ii. All calculations using the Original District Funding Revenue and the New District Funding Revenue made for years three (3) through ten (10) of this Agreement shall be based upon the limitation of value on the Qualified Property using the Tax Limitation Amount so that Applicant is not responsible for protecting the District against any decrease in the amount of local ad valorem taxes collected.

iii. All calculations made under this Schedule 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.

iv. The calculation made under this Schedule cannot result in a negative number. In the event that the calculation is a negative number, the loss to the District under this Schedule will be considered to be zero.