

FINDINGS
of the
FLOYDADA INDEPENDENT
SCHOOL DISTRICT
BOARD OF TRUSTEES

Under Chapter 313 of the
Texas Tax Code

ON THE APPLICATION FOR
APPRAISED VALUE LIMITATION
ON QUALIFIED PROPERTY

SUBMITTED BY

OLD SETTLER WIND, LLC

Comptroller Application Number 1124

**RESOLUTION AND FINDINGS OF FACT
of the
FLOYDADA INDEPENDENT SCHOOL DISTRICT BOARD OF TRUSTEES
UNDER CHAPTER 313 OF THE TEXAS TAX CODE
ON THE APPLICATION FOR APPRAISED VALUE LIMITATION
ON QUALIFIED PROPERTY
SUBMITTED BY OLD SETTLER WIND, LLC**

STATE OF TEXAS §
 §
COUNTY OF FLOYD §

PREAMBLE

On the 22nd day of March, 2016, a public meeting of the Board of Trustees of the Floydada Independent School District (the “Board”) was held to solicit input from interested parties on the application by Old Settler Wind, LLC (“Old Settler Wind” or “Applicant”) for an appraised value limitation on qualified property under Chapter 313 of the Texas Tax Code. The meeting was duly posted in accordance with the provisions of the Texas Open Meetings Act, Chapter 551, Texas Government Code. At the meeting, the Board considered the application by Old Settler Wind for a Limitation on Appraised Value on Qualified Property, pursuant to Chapter 313 of the Texas Tax Code. The Board of Trustees solicited input into its deliberations from interested parties within the District. After hearing presentations from the District’s administrative staff and the consultants retained by the District to advise the Board in this matter and reviewing the Comptroller’s Economic Impact Evaluation under Texas Tax Code §313.026 and 34 T.A.C. §9.1054, the Board of Trustees of the Floydada Independent School District makes the following Findings regarding the Application:

On or about the 11th day of February, 2016, the Board of Trustees for the Floydada Independent School District received an Application for Appraised Value Limitation on Qualified Property from Old Settler Wind, pursuant to Chapter 313 of the Texas Tax Code (the “Application”). The general nature of Applicant’s investment in qualified property set forth in the Application is for equipment and material related to the construction of a wind-powered electric generation facility (the “Property”). See Application, Tab 4, attached hereto as Attachment A. The Board agreed to consider such Application, and the District’s Superintendent formally acknowledged receipt of the Application for consideration on behalf of the District, which was delivered to the Texas Comptroller of Public Accounts immediately upon a determination that the Application was complete. The Comptroller acknowledged receipt of the Application on or about February 16, 2016, and issued its notice of completeness by letter dated February 24, 2016, the Application Review Start Date. Thereafter, on behalf of Applicant, the District submitted Amendment No. 001 (a revised Schedule B) to the Comptroller on March 2, 2016. The Application and Amendment No. 001 are hereafter collectively referred to as the “Application.” A copy of the Application and Comptroller’s completeness letter of February 24, 2016 are collectively attached hereto as Attachment A.

The Texas Taxpayer Identification number for Old Settler Wind, LLC is 32058265235. Old Settler Wind is an entity subject to Chapter 171 of the Texas Tax Code and is certified to be in good

standing with the Texas Comptroller of Public Accounts as required by Texas Tax Code §313.024(a). See Attachments A, B and C.

The Board acknowledged receipt of the Application and necessary application fee as established by §313.025(a)(1) of the Texas Tax Code and Local District Policy.

The Application was delivered to the Texas Comptroller's Office for review pursuant to §313.025(b) of the Texas Tax Code.

A copy of the Application was delivered to the Floyd County Appraisal District for review pursuant to 34 Texas Administrative Code §9.1054.

The Application was reviewed by the Texas Comptroller's Office pursuant to Texas Tax Code §§313.025 and 313.026. After receipt of the Application, the Texas Comptroller's Office caused an Economic Impact Evaluation to be conducted. The Comptroller, pursuant to Texas Tax Code §313.025(h), determined the project subject to the Application meets the requirements for eligibility under Texas Tax Code §313.024 for a limitation on appraised value, and after reviewing the Application based on the criteria set out in Texas Tax Code § 313.026, issued a Certificate for a Limitation on Appraised Value on March 9, 2016 that the Application be approved (the "Certification"). See Attachment C. The Board of Trustees has carefully considered such Evaluation and Certification. Copies of the Certification and Economic Impact Evaluation are attached to these Findings as Attachments C and D.

The Board also directed that a specific school financial analysis be conducted of the impact of the proposed value limitation on the finances of Floydada Independent School District. A copy of a report prepared by McDowell & Brown, LLC is attached to these Findings as Attachment E.

The Board has confirmed that the taxable value of industrial property in the Floydada Independent School District for the preceding tax year, as determined under Subchapter M, Chapter 403 of the Texas Government Code, falls within a rural school district, Category III of §313.054 of the Texas Tax Code. See Comptroller's "2015 ISD Summary Worksheet," attached hereto as Attachment G; see also Attachment D.

After receipt of the completed Application, the District entered into negotiations with Old Settler Wind regarding the specific language to be included in the Agreement for Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes (the "Agreement") pursuant to Chapter 313 of the Texas Tax Code, including appropriate revenue protection provisions for the District. The parties were able to agree upon language for inclusion into a draft agreement pursuant to Texas Tax Code §313.027. Some of the terms agreed to by the parties were at variance with specific language contained in Comptroller Form 50-286. Such changes were submitted to the Texas Comptroller for review pursuant to 34 Tex. Admin. Code §9.1055(e)(1). At the specific direction of the Comptroller's Office, the parties used the template Texas Economic Development Agreement. As required by the Comptroller's Office, the parties changed only the provisions of the template that the Comptroller permitted. The proposed Agreement is attached to these Findings as Attachment H, and that form of the Agreement was submitted to and approved by the Comptroller as set out under 34 Texas Administrative Code §9.1015, *et seq.* See copy of March 18, 2016, Agreement Review Letter from the Comptroller, attached to these Findings as Attachment I.

After review of the Comptroller's Certification and Economic Impact Evaluation, and in consideration of its own analysis of Old Settler Wind's Application and all other substantive documentation related thereto, the Board, in addition to the above Findings, further finds as follows:

Board Finding Number 1.

Based on the Application and the Comptroller's Certification, the Property meets the requirements of Texas Tax Code §313.024 for eligibility for a limitation on appraised value under Texas Tax Code §313.024(5) as a renewable energy electric generation project.

In support of Finding Number 1, the Comptroller's Certification states:

Determination required by 313.025(h)

- Sec. 313.024(a) Applicant is subject to tax imposed by Chapter 171.
- Sec. 313.024(b) Applicant is proposing to use the property for an eligible project.
- Sec. 313.024(d) Applicant has requested a waiver to create the required number of new qualifying jobs and [will] pay all jobs created that are not qualifying jobs a wage that exceeds the county average weekly wage for all jobs in the county where the jobs are located.

* * *

Based on the information provided by the applicant, the Comptroller has determined that the property meets the requirements of Section 313.024 for eligibility for a limitation on appraised value under Chapter 313, Subchapter C.

See Attachment C.

Board Finding Number 2.

The Project proposed by Applicant is reasonably likely to generate tax revenue sufficient to offset the District's maintenance and operations ad valorem tax revenue lost as a result of the Agreement before the 25th anniversary of the beginning of the limitation period.

In support of Finding Number 2, the Certification states:

The Comptroller has determined that the project proposed by the applicant is reasonably likely to generate tax revenue in an amount sufficient to offset the school district maintenance and operations ad valorem tax revenue lost as a result of the agreement before the 25th anniversary of the beginning of the limitation period.

Also in support of Finding Number 2, the Economic Impact Evaluation states:

Attachment B - Tax Revenue over 25 Years

This represents the Comptroller's determination that Old Settler Wind, LLC (project) is reasonably likely to generate, before the 25th anniversary of the beginning of the limitation period, tax revenue in an amount sufficient to offset the school district maintenance and operations ad valorem tax revenue lost as a result of the agreement. This evaluation is based on an analysis of the estimated M&O portion of the school district property tax levy and direct, indirect and induced tax effects from project employment directly related to this project, using estimated taxable values provided in the application.

	Tax Year	Estimated ISD M&O Tax Levy Generated (Annual)	Estimated ISD M&O Tax Levy Generated (Cumulative)	Estimated ISD M&O Tax Levy Loss as Result of Agreement (Annual)	Estimated ISD M&O Tax Levy Loss as Result of Agreement (Cumulative)
Limitation Pre-Years	2014	\$0	\$0	\$0	\$0
	2015	\$0	\$0	\$0	\$0
	2016	\$0	\$0	\$0	\$0
Limitation Period (10 Years)	2017	\$234,000	\$234,000	\$2,040,480	\$2,040,480
	2018	\$234,000	\$468,000	\$1,945,710	\$3,986,190
	2019	\$234,000	\$702,000	\$1,850,940	\$5,837,130
	2020	\$234,000	\$936,000	\$1,756,170	\$7,593,300
	2021	\$234,000	\$1,170,000	\$1,661,400	\$9,254,700
	2022	\$234,000	\$1,404,000	\$1,566,630	\$10,821,330
	2023	\$234,000	\$1,638,000	\$1,471,860	\$12,293,190
	2024	\$234,000	\$1,872,000	\$1,377,090	\$13,670,280
	2025	\$234,000	\$2,106,000	\$1,282,320	\$14,952,600
	2026	\$234,000	\$2,340,000	\$1,187,550	\$16,140,150
Maintain Viable Presence (5 Years)	2027	\$1,326,780	\$3,666,780	\$0	\$16,140,150
	2028	\$1,232,010	\$4,898,790	\$0	\$16,140,150
	2029	\$1,137,240	\$6,036,030	\$0	\$16,140,150
	2030	\$1,042,470	\$7,078,500	\$0	\$16,140,150
	2031	\$947,700	\$8,026,200	\$0	\$16,140,150
Additional Years as Required by 313.026(c)(1) (10 Years)	2032	\$852,930	\$8,879,130	\$0	\$16,140,150
	2033	\$758,160	\$9,637,290	\$0	\$16,140,150
	2034	\$663,390	\$10,300,680	\$0	\$16,140,150
	2035	\$568,620	\$10,869,300	\$0	\$16,140,150
	2036	\$473,850	\$11,343,150	\$0	\$16,140,150
	2037	\$473,850	\$11,817,000	\$0	\$16,140,150
	2038	\$473,850	\$12,290,850	\$0	\$16,140,150
	2039	\$473,850	\$12,764,700	\$0	\$16,140,150
	2040	\$473,850	\$13,238,550	\$0	\$16,140,150
	2041	\$473,850	\$13,712,400	\$0	\$16,140,150
		\$13,712,400	is less than	\$16,140,150	
Analysis Summary					
Is the project reasonably likely to generate M&O tax revenue in an amount sufficient to offset the M&O levy loss as a result of the limitation agreement?					No
NOTE: The analysis above only takes into account this project's estimated impact on the M&O portion of the school district property tax levy directly related to this project.					

Source: CPA, Old Settler Wind, LLC

Year	Employment			Personal Income			Revenue & Expenditure		
	Direct	Indirect + Induced	Total	Direct	Indirect + Induced	Total	Revenue	Expenditure	Net Tax Effect
2015	0	0	0	\$0	\$0	\$0	0	0	\$0
2016	125	118	243.164	\$6,191,590	\$8,578,918	\$14,770,508	808716	-427246	\$1,235,962
2017	5	17	22	\$191,590	\$2,127,746	\$2,319,336	144958	160217	-\$15,259
2018	5	13	18	\$191,590	\$1,639,465	\$1,831,055	114441	160217	-\$45,776
2019	5	9	14	\$191,590	\$1,151,183	\$1,342,773	122070	175476	-\$53,406
2020	5	9	14	\$191,590	\$1,639,465	\$1,831,055	122070	160217	-\$38,147
2021	5	11	16	\$191,590	\$1,151,183	\$1,342,773	122070	144958	-\$22,888
2022	5	9	14	\$191,590	\$1,151,183	\$1,342,773	106812	144958	-\$38,146
2023	5	9	14	\$191,590	\$1,151,183	\$1,342,773	106812	137329	-\$30,517
2024	5	9	14	\$191,590	\$1,273,254	\$1,464,844	152588	114441	\$38,147
2025	5	15	20	\$191,590	\$1,273,254	\$1,464,844	152588	114441	\$38,147
2026	5	11	16	\$191,590	\$1,395,324	\$1,586,914	183105	114441	\$68,664
2027	5	11	16	\$191,590	\$1,029,113	\$1,220,703	152588	99182	\$53,406
2028	5	11	16	\$191,590	\$1,029,113	\$1,220,703	160217	83923	\$76,294
2029	5	7	12	\$191,590	\$1,273,254	\$1,464,844	160217	114441	\$45,776
2030	5	7	12	\$191,590	\$784,973	\$976,563	122070	68665	\$53,405
2031	5	3	8	\$191,590	\$784,973	\$976,563	91553	38147	\$53,406
2032	5	5	10	\$191,590	\$296,691	\$488,281	99182	38147	\$61,035
2033	5	5	10	\$191,590	\$540,832	\$732,422	99182	-15259	\$114,441
2034	5	5	10	\$191,590	\$540,832	\$732,422	91553	-7629	\$99,182
2035	5	3	8	\$191,590	\$296,691	\$488,281	68665	-15259	\$83,924
2036	5	3	8	\$191,590	\$540,832	\$732,422	45776	-53406	\$99,182
2037	5	3	8	\$191,590	\$296,691	\$488,281	38147	-76294	\$114,441
2038	5	1	6	\$191,590	\$296,691	\$488,281	61035	-83923	\$144,958
2039	5	5	10	\$191,590	\$296,691	\$488,281	30518	-99182	\$129,700
2040	5	(1)	4	\$191,590	\$52,551	\$244,141	30518	-114441	\$144,959
2041	5	1	6	\$191,590	\$52,551	\$244,141	0	-144958	\$144,958
2042	0	0	0	\$0	\$0	\$0	0	0	\$0
						Total	\$3,387,451	\$831,603	\$2,555,848
							\$16,268,248	is greater than	\$16,140,150
Analysis Summary									
Is the project reasonably likely to generate tax revenue in an amount sufficient to offset the M&O levy loss as a result of the limitation agreement?									Yes

Disclaimer: This examination is based on information from the application submitted to the school district and forwarded to the comptroller. It is intended to meet the statutory requirement of Chapter 313 of the Tax Code and is not intended for any other purpose.

See Attachment D.

Board Finding Number 3.

The new qualifying jobs creation requirement under § 313.051(b) exceeds the industry standard for the number of employees reasonably necessary for the operation of the Applicant's facility described in the Application, and Applicant qualifies for a waiver of the new jobs requirement pursuant to § 313.025(f-1).

In support of this Finding, Applicant submitted information as Tab 12 to its Application regarding the industry standard for the number of jobs for a project with qualified property of this size and type. Tab 12 provides that for a project of the size and type described in the Application, the project will require less than ten (10) permanent jobs. According to the Applicant, the industry standard requires approximately one (1) full time position for every 15 turbines, which is less than the requirements of §313.051(b). Applicant intends to install approximately 75 turbines within Floydada ISD, with a total capacity of 150 MW. A copy of Tab 12 submitted with the Application is attached hereto as Attachment J. Applicant reported in its Application that it would create a total of five (5) new qualifying jobs to service and support a wind farm consisting of 75 turbines with a capacity of 150 MW, which is consistent with industry standards.

See Attachments A, D and J.

Board Finding Number 4.

The Applicant will create five (5) new qualifying jobs, which Applicant affirms will meet all of the requirements set out in Texas Tax Code §313.021(3).

See Attachments A, D and J.

Board Finding Number 5.

The ability of the Applicant to locate the proposed wind energy facility in another state or another region of this state is significant because of the highly competitive marketplace for economic development. Therefore, the limitation on appraised value is a determining factor in the Applicant's decision to invest capital and construct the Project in Texas.

See Attachment C.

In support of Finding Number 5, the Economic Impact Evaluation states:

The Comptroller has determined that the limitation on appraised value is a determining factor in the Old Settler Wind, LLC decision to invest capital and construct the project in this state. This is based on information available, including information provided by the applicant. Specifically, the comptroller notes the following:

- Per the applicant, this project was selected as a candidate to explore for development because of the robust wind resource in Floyd County and access to the ERCOT market and the new CREZ White River substation plus the potential to access the SPP market as well.
- Per the applicant, a Chapter 313 Appraised Value Limitation on Qualified Property is necessary to make the economics of the project viable by providing relief for the greatest operational cost of the project.

See Attachment D.

Old Settler Wind further states, in Tab 5 of its Application, that:

Apex Clean Energy Holdings, LLC (“Apex”), the parent company of Old Settler Wind, LLC, has been in the renewable energy sector for over five years and has the capabilities to develop, finance, construct and operate renewable facilities with a current development pipeline of over 10,000 MW of independent power assets located throughout the United States, of which, currently 1,500 MW have the opportunity to be developed in Texas.

This project was selected as a candidate to explore for development because of the robust wind resource in Floyd County and access to the ERCOT market and the new CREZ White River substation plus the potential to access the SPP market as well. The Project is seeking property tax incentives under the Tax Code Chapter 312 Tax Abatement and Chapter 313 Appraised Value Limitation.

Apex would like to develop and build its proposed project but, given the myriad of undetermined variables at this early stage, a Chapter 313 Appraised Value Limitation on Qualified Property is necessary to make the economics of the project viable by providing relief for the greatest operational cost of the project. If Apex cannot secure a Chapter 313 Appraised Value Limitation Agreement, resources will be reallocated to other developable counties and/or states competing for similar projects where Apex has land interests and state and local taxes are such that the project can be constructed.

See Attachment A.

Board Finding Number 6.

The proposed limitation on appraised value for the qualified property is \$20,000,000.

See Attachments A and D.

Board Finding Number 7.

The revenue gains that will be realized by the school district if the Application is approved will be significant in the long term, with special reference to revenues used for supporting school district debt.

In support of this Finding, McDowell & Brown, LLC estimate in the District's Financial Impact Report, based on Old Settler Wind's Application, that the project would add \$194,400,000 to the tax base at the peak investment level for the 2017 tax year. This additional value is fully taxable for debt service taxes and can be used to meet any current or future debt needs. See Table I of Attachment E. See also Table 4 of Attachment D. In addition, the projected revenue gains from the proposed Agreement would be approximately \$974,274. See Attachment H at Section 6.2.A and Table VI of Attachment E.

Board Finding Number 8.

The effect of the Applicant's proposal, if approved, is not expected to increase the District's instructional facility needs. Floydada ISD can easily accommodate the projected student growth anticipated from Applicant's project with its existing facilities. However, possible increases in and/or changes to class size and personnel could cause the District to incur extraordinary educational expenses.

In support of this finding, the District's Financial Impact Report states:

Old Settler Wind, LLC provided supplemental information with their application that projected the number of full-time employees that are expected for permanent employment after construction of the project is completed. They projected that five full-time employees are expected. It is not known whether these would be new employees to the Floydada ISD, or if current residents would occupy these positions; however, it is assumed that these employees would be new residents to the district.

Based on average statewide figures provided by a demographer, it is projected that each new household would produce .5 students. Thus, the new five positions equates to 3 new students.

This minimal projected student growth can easily be accommodated with the current facilities of Floydada ISD.

See Attachment E. See also TEA's Facilities Impact Review Letter at Attachment F.

Board Finding Number 9.

The projected dollar amount of the taxes that would be imposed on the qualified property for each year of the Agreement if the property does not receive a limitation on appraised value, based on the further depreciations of investment provided by Applicant, is shown in Table II of Attachment E (column labeled “Taxes w/o Agreement”), and is further based on the assumption that the projected total maintenance and operations tax rate and interest and sinking fund tax rate per \$100 in valuation in each year of the Agreement will be as indicated in the Table.

TABLE II- Computation of Net Tax Savings:

Fiscal Year	Projected M&O Tax Rate	Projected I&S Tax Rate	Taxes w/o Agreement	Tax Savings with Agreement	Payment of District's Revenue Losses	Net Tax Savings
2015-2016	1.170	0.137	0	0	0	0
2016-2017	1.170	0.136	0	0	0	0
2017-2018	1.150	0.078	2,235,600	2,005,600	(1,375,279)	630,321
2018-2019	1.170	0.079	2,179,710	1,945,710	0	1,945,710
2019-2020	1.170	0.080	2,084,940	1,850,940	0	1,850,940
2020-2021	1.170	0.082	1,990,170	1,756,170	0	1,756,170
2021-2022	1.170	0.083	1,895,400	1,661,400	0	1,661,400
2022-2023	1.170	0.084	1,800,630	1,566,630	0	1,566,630
2023-2024	1.170	0.086	1,705,860	1,471,860	0	1,471,860
2024-2025	1.170	0.087	1,611,090	1,377,090	0	1,377,090
2025-2026	1.170	0.088	1,516,320	1,282,320	0	1,282,320
2026-2027	1.170	0.090	1,421,550	1,187,550	0	1,187,550
2027-2028	1.040	0.091	1,179,360	0	0	0
2028-2029	1.170	0.093	1,232,010	0	0	0
2029-2030	1.170	0.095	1,137,240	0	0	0
2030-2031	1.170	0.096	1,042,470	0	0	0
2031-2032	1.170	0.098	947,700	0	0	0
Totals			23,980,050	16,105,270	(1,375,279)	14,729,991

Board Finding Number 10.

The projected dollar amount of the taxes that would be imposed on the qualified property, for each year of the Agreement, if the property does receive a limitation on appraised value with the projected depreciations of investment, is discernible from Table II of Attachment E (subtracting the amounts in the column labeled “Tax Savings with Agreement” from the column labeled “Taxes w/o Agreement”), and is based on the assumption that the projected total maintenance and operations tax rate and interest and sinking fund tax rate per \$100 in valuation in each year of the Agreement will be as indicated in the Table.

TABLE II- Computation of Net Tax Savings:

Fiscal Year	Projected M&O Tax Rate	Projected I&S Tax Rate	Taxes w/o Agreement	Tax Savings with Agreement	Payment of District's Revenue Losses	Net Tax Savings
2015-2016	1.170	0.137	0	0	0	0
2016-2017	1.170	0.136	0	0	0	0
2017-2018	1.150	0.078	2,235,600	2,005,600	(1,375,279)	630,321
2018-2019	1.170	0.079	2,179,710	1,945,710	0	1,945,710
2019-2020	1.170	0.080	2,084,940	1,850,940	0	1,850,940
2020-2021	1.170	0.082	1,990,170	1,756,170	0	1,756,170
2021-2022	1.170	0.083	1,895,400	1,661,400	0	1,661,400
2022-2023	1.170	0.084	1,800,630	1,566,630	0	1,566,630
2023-2024	1.170	0.086	1,705,860	1,471,860	0	1,471,860
2024-2025	1.170	0.087	1,611,090	1,377,090	0	1,377,090
2025-2026	1.170	0.088	1,516,320	1,282,320	0	1,282,320
2026-2027	1.170	0.090	1,421,550	1,187,550	0	1,187,550
2027-2028	1.040	0.091	1,179,360	0	0	0
2028-2029	1.170	0.093	1,232,010	0	0	0
2029-2030	1.170	0.095	1,137,240	0	0	0
2030-2031	1.170	0.096	1,042,470	0	0	0
2031-2032	1.170	0.098	947,700	0	0	0
Totals			23,980,050	16,105,270	(1,375,279)	14,729,991

See also Comptroller's estimates at Table 4 of Attachment D.

Board Finding Number 11.

Based upon the Applicant's certification that the Application is true and correct, the Comptroller's Economic Impact Evaluation, the Comptroller's Certification, and the consultants' review of these and other documents, the Board has determined that the information provided by the Applicant in its Application was true and correct when it was submitted (see Attachments A, C, D and E).

Board Finding Number 12.

The Applicant (Taxpayer Id. 32058265235) is eligible for the limitation on appraised value of qualified property as specified in the Agreement based on its "good standing" certification as a franchise-tax paying entity. See Attachments A, B and C.

Board Finding Number 13.

The Project will be located within an area that is currently designated as a reinvestment zone, pursuant to Chapter 312 of the Texas Tax Code. Should it be required, the District will cooperate with the Applicant's efforts to ensure that the area remains designated as a reinvestment zone through the Final Termination Date of the Agreement.

Board Finding Number 14.

The Agreement for Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes, pursuant to Chapter 313 of the Texas Tax Code, attached hereto as Attachment H, includes adequate and appropriate revenue protection provisions for the District.

In support of this Finding and based on the information provided by Applicant in its Application, the District's Financial Impact Analysis demonstrates that the District will incur a revenue loss during tax year 2017. However, the negative consequences of granting the value limitation are offset through the revenue protection provision of the Agreement and other revenue protection provisions agreed to by the Applicant and the District. See Table II in Attachment E, and proposed Agreement, Articles IV, at Attachment H.

Board Finding Number 15.

Considering the purpose and effect of the law and the terms of the Agreement, it is in the best interest of the District and the State to approve Old Settler Wind's Application and enter into the attached Agreement for Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes.

Board Finding Number 16.

The Agreement for Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes, pursuant to Chapter 313 of the Texas Tax Code, attached hereto as Attachment H, is in the form of the template Texas Economic Development Act Agreement adopted by the Comptroller, as of January 24, 2016.

IT IS THEREFORE ORDERED, that all of the Findings above, including the recitals and statements set out in the Preamble herein, are adopted and approved as the Findings of the Floydada Independent School District Board of Trustees, and the Board of Trustees has made the above factual Findings in accordance with the Texas Tax Code § 313.025(e) and Texas Administrative Code 34, Chapter 9, subchapter F; and,

IT IS FURTHER ORDERED that the Application attached hereto as Attachment A is hereby APPROVED; and,

IT IS FURTHER ORDERED that the new jobs requirement pursuant to § 313.051(b) is hereby WAIVED; and,

IT IS FURTHER ORDERED that the Agreement attached hereto as Attachment H is APPROVED and is hereby authorized to be executed and delivered by the Trustees whose signatures appear below on behalf of the Floydada Independent School District, along with a copy of the these Findings, which shall be binding upon the parties upon receipt of an executed original of the Agreement from Applicant; and,

IT IS FURTHER ORDERED that these Findings and the Attachments referenced herein be made a part of the official minutes of this meeting, and maintained in the permanent records of the Floydada Independent School District Board of Trustees.

Dated this 22nd day of March, 2016.

Floydada Independent School District

By 
Signature
Lyte Miller - President
Printed Name and Title

Attest:

By 
Signature
Kay Brotherton
Printed Name and Title

LIST OF ATTACHMENTS

<i>Attachment</i>	<i>Description</i>
A	Application and Comptroller's Completeness Letter
B	Franchise Tax Certification of Account Status
C	Comptroller's Certification Letter
D	Comptroller Economic Impact Analysis
E	District's Financial Impact Analysis
F	TEA's Facilities Impact Letter
G	Comptroller's 2015 ISD Property Value Study Report
H	Proposed Agreement for Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes
I	Comptroller's March 18, 2016 Agreement Review Letter
J	Job Waiver Request



GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

P.O. Box 13528 • Austin, TX 78711-3528

February 24, 2016

Gilbert Trevino
Superintendent
Floydada Independent School District
226 W. California Street
Floydada, Texas 79235

Dear Superintendent Trevino:

On February 16, 2016, the Comptroller's office received from Floydada Independent School District (Floydada ISD) an application from Old Settler Wind, LLC for a limitation on appraised value (App #1124).

The purpose of this letter is to inform you that the Comptroller's office has reviewed the submitted application and determined that it includes the information necessary to be determined as complete on February 24, 2016.

Texas Tax Code §313.025(d) directs the Comptroller's office to issue a certificate for a limitation on the appraised value of the property, or provide the governing body of the school district with a written explanation of the comptroller's decision to not issue a certificate no later than the 90th day after receiving the completed application. The requirements to determine eligibility and to issue a certificate for a limitation do not begin until an application is complete as determined by this agency. The Comptroller's office will move forward with our economic impact evaluation and will send a letter of determination to the ISD and the applicant.

This letter does not constitute a review of the application under Section 313.025(h) to determine if the project meets the requirements of Section 313.024 for eligibility for a limitation on appraised value. Likewise, this letter does not address the determinations required under Section 313.026(c).

Should you have any questions, please contact Stephanie Jones with our office. She can be reached by email at stephanie.jones@cpa.texas.gov or by phone at 1-800-531-5441, ext. 3-4594, or direct in Austin at 512-463-4594.

Sincerely,

A handwritten signature in black ink, reading "Korry Castillo", is written over a horizontal line.

Korry Castillo
Director
Data Analysis & Transparency Division

cc: James Wester, Underwood Law Firm
Bob Kirby, Old Settler Wind
Allen Espinosa, Merit Advisors

Old Settler Wind, LLC

Application for Appraised Value Limitation on
Qualified Property

Presented to:

Floydada Independent School District

February 11, 2016

Tab 1

Page 1 through 11 of Application



Application for Appraised Value Limitation on Qualified Property

(Tax Code, Chapter 313, Subchapter B or C)

Economic Development
and Analysis
Form 50-296-A

INSTRUCTIONS: This application must be completed and filed with the school district. In order for an application to be processed, the governing body (school board) must elect to consider an application, but — by Comptroller rule — the school board may elect to consider the application only after the school district has received a completed application. Texas Tax Code, Section 313.025 requires that any completed application and any supplemental materials received by the school district must be forwarded within seven days to the Comptroller of Public Accounts.

If the school board elects to consider the application, the school district must:

- notify the Comptroller that the school board has elected to consider the application. This notice must include:
 - the date on which the school district received the application;
 - the date the school district determined that the application was complete;
 - the date the school board decided to consider the application; and
 - a request that the Comptroller prepare an economic impact analysis of the application;
- provide a copy of the notice to the appraisal district;
- must complete the sections of the application reserved for the school district and provide information required in the Comptroller rules located at 34 Texas Administrative Code (TAC) Section 9.1054; and
- forward the original hard copy of the completed application to the Comptroller in a three-ring binder with tabs, as indicated on page 9 of this application, separating each section of the documents, in addition to an electronic copy on CD. See 34 TAC Chapter 9, Subchapter F.

The governing body may, at its discretion, allow the applicant to supplement or amend the application after the filing date, subject to the restrictions in 34 TAC Chapter 9, Subchapter F.

When the Comptroller receives the notice and required information from the school district, the Comptroller will publish all submitted application materials on its website. The Comptroller is authorized to treat some application information as confidential and withhold it from publication on the Internet. To do so, however, the information must be segregated and comply with the other requirements set out in the Comptroller rules. For more information, see guidelines on Comptroller's website.

The Comptroller will independently determine whether the application has been completed according to the Comptroller's rules (34 TAC Chapter 9, Subchapter F). If the Comptroller finds the application is not complete, the Comptroller will request additional materials from the school district. Pursuant to 9.1053(a)(1)(C), requested information shall be provided within 20 days of the date of the request. When the Comptroller determines that the application is complete, it will send the school district a notice indicating so. The Comptroller will determine the eligibility of the project, issue a certificate for a limitation on appraised value to the school board regarding the application and prepare an economic impact evaluation by the 90th day after the Comptroller receives a complete application—as determined by the Comptroller.

The school board must approve or disapprove the application not later than the 150th day after the application review start date (the date the application is finally determined to be complete), unless an extension is granted. The Comptroller and school district are authorized to request additional information from the applicant that is reasonably necessary to issue a certificate, complete the economic impact evaluation or consider the application at any time during the application review period.

Please visit the Comptroller's website to find out more about the program at www.texasahead.org/tax_programs/chapter313/. There are links to the Chapter 313 statute, rules, guidelines and forms. Information about minimum limitation values for particular districts and wage standards may also be found at that site.

SECTION 1: School District Information

1. Authorized School District Representative

February 11, 2016

Date Application Received by District

Gilbert

First Name

Superintendent

Title

Floydada ISD

School District Name

226 W. California Street

Street Address

226 W. California Street

Mailing Address

Floydada

City

806-983-3498

Phone Number

Trevino

Last Name

TX

State

806-983-5739

Fax Number

gtrevino@floydadaisd.esc17.net

Email Address

79235

ZIP

2. Does the district authorize the consultant to provide and obtain information related to this application?



Yes



No

SECTION 1: School District Information *(continued)*

3. Authorized School District Consultant *(If Applicable)*

James	Wester
First Name	Last Name
Attorney	
Title	
Underwood Law Firm, P.C.	
Firm Name	
806-379-0354	806-379-0316
Phone Number	Fax Number
	james.wester@uwlaw.com
Mobile Number <i>(optional)</i>	Email Address
	February 12, 2016

4. On what date did the district determine this application complete?

5. Has the district determined that the electronic copy and hard copy are identical? ☒ Yes ☐ No

SECTION 2: Applicant Information

1. Authorized Company Representative *(Applicant)*

Bob	Kirby
First Name	Last Name
Director	Old Settler Wind, LLC
Title	Organization
310 4th St. N.E., Suite 200	
Street Address	
310 4th St. N.E., Suite 200	
Mailing Address	
Charlottesville	VA
City	State
434.220.6353	22902
Phone Number	ZIP
Mobile Number <i>(optional)</i>	
	Fax Number
	bob.kirby@apexcleanenergy.com
	Business Email Address

2. Will a company official other than the authorized company representative be responsible for responding to future information requests? ☐ Yes ☒ No

2a. If yes, please fill out contact information for that person.

First Name	Last Name
Title	Organization
Street Address	
Mailing Address	
City	State
Phone Number	ZIP
Mobile Number <i>(optional)</i>	
	Fax Number
	Business Email Address

3. Does the applicant authorize the consultant to provide and obtain information related to this application? ☐ Yes ☐ No

SECTION 2: Applicant Information (continued)**4. Authorized Company Consultant (If Applicable)**

Allen	Espinosa
First Name	Last Name
Director	
Title	
Merit Advisors	
Firm Name	
504.208.5957	813-289-1213
Phone Number	Fax Number
aespinosa@meritatc.com	
Business Email Address	

SECTION 3: Fees and Payments

1. Has an application fee been paid to the school district? ☒ Yes ☐ No

The total fee shall be paid at time of the application is submitted to the school district. Any fees not accompanying the original application shall be considered supplemental payments.

1a. If yes, attach in **Tab 2** proof of application fee paid to the school district.

For the purpose of questions 2 and 3, "payments to the school district" include any and all payments or transfers of things of value made to the school district or to any person or persons in any form if such payment or transfer of thing of value being provided is in recognition of, anticipation of, or consideration for the agreement for limitation on appraised value.

2. Will any "payments to the school district" that you may make in order to receive a property tax value limitation agreement result in payments that are not in compliance with Tax Code §313.027(i)? ☐ Yes ☒ No ☐ N/A
3. If "payments to the school district" will only be determined by a formula or methodology without a specific amount being specified, could such method result in "payments to the school district" that are not in compliance with Tax Code §313.027(i)? ☐ Yes ☒ No ☐ N/A

SECTION 4: Business Applicant Information

1. What is the legal name of the applicant under which this application is made? Old Settler Wind, LLC
2. List the Texas Taxpayer I.D. number of entity subject to Tax Code, Chapter 171 (11 digits) 32058265235
3. List the NAICS code 221115
4. Is the applicant a party to any other pending or active Chapter 313 agreements? ☐ Yes ☒ No
- 4a. If yes, please list application number, name of school district and year of agreement

SECTION 5: Applicant Business Structure

1. Identify Business Organization of Applicant (corporation, limited liability corporation, etc) Limited Liability Company
2. Is applicant a combined group, or comprised of members of a combined group, as defined by Tax Code §171.0001(7)? ☐ Yes ☒ No
- 2a. If yes, attach in **Tab 3** a copy of Texas Comptroller Franchise Tax Form No. 05-165, No. 05-166, or any other documentation from the Franchise Tax Division to demonstrate the applicant's combined group membership and contact information.
3. Is the applicant current on all tax payments due to the State of Texas? ☒ Yes ☐ No
4. Are all applicant members of the combined group current on all tax payments due to the State of Texas? ☐ Yes ☐ No ☒ N/A
5. If the answer to question 3 or 4 is no, please explain and/or disclose any history of default, delinquencies and/or any material litigation, including litigation involving the State of Texas. (If necessary, attach explanation in **Tab 3**)

SECTION 6: Eligibility Under Tax Code Chapter 313.024

1. Are you an entity subject to the tax under Tax Code, Chapter 171? ☒ Yes ☐ No
2. The property will be used for one of the following activities:
 - (1) manufacturing ☐ Yes ☒ No
 - (2) research and development ☐ Yes ☒ No
 - (3) a clean coal project, as defined by Section 5.001, Water Code ☐ Yes ☒ No
 - (4) an advanced clean energy project, as defined by Section 382.003, Health and Safety Code ☐ Yes ☒ No
 - (5) renewable energy electric generation ☒ Yes ☐ No
 - (6) electric power generation using integrated gasification combined cycle technology ☐ Yes ☒ No
 - (7) nuclear electric power generation ☐ Yes ☒ No
 - (8) a computer center that is used as an integral part or as a necessary auxiliary part for the activity conducted by applicant in one or more activities described by Subdivisions (1) through (7) ☐ Yes ☒ No
 - (9) a Texas Priority Project, as defined by 313.024(e)(7) and TAC 9.1051 ☐ Yes ☒ No
3. Are you requesting that any of the land be classified as qualified investment? ☐ Yes ☒ No
4. Will any of the proposed qualified investment be leased under a capitalized lease? ☐ Yes ☒ No
5. Will any of the proposed qualified investment be leased under an operating lease? ☐ Yes ☒ No
6. Are you including property that is owned by a person other than the applicant? ☐ Yes ☒ No
7. Will any property be pooled or proposed to be pooled with property owned by the applicant in determining the amount of your qualified investment? ☐ Yes ☒ No

SECTION 7: Project Description

1. In **Tab 4**, attach a detailed description of the scope of the proposed project, including, at a minimum, the type and planned use of real and tangible personal property, the nature of the business, a timeline for property construction or installation, and any other relevant information.
2. Check the project characteristics that apply to the proposed project:

☒ Land has no existing improvements

☐ Land has existing improvements (*complete Section 13*)

☐ Expansion of existing operation on the land (*complete Section 13*)

☐ Relocation within Texas

SECTION 8: Limitation as Determining Factor

1. Does the applicant currently own the land on which the proposed project will occur? ☐ Yes ☒ No
2. Has the applicant entered into any agreements, contracts or letters of intent related to the proposed project? ☐ Yes ☒ No
3. Does the applicant have current business activities at the location where the proposed project will occur? ☐ Yes ☒ No
4. Has the applicant made public statements in SEC filings or other documents regarding its intentions regarding the proposed project location? ☐ Yes ☒ No
5. Has the applicant received any local or state permits for activities on the proposed project site? ☐ Yes ☒ No
6. Has the applicant received commitments for state or local incentives for activities at the proposed project site? ☐ Yes ☒ No
7. Is the applicant evaluating other locations not in Texas for the proposed project? ☒ Yes ☐ No
8. Has the applicant provided capital investment or return on investment information for the proposed project in comparison with other alternative investment opportunities? ☐ Yes ☒ No
9. Has the applicant provided information related to the applicant's inputs, transportation and markets for the proposed project? ☐ Yes ☒ No
10. Are you submitting information to assist in the determination as to whether the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in Texas? ☐ Yes ☒ No

Chapter 313.026(e) states "the applicant may submit information to the Comptroller that would provide a basis for an affirmative determination under Subsection (c)(2)." If you answered "yes" to any of the questions in Section 8, attach supporting information in Tab 5.

SECTION 9: Projected Timeline

1. Application approval by school board April 2016
2. Commencement of construction Q2 2016
3. Beginning of qualifying time period April 2016
4. First year of limitation 2017
5. Begin hiring new employees Q3 2016
6. Commencement of commercial operations Q3 2016
7. Do you propose to construct a new building or to erect or affix a new improvement after your application review start date (date your application is finally determined to be complete)? ☒ Yes ☐ No
- Note:** Improvements made before that time may not be considered qualified property.
8. When do you anticipate the new buildings or improvements will be placed in service? Q4 2016

SECTION 10: The Property

1. Identify county or counties in which the proposed project will be located Floyd County
2. Identify Central Appraisal District (CAD) that will be responsible for appraising the property Floyd CAD
3. Will this CAD be acting on behalf of another CAD to appraise this property? ☐ Yes ☒ No
4. List all taxing entities that have jurisdiction for the property, the portion of project within each entity and tax rates for each entity:

County: <u>Floyd County, \$0.63512, 100%</u> (Name, tax rate and percent of project)	City: (Name, tax rate and percent of project)
Hospital District: <u>Caprock Hospital, \$0.14060, 100%</u> (Name, tax rate and percent of project)	Water District: <u>High Plains UWCD #1, \$0.00810, 100%</u> (Name, tax rate and percent of project)
Other (describe): (Name, tax rate and percent of project)	Other (describe): (Name, tax rate and percent of project)
5. Is the project located entirely within the ISD listed in Section 1? ☒ Yes ☐ No
 - 5a. If no, attach in **Tab 6** additional information on the project scope and size to assist in the economic analysis.
6. Did you receive a determination from the Texas Economic Development and Tourism Office that this proposed project and at least one other project seeking a limitation agreement constitute a single unified project (SUP), as allowed in §313.024(d-2)? ☐ Yes ☒ No
 - 6a. If yes, attach in **Tab 6** supporting documentation from the Office of the Governor.

SECTION 11: Investment

NOTE: The minimum amount of qualified investment required to qualify for an appraised value limitation and the minimum amount of appraised value limitation vary depending on whether the school district is classified as Subchapter B or Subchapter C, and the taxable value of the property within the school district. For assistance in determining estimates of these minimums, access the Comptroller's website at www.texasahead.org/tax_programs/chapter313/.

1. At the time of application, what is the estimated minimum qualified investment required for this school district? 10,000,000.00
2. What is the amount of appraised value limitation for which you are applying? 20,000,000.00
- Note:** The property value limitation amount is based on property values available at the time of application and may change prior to the execution of any final agreement.
3. Does the qualified investment meet the requirements of Tax Code §313.021(1)? ☒ Yes ☐ No
4. Attach a description of the qualified investment [See §313.021(1).] The description must include:
 - a. a specific and detailed description of the qualified investment you propose to make on the property for which you are requesting an appraised value limitation as defined by Tax Code §313.021 (**Tab 7**);
 - b. a description of any new buildings, proposed new improvements or personal property which you intend to include as part of your minimum qualified investment (**Tab 7**); and
 - c. a detailed map of the qualified investment showing location of tangible personal property to be placed in service during the qualifying time period and buildings to be constructed during the qualifying time period, with vicinity map (**Tab 11**).
5. Do you intend to make at least the minimum qualified investment required by Tax Code §313.023 (or §313.053 for Subchapter C school districts) for the relevant school district category during the qualifying time period? ☒ Yes ☐ No

SECTION 12: Qualified Property

1. Attach a detailed description of the qualified property. [See §313.021(2)] (If qualified investment describes qualified property exactly, you may skip items a, b and c below.) The description must include:
 - 1a. a specific and detailed description of the qualified property for which you are requesting an appraised value limitation as defined by Tax Code §313.021 (**Tab 8**);
 - 1b. a description of any new buildings, proposed new improvements or personal property which you intend to include as part of your qualified property (**Tab 8**); and
 - 1c. a map of the qualified property showing location of new buildings or new improvements with vicinity map (**Tab 11**).
2. Is the land upon which the new buildings or new improvements will be built part of the qualified property described by §313.021(2)(A)? ☐ Yes ☒ No
 - 2a. If yes, attach complete documentation including:
 - a. legal description of the land (**Tab 9**);
 - b. each existing appraisal parcel number of the land on which the new improvements will be constructed, regardless of whether or not all of the land described in the current parcel will become qualified property (**Tab 9**);
 - c. owner (**Tab 9**);
 - d. the current taxable value of the land. Attach estimate if land is part of larger parcel (**Tab 9**); and
 - e. a detailed map showing the location of the land with vicinity map (**Tab 11**).
3. Is the land on which you propose new construction or new improvements currently located in an area designated as a reinvestment zone under Tax Code Chapter 311 or 312 or as an enterprise zone under Government Code Chapter 2303? ☒ Yes ☐ No
 - 3a. If yes, attach the applicable supporting documentation:
 - a. evidence that the area qualifies as a enterprise zone as defined by the Governor's Office (**Tab 16**);
 - b. legal description of reinvestment zone (**Tab 16**);
 - c. order, resolution or ordinance establishing the reinvestment zone (**Tab 16**);
 - d. guidelines and criteria for creating the zone (**Tab 16**); and
 - e. a map of the reinvestment zone or enterprise zone boundaries with vicinity map (**Tab 11**)
 - 3b. If no, submit detailed description of proposed reinvestment zone or enterprise zone with a map indicating the boundaries of the zone on which you propose new construction or new improvements to the Comptroller's office within 30 days of the application date. What is the anticipated date on which you will submit final proof of a reinvestment zone or enterprise zone?

SECTION 13: Information on Property Not Eligible to Become Qualified Property

1. In **Tab 10**, attach a specific and detailed description of all **existing property**. This includes buildings and improvements existing as of the application review start date (the date the application is determined to be complete by the Comptroller). The description must provide sufficient detail to locate all existing property on the land that will be subject to the agreement and distinguish existing property from future proposed property.
2. In **Tab 10**, attach a specific and detailed description of all **proposed new property that will not become new improvements** as defined by TAC 9.1051. This includes proposed property that: functionally replaces existing or demolished/removed property; is used to maintain, refurbish, renovate, modify or upgrade existing property; or is affixed to existing property; or is otherwise ineligible to become qualified property. The description must provide sufficient detail to distinguish existing property (question 1) and all proposed new property that cannot become qualified property from proposed qualified property that will be subject to the agreement (as described in Section 12 of this application).
3. For the property not eligible to become qualified property listed in response to questions 1 and 2 of this section, provide the following supporting information in **Tab 10**:
 - a. maps and/or detailed site plan;
 - b. surveys;
 - c. appraisal district values and parcel numbers;
 - d. inventory lists;
 - e. existing and proposed property lists;
 - f. model and serial numbers of existing property; or
 - g. other information of sufficient detail and description.
4. Total estimated market value of existing property (that property described in response to question 1): \$ 0.00
5. In **Tab 10**, include an appraisal value by the CAD of all the buildings and improvements existing as of a date within 15 days of the date the application is received by the school district.
6. Total estimated market value of proposed property not eligible to become qualified property
(that property described in response to question 2): \$ 0.00

Note: Investment for the property listed in question 2 may count towards qualified investment in Column C of Schedules A-1 and A-2, if it meets the requirements of 313.021(1). Such property cannot become qualified property on Schedule B.

SECTION 14: Wage and Employment Information

1. What is the estimated number of permanent jobs (more than 1,600 hours a year), with the applicant or a contractor of the applicant, on the proposed qualified property during the last complete quarter before the application review start date (date your application is finally determined to be complete)? 0
2. What is the last complete calendar quarter before application review start date:
☐ First Quarter ☐ Second Quarter ☐ Third Quarter ☒ Fourth Quarter of 2015
(year)
3. What were the number of permanent jobs (more than 1,600 hours a year) this applicant had in Texas during the most recent quarter reported to the Texas Workforce Commission (TWC)? 0
Note: For job definitions see TAC §9.1051 and Tax Code §313.021(3).
4. What is the number of new qualifying jobs you are committing to create? 5
5. What is the number of new non-qualifying jobs you are estimating you will create? 0
6. Do you intend to request that the governing body waive the minimum new qualifying job creation requirement, as provided under Tax Code §313.025(f-1)? ☒ Yes ☐ No
 - 6a. If yes, attach evidence in **Tab 12** documenting that the new qualifying job creation requirement above exceeds the number of employees necessary for the operation, according to industry standards.
7. Attach in **Tab 13** the four most recent quarters of data for each wage calculation below, including documentation from the TWC website. The final actual statutory minimum annual wage requirement for the applicant for each qualifying job — which may differ slightly from this estimate — will be based on information from the four quarterly periods for which data were available at the time of the application review start date (date of a completed application). See TAC §9.1051(21) and (22).
 - a. Average weekly wage for all jobs (all industries) in the county is 635.75
 - b. 110% of the average weekly wage for manufacturing jobs in the county is 753.23
 - c. 110% of the average weekly wage for manufacturing jobs in the region is 736.87
8. Which Tax Code section are you using to estimate the qualifying job wage standard required for this project? ☐ §313.021(5)(A) or ☒ §313.021(5)(B)
9. What is the minimum required annual wage for each qualifying job based on the qualified property? 38,318.00
10. What is the annual wage you are committing to pay for each of the new qualifying jobs you create on the qualified property? 38,318.00
11. Will the qualifying jobs meet all minimum requirements set out in Tax Code §313.021(3)? ☒ Yes ☐ No
12. Do you intend to satisfy the minimum qualifying job requirement through a determination of cumulative economic benefits to the state as provided by §313.021(3)(F)? ☐ Yes ☒ No
 - 12a. If yes, attach in **Tab 12** supporting documentation from the TWC, pursuant to §313.021(3)(F).
13. Do you intend to rely on the project being part of a single unified project, as allowed in §313.024(d-2), in meeting the qualifying job requirements? ☐ Yes ☒ No
 - 13a. If yes, attach in **Tab 6** supporting documentation including a list of qualifying jobs in the other school district(s).

SECTION 15: Economic Impact

1. Complete and attach Schedules A1, A2, B, C, and D in **Tab 14**. Note: Excel spreadsheet versions of schedules are available for download and printing at URL listed below.
2. Attach an Economic Impact Analysis, if supplied by other than the Comptroller's Office, in **Tab 15**. (*not required*)
3. If there are any other payments made in the state or economic information that you believe should be included in the economic analysis, attach a separate schedule showing the amount for each year affected, including an explanation, in **Tab 15**.

APPLICATION TAB ORDER FOR REQUESTED ATTACHMENTS

TAB	ATTACHMENT
1	Pages 1 through 11 of Application
2	Proof of Payment of Application Fee
3	Documentation of Combined Group membership under Texas Tax Code 171.0001(7), history of tax default, delinquencies and/or material litigation <i>(if applicable)</i>
4	Detailed description of the project
5	Documentation to assist in determining if limitation is a determining factor
6	Description of how project is located in more than one district, including list of percentage in each district and, if determined to be a single unified project, documentation from the Office of the Governor <i>(if applicable)</i>
7	Description of Qualified Investment
8	Description of Qualified Property
9	Description of Land
10	Description of all property not eligible to become qualified property <i>(if applicable)</i>
11	Maps that clearly show: a) Project vicinity b) Qualified investment including location of tangible personal property to be placed in service during the qualifying time period and buildings to be constructed during the qualifying time period c) Qualified property including location of new buildings or new improvements d) Existing property e) Land location within vicinity map f) Reinvestment or Enterprise Zone within vicinity map, showing the actual or proposed boundaries and size Note: Electronic maps should be high resolution files. Include map legends/markers.
12	Request for Waiver of Job Creation Requirement and supporting information <i>(if applicable)</i>
13	Calculation of three possible wage requirements with TWC documentation
14	Schedules A1, A2, B, C and D completed and signed Economic Impact <i>(if applicable)</i>
15	Economic Impact Analysis, other payments made in the state or other economic information <i>(if applicable)</i>
16	Description of Reinvestment or Enterprise Zone, including: a) evidence that the area qualifies as a enterprise zone as defined by the Governor's Office b) legal description of reinvestment zone* c) order, resolution or ordinance establishing the reinvestment zone* d) guidelines and criteria for creating the zone* * To be submitted with application or before date of final application approval by school board
17	Signature and Certification page, signed and dated by Authorized School District Representative and Authorized Company Representative <i>(applicant)</i>

Tab 2

Proof of Payment of Application Fee

Proof of payment attached.

Proof of payment of filing fee received by the
Comptroller of Public Accounts per TAC Rule
§9.1054 (b)(5)

*(Page Inserted by Office of Texas Comptroller of Public
Accounts)*

Tab 3

Documentation of Combined Group membership under Texas Tax Code 171.0001 (7), history of tax default, delinquencies and/or material litigation (if applicable)

Not applicable.

Detailed description of the project

Apex Clean Energy Holdings, LLC ("Apex") is requesting an appraised value limitation from Floydada Independent School District ("ISD") for the Old Settler Wind, LLC Project ("Project"). Apex is proposing to construct, operate, and maintain a renewable energy facility primarily utilizing wind-powered electric generation equipment, potentially augmented by utility scale solar equipment, to be located in Floyd County ("County"), which will expand the local tax base in this rural community and contribute to employment in the County without triggering any new burden to shared services.

The Project is anticipated to have a capacity of 150 MW located in Floydada ISD. The exact number and placement of the wind turbines (and/or solar panels) and size of each will vary depending on the final design package. Construction of the Project is expected to begin in the 2nd Quarter of 2016 with completion by the end of 2016 and is expected to be operational for 30 years or more.

The Project site is well-suited for energy development alongside current agricultural use. It is considered low-risk in terms of potential impact to sensitive wildlife due to active farming and abundance of comparable habitats in the vicinity. The Project's wildlife study protocols are consistent with the industry's practices for similar habitats. Threatened and endangered species concerns are considered minimal: no mitigation, curtailment or permits are required.

Documentation to assist in determining if limitation is a determining factor

Apex Clean Energy Holdings, LLC ("Apex"), the parent company of Old Settler Wind, LLC, has been in the renewable energy sector for over five years and has the capabilities to develop, finance, construct and operate renewable facilities with a current development pipeline of over 10,000 MW of independent power assets located throughout the United States, of which, currently 1,500 MW have the opportunity to be developed in Texas.

This project was selected as a candidate to explore for development because of the robust wind resource in Floyd County and access to the ERCOT market and the new CREZ White River substation plus the potential to access the SPP market as well. The Project is seeking property tax incentives under the Tax Code Chapter 312 Tax Abatement and Chapter 313 Appraised Value Limitation.

Apex would like to develop and build its proposed project but, given the myriad of undetermined variables at this early stage, a Chapter 313 Appraised Value Limitation on Qualified Property is necessary to make the economics of the project viable by providing relief for the greatest operational cost of the project. If Apex cannot secure a Chapter 313 Appraised Value Limitation Agreement, resources will be reallocated to other developable counties and/or states competing for similar projects where Apex has land interests and state and local taxes are such that the project can be constructed.

Tab 6

Description of how project is located in more than one district, including list of percentage in each district and, if determined to be a single unified project, documentation from the Office of the Governor (if applicable)

Not applicable.

Description of Qualified Investment

The qualified investment would initially consist of up to 75 wind turbines or more located in Floydada ISD with an initial operating capacity of 150 MW, depending on the wind turbine model selected and the nameplate capacity of each turbine and may be augmented by utility scale solar depending on market demand and interest. In addition to the wind turbines and potential solar equipment, electrical connections will be installed to permit the interconnection and transmission of electricity generated by the wind turbines. The size and number of turbines will ultimately be determined by the timing of development and construction of the project and availability of turbines. There will be an electrical collector substation within the project boundary, a short transmission line to the point of interconnection, permanent buildings and offices, office equipment and computers, anemometer towers, electrical transmission interconnects, cables, towers, spare parts, control systems for commercial generation of electricity, fencing and other equipment as needed for safety and security and related office and control buildings and personal property supporting the Project.

Tab 8

Description of Qualified Property

Same as Tab 7. See above description.

Tab 9

Description of Land

Not applicable.

Tab 10

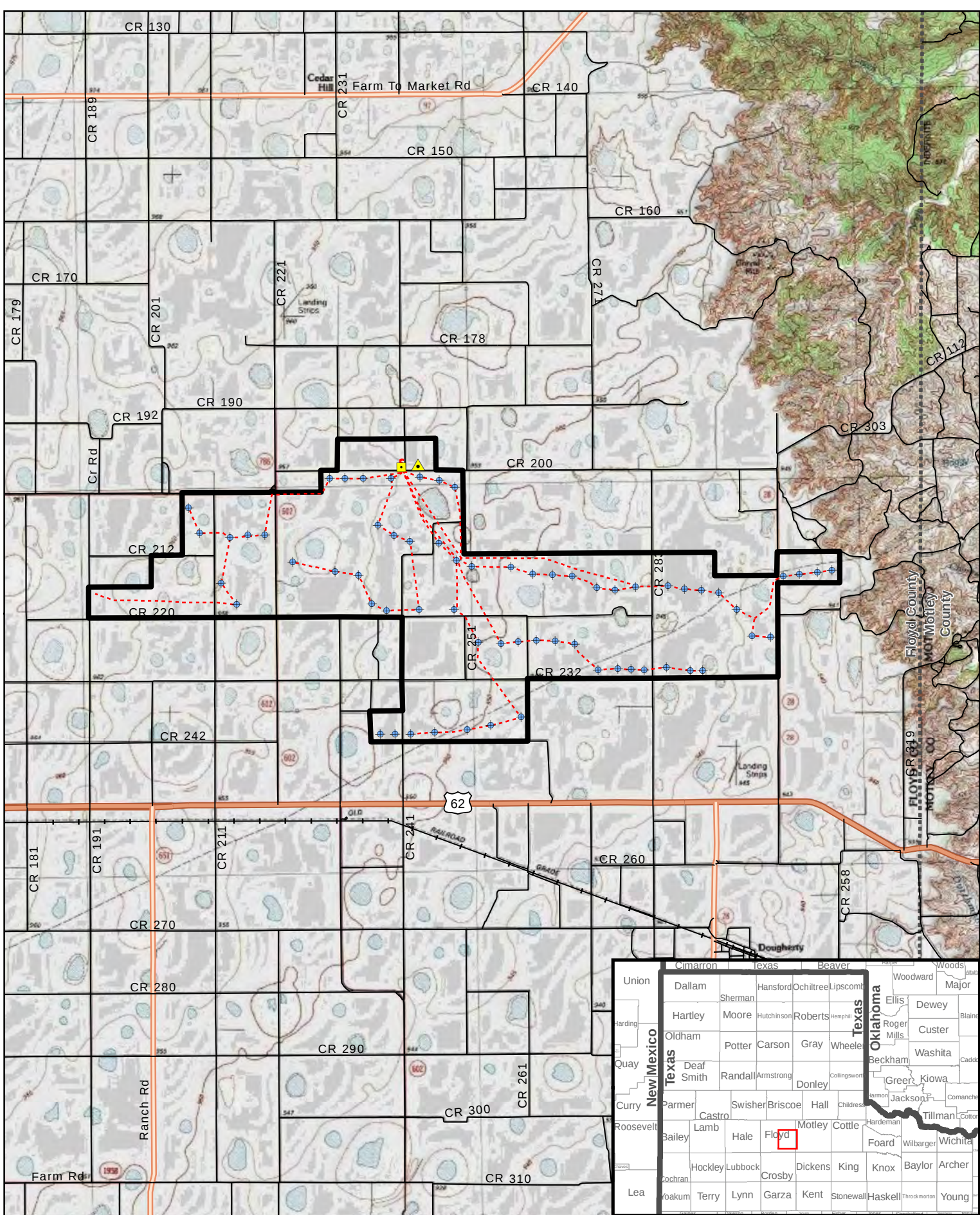
Description of all property not eligible to become qualified property (if applicable)

Not applicable.

Tab 11

Maps

See attached.



Union	Dallam	Hanford	Ochiltree	Lipscomb	Woodward	Major
Harding	Sherman	Moore	Hutchinson	Roberts	Ellis	Dewey
Quay	Hartley	Potter	Carson	Gray	Wheeler	Blaine
Curry	Oldham	Deaf Smith	Randall	Armstrong	Donley	Custer
Parmer	Castro	Swisher	Briscoe	Hall	Childress	Washita
Roosevelt	Bayley	Lamb	Hale	Floyd	Motley	Cottle
Cochran	Hockley	Lubbock	Crosby	Dickens	King	Knox
Lea	Yoakum	Terry	Lynn	Garza	Kent	Stonewall
						Haskell

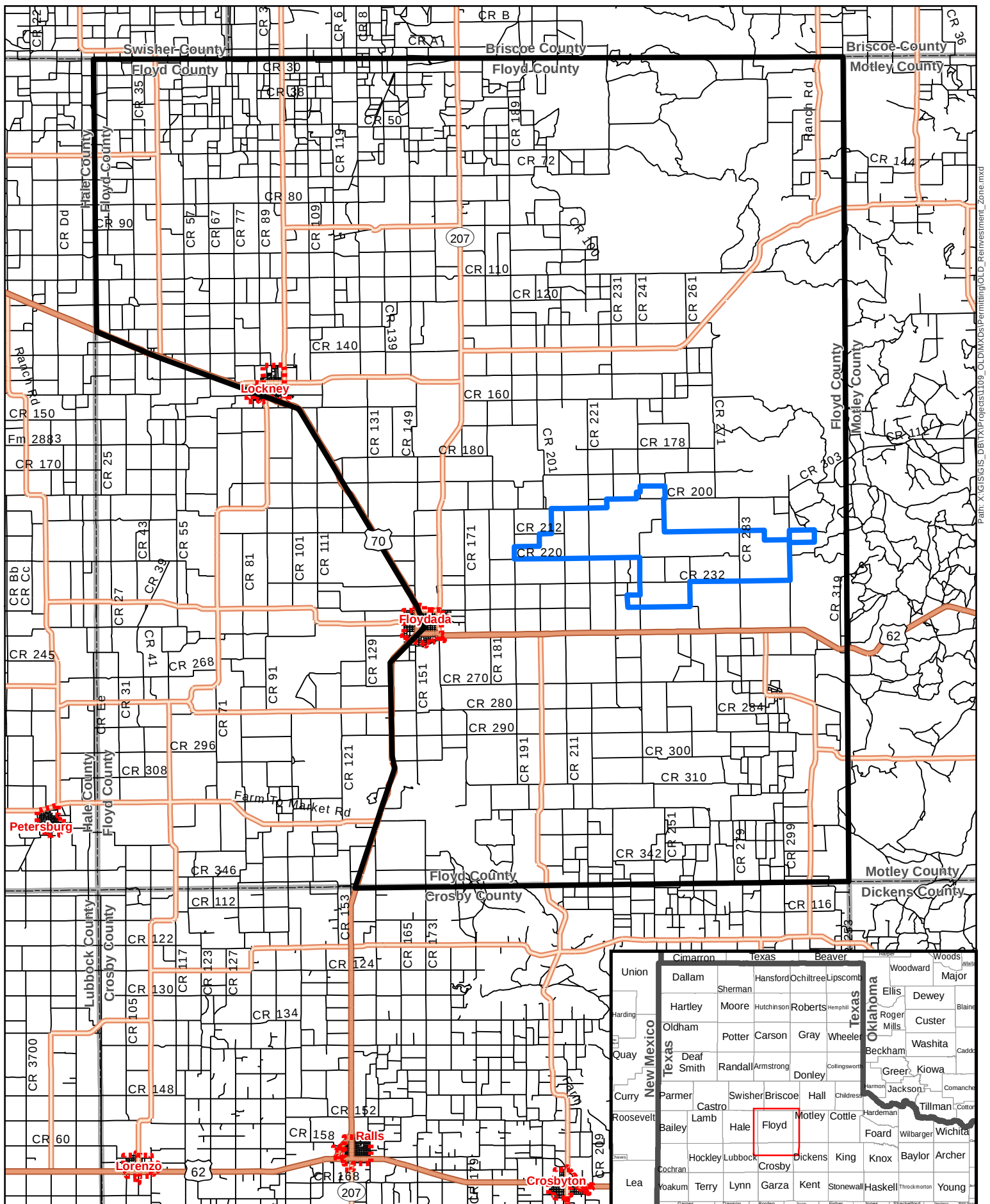
Old Settler

- Turbine Location
- Collection Line
- County Boundary
- Project Boundary
- Point of Interconnect
- Project Substation



Confidential
Author: JF Date: 2/2/2016
NAD 1983 UTM Zone 14N
Projection: Transverse Mercator
Datum: North American 1983

* Turbine Locations Will Change Due to Final Survey/Design



Old Settler: Reinvestment Zone

-  Reinvestment Zone
 Old Settler
 City/Town
 County Boundary



Confidential

Author: MD Date: 2/4/2016
NAD 1983 UTM Zone 14N
Projection: Transverse Mercator

* Turbine Locations Will Change Due to Final Survey/Design

Tab 12

Request for Waiver of Job Creation Requirement and supporting information (if applicable)

See the attached letter.

Old Settler Wind, LLC

Floyd County, Texas

February 9, 2016

Re: Old Settler Wind, LLC Employment Estimate

To whom it may concern:

Wind projects create a large number of construction jobs but require a small number of highly skilled technicians to operate a wind project once commercial operations begin. The permanent employees of a wind farm maintain and service the wind turbines, underground electrical connections, substations and other infrastructure associated with the safe and reliable operation of the project. Based upon Apex's extensive experience in wind development and a survey of experienced developers and operators of large scale wind projects, we find that the industry standard for ratio for permanent employment is one (1) full-time employee for every fifteen (15) turbines. This number can and does vary depending upon the operator, turbine type and size, and support and technical assistance offered by the turbine manufacturer. Thus, there are five (5) full-time employees anticipated for this seventy five (75) turbine project. In addition to the on-site employees described above, there may be asset managers or technicians who supervise, monitor and support wind project operations from off-site locations.

Therefore, we respectfully request that the job creation requirement be waived for this project.

If you have any questions please do not hesitate to contact me at 434.220.6353.

Sincerely,



Mark Goodwin

Calculation of three possible wage requirements with TWC documentation

Chapter 313 Wage Calculation – Floyd County – All Industries

Quarter	Year	Avg. Weekly Wages*	Annualized
Fourth	2014	\$739	\$38,428
First	2015	\$587	\$30,524
Second	2015	\$593	\$30,836
Third	2015	\$624	\$32,448
	Average	\$635.75	\$33,059
	110%	\$699.33	

Chapter 313 Wage Calculation – Floyd County – Manufacturing Jobs

Quarter	Year	Avg. Weekly Wages*	Annualized
Fourth	2014	\$790	\$41,080
First	2015	\$518	\$26,936
Second	2015	\$619	\$32,188
Third	2015	\$812	\$42,224
	Average	\$684.75	\$35,607
	110%	\$753.23	

Chapter 313 Wage Calculation – Regional Wage Rate – Manufacturing Jobs

Region	Year	Avg. Weekly Wages*	Annualized
South Plains	2014	\$669.88	\$34,834
	110%	\$736.87	

*See attached TWC documentation

Tab 14

Schedules A1, A2, B, C, and D completed and signed Economic Impact (if applicable)

See attached.

PROPERTY INVESTMENT AMOUNTS								
(Estimated Investment in each year. Do not put cumulative totals.)								
				Column A	Column B	Column C	Column D	Column E
	Year	School Year (YYYY-YYYY)	Tax Year (Fill in actual tax year below) YYYY	New investment (original cost) in tangible personal property placed in service during this year that will become Qualified Property	New investment made during this year in buildings or permanent nonremovable components of buildings that will become Qualified Property	Other new investment made during this year that will <u>not</u> become Qualified Property [SEE NOTE]	Other new investment made during this year that may become Qualified Property [SEE NOTE]	Total Investment (Sum of Columns A+B+C+D)
Investment made before filing complete application with district	--	Year preceding the first complete tax year of the qualifying time period (assuming no deferrals of qualifying time period)	2016	Not eligible to become Qualified Property			[The only other investment made before filing complete application with district that may become Qualified Property is land.]	
Investment made after filing complete application with district, but before final board approval of application				\$202,500,000				\$202,500,000
Investment made after final board approval of application and before Jan. 1 of first complete tax year of qualifying time period								
Complete tax years of qualifying time period	QTP1	2017 - 2018	2017					
	QTP2	2018 - 2019	2018					
Total Investment through Qualifying Time Period [ENTER this row in Schedule A2]				\$202,500,000				\$202,500,000
				Enter amounts from TOTAL row above in Schedule A2				
				Total Qualified Investment (sum of green cells)	\$202,500,000			

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

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

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

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

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

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

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

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

PROPERTY INVESTMENT AMOUNTS								
(Estimated Investment in each year. Do not put cumulative totals.)								
				Column A	Column B	Column C	Column D	Column E
	Year	School Year (YYYY-YYYY)	Tax Year (Fill in actual tax year below) YYYY	New investment (original cost) in tangible personal property placed in service during this year that will become Qualified Property	New investment made during this year in buildings or permanent nonremovable components of buildings that will become Qualified Property	Other investment made during this year that will <u>not</u> become Qualified Property [SEE NOTE]	Other investment made during this year that will become Qualified Property {SEE NOTE]	Total Investment (A+B+C+D)
Total Investment from Schedule A1*	--	TOTALS FROM SCHEDULE A1		Enter amounts from TOTAL row in Schedule A1 in the row below				
				\$202,500,000				\$202,500,000
Each year prior to start of value limitation period** <i>Insert as many rows as necessary</i>	0	2016 - 2017	2016	\$202,500,000				
Value Limitation Period***	1	2017 - 2018	2017					
	2	2018 - 2019	2018					
	3	2019 - 2020	2019					
	4	2020 - 2021	2020					
	5	2021 - 2022	2021					
	6	2022 - 2023	2022					
	7	2023 - 2024	2023					
	8	2024 - 2025	2024					
	9	2025 - 2026	2025					
	10	2026 - 2027	2026					
Total Investment made through limitation				\$202,500,000				\$202,500,000
Continue to maintain viable presence	11	2027 - 2028	2027					
	12	2028 - 2029	2028					
	13	2029 - 2030	2029					
	14	2030 - 2031	2030					
	15	2031 - 2032	2031					
Additional years for 25 year economic impact as required by 313.026(c)(1)	16	2032 - 2033	2032					
	17	2033 - 2034	2033					
	18	2034 - 2035	2034					
	19	2035 - 2036	2035					
	20	2036 - 2037	2036					
	21	2037 - 2038	2037					
	22	2038 - 2039	2038					
	23	2039 - 2040	2039					
	24	2040 - 2041	2040					
	25	2041 - 2042	2041					

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

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

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

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

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

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

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

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

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

Amendment No. 001

Date2/9/2016

Applicant NameOld Settler Wind, LLC

ISD NameFloydada

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

Form 50-296A

Revised May 2014

				Qualified Property			Estimated Taxable Value		
				Estimated Market Value of Land	Estimated Total Market Value of new buildings or other new improvements	Estimated Total Market Value of tangible personal property in the new buildings or "in or on the new improvements"	Market Value less any exemptions (such as pollution control) and before limitation	Final taxable value for I&S after all reductions	Final taxable value for M&O after all reductions
Pre-Year	0	2016 - 2017	2016			\$194,400,000			
Value Limitation Period	1	2017 - 2018	2017			\$186,300,000	\$194,400,000	\$194,400,000	\$20,000,000
	2	2018 - 2019	2018			\$178,200,000	\$186,300,000	\$186,300,000	\$20,000,000
	3	2019 - 2020	2019			\$170,100,000	\$178,200,000	\$178,200,000	\$20,000,000
	4	2020 - 2021	2020			\$162,000,000	\$170,100,000	\$170,100,000	\$20,000,000
	5	2021 - 2022	2021			\$153,900,000	\$162,000,000	\$162,000,000	\$20,000,000
	6	2022 - 2023	2022			\$145,800,000	\$153,900,000	\$153,900,000	\$20,000,000
	7	2023 - 2024	2023			\$137,700,000	\$145,800,000	\$145,800,000	\$20,000,000
	8	2024 - 2025	2024			\$129,600,000	\$137,700,000	\$137,700,000	\$20,000,000
	9	2025 - 2026	2025			\$121,500,000	\$129,600,000	\$129,600,000	\$20,000,000
	10	2026 - 2027	2026			\$113,400,000	\$121,500,000	\$121,500,000	\$20,000,000
Continue to maintain viable presence	11	2027 - 2028	2027			\$105,300,000	\$113,400,000	\$113,400,000	\$113,400,000
	12	2028 - 2029	2028			\$97,200,000	\$105,300,000	\$105,300,000	\$105,300,000
	13	2029 - 2030	2029			\$89,100,000	\$97,200,000	\$97,200,000	\$97,200,000
	14	2030 - 2031	2030			\$81,000,000	\$89,100,000	\$89,100,000	\$89,100,000
	15	2031 - 2032	2031			\$72,900,000	\$81,000,000	\$81,000,000	\$81,000,000
Additional years for 25 year economic impact as required by 313.026(c)(1)	16	2032 - 2033	2032			\$64,800,000	\$72,900,000	\$72,900,000	\$72,900,000
	17	2033 - 2034	2033			\$56,700,000	\$64,800,000	\$64,800,000	\$64,800,000
	18	2034 - 2035	2034			\$48,600,000	\$56,700,000	\$56,700,000	\$56,700,000
	19	2035 - 2036	2035			\$40,500,000	\$48,600,000	\$48,600,000	\$48,600,000
	20	2036 - 2037	2036			\$40,500,000	\$40,500,000	\$40,500,000	\$40,500,000
	21	2037 - 2038	2037			\$40,500,000	\$40,500,000	\$40,500,000	\$40,500,000
	22	2038 - 2039	2038			\$40,500,000	\$40,500,000	\$40,500,000	\$40,500,000
	23	2039 - 2040	2039			\$40,500,000	\$40,500,000	\$40,500,000	\$40,500,000
	24	2040 - 2041	2040			\$40,500,000	\$40,500,000	\$40,500,000	\$40,500,000
	25	2041 - 2042	2041			\$40,500,000	\$40,500,000	\$40,500,000	\$40,500,000

Notes: Market value in future years is good faith estimate of future taxable value for the purposes of property taxation.

Only include market value for eligible property on this schedule.

Schedule C: Employment Information

Date

11/21/2014

Applicant Name

Cotton Plains Wind I, LLC

ISD Name

Floydada

Form 50-296A

Revised May 2014

				Construction		Non-Qualifying Jobs	Qualifying Jobs	
				Column A	Column B	Column C	Column D	Column E
	Year	School Year (YYYY-YYYY)	Tax Year (Actual tax year) YYYY	Number of Construction FTE's or man-hours (specify)	Average annual wage rates for construction workers	Number of non-qualifying jobs applicant estimates it will create (cumulative)	Number of new qualifying jobs applicant commits to create meeting all criteria of Sec. 313.021(3) (cumulative)	Average annual wage of new qualifying jobs
Pre-Year	0	2016 - 2017	2016	250,000 man-hours	\$50,000	0	5	\$38,318
Value Limitation Period	1	2017 - 2018	2017			0	5	\$38,318
	2	2018 - 2019	2018			0	5	\$38,318
	3	2019 - 2020	2019			0	5	\$38,318
	4	2020 - 2021	2020			0	5	\$38,318
	5	2021 - 2022	2021			0	5	\$38,318
	6	2022 - 2023	2022			0	5	\$38,318
	7	2023 - 2024	2023			0	5	\$38,318
	8	2024 - 2025	2024			0	5	\$38,318
	9	2025 - 2026	2025			0	5	\$38,318
	10	2026 - 2027	2026			0	5	\$38,318
Years Following Value Limitation Period	11 through 25	2025 - 2042	2026 - 2041			0	5	\$38,318

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

C1. Are the cumulative number of qualifying jobs listed in Column D less than the number of qualifying jobs required by statute? (25

☒

Yes

☐

If yes, answer the following two questions:

C1a. Will the applicant request a job waiver, as provided under 313.025(f-1)?

☒

Yes

☐

C1b. Will the applicant avail itself of the provision in 313.021(3)(F)?

☐

Yes

☒

No

Schedule D: Other Incentives (Estimated)

Date

2/9/2016

Applicant Name

Old Settler Wind, LLC

Form 50-296A

ISD Name

Floydada

Revised May 2014

State and Local Incentives for which the Applicant intends to apply (Estimated)						
Incentive Description	Taxing Entity (as applicable)	Beginning Year of Benefit	Duration of Benefit	Annual Tax Levy without Incentive	Annual Incentive	Annual Net Tax Levy
Tax Code Chapter 311	County: N/A					
	City: N/A					
	Other: N/A					
Tax Code Chapter 312	County: Floyd County	2017	10	\$1,003,172	\$618,108	\$385,064
	Other:					
	Other:					
Local Government Code Chapters 380/381	County: N/A					
	City: N/A					
	Other: N/A					
Freeport Exemptions	N/A					
Non-Annexation Agreements	N/A					
Enterprise Zone/Project	N/A					
Economic Development Corporation	N/A					
Texas Enterprise Fund	N/A					
Employee Recruitment	N/A					
Skills Development Fund	N/A					
Training Facility Space and Equipment	N/A					
Infrastructure Incentives	N/A					
Permitting Assistance	N/A					
Other:	N/A					
Other:	N/A					
Other:	N/A					
Other:	N/A					
TOTAL				\$1,003,172	\$618,108	\$385,064

Additional information on incentives for this project:

Tab 15

Economic Impact Analysis, other payments made in the state or other economic information (if applicable)

Not applicable.

Description of Reinvestment or Enterprise Zone

- a) Evidence that the area qualifies as an enterprise zone as defined by the Governor's office
- b) Legal description of reinvestment zone
- c) Order, resolution, or ordinance established the reinvestment zone
- d) Guidelines and criteria for creating the zone

a) Not applicable.

Tab 16 (b) - Legal Description of Reinvestment Zone

Beginning in the northwest corner of Floyd County and then:

- following the northerly Floyd County line eastward to the northeast corner of Floyd County,
- Then following the easterly Floyd County line southward to the southeast corner of Floyd County,
- Then following the southerly Floyd County line westward to the east side of US Highway 62.
- Then following the east boundary of US Highway 62 northward to the city limits of Floydada, TX
- Then following the Floydada city limits around the east and north sides of the city to the east side of US Highway 70
- Then following the east side of US Highway 70 northward to CR 232
- Then following the north side of CR 232 westward to the east side of CR 91
- Then following the east side of CR 91 northward until it joins and turns into FM 378
- Then following the east side of FM 378 northward to the southeastly city limits of Lockney, TX
- Then following the Lockney city limits around the east, north, and finally the west side of the city back to north side of US Highway 70
- Then following north side of US Highway 70 northwestward to the Floyd/Hale county line.
- Then following the westerly boundary of Floyd County northward to the beginning point, being the northwest corner of Floyd County

For the avoidance of doubt, this area specifically excludes the incorporated municipalities of Lockney and Floydada and that area within the boundaries of the Whirlwind Reinvestment Zone No. 2 as described in Exhibit A of Order 11-10-08 of the Commissioners Court of Floyd County, Texas Designating Reinvestment Zone.

Tab 16 (c) - Order Establishing Reinvestment Zone

**ORDER NO. 2013-11-03 OF THE COMMISSIONERS COURT
OF FLOYD COUNTY, TEXAS
DESIGNATING REINVESTMENT ZONE**

AN ORDER DESIGNATING A CERTAIN AREA AS FLOYD COUNTY WIND REINVESTMENT ZONE NO.1, FOR COMMERCIAL/INDUSTRIAL TAX ABATEMENT IN FLOYD COUNTY, TEXAS, ESTABLISHING THE BOUNDARIES THEREOF, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Commissioners Court of Floyd County, Texas desires to promote the development or redevelopment of a certain contiguous geographic area within its jurisdiction by the creation of a reinvestment zone as authorized by the Property Redevelopment and Tax Abatement Act, as amended (Texas Property Tax Code § 312.001, *et seq.*), and the Guidelines and Criteria of the Commissioners Court of Floyd County for Granting a Tax Abatement in a Reinvestment Zone Created in Floyd County, Texas (the "Guidelines"); and

WHEREAS, on March 11, 2013, a hearing before the Commissioners Court of Floyd County, Texas was held, such date being at least seven (7) days after the date of publication of the notice of such public hearing in the *Floyd County Hesperian Beacon* and the delivery of written notice to the respective presiding officers of each taxing entity that it includes within its boundaries real property that is to be included in the proposed reinvestment zone; and

WHEREAS, the Commissioners Court of Floyd County, Texas at such public hearing invited any interested person to appear and speak for or against the creation of the reinvestment zone and whether all or part of the territory described should be included in the proposed reinvestment zone; and

WHEREAS, the proponents of the reinvestment zone offered evidence, both oral and documentary, in favor of all of the foregoing matters relating to the creation of the reinvestment zone and opponents, if any, of the reinvestment zone appeared to contest the creation of the reinvestment zone.

BE IT RESOLVED BY THE COMMISSIONERS COURT OF FLOYD COUNTY, TEXAS:

SECTION 1. That the facts and recitations contained in the preamble of this Order are hereby found and declared to be true and correct.

SECTION 2. That the Commissioners Court of Floyd County, Texas, after conducting such hearing and having heard such evidence and testimony, has made the following findings and determinations based on the evidence and testimony presented to it:

- (a) That the public hearing on adoption of the Floyd County Wind Reinvestment Zone No. 1 has been properly called, held and conducted and that notice of such

Tab 16 (c) - Order Establishing Reinvestment Zone

hearing has been published as required by law and mailed to the respective presiding officers of the governing bodies of all taxing units overlapping the territory inside the proposed reinvestment zone; and

- (b) That the boundaries of the Floyd County Wind Reinvestment Zone No. 1 should be the area within the boundaries described in Exhibit "A" and as depicted in the plat map indicating the boundaries thereof, attached hereto as Exhibit "B," and incorporated herein by reference for all intents and purposes; and,
- (c) That creation of the Floyd County Wind Reinvestment Zone No. 1 with boundaries as described in Exhibit "A" and depicted in "B" will result in benefits to the Floyd County, Texas and to land included in the zone and that the improvements sought are feasible and practical; and
- (d) The Floyd County Wind Reinvestment Zone No. 1, as described in Exhibit "A" and depicted in Exhibit "B" meets the criteria set forth in Texas Property Tax Code Chapter 312 for the creation of a reinvestment zone as set forth in the Property Redevelopment and Tax Abatement Act, as amended, and the Guidelines, in that it is reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract investment in the zone that would be a benefit to the property and that would contribute to the economic development of Floyd County, Texas, and that the entire tract of land is located entirely within an unincorporated area of Floyd County, Texas.

SECTION 3. That pursuant to the Property Redevelopment and Tax Abatement Act, as amended, and the Guidelines, Floyd County Commissioner's Court hereby creates Floyd County Wind Reinvestment Zone No. 1; a reinvestment zone for commercial-industrial tax abatement encompassing only the area within the boundaries described in "Exhibit A" and that is depicted in the plat map thereof in Exhibit "B," and such reinvestment zone is hereby designated and shall hereafter be referred to as Floyd County Wind Reinvestment Zone No. 1.

SECTION 4. That Floyd County Wind Reinvestment Zone No. 1 shall take effect on March 11, 2013 and shall remain designated as a commercial-industrial reinvestment zone for a period of five (5) years from such date of designation, and may be renewed for an additional five (5) year period thereafter.

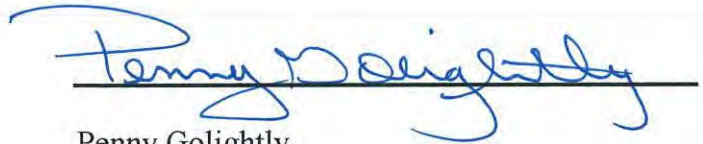
SECTION 5. That if any section, paragraph, clause or provision of this Order shall for any reason beheld to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Order.

SECTION 6. That it is hereby found, determined and declared that a sufficient notice of the date, hour, place and subject, of the meeting of the Floyd County Commissioners Court at which this Order was adopted was posted at a place convenient and readily accessible at all times

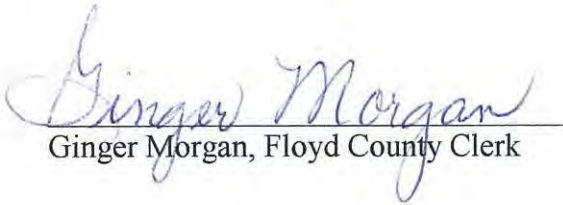
Tab 16 (c) - Order Establishing Reinvestment Zone

as required by the Texas Open Government Act, Texas Government Code, Chapter 551, as amended, and that a public hearing was held prior to the designation of such reinvestment zone and that proper notice of the hearing was published in the official newspaper of general circulation within the County, and furthermore, such notice was in fact delivered to the presiding officer of any affected taxing entity as prescribed by the Property Redevelopment and Tax Abatement Act.

PASSED, APPROVED AND ADOPTED on this 11th day of March, 2013.



Penny Golightly,
Floyd County Judge



Ginger Morgan, Floyd County Clerk

[COUNTY SEAL]

Tab 16 (d) - Guidelines & Criteria for Creating Reinvestment Zone

GUIDELINES AND CRITERIA GOVERNING TAX ABATEMENT FOR SELECTED TAXING UNITS CONTAINED WITHIN FLOYD COUNTY, TEXAS

SECTION I. General Purpose:

The Affected Jurisdictions located wholly within or partially within the County of Floyd, Texas, are committed to the promotion of high quality development in all parts of Floyd County, Texas; and to an ongoing improvement in the quality of life for the citizens residing within the Affected Jurisdictions. The Affected Jurisdictions recognize that these objectives are generally served by enhancement and expansion of the local economy. The Affected Jurisdictions will, on a case by case basis, give consideration to providing tax abatement, as authorized by V.T.C.A., Tax Code, Chapter 312, as stimulation for economic development within the Affected Jurisdictions. It is the policy of the Affected Jurisdictions that said consideration will be provided in accordance with the guidelines and criteria herein set forth and in conformity with the Tax Code.

Nothing contained herein shall imply, suggest or be understood to mean that the Affected Jurisdictions are under any obligation to provide tax abatement to any applicant and attention is called to V.T. C. A., Tax Code, Section 312.002(d). With the above rights reserved all applications for tax abatement will be considered on a case by case basis.

SECTION II. Definitions:

As used within these guidelines and criteria, the following words or phrases shall have the following meaning:

1. **Abatement of Taxes:** To exempt from ad valorem taxation all or part of the value of certain improvements placed on land located in a reinvestment zone designated for economic development purposes as of the date of execution of the Tax Abatement Agreement for a period of time not to exceed ten (10) years.
2. **Affected Jurisdiction:** The County of Floyd and any other governmental taxing unit located totally within or partially within the County of Floyd that has adopted these guidelines and criteria.
3. **Abatement Agreement:** (1) A contract between a property owner and an Affected Jurisdiction for the abatement of taxes on qualified property located within the reinvestment zone; or, (2) a contract for the abatement of taxes between an Affected Jurisdiction and a certified air carrier who owns or leases Real Property located within the reinvestment zone or Personal Property or both as authorized by V.T.C.A., Tax Code, Section 312.204(e)
4. **Base Year Value:** The assessed value of property eligible for tax abatement as of January 1 preceding the execution of an Abatement Agreement as herein defined.

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5. **Distribution Center Facility:** A building or structure including Tangible Personal Property used or to be used primarily to receive, store, service or distribute goods or materials.
6. **Expansion of Existing Facilities or Structures:** The addition of buildings, structures, machinery or equipment to a Facility after the date of execution of an Abatement Agreement.
7. **Existing Facility or Structure:** A facility as of the date of execution of the Tax Abatement Agreement, located in or on Real Property eligible for tax abatement.
8. **Facility:** The improvements made to Real Property eligible for tax abatement and including the building or structure erected on such Real Property and/or any Tangible Personal Property to be located in or on such property.
9. **Improvements to Real Property or Improvements:** Shall mean the construction, addition to, structural upgrading of, replacement of, or completion of any facility located upon, or to be located upon, Real Property, as herein defined, or any Tangible Personal Property placed in or on said Real Property.
10. **Manufacturing Facility:** A Facility which is or will be used for the primary purpose of the production of goods or materials or the processing or change of goods or materials to a finished product.
11. **Modernization of Existing Facilities:** The replacement or upgrading or existing facilities.
12. **New Facility:** The construction of a Facility on previously undeveloped real property eligible for tax abatement.
13. **New Permanent Job:** A new employment position created by a business that has provided employment to an employee of at least 1,820 hours annually and intended to be an employment position that exists during the life of the abatement. In the case of a seasonal industry, a new permanent job shall mean a apposition which provides employment to an employee of at least 36 hours per week during the season or seasons of business activity and intended to be an employment position that exists during each season of business activity during the life of the abatement.

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14. **Other Basic Industry:** A Facility other than a distribution center facility, a research facility, a regional service facility or a manufacturing facility which produces goods or services or which creates new or expanded job opportunities.
15. **Owner:** The record title owner of Real Property or the legal owner of Tangible Personal Property. In the case of land leased from an Affected Jurisdiction the lessee shall be deemed the owner of such leased property together with all improvements and Tangible Personal Property located thereon.
16. **Productive Life:** The number of years a Facility is expected to be in service.
17. **Real Property:** Land on which Improvements are to be made or fixtures placed.
18. **Regional Services Facility:** A Facility, the primary purpose of which is to service or repair goods or materials and which creates job opportunities within the Affected Jurisdictions.
19. **Reinvestment Zone:** Real Property designated as a Reinvestment Zone under the provisions of V.T.C.A., Tax Code, Section 312.202.
20. **Research Facility:** A Facility used or to be used primarily for research or experimentation to improve or develop new goods and/or services or to improve or develop the production process for such goods and/or services.
21. **Tangible Personal Property:** Any Personal Property, not otherwise defined herein and which is necessary for the proper operation of any type of Facility.

SECTION III. Intent of Criteria and Guidelines:

The Intent of the criteria and guidelines, as herein set forth, is to establish the minimum standards which an applicant for tax abatement must meet in order to be considered for such status by the Affected Jurisdictions.

SECTION IV. Criteria and Guidelines for Tax Abatement:

1. Any type of Facility will be eligible for tax abatement consideration provided such Facility meets the following guidelines and criteria:
2. To qualify for Tax Abatement, the company must modernize or expand an existing facility or construct a new facility.

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3. In addition to the aforementioned, the taxing jurisdiction will consider abatement if the company meets one of the following criteria:
 - a) The facility will conduct its primary business in one of the following target industries:
 - i) Value-added Agricultural Production including Food Processing and Machinery
 - ii) Warehouse Distribution
 - iii) Dairy Production
 - iv) Confined Cattle Feeding Operations
 - v) Tourism
 - vi) Hospitality
 - b) The project is not included as a target industry, but is expected to create a substantial economic impact on an Affected Jurisdiction or has the potential of generating additional significant economic development opportunities to Floyd County.
4. The project will significantly increase assessed valuation of real property and/or personal property, or will create new permanent jobs of substantial value to an Affected Jurisdiction.
5. New or existing facilities, of any type herein defined, located in a reinvestment zone or upon Real Property eligible for such status will be eligible for consideration for tax abatement status provided that all other criteria and guidelines are satisfied.
6. Improvements to Real Property are eligible for tax abatement status.
7. The following types of Property shall be ineligible for tax abatement status and shall be fully taxed
 - a) Real Property;
 - b) inventories or supplies;
 - c) dwelling units intended for lease passive income to the landlord; provided, however, that nursing homes, hotels and the like which include the provision of services as a substantial component of the enterprise are not hereby excluded from eligibility for tax abatement;
 - d) vehicles;
 - e) aircraft;
 - f) boats;
 - g) property owned by the State of Texas or any State agency; and,
 - h) property owned or leased by a member of the Affected Jurisdiction.
8. In order for a Facility to qualify for abatement, the following conditions must apply:

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- a) The owner or leaseholder must make eligible improvements to the property; and,
 - b) In the case of lessees the leaseholder must have a commitment at least equal to the term of the abatement agreement plus one year.
9. In reinvestment zones, the amount and term of abatement shall be determined on a case by case basis, however, in no event shall taxes be abated for a term in excess of ten (10) years. The amount of the taxable value of Improvements to be abated and the term of the abatement shall be determined by the municipality in all cases where the property for which tax abatement is applied for is within the City limits of a City or by the County of Floyd in all cases where the property for which tax abatement is applied for is outside of the City limits of a municipality, but within the County of Floyd, except that a reinvestment zone that is a state enterprise zone is designated for the same period as a state enterprise zone as provided by Chapter 2303, Government Code. The authority of all other taxing units shall be as set forth in V.T.C.A., Tax Code, Section 312.206.

In enterprise zones, the governing body of each taxing jurisdiction may execute a written agreement with the owner of the property not later than the 90th day after the date the municipal or county agreement, whichever is later. The agreement may, but is not required to, contain terms that are identical to those contained in the agreement with the municipality, county, or both, whichever applies, and the only terms for the agreement that may vary are the portion of the property that is to be exempt from taxation under the agreement and the duration of the agreement.

10. No property shall be eligible for tax abatement unless such property is located in a reinvestment zone in accordance with V.T. C. A., Tax Code, Section 312.202.
11. Notwithstanding any of the requirements set forth in Section 10, the governing body of an Affected Jurisdiction upon the affirmative vote of three-fourths (3/4) of its members may vary any of the above requirements when it is demonstrated by the applicant for Tax Abatement that variation is in the best interest of the Affected Jurisdiction and will enhance the economic development of the Affected Jurisdiction. By way of example only and not by imitation the governing body of an Affected Jurisdiction may consider the following or similar terms in determining whether a variance shall be granted:
 - a) That the increase in productivity of the Facility will be substantial and hence directly benefit the economy.
 - b) That the increase of goods or services produced by the Facility will be substantial and directly benefit the economy.
 - c) That the employment maintained at the Facility will be increased.
 - d) That the waiver of the requirement will contribute and provide for the retention of existing jobs within the Affected Jurisdiction.
 - e) That the applicant for tax abatement has demonstrated that if tax abatement is granted to his Facility even though his Facility will not employ additional personnel, nevertheless due to the existence of said Facility new jobs will be created as a direct result of his Facility in other facilities located within the Affected Jurisdiction.

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- f) Any other evidence tending to show a direct economic benefit to the Affected Jurisdiction.

12. Taxability:

- a) The portion of the value of Improvements to be abated shall be abated in accordance with the terms and provisions of a Tax Abatement Agreement executed between the Affected Jurisdiction and the owner of the Real Property and/or Tangible Personal Property, (which agreement shall be) in accord with the provisions of V.T. C. A., Tax Code, Section 312.205.
- b) All ineligible property, if otherwise taxable as herein described, shall be fully taxed.

13. The governing body of each Affected Jurisdiction shall have total discretion as to whether tax abatement is to be granted. Such discretion, as herein retained, shall be exercised on a case by case basis. The adoption of these guidelines and criteria by the governing body of an Affected Jurisdiction does not:

- a) Limit the discretion of the governing body to decide whether to enter into a specific tax abatement agreement;
- b) Limit the discretion of the governing body to delegate to its employees the authority to determine whether or not the governing body should consider a particular application or request for tax abatement; or,
- c) Create any property, contract, or other legal right in any person to have the governing body consider or grant a specific application or request for tax abatement.

14. The burden to demonstrate that an application for tax abatement should be granted shall be upon the applicant. Each Affected Jurisdiction to which the application has been directed shall have full authority to request any additional information from the applicant that the governing body of such Affected Jurisdiction deems necessary to assist it in considering such application.

SECTION V. Criteria and Guidelines for Creation of Reinvestment Zone:

- 1. No property shall be eligible for tax abatement unless such property is located in a reinvestment zone designated as such as in accordance with V.T.C.A., Tax Code, Section 312.202. To be designated as a reinvestment zone an area must:
 - a) Substantially arrest or impair the sound growth of the municipality or county creating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:
 - 1. a substantial number of substandard, slum, deteriorated, or deteriorating structures;
 - 2. the predominance of defective or inadequate sidewalks or streets;
 - 3. faulty size, adequacy, accessibility or usefulness of lots;
 - 4. unsanitary or unsafe conditions;

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5. the deterioration of site or other improvements;
 6. tax or special assessment delinquency exceeding the fair value of the land;
 7. defective or unusual conditions of title;
 8. conditions that endanger life or property by fire or other cause; or
 9. any combination of these factors;
- b) Be predominantly open and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality;
- c) Be in a federally assisted new community located in a home rule municipality or in an area immediately adjacent to a federally assisted new community located in a home rule municipality;
- d) Be located entirely in an area that meets the requirements for federal assistance under Section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5318);
- e) Encompass signs, billboards, or other outdoor advertising structures designated by the governing body of the municipality for relocation, reconstruction, or removal for the purpose of enhancing the physical environment of the municipality, which the legislature declares to be a public purpose; or,
- f) Be reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the municipality.
2. For purposes of this Section, federally assisted new community is a federally assisted area:
- a) That has received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act (12 U.S.C., Section 1749aa et seq); and,
 - b) A portion of which has received grants under Section 107 (a) (1) of the Housing and Community Development Act of 1974, as amended.
3. The governing body of a municipality, as required by Section 312.201, or a county as required by V.T.C.A., Tax Code, Section 312.401, shall hold a public hearing on the designation of an area within its jurisdiction as a reinvestment zone. The burden shall be on the owner of the property sought to be included in the zone or applicant for the creation of the reinvestment zone to establish the following:
- a) That the requirements of Subsection 1 of this Section have been met; and
 - b) That the improvements sought are feasible and practical.

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4. No later than the seventh day before the date set for the above public hearing notice of such hearing shall be:
 - a) Published in a newspaper having general circulation in the Affected Jurisdiction; and
 - b) Delivered in writing to the presiding officer of the governing body of each taxing unit that includes in its boundaries Real Property that is to be included in the reinvestment zone.
5. At the public hearing above described in Subsection 3 above, any interested person is entitled to speak and present evidence for or against the designation of such reinvestment zone.
6. At the conclusion of the hearing described in Subparagraph 3 above, the governing body shall enter its findings as follows:
 - a) That the applicant or owner has or has not met his burden as hereinabove set forth, and/or,
 - b) That the improvements sought are or are not feasible and practical.
 - c) That the proposed improvements sought will or will not be a benefit to the land to be included in the reinvestment zone and to the Affected Jurisdiction after the expiration of an agreement entered into under V.T.C.A., Tax Code, Section 312.204.
7. An application for the creation of a reinvestment zone shall not be granted unless the Affected Jurisdiction considering such application enters affirmative findings to Subparagraphs a, b, and c of Subsection 6 above set forth.
8. At the conclusion of the public hearing herein required and upon the affirmative finding of the governing body as required by Subsection 7 above set forth, the governing body may designate a reinvestment zone in accordance with the provisions of V.T.C.A., Tax Code, Sections 312.201 or 312.401, whichever Section shall be applicable to the premises.
9. The designation of a reinvestment zone expires five years after the date of the designation and may be renewed for periods not to exceed five years, except that a reinvestment zone that is a state enterprise zone as provided by Chapter 2303, Government Code. The expiration of the designation does not affect an existing tax abatement agreement made in accordance with V.T.C.A., Tax Code, Section 312.201 through Section 312.209.
10. Designation of an area as an enterprise zone under the Texas Enterprise Zone Act, Chapter 2303, Subchapter C, Texas Government code, constitutes designation of the area as a reinvestment zone under Subchapter B of the Property Redevelopment and Tax Abatement Act without further hearing or other procedural requirements other than those

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provided by the Texas Enterprise Zone Act, Chapter 2303 Subchapter C, Texas Government Code.

SECTION VI. Tax Abatement Agreement:

1. After the creation of a reinvestment zone as hereinabove authorized a Tax Abatement Agreement may be executed between the owner and any Affected Jurisdiction. A Tax Abatement Agreement shall:
 - a) Establish and set forth the Base Year assessed value of the property for which tax abatement is sought.
 - b) Provide that the taxes paid on the base year assessed value shall not be abated as a result of the execution of said Tax Abatement Agreement.
 - c) Provide that ineligible property as subscribed in Section IV, Subsection 6, hereinabove shall be fully taxed.
 - d) Provide for the exemption of Improvements in each year covered by the agreement only to the extent the value of such improvements for each such year exceeds the value for the year in which the agreement is executed.
 - e) Fully describe and list the kind, number and location of all of the improvements to be made in or on the Real Property.
 - f) Set forth the estimated value of all improvements to be made in or on the Real Property.
 - g) Clearly provide that tax abatement shall be granted only to the extent:
 1. The Improvements to Real Property increase the value of the Real Property for the year in which the Tax Abatement Agreement is executed; and
 2. That the Tangible Personal Property improvements to Real Property were not located on the Real Property prior to the execution of the Tax Abatement Agreement.
 - h) Provide for the portion of the value of the improvements to Real Property or improvements to be abated. This determination is to be made consistent with the provisions of Section IV, Subsection 6, of these guidelines and criteria as hereinabove set forth.

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- i) Provide for the commencement date and the termination date. In no event shall said dates exceed a period of ten years.
- j) Describe the type and proposed use of the improvements to Real Property or improvements including:
 - 1. The type of facility.
 - 2. Whether the improvements are for a new facility, modernization of a facility, or expansion of a facility.
 - 3. The nature of the construction, proposed time table of completion, a map or drawings of the improvements above mentioned.
 - 4. The amount of investment and the commitment for the creation of new jobs.
 - 5. A list containing the kind, number and location of all proposed Improvements.
 - 6. Any other information required by the Affected Jurisdiction.
- k) Provide a legal description of the Real Property upon which improvements are to be made.
- l) Provide access to and authorize inspection of the Real Property or improvements by employees of the Affected Jurisdiction, who have executed a Tax Abatement Agreement with owner to insure improvements are made according to the specifications and conditions of the Tax Abatement Agreement.
- m) Provide for the limitation of the uses of the Real Property or improvements consistent with the general purpose of encouraging development or redevelopment of the zone during the period covered by the Tax Abatement Agreement.
- n) Provide the contractual obligations in the event of default by owner, violation of the terms or conditions by owner, recapturing property tax revenue in the event owner defaults or otherwise fails to make improvements as provided in said Tax Abatement Agreement, and any other provision as may be required or authorized by State Law.

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- o) Contain each term agreed to by the owner of the property.
 - p) Require the owner of the property to certify annually to the governing body of each taxing unit that the owner is in compliance with each applicable term of the agreement.
 - q) Provide that the governing body of the municipality may cancel or modify the agreement if the property owner fails to comply with agreement.
- 2. Not later than the seventh day before a municipality or the County of Floyd (as required by V.T.C.A., Tax Code 312.2041 or Section 312.402) enters into an agreement for tax abatement under V.T.C.A., Tax Code, Section 312.204, the governing body of a municipality or a designated officer or employee thereof or the governing body of the County of Floyd or a designated officer or employee thereof shall deliver to the presiding officer of the governing body of each of the taxing units in which the property to be subject to the agreement is located, a written notice that the municipality or the County of Floyd as the case may be, intends to enter into the agreement. The notice must include a copy of the proposed Tax Abatement Agreement.
- 3. A notice, as above described in Subparagraph 2, is presumed delivered when placed in the mail, postage paid and properly addressed to the appropriate presiding officer. A notice properly addressed and sent by registered or certified mail for which a return receipt is received by the sender is considered to have been delivered to the addressee.
- 4. Failure to deliver the notice does not affect the validity of the agreement.

SECTION VII. Application:

- 1. Any present owner or lessee of taxable property located within an Affected Jurisdiction may apply for tax abatement by filing an application with the County of Floyd, when the Real Property or Tangible Personal Property for which abatement is sought is located within the County of Floyd but outside of the City limits of any City or with the appropriate City when the Real Property or Tangible Personal Property for which abatement is sought is located within the City limits of a municipality located wholly or partially within Floyd County.
- 2. The application shall consist of a completed application form accompanied by:
 - a) A general description of the improvements to be undertaken.

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- b) A descriptive list of the improvements for which tax abatement is requested.
- c) A list of the kind, number and location of all proposed improvements of the Real Property Facility or Existing Facility.
- d) A map indicating the approximate location of improvements on the Real Property Facility or Existing Facility together with the location of any or all Existing Facilities located on the Real Property or Facility.
- e) A list of any and all Tangible Personal Property presently existing on the Real Property or located in an existing facility.
- f) A proposed time schedule for undertaking and completing the proposed improvements.
- g) A general description stating whether the proposed improvements are in connection with:
 - 1. the modernization of a facility (of any type herein defined); or,
 - 2. construction of a new facility (of any type herein defined); or,
 - 3. expansion of a facility (of any type herein defined); or,
 - 4. any combination of the above.
- h) A statement of the additional value to the Real Property or Facility as a result of the proposed improvements.
- i) A statement of the assessed value of the Real Property, Facility or Existing Facility for the Base Year.
- j) Information concerning the number of new jobs that will be created or information concerning the number of existing jobs to be retained as result of the improvements undertaken.

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- k) Any other information which the Affected Jurisdiction, to which the application has been directed, deems appropriate for evaluating the financial capacity of the applicant and compatibility of the proposed improvements with these guidelines and criteria.
- l) Information that is provided to an Affected Jurisdiction in connection with an application or request for tax abatement and which describes the specific processes or business activity to be conducted or the equipment or other property to be located on the property for which tax abatement is sought is confidential and not subject to public disclosure until the Tax Abatement Agreement is executed. Information in the custody of an Affected Jurisdiction after the agreement is executed is not confidential. (V.T.C.A., Tax Code, Section 312.003)
- m) The Affected Jurisdiction to which the application for tax abatement has been directed shall determine if the property described in said application is within a designated reinvestment zone. If the Affected Jurisdiction determines that the property described is not within a current reinvestment zone then they shall so notify the applicant and said applicant shall then be considered both as an application for the creation of a reinvestment zone and a request for tax abatement to be effective after the zone is created.

SECTION VIII. Recapture:

1. In the event that any type of facility, (as defined in Section II, Subparagraphs 5, 6, 7, 8, 10, 1, 12, 14, 18, 20) is completed and begins producing goods or services, but subsequently discontinues producing goods or services for any reason, excepting fire, explosion, other casualty accident, natural disaster or other event beyond the reasonable control of applicant or owner, including the inability to produce energy due to the lack of wind energy for a period of 180 consecutive days during the term of a tax abatement agreement, then in such even the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within (60) days of the date of termination. The burden shall be upon the applicant or owner to prove to the satisfaction of the Affected Jurisdiction to which the application for tax abatement was directed that the discontinuance of producing goods or services was as a result of fire, explosion, other casualty accident, natural disaster or other event beyond the control of applicant or owner. In the event that applicant or owner meets this burden and the Affected Jurisdiction is satisfied that the discontinuance of the production of goods or services was the result of events beyond the control of the applicant or owner, then such applicant or owner shall have a period of one year, then the Tax Abatement Agreement shall terminate and the Abatement of all taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to each Affected Jurisdiction by no later

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than January 31st of the following year. Taxes abated in years prior to the date of termination shall be payable to each Affected Jurisdiction within sixty (60) days of the date of termination. The one year time period, hereinabove mentioned, shall commence upon written notification from the Affected Jurisdiction to the applicant or owner.

2. In the event that the applicant or owner has entered into a tax abatement agreement to make improvements to a facility of any type described in Section 1 above, but fails to undertake or complete such improvements, then in such event the Affected Jurisdiction to whom the application for tax abatement was directed shall give the applicant or owner sixty (60) days notice of such failure. The applicant or owner shall demonstrate to the satisfaction of the Affected Jurisdiction, above mentioned, that the applicant or owner has commenced to cure such failure within the sixty (60) days above mentioned. In the event that the applicant or owner fails to demonstrate that he is taking affirmative action to cure his failure, then in such event the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within sixty (60) days of the date of termination.
3. In the event that the Affected Jurisdiction to which the application for tax abatement was directed determines that the applicant or owner is in default of any of the terms or conditions contained in the Tax Abatement Agreement, then in such event the Affected Jurisdiction, shall give the applicant or owner sixty (60) days written notice to cure such default. In the event such default is not cured to the satisfaction of the Affected Jurisdiction within the sixty (60) days notice period, then the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate, however, where fulfillment of any obligation requires more than sixty (60) days, performance shall be commenced within sixty (60) days after receipt of the notice and such performance shall be diligently continued until the default is cured; provided, however, that if such default is not cured within one hundred and fifty (150) days from the date of such notice of default from the Affected Jurisdiction, the failure to cure such default shall constitute a default hereunder. Taxes abated during the calendar year in which termination takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year.
4. In the event that the applicant or owner allows ad valorem taxes on property ineligible for tax abatement owed to any Affected Jurisdiction, to become delinquent and fails to timely and properly follow the legal procedures for their protest or contest, then in such event the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination, under this subparagraph, takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year.

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5. In the event that the applicant or owner, who has executed a tax abatement agreement with Affected Jurisdiction, relocates the business for which tax abatement has been granted, to a location outside of the designated reinvestment zone, then in such event, the Tax Abatement Agreement shall terminate after sixty (60) days written notice by the Affected Jurisdiction to the Owner/Applicant. Taxes abated during the calendar year in which termination, under this subparagraph takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within sixty (60) days of the date of termination.
6. The date of termination as that term is used in this Subsection VIII shall, in every instance, be the 60th day or the 150th day, if applicable, as described in Section VIII(3) after the day the Affected Jurisdiction sends notice of default, in the mail to the address shown in the Tax Abatement Agreement to the Applicant or Owner. Should the default be cured by the owner or Applicant within the sixty (60) day notice period, the Owner/Applicant shall be responsible for so advising the Affected Jurisdiction and obtaining a release from the notice of default from the Affected Jurisdiction, failing in which, the abatement remains terminated and the abated taxes must be paid.
7. In every case of termination set forth in Subparagraphs 1, 2, 3, 4 and 5 above, the Affected Jurisdiction to which the application for tax abatement was directed shall determine whether default has occurred by Owner (Applicant) in the terms and conditions of the Tax Abatement Agreement and shall so notify all other Affected Jurisdictions.

SECTION IX. Miscellaneous:

1. Any notice required to be given by these criteria or guidelines shall be given in the following manner:
 - a) To the owner or applicant: written notice shall be sent to the address appearing on the Tax Abatement Agreement.
 - b) To an Affected Jurisdiction: written notice shall be sent to the address appearing on the Tax Abatement Agreement.
2. The Chief Appraiser of the Floyd County Central Appraisal District shall annually assess the Real and Personal Property comprising the reinvestment zone. Each year, the applicant or owner receiving tax abatement shall furnish the Chief Appraiser with such information as may be necessary for the abatement. Once value has been established, the Chief Appraiser shall notify the Affected Jurisdictions which levy taxes of the amount of assessment.

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3. Upon the completion of improvements made to any type of Facility as set forth in Section VIII, Subparagraph 1 of these criteria and guidelines a designated employee or employees of any Affected Jurisdiction having executed a tax abatement agreement with applicant or owner shall have access to the Facility to insure compliance with the Tax Abatement Agreement.
4. A tax abatement agreement may be assigned, in whole or in part, to a new owner but only after written consent has been obtained from all Affected Jurisdictions which have executed an agreement with the applicant or owner, however, assignment may be made with or without the consent in the context of financing the facility or in the case of a transfer to an entity that has equal or greater financial strength than the Owner.
5. These guidelines and criteria are effective upon the date of their adoption by an Affected Jurisdiction and shall remain in force for two years. At the end of the two year period these guidelines and criteria may be readopted, modified, amended or rewritten as the conditions may warrant.
6. Each Affected Jurisdiction shall determine whether or not said Affected Jurisdiction elects by resolution to become eligible to participate in tax abatement, then such Affected Jurisdiction shall adopt these guidelines and criteria by separate resolution forwarding a copy of both resolutions to all other Affected Jurisdictions.
7. In the event of a conflict between these guidelines and criteria and V.T.C.A., Tax Code, Chapter 312, then in such event the Tax Code shall prevail and these guidelines and criteria interpreted accordingly.
8. The guidelines and criteria once adopted by an Affected Jurisdiction may be amended or repealed by a vote of three-fourths of the members of the governing body of an Affected Jurisdiction during the two year term in which these guidelines and criteria are effective.

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SECTION X. Road Maintenance :

- 1. During construction of the Improvements, Owner agrees to use commercially reasonable efforts to minimize the disruption to County roads by Owner or its agents during the construction period.**
- 2. After construction, Owner will leave such County roads in a state of equal or better condition than they were prior to construction, excepting normal wear and tear.**

Tab 17

Signature and Certification page

See page 8 of the application form 50-296-A (Tab 1)

SECTION 16: Authorized Signatures and Applicant Certification

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

1. Authorized School District Representative Signature

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

print here Gilbert Trevino
Print Name (Authorized School District Representative)

Superintendent
Title

sign here 
Signature (Authorized School District Representative)

2/11/16
Date

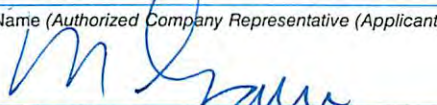
2. Authorized Company Representative (Applicant) Signature and Notarization

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

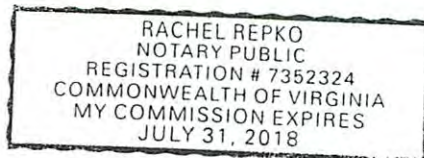
I hereby certify and affirm that the business entity I represent is in good standing under the laws of the state in which the business entity was organized and that no delinquent taxes are owed to the State of Texas.

Old Settler Wind, LLC, by Cotton Plains Holdings, LLC its Sole Member, by Apex GCL, LLC, its Sole Member, by Apex Clean Energy Holdings, LLC, its Sole Member
print here Mark Goodwin
Print Name (Authorized Company Representative (Applicant))

President
Title

sign here 
Signature (Authorized Company Representative (Applicant))

February 11, 2016
Date



(Notary Seal)

GIVEN under my hand and seal of office this, the

11th day of February, 2016


Notary Public in and for the State of Texas Virginia

My Commission expires: 7/31/18

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



Franchise Tax Account Status

As of: 03/16/2016 10:14:57 AM

This Page is Not Sufficient for Filings with the Secretary of State

OLD SETTLER WIND, LLC	
Texas Taxpayer Number	32058265235
Mailing Address	206 E 9TH ST STE 1300 AUSTIN, TX 78701-4411
Right to Transact Business in Texas	ACTIVE
State of Formation	DE
Effective SOS Registration Date	09/10/2015
Texas SOS File Number	0802290379
Registered Agent Name	NATIONAL CORPORATE RESEARCH, LTD.
Registered Office Street Address	206 E. 9TH STREET, SUITE 1300 AUSTIN, TX 78701



GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

P.O.Box 13528 • Austin, TX 78711-3528

March 9, 2016

Gilbert Trevino
Superintendent
Floydada Independent School District
226 W. California Street
Floydada, Texas 79235

Dear Superintendent Trevino:

On February 24, 2016, the Comptroller issued written notice that Old Settler Wind, LLC (the applicant) submitted a completed application (Application #1124) for a limitation on appraised value under the provisions of Tax Code Chapter 313¹. This application was originally submitted on February 11, 2016, to the Floydada Independent School District (the school district) by the applicant.

This presents the results of the Comptroller's review of the application and determinations required:

- 1) under Section 313.025(h) to determine if the property meets the requirements of Section 313.024 for eligibility for a limitation on appraised value under Chapter 313, Subchapter C; and
- 2) under Section 313.025(d), to issue a certificate for a limitation on appraised value of the property and provide the certificate to the governing body of the school district or provide the governing body a written explanation of the comptroller's decision not to issue a certificate, using the criteria set out in Section 313.026.

Determination required by 313.025(h)

Sec. 313.024(a)	Applicant is subject to tax imposed by Chapter 171.
Sec. 313.024(b)	Applicant is proposing to use the property for an eligible project.
Sec. 313.024(d)	Applicant has requested a waiver to create the required number of new qualifying jobs and pay all jobs created that are not qualifying jobs a wage that exceeds the county average weekly wage for all jobs in the county where the jobs are located.
Sec. 313.024(d-2)	Not applicable to Application #1124.

Based on the information provided by the applicant, the Comptroller has determined that the property meets the requirements of Section 313.024 for eligibility for a limitation on appraised value under Chapter 313, Subchapter C.

¹ All statutory references are to the Texas Tax Code, unless otherwise noted.

Certificate decision required by 313.025(d)

Determination required by 313.026(c)(1)

The Comptroller has determined that the project proposed by the applicant is reasonably likely to generate tax revenue in an amount sufficient to offset the school district maintenance and operations ad valorem tax revenue lost as a result of the agreement before the 25th anniversary of the beginning of the limitation period. See Attachment B.

Determination required by 313.026(c)(2)

The Comptroller has determined that the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in this state. See Attachment C.

Based on these determinations, the Comptroller issues a certificate for a limitation on appraised value. This certificate is contingent on the school district's receipt and acceptance of the Texas Education Agency's determination per 313.025(b-1).

The Comptroller's review of the application assumes the accuracy and completeness of the statements in the application. If the application is approved by the school district, the applicant shall perform according to the provisions of the Texas Economic Development Act Agreement (Form 50-826) executed with the school district. The school district shall comply with and enforce the stipulations, provisions, terms, and conditions of the agreement, applicable Texas Administrative Code and Chapter 313, per TAC 9.1054(i)(3).

This certificate is no longer valid if the application is modified, the information presented in the application changes, or the limitation agreement does not conform to the application. Additionally, this certificate is contingent on the school district approving and executing the agreement by December 31, 2016.

Note that any building or improvement existing as of the application review start date of February 24, 2016, or any tangible personal property placed in service prior to that date may not become "Qualified Property" as defined by 313.021(2) and the Texas Administrative Code.

Should you have any questions, please contact Korry Castillo, Director, Data Analysis & Transparency, by email at korry.castillo@cpa.texas.gov or by phone at 1-800-531-5441, ext. 3-3806, or direct in Austin at 512-463-3806.

Sincerely,



Mike Reissig
Deputy Comptroller

Enclosure

cc: Korry Castillo

Attachment A – Economic Impact Analysis

The following tables summarize the Comptroller’s economic impact analysis of Old Settler Wind, LLC (the project) applying to Floydada Independent School District (the district), as required by Tax Code, 313.026 and Texas Administrative Code 9.1055(d)(2).

Table 1 is a summary of investment, employment and tax impact of Old Settler Wind, LLC.

Applicant	OLD SETTLER WIND, LLC
Tax Code, 313.024 Eligibility Category	Renewable Energy Electric Generation
School District	Floydada ISD
2011-12 Enrollment in School District	696
County	Floyd
Proposed Total Investment in District	\$205,500,000
Proposed Qualified Investment	\$205,500,000
Limitation Amount	\$20,000,000
Number of new qualifying jobs committed to by applicant	5*
Number of new non-qualifying jobs estimated by applicant	0
Average weekly wage of qualifying jobs committed to by applicant	\$737
Minimum weekly wage required for each qualifying job by Tax Code, 313.021(5)(B)	\$737
Minimum annual wage committed to by applicant for qualified jobs	\$38,318
Minimum weekly wage required for non-qualifying jobs	\$637
Minimum annual wage required for non-qualifying jobs	\$33,111
Investment per Qualifying Job	\$40,500,000
Estimated M&O levy without any limit (15 years)	\$24,166,350
Estimated M&O levy with Limitation (15 years)	\$8,026,200
Estimated gross M&O tax benefit (15 years)	\$16,140,150
* Applicant is requesting district to waive requirement to create minimum number of qualifying jobs pursuant to Tax Code, 313.025 (f-1).	

Table 2 is the estimated statewide economic impact of Old Settler Wind, LLC (modeled).

Year	Employment			Personal Income			Revenue & Expenditure		
	Direct	Indirect + Induced	Total	Direct	Indirect + Induced	Total	Revenue	Expenditure	Net Tax Effect
2015	0	0	0	\$0	\$0	\$0	0	0	\$0
2016	125	118	243.164	\$6,191,590	\$8,578,918	\$14,770,508	808716	-427246	\$1,235,962
2017	5	17	22	\$191,590	\$2,127,746	\$2,319,336	144958	160217	-\$15,259
2018	5	13	18	\$191,590	\$1,639,465	\$1,831,055	114441	160217	-\$45,776
2019	5	9	14	\$191,590	\$1,151,183	\$1,342,773	122070	175476	-\$53,406
2020	5	9	14	\$191,590	\$1,639,465	\$1,831,055	122070	160217	-\$38,147
2021	5	11	16	\$191,590	\$1,151,183	\$1,342,773	122070	144958	-\$22,888
2022	5	9	14	\$191,590	\$1,151,183	\$1,342,773	106812	144958	-\$38,146
2023	5	9	14	\$191,590	\$1,151,183	\$1,342,773	106812	137329	-\$30,517
2024	5	9	14	\$191,590	\$1,273,254	\$1,464,844	152588	114441	\$38,147
2025	5	15	20	\$191,590	\$1,273,254	\$1,464,844	152588	114441	\$38,147
2026	5	11	16	\$191,590	\$1,395,324	\$1,586,914	183105	114441	\$68,664
2027	5	11	16	\$191,590	\$1,029,113	\$1,220,703	152588	99182	\$53,406
2028	5	11	16	\$191,590	\$1,029,113	\$1,220,703	160217	83923	\$76,294
2029	5	7	12	\$191,590	\$1,273,254	\$1,464,844	160217	114441	\$45,776
2030	5	7	12	\$191,590	\$784,973	\$976,563	122070	68665	\$53,405

Source: CPA, REMI, Old Settler Wind, LLC

Table 3 examines the estimated direct impact on ad valorem taxes to the region if all taxes are assessed.

Year	Estimated Taxable Value for I&S	Estimated Taxable Value for M&O		Floydada ISD I&S Tax Levy	Floydada ISD M&O Tax Levy	Floydada ISD M&O and I&S Tax Levies	Floyd County Tax Levy	Caprock Hospital Dist Tax Levy	High Plains UWCD #1 Tax Levy	Estimated Total Property Taxes
			Tax Rate ¹	0.1367	1.1700		0.6650	0.1406	0.0080	
2017	\$194,400,000	\$194,400,000		\$265,725	\$2,274,480	\$2,540,205	\$1,292,760	\$273,326	\$15,603	\$4,121,894
2018	\$186,300,000	\$186,300,000		\$254,653	\$2,179,710	\$2,434,363	\$1,238,895	\$261,938	\$14,952	\$3,950,149
2019	\$178,200,000	\$178,200,000		\$243,582	\$2,084,940	\$2,328,522	\$1,185,030	\$250,549	\$14,302	\$3,778,403
2020	\$170,100,000	\$170,100,000		\$232,510	\$1,990,170	\$2,222,680	\$1,131,165	\$239,161	\$13,652	\$3,606,658
2021	\$162,000,000	\$162,000,000		\$221,438	\$1,895,400	\$2,116,838	\$1,077,300	\$227,772	\$13,002	\$3,434,912
2022	\$153,900,000	\$153,900,000		\$210,366	\$1,800,630	\$2,010,996	\$1,023,435	\$216,383	\$12,352	\$3,263,166
2023	\$145,800,000	\$145,800,000		\$199,294	\$1,705,860	\$1,905,154	\$969,570	\$204,995	\$11,702	\$3,091,421
2024	\$137,700,000	\$137,700,000		\$188,222	\$1,611,090	\$1,799,312	\$915,705	\$193,606	\$11,052	\$2,919,675
2025	\$129,600,000	\$129,600,000		\$177,150	\$1,516,320	\$1,693,470	\$861,840	\$182,218	\$10,402	\$2,747,930
2026	\$121,500,000	\$121,500,000		\$166,078	\$1,421,550	\$1,587,628	\$807,975	\$170,829	\$9,752	\$2,576,184
2027	\$113,400,000	\$113,400,000		\$155,006	\$1,326,780	\$1,481,786	\$754,110	\$159,440	\$9,101	\$2,404,438
2028	\$105,300,000	\$105,300,000		\$143,935	\$1,232,010	\$1,375,945	\$700,245	\$148,052	\$8,451	\$2,232,693
2029	\$97,200,000	\$97,200,000		\$132,863	\$1,137,240	\$1,270,103	\$646,380	\$136,663	\$7,801	\$2,060,947
2030	\$89,100,000	\$89,100,000		\$121,791	\$1,042,470	\$1,164,261	\$592,515	\$125,275	\$7,151	\$1,889,202
2031	\$81,000,000	\$81,000,000		\$110,719	\$947,700	\$1,058,419	\$538,650	\$113,886	\$6,501	\$1,717,456
					Total	\$26,989,682	\$13,735,575	\$2,904,093	\$165,777	\$43,795,127

Source: CPA, Old Settler Wind, LLC

¹Tax Rate per \$100 Valuation

Table 4 examines the estimated direct impact on ad valorem taxes to the school district and Floyd County, with all property tax incentives sought being granted using estimated market value from the application. The project has applied for a value limitation under Chapter 313, Tax Code and tax abatement with the county.

The difference noted in the last line is the difference between the totals in Table 3 and Table 4.

Year	Estimated Taxable Value for I&S	Estimated Taxable Value for M&O		Floydada ISD I&S Tax Levy	Floydada ISD M&O Tax Levy	Floydada ISD M&O and I&S Tax Levies	Floyd County Tax Levy	Caprock Hospital Dist Tax Levy	High Plains UWCD #1 Tax Levy	Estimated Total Property Taxes	
			Tax Rate ¹	0.1367	1.1700		0.6650	0.1406	0.0080		
2017	\$194,400,000	\$20,000,000		\$265,725	\$234,000	\$499,725	\$491,249	\$273,326	\$15,603	\$1,279,903	
2018	\$186,300,000	\$20,000,000		\$254,653	\$234,000	\$488,653	\$470,780	\$261,938	\$14,952	\$1,236,324	
2019	\$178,200,000	\$20,000,000		\$243,582	\$234,000	\$477,582	\$450,311	\$250,549	\$14,302	\$1,192,745	
2020	\$170,100,000	\$20,000,000		\$232,510	\$234,000	\$466,510	\$429,843	\$239,161	\$13,652	\$1,149,165	
2021	\$162,000,000	\$20,000,000		\$221,438	\$234,000	\$455,438	\$409,374	\$227,772	\$13,002	\$1,105,586	
2022	\$153,900,000	\$20,000,000		\$210,366	\$234,000	\$444,366	\$388,905	\$216,383	\$12,352	\$1,062,007	
2023	\$145,800,000	\$20,000,000		\$199,294	\$234,000	\$433,294	\$368,437	\$204,995	\$11,702	\$1,018,427	
2024	\$137,700,000	\$20,000,000		\$188,222	\$234,000	\$422,222	\$347,968	\$193,606	\$11,052	\$974,848	
2025	\$129,600,000	\$20,000,000		\$177,150	\$234,000	\$411,150	\$327,499	\$182,218	\$10,402	\$931,269	
2026	\$121,500,000	\$20,000,000		\$166,078	\$234,000	\$400,078	\$307,031	\$170,829	\$9,752	\$887,689	
2027	\$113,400,000	\$113,400,000		\$155,006	\$1,326,780	\$1,481,786	\$754,110	\$159,440	\$9,101	\$2,404,438	
2028	\$105,300,000	\$105,300,000		\$143,935	\$1,232,010	\$1,375,945	\$700,245	\$148,052	\$8,451	\$2,232,693	
2029	\$97,200,000	\$97,200,000		\$132,863	\$1,137,240	\$1,270,103	\$646,380	\$136,663	\$7,801	\$2,060,947	
2030	\$89,100,000	\$89,100,000		\$121,791	\$1,042,470	\$1,164,261	\$592,515	\$125,275	\$7,151	\$1,889,202	
2031	\$81,000,000	\$81,000,000		\$110,719	\$947,700	\$1,058,419	\$538,650	\$113,886	\$6,501	\$1,717,456	
						Total	\$10,849,532	\$7,223,297	\$2,904,093	\$165,777	\$21,142,698
						Difference	\$16,140,150	\$6,512,279	\$0	\$0	\$22,652,429

Source: CPA, Old Settler Wind, LLC

¹Tax Rate per \$100 Valuation

Disclaimer: This examination is based on information from the application submitted to the school district and forwarded to the comptroller. It is intended to meet the statutory requirement of Chapter 313 of the Tax Code and is not intended for any other purpose.

Attachment B – Tax Revenue over 25 Years

This represents the Comptroller's determination that Old Settler Wind, LLC (project) is reasonably likely to generate, before the 25th anniversary of the beginning of the limitation period, tax revenue in an amount sufficient to offset the school district maintenance and operations ad valorem tax revenue lost as a result of the agreement. This evaluation is based on an analysis of the estimated M&O portion of the school district property tax levy and direct, indirect and induced tax effects from project employment directly related to this project, using estimated taxable values provided in the application.

	Tax Year	Estimated ISD M&O Tax Levy Generated (Annual)	Estimated ISD M&O Tax Levy Generated (Cumulative)	Estimated ISD M&O Tax Levy Loss as Result of Agreement (Annual)	Estimated ISD M&O Tax Levy Loss as Result of Agreement (Cumulative)
Limitation Pre-Years	2014	\$0	\$0	\$0	\$0
	2015	\$0	\$0	\$0	\$0
	2016	\$0	\$0	\$0	\$0
Limitation Period (10 Years)	2017	\$234,000	\$234,000	\$2,040,480	\$2,040,480
	2018	\$234,000	\$468,000	\$1,945,710	\$3,986,190
	2019	\$234,000	\$702,000	\$1,850,940	\$5,837,130
	2020	\$234,000	\$936,000	\$1,756,170	\$7,593,300
	2021	\$234,000	\$1,170,000	\$1,661,400	\$9,254,700
	2022	\$234,000	\$1,404,000	\$1,566,630	\$10,821,330
	2023	\$234,000	\$1,638,000	\$1,471,860	\$12,293,190
	2024	\$234,000	\$1,872,000	\$1,377,090	\$13,670,280
	2025	\$234,000	\$2,106,000	\$1,282,320	\$14,952,600
	2026	\$234,000	\$2,340,000	\$1,187,550	\$16,140,150
Maintain Viable Presence (5 Years)	2027	\$1,326,780	\$3,666,780	\$0	\$16,140,150
	2028	\$1,232,010	\$4,898,790	\$0	\$16,140,150
	2029	\$1,137,240	\$6,036,030	\$0	\$16,140,150
	2030	\$1,042,470	\$7,078,500	\$0	\$16,140,150
	2031	\$947,700	\$8,026,200	\$0	\$16,140,150
Additional Years as Required by 313.026(c)(1) (10 Years)	2032	\$852,930	\$8,879,130	\$0	\$16,140,150
	2033	\$758,160	\$9,637,290	\$0	\$16,140,150
	2034	\$663,390	\$10,300,680	\$0	\$16,140,150
	2035	\$568,620	\$10,869,300	\$0	\$16,140,150
	2036	\$473,850	\$11,343,150	\$0	\$16,140,150
	2037	\$473,850	\$11,817,000	\$0	\$16,140,150
	2038	\$473,850	\$12,290,850	\$0	\$16,140,150
	2039	\$473,850	\$12,764,700	\$0	\$16,140,150
	2040	\$473,850	\$13,238,550	\$0	\$16,140,150
	2041	\$473,850	\$13,712,400	\$0	\$16,140,150

\$13,712,400

is less than

\$16,140,150

Analysis Summary

Is the project reasonably likely to generate M&O tax revenue in an amount sufficient to offset the M&O levy loss as a result of the limitation agreement?

No

NOTE: The analysis above only takes into account this project's estimated impact on the M&O portion of the school district property tax levy directly related to this project.

Year	Employment			Personal Income			Revenue & Expenditure		
	Direct	Indirect + Induced	Total	Direct	Indirect + Induced	Total	Revenue	Expenditure	Net Tax Effect
2015	0	0	0	\$0	\$0	\$0	0	0	\$0
2016	125	118	243.164	\$6,191,590	\$8,578,918	\$14,770,508	808716	-427246	\$1,235,962
2017	5	17	22	\$191,590	\$2,127,746	\$2,319,336	144958	160217	-\$15,259
2018	5	13	18	\$191,590	\$1,639,465	\$1,831,055	114441	160217	-\$45,776
2019	5	9	14	\$191,590	\$1,151,183	\$1,342,773	122070	175476	-\$53,406
2020	5	9	14	\$191,590	\$1,639,465	\$1,831,055	122070	160217	-\$38,147
2021	5	11	16	\$191,590	\$1,151,183	\$1,342,773	122070	144958	-\$22,888
2022	5	9	14	\$191,590	\$1,151,183	\$1,342,773	106812	144958	-\$38,146
2023	5	9	14	\$191,590	\$1,151,183	\$1,342,773	106812	137329	-\$30,517
2024	5	9	14	\$191,590	\$1,273,254	\$1,464,844	152588	114441	\$38,147
2025	5	15	20	\$191,590	\$1,273,254	\$1,464,844	152588	114441	\$38,147
2026	5	11	16	\$191,590	\$1,395,324	\$1,586,914	183105	114441	\$68,664
2027	5	11	16	\$191,590	\$1,029,113	\$1,220,703	152588	99182	\$53,406
2028	5	11	16	\$191,590	\$1,029,113	\$1,220,703	160217	83923	\$76,294
2029	5	7	12	\$191,590	\$1,273,254	\$1,464,844	160217	114441	\$45,776
2030	5	7	12	\$191,590	\$784,973	\$976,563	122070	68665	\$53,405
2031	5	3	8	\$191,590	\$784,973	\$976,563	91553	38147	\$53,406
2032	5	5	10	\$191,590	\$296,691	\$488,281	99182	38147	\$61,035
2033	5	5	10	\$191,590	\$540,832	\$732,422	99182	-15259	\$114,441
2034	5	5	10	\$191,590	\$540,832	\$732,422	91553	-7629	\$99,182
2035	5	3	8	\$191,590	\$296,691	\$488,281	68665	-15259	\$83,924
2036	5	3	8	\$191,590	\$540,832	\$732,422	45776	-53406	\$99,182
2037	5	3	8	\$191,590	\$296,691	\$488,281	38147	-76294	\$114,441
2038	5	1	6	\$191,590	\$296,691	\$488,281	61035	-83923	\$144,958
2039	5	5	10	\$191,590	\$296,691	\$488,281	30518	-99182	\$129,700
2040	5	(1)	4	\$191,590	\$52,551	\$244,141	30518	-114441	\$144,959
2041	5	1	6	\$191,590	\$52,551	\$244,141	0	-144958	\$144,958
2042	0	0	0	\$0	\$0	\$0	0	0	\$0
						Total	\$3,387,451	\$831,603	\$2,555,848
							\$16,268,248	is greater than	\$16,140,150

Analysis Summary

Is the project reasonably likely to generate tax revenue in an amount sufficient to offset the M&O levy loss as a result of the limitation agreement?

Yes

Disclaimer: This examination is based on information from the application submitted to the school district and forwarded to the comptroller. It is intended to meet the statutory requirement of Chapter 313 of the Tax Code and is not intended for any other purpose.

Attachment C – Limitation as a Determining Factor

Tax Code 313.026 states that the Comptroller may not issue a certificate for a limitation on appraised value under this chapter for property described in an application unless the comptroller determines that “the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in this state.” This represents the basis for the Comptroller's determination.

Methodology

Texas Administrative Code 9.1055(d) states the Comptroller shall review any information available to the Comptroller including:

- the application, including the responses to the questions in Section 8 (Limitation as a Determining Factor);
- public documents or statements by the applicant concerning business operations or site location issues or in which the applicant is a subject;
- statements by officials of the applicant, public documents or statements by governmental or industry officials concerning business operations or site location issues;
- existing investment and operations at or near the site or in the state that may impact the proposed project;
- announced real estate transactions, utility records, permit requests, industry publications or other sources that may provide information helpful in making the determination; and
- market information, raw materials or other production inputs, availability, existing facility locations, committed incentives, infrastructure issues, utility issues, location of buyers, nature of market, supply chains, other known sites under consideration.

Determination

The Comptroller has determined that the limitation on appraised value is a determining factor in the Old Settler Wind, LLC decision to invest capital and construct the project in this state. This is based on information available, including information provided by the applicant. Specifically, the comptroller notes the following:

- Per the applicant, this project was selected as a candidate to explore for development because of the robust wind resource in Floyd County and access to the ERCOT market and the new CREZ White River substation plus the potential to access the SPP market as well.
- Per the applicant, a Chapter 313 Appraised Value Limitation on Qualified Property is necessary to make the economics of the project viable by providing relief for the greatest operational cost of the project.

Supporting Information

- a) Section 8 of the Application for a Limitation on Appraised Value
- b) Attachments provided in Tab 5 of the Application for a Limitation on Appraised Value
- c) Additional information provided by the Applicant or located by the Comptroller

Disclaimer: This examination is based on information from the application submitted to the school district and forwarded to the comptroller. It is intended to meet the statutory requirement of Chapter 313 of the Tax Code and is not intended for any other purpose.

Supporting Information

**Section 8 of the Application for
a Limitation on Appraised Value**

Application for Appraised Value Limitation on Qualified Property

SECTION 6: Eligibility Under Tax Code Chapter 313.024

1. Are you an entity subject to the tax under Tax Code, Chapter 171? ☒ Yes ☐ No
2. The property will be used for one of the following activities:
 - (1) manufacturing ☐ Yes ☒ No
 - (2) research and development ☐ Yes ☒ No
 - (3) a clean coal project, as defined by Section 5.001, Water Code ☐ Yes ☒ No
 - (4) an advanced clean energy project, as defined by Section 382.003, Health and Safety Code ☐ Yes ☒ No
 - (5) renewable energy electric generation ☒ Yes ☐ No
 - (6) electric power generation using integrated gasification combined cycle technology ☐ Yes ☒ No
 - (7) nuclear electric power generation ☐ Yes ☒ No
 - (8) a computer center that is used as an integral part or as a necessary auxiliary part for the activity conducted by applicant in one or more activities described by Subdivisions (1) through (7) ☐ Yes ☒ No
 - (9) a Texas Priority Project, as defined by 313.024(e)(7) and TAC 9.1051 ☐ Yes ☒ No
3. Are you requesting that any of the land be classified as qualified investment? ☐ Yes ☒ No
4. Will any of the proposed qualified investment be leased under a capitalized lease? ☐ Yes ☒ No
5. Will any of the proposed qualified investment be leased under an operating lease? ☐ Yes ☒ No
6. Are you including property that is owned by a person other than the applicant? ☐ Yes ☒ No
7. Will any property be pooled or proposed to be pooled with property owned by the applicant in determining the amount of your qualified investment? ☐ Yes ☒ No

SECTION 7: Project Description

1. In **Tab 4**, attach a detailed description of the scope of the proposed project, including, at a minimum, the type and planned use of real and tangible personal property, the nature of the business, a timeline for property construction or installation, and any other relevant information.
2. Check the project characteristics that apply to the proposed project:

☒ Land has no existing improvements	☐ Land has existing improvements (<i>complete Section 13</i>)
☐ Expansion of existing operation on the land (<i>complete Section 13</i>)	☐ Relocation within Texas

SECTION 8: Limitation as Determining Factor

1. Does the applicant currently own the land on which the proposed project will occur? ☐ Yes ☒ No
2. Has the applicant entered into any agreements, contracts or letters of intent related to the proposed project? ☐ Yes ☒ No
3. Does the applicant have current business activities at the location where the proposed project will occur? ☐ Yes ☒ No
4. Has the applicant made public statements in SEC filings or other documents regarding its intentions regarding the proposed project location? ☐ Yes ☒ No
5. Has the applicant received any local or state permits for activities on the proposed project site? ☐ Yes ☒ No
6. Has the applicant received commitments for state or local incentives for activities at the proposed project site? ☐ Yes ☒ No
7. Is the applicant evaluating other locations not in Texas for the proposed project? ☒ Yes ☐ No
8. Has the applicant provided capital investment or return on investment information for the proposed project in comparison with other alternative investment opportunities? ☐ Yes ☒ No
9. Has the applicant provided information related to the applicant's inputs, transportation and markets for the proposed project? ☐ Yes ☒ No
10. Are you submitting information to assist in the determination as to whether the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in Texas? ☐ Yes ☒ No

Chapter 313.026(e) states "the applicant may submit information to the Comptroller that would provide a basis for an affirmative determination under Subsection (c)(2)." If you answered "yes" to any of the questions in Section 8, attach supporting information in Tab 5.

Supporting Information

**Attachments provided in Tab 5
of the Application for a
Limitation on Appraised Value**

Tab 5

Documentation to assist in determining if limitation is a determining factor

Apex Clean Energy Holdings, LLC ("Apex"), the parent company of Old Settler Wind, LLC, has been in the renewable energy sector for over five years and has the capabilities to develop, finance, construct and operate renewable facilities with a current development pipeline of over 10,000 MW of independent power assets located throughout the United States, of which, currently 1,500 MW have the opportunity to be developed in Texas.

This project was selected as a candidate to explore for development because of the robust wind resource in Floyd County and access to the ERCOT market and the new CREZ White River substation plus the potential to access the SPP market as well. The Project is seeking property tax incentives under the Tax Code Chapter 312 Tax Abatement and Chapter 313 Appraised Value Limitation.

Apex would like to develop and build its proposed project but, given the myriad of undetermined variables at this early stage, a Chapter 313 Appraised Value Limitation on Qualified Property is necessary to make the economics of the project viable by providing relief for the greatest operational cost of the project. If Apex cannot secure a Chapter 313 Appraised Value Limitation Agreement, resources will be reallocated to other developable counties and/or states competing for similar projects where Apex has land interests and state and local taxes are such that the project can be constructed.

Supporting Information

Additional information
provided by
the Comptroller



Control Number: 45350



Item Number: 1

Addendum StartPage: 0



Pursuant to PUC SUBSTANTIVE RULE § 25.109

45350

Registration Form for Power Generation Companies and Self-Generators

Part A – Type of Registration

1. Type of registration

Check only one of the following.

- | | |
|--|---|
| ☐ New self-generator registration | ☐ Amending self-generator registration |
| ☐ New power generation company registration | ☐ Amending PGC registration |
| ☒ New EWG/PGC | |

2. Amendments

If filing an amendment, check all applicable boxes and fill in only the sections of this form that are applicable to your amendment:

- | | |
|--|--|
| ☐ Name change amendment | ☐ Facility/output capacity change |
| ☐ Change in ownership/control | ☐ New generating plant/facility |
| ☐ Registration relinquishment | ☐ Other |

Registration number:

Provide an explanation, if necessary:

2015 NOV 17 AM 9:55
PUBLIC UTILITY COMMISSION
FILING CLERK

Part B – Applicable to Registration of Self-Generators

1. Registering Party

Legal name:

Texas business address:

City:

ZIP:

Principal place of business:

2. Contact Information (for all communications)

Name:

Title:

Address:

City:

State:

ZIP:

Email:

Phone:

Fax:

Part C - Applicable to Registration of Power Generation Companies

1. Registering Party

Legal name: Old Settler Wind, LLC	Trade/commercial name: Old Settler Wind	
Texas business address: 32815 Tamina Road, Suite C		
City: Magnolia	ZIP: 77354	Principal place of business: c/o Apex Clean Energy, Inc. 310 4th St. NE, Suite 200, Charlottesville, VA 22902

2. Contact Information (for all communications)

Name: William Pezalla		Title: Transmission Manager
Address: 310 4th St. NE, Suite 200,		
City: Charlottesville	State: VA	ZIP: 22902
Email: bill.pezalla@apexcleanenergy.com	Phone: 434-282-2107	Fax: 434-220-3712

3. Names and types of business of the registering party's corporate parent companies with percentages of ownership

Name (press Enter Key for multiple entries)	Types of business	% of ownership
Apex Clean Energy Holdings, LLC	Sole Member of Apex GCL, LLC	100
Apex GCL, LLC	Sole Member of Old Settler Wind, LLC	100

4. Description of the types of services provided by the registering party that pertain to the generation of electricity

Generation of electricity from wind turbine generators

5. Name and corporate relationship of each affiliate that buys and sells electricity at wholesale in Texas, sells electricity at retail in Texas, or is an electric or municipally owned utility in Texas

Name (press Enter Key for multiple entries)	Corporate relationship

6. If applicable, attach to this form any Supplemental Information, as described in the Instructions, labeled "Attachment B8"

Part D – Applicable to all Registering Parties

AFFIDAVIT

(Must be notarized by a public notary in and for the State of Texas)

STATE OF ~~TEXAS~~ Virginia &
COUNTY OF Charlottesville
City

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned, who, after being duly sworn, stated on his or her oath that he or she is entitled to make this Affidavit, and that the statements contained below and in the foregoing are true and correct.

Check one of the following boxes:

- ☐ I am an authorized representative of the registering party, which is a **self-generator**.
- ☒ I am an authorized representative of the registering party, which is a **power generation company** and swear that the company:

- (A) Generates electricity that is intended to be sold at wholesale;
- (B) Does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under PUC SUBSTANTIVE RULE 25.5; and
- (C) Does not have a certificated service area.

I swear or affirm that I have personal knowledge of the facts stated in the attached registration, that I am competent to testify to them, and that I have the authority to submit this registration form on behalf of the registering party. I further swear or affirm that all statements made in the registration form are true, correct and complete and that any substantial changes in such information will be provided to the Public Utility Commission of Texas in a timely manner. I swear or affirm that the registering party understands and will comply with all requirements of the applicable law and rules.

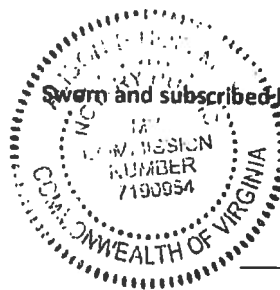
Mark Goodwin

Signature of Authorized Representative

MARK GOODWIN

Printed Name

Name of Registering Party



Sworn and subscribed before me this 12th day of November, 2015
Month Year

Alison B. Hoffman

Notary Public in and for the State of ~~Texas~~

Virginia

USER: NONE - 9999

Filings for 45350

Case
StyleAPPLICATION OF OLD SETTLER WIND, LLC FOR POWER GENERATION
COMPANIES REGISTRATION

Item	File Stamp	Party	Description
1	11/17/2015	OLD SETTLER WIND, LLC	APPLICATION OF OLD SETTLER WIND, LLC FOR POWER GENERATION COMPANIES REGISTRATION
2	12/2/2015	PUC COMPETITIVE MARKETS	RECOMMENDATION
3	12/4/2015	PUC CADM	NOTICE OF APPROVAL
4	12/4/2015	PUC CADM	OUTGOING COMMISSION-SIGNED ORDER MAIL LOG

4 Records found.

4 Filings

End of Records[| PUCT Home](#) | [State of Texas](#) | [TRAIL](#) |[PUC Policies](#)

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1701 N. Congress Ave., PO Box 13326, Austin, TX 78711-3326
General Information 512-936-7000
Customer Hot Line 1-888-782-8477 or e-mail: customer@puc.texas.gov
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For site Interchange issues or problems please contact: helpdesk@puc.texas.govFor site issues and suggestions please contact: web@puc.texas.gov

**Summary of the District's Financial Impact
of Chapter 313 Agreement
with Old Settler Wind, LLC**

March 10, 2016

Prepared by
McDowell & Brown, LLC
School Finance Consulting

Floydada ISD Financial Impact of Chapter 313 Agreement

Summary of Floydada ISD Financial Impact of the Limited Appraised Value Application from Old Settler Wind, LLC

Introduction

Old Settler Wind, LLC applied for a property value limitation from Floydada Independent School District under Chapter 313 of the Tax Code. The application was submitted on February 11, 2016 and subsequently approved for consideration by the Floydada ISD Board of Trustees. Old Settler Wind, LLC (“Old Settler Wind”), is requesting the property value limitation as a “renewable energy electric generation” project as listed in Sec. 313.024.(b) of the Tax Code.

“The Economic Development Act “, Tax Code Chapter 313, was created by House Bill 1200 of the 77th Texas Legislature in 2001. Further amendments were made to Chapter 313 as a result of House Bill 1470 from the 80th Texas Legislative Session in 2007.

The Economic Development Act was created to attract qualifying businesses to Texas by allowing school districts the option of approving a property value limitation to these qualifying entities. The purpose of the property value limitation is to reduce the maintenance and operations taxes paid by the company, to a school district during the applicable years as displayed below.

Floydada ISD Financial Impact of Chapter 313 Agreement

The company must file an application with the school district to qualify for consideration of a Limited Appraised Value Agreement (“LAVA” or “Agreement”) to begin the following tax year or a later year if agreed upon by the District and the Company.

Years Prior to Start of Value Limitation Period:

The first two years of the agreement are considered the “Prior to Start of Value Limitation Period” and the company’s school district taxes will be levied at one-hundred percent of the appraised value. The applicant has requested that tax years 2015 and 2016 be considered the years that are Prior to the Start of Value Limitation Period.

Value Limitation Period:

During the ten years of the Value Limitation Period, the qualifying entity’s taxable value will be reduced to the minimum qualified investment for the applicable school district as determined by the State Comptroller’s Office. Floydada ISD is considered a Rural category 3 District as categorized with total taxable value of industrial property of at least \$1 million but less than \$90 million. Thus, Floydada ISD has a minimum qualified investment amount of \$20 million. A qualifying entity’s taxable value would be reduced to \$20 million during this ten year period of the agreement for the purposes of computing the tax levy for the maintenance and operations (M&O) tax of Floydada ISD. The entire appraised value will be used for computing the interest and sinking (I&S) tax levy. The applicant has requested that the Value Limitation Period to begin in tax year 2017 and continue through tax year 2026.

Final Five Years of the Agreement – Continue to Maintain a Viable Presence:

Tax years 2027 through 2031 will be the final five years of the agreement and the applicant agrees to maintain a viable presence with this project during this time.

Floydada ISD Financial Impact of Chapter 313 Agreement

Taxable Value Projections from Application

The following data shows the projected taxable values that Old Settler Wind reported in the application to the District:

	Year	School Year	Tax Year	Projected Taxable Value	Actual Taxable Value
Each Year Prior to Start of Value Limitation Period	0	2015-2016	2015	0	0
	0	2016-2017	2016	0	0
Value Limitation Period	1	2017-2018	2017	\$194,400,000	\$20,000,000
	2	2018-2019	2018	\$186,300,000	\$20,000,000
	3	2019-2020	2019	\$178,200,000	\$20,000,000
	4	2020-2021	2020	\$170,100,000	\$20,000,000
	5	2021-2022	2021	\$162,000,000	\$20,000,000
	6	2022-2023	2022	\$153,900,000	\$20,000,000
	7	2023-2024	2023	\$145,800,000	\$20,000,000
	8	2024-2025	2024	\$137,700,000	\$20,000,000
	9	2025-2026	2025	\$129,600,000	\$20,000,000
	10	2026-2027	2026	\$121,500,000	\$20,000,000
Continue to Maintain Viable Presence	11	2027-2028	2027	\$113,400,000	\$113,400,000
	12	2028-2029	2028	\$105,300,000	\$105,300,000
	13	2029-2030	2029	\$97,200,000	\$97,200,000
	14	2030-2031	2030	\$89,100,000	\$89,100,000
	15	2031-2032	2031	\$81,000,000	\$81,000,000
Additional Years for 25 Year Economic Impact Study	16	2032-2033	2032	\$72,900,000	\$72,900,000
	17	2033-2034	2033	\$64,800,000	\$64,800,000
	18	2034-2035	2034	\$56,700,000	\$56,700,000
	19	2035-2036	2035	\$48,600,000	\$48,600,000
	20	2036-2037	2036	\$40,500,000	\$40,500,000
	21	2037-2038	2037	\$40,500,000	\$40,500,000
	22	2038-2039	2038	\$40,500,000	\$40,500,000
	23	2039-2040	2039	\$40,500,000	\$40,500,000
	24	2040-2041	2040	\$40,500,000	\$40,500,000
	25	2041-2042	2041	\$40,500,000	\$40,500,000

Floydada ISD Financial Impact of Chapter 313 Agreement

Taxable Value Impact from LAVA

The “Additional Value from Old Settler Wind” represents the values that the company estimated as their taxable values in the application that was filed with the district. During tax years 2017 through 2026, the company’s taxable value will be limited to the \$20,000,000 minimum qualified investment of Floydada ISD.

TABLE I- Calculation of Taxable Value:

Tax Year	Additional Value From Old Settler Wind	Minimum Qualified Investment	Abated Value	Taxable Value
Jan. 1, 2015	0	n/a	0	0
Jan. 1, 2016	0	n/a	0	0
Jan. 1, 2017	194,400,000	(20,000,000)	174,400,000	20,000,000
Jan. 1, 2018	186,300,000	(20,000,000)	166,300,000	20,000,000
Jan. 1, 2019	178,200,000	(20,000,000)	158,200,000	20,000,000
Jan. 1, 2020	170,100,000	(20,000,000)	150,100,000	20,000,000
Jan. 1, 2021	162,000,000	(20,000,000)	142,000,000	20,000,000
Jan. 1, 2022	153,900,000	(20,000,000)	133,900,000	20,000,000
Jan. 1, 2023	145,800,000	(20,000,000)	125,800,000	20,000,000
Jan. 1, 2024	137,700,000	(20,000,000)	117,700,000	20,000,000
Jan. 1, 2025	129,600,000	(20,000,000)	109,600,000	20,000,000
Jan. 1, 2026	121,500,000	(20,000,000)	101,500,000	20,000,000
Jan. 1, 2027	113,400,000	n/a	0	113,400,000
Jan. 1, 2028	105,300,000	n/a	0	105,300,000
Jan. 1, 2029	97,200,000	n/a	0	97,200,000
Jan. 1, 2030	89,100,000	n/a	0	89,100,000
Jan. 1, 2031	81,000,000	n/a	0	81,000,000

Floydada ISD Financial Impact of Chapter 313 Agreement

Old Settler Wind's Tax Benefit from Agreement

The projected amount of the net tax savings for Old Settler Wind is \$14.73 million over the life of the Agreement. This net savings is after all tax savings and after estimated payments have been made to the district to offset their revenue losses that were a direct result of entering into this Agreement.

Floydada ISD's projected tax rates for maintenance & operations (M&O) and interest & sinking (I&S) are based on the following assumptions:

- The District held a tax ratification election and the study projects that it will maintain an M&O tax rate of \$1.17 for the life of this agreement. The M&O rates for 2017-2018 & 2027-2028 are projected to drop to \$1.15 & \$1.04 respectively, due to the rollback tax rate calculations.
- The district has outstanding bonds that are scheduled to payoff in 2037 and currently have a \$.137 I&S tax rate. This district's annual debt payments are just over \$360,000 per year through 2037 and the debt rates below are calculated rates using the projected taxable values with the addition of Old Settler Wind estimated taxable values. The district could pursue a bond election and issue additional bonded debt during the life of this agreement.

TABLE II- Computation of Net Tax Savings:

Fiscal Year	Projected M&O Tax Rate	Projected I&S Tax Rate	Taxes w/o Agreement	Tax Savings with Agreement	Payment of District's Revenue Losses	Net Tax Savings
2015-2016	1.170	0.137	0	0	0	0
2016-2017	1.170	0.136	0	0	0	0
2017-2018	1.150	0.078	2,235,600	2,005,600	(1,375,279)	630,321
2018-2019	1.170	0.079	2,179,710	1,945,710	0	1,945,710
2019-2020	1.170	0.080	2,084,940	1,850,940	0	1,850,940
2020-2021	1.170	0.082	1,990,170	1,756,170	0	1,756,170
2021-2022	1.170	0.083	1,895,400	1,661,400	0	1,661,400
2022-2023	1.170	0.084	1,800,630	1,566,630	0	1,566,630
2023-2024	1.170	0.086	1,705,860	1,471,860	0	1,471,860
2024-2025	1.170	0.087	1,611,090	1,377,090	0	1,377,090
2025-2026	1.170	0.088	1,516,320	1,282,320	0	1,282,320
2026-2027	1.170	0.090	1,421,550	1,187,550	0	1,187,550
2027-2028	1.040	0.091	1,179,360	0	0	0
2028-2029	1.170	0.093	1,232,010	0	0	0
2029-2030	1.170	0.095	1,137,240	0	0	0
2030-2031	1.170	0.096	1,042,470	0	0	0
2031-2032	1.170	0.098	947,700	0	0	0
Totals			23,980,050	16,105,270	(1,375,279)	14,729,991

Floydada ISD Financial Impact of Chapter 313 Agreement

Financial Impact Study

This Financial Impact Study was performed to determine the financial impact of the Limited Appraised Value Agreement on Floydada ISD. First, a fifteen year financial forecast was prepared to establish a baseline without the added values of the renewable energy electric generation company. Second, a fifteen year financial forecast was prepared that incorporated the additional taxable value of the company without a LAVA in effect. Third, a fifteen year financial forecast was prepared that incorporates the additional taxable value of the company with an approved LAVA. These three forecasts are detailed in the “Calculation of LAVA Impact on District’s Finances” section. The following assumptions were used to compare the financial impact of the LAVA:

- The current state funding formulas (in effect for 2015-2016 fiscal year) were used for state aid and recapture calculation purposes
 - Level 2 of Tier II yield - \$77.53 per weighted student in average daily attendance (WADA) per penny of tax effort
- The district’s tax rate for maintenance & operations (M&O) will remain at the same rate as for tax year 2015.
- A tax collection rate of 100% on current year tax levy with no projected delinquent taxes
- An annual taxable value increase of .5% was used to project the district’s taxable value, except as it related to the requested LAVA. The district’s 2015 taxable value was used as a baseline for all projections
- The district’s enrollment is projected to decrease slightly; therefore, the projected ADA and WADA for school year 2015-2016 was increased by .25% per year for the life of the agreement.

Although these assumptions were used to develop a baseline scenario for comparison purposes, many of these factors will not remain constant for the thirteen years of this proposed agreement. Also, Legislative changes to the school finance formulas are likely during the near future and almost certain during the life of this agreement.

Floydada ISD Financial Impact of Chapter 313 Agreement

Calculation of LAVA Impact on District's Finances

The tables displayed below (Table III, IV, V) show the different impacts on the school district's finances. These scenarios were computed to compare the District's revenue without the additional taxable value of Old Settler Wind (Table III), the addition of Old Settler Wind's taxable values without a Chapter 313 Agreement (Table IV), and the addition of Old Settler Wind's taxable values with a Chapter 313 Agreement (Table V).

TABLE III – District Revenues *without* Old Settler Wind, LLC:

Fiscal Year	Total Taxable Value	M&O Taxes Compressed Rate	State Revenue	Recapture Amount	Hold Harmless Revenue	M&O Taxes > Comp Rate	Total District Revenue
2015-2016	263,991,977	2,657,014	4,480,498	0	7,137,512	1,079,938	8,217,450
2016-2017	265,311,937	2,670,213	4,530,599	0	7,200,813	1,102,156	8,302,969
2017-2018	266,638,497	2,683,479	4,538,459	0	7,221,937	1,104,876	8,326,814
2018-2019	267,971,689	2,696,811	4,540,985	0	7,237,796	1,107,603	8,345,399
2019-2020	269,311,547	2,710,209	4,543,443	0	7,253,653	1,110,337	8,363,990
2020-2021	270,658,105	2,723,675	4,551,103	0	7,274,778	1,113,078	8,387,856
2021-2022	272,011,396	2,737,208	4,553,430	0	7,290,638	1,115,826	8,406,464
2022-2023	273,371,453	2,750,809	4,555,689	0	7,306,498	1,118,581	8,425,078
2023-2024	274,738,310	2,764,477	4,563,147	0	7,327,625	1,121,342	8,448,967
2024-2025	276,112,002	2,778,214	4,565,271	0	7,343,485	1,124,111	8,467,597
2025-2026	277,492,562	2,792,020	4,572,593	0	7,364,612	1,126,887	8,491,499
2026-2027	278,880,024	2,805,894	4,574,581	0	7,380,475	1,129,670	8,510,145
2027-2028	280,274,424	2,819,838	4,576,499	0	7,396,337	1,132,460	8,528,797
2028-2029	281,675,797	2,833,852	4,583,617	0	7,417,468	1,135,257	8,552,725
2029-2030	283,084,176	2,847,936	4,585,392	0	7,433,328	1,138,061	8,571,389
2030-2031	284,499,596	2,862,090	4,592,368	0	7,454,458	1,140,872	8,595,330
2031-2032	285,922,094	2,876,315	4,594,005	0	7,470,320	1,143,690	8,614,010

Floydada ISD Financial Impact of Chapter 313 Agreement

TABLE IV- District Revenues *with Old Settler Wind without Chapter 313 Agreement:*

Fiscal Year	Total Taxable Value	M&O Taxes Compressed Rate	State Revenue	Recapture Amount	Hold Harmless Revenue	M&O Taxes > Comp Rate	Total District Revenue
2015-2016	263,991,977	2,657,014	4,480,498	0	7,137,512	1,079,938	8,217,450
2016-2017	265,311,937	2,670,213	4,530,599	0	7,200,813	1,102,156	8,302,969
2017-2018	461,038,497	4,629,616	4,538,459	0	9,168,074	723,877	9,891,951
2018-2019	454,271,689	4,559,811	2,596,985	35,452	7,121,343	1,118,546	8,239,890
2019-2020	447,511,547	4,492,209	2,680,443	26,921	7,145,732	1,112,559	8,258,291
2020-2021	440,758,105	4,424,675	2,769,103	18,396	7,175,381	1,106,581	8,281,962
2021-2022	434,011,396	4,357,208	2,852,430	9,879	7,199,759	1,100,610	8,300,369
2022-2023	427,271,453	4,289,809	2,935,689	1,369	7,224,129	1,094,647	8,318,776
2023-2024	420,538,310	4,222,477	3,024,147	0	7,246,625	1,095,827	8,342,451
2024-2025	413,812,002	4,155,214	3,107,271	0	7,262,485	1,098,375	8,360,860
2025-2026	407,092,562	4,088,020	3,195,593	0	7,283,612	1,100,923	8,384,536
2026-2027	400,380,024	4,020,894	3,278,581	0	7,299,475	1,103,471	8,402,946
2027-2028	393,674,424	3,953,838	3,361,499	0	7,315,337	1,106,019	8,421,356
2028-2029	386,975,797	3,886,852	3,449,617	0	7,336,468	1,108,565	8,445,033
2029-2030	380,284,176	3,819,936	3,532,392	0	7,352,328	1,111,110	8,463,438
2030-2031	373,599,596	3,753,090	3,620,368	0	7,373,458	1,113,653	8,487,111
2031-2032	366,922,094	3,686,315	3,703,005	0	7,389,320	1,116,194	8,505,514

TABLE V – District Revenues *with Old Settler Wind with Chapter 313 Agreement:*

Fiscal Year	Total Taxable Value	M&O Taxes Comp Rate	State Revenue	Recapture Amount	Hold Harmless Revenue	M&O Taxes > Comp Rate	Payment for District Losses	Total District Revenue
2015-2016	263,991,977	2,657,014	4,480,498	0	7,137,512	1,079,938	0	8,217,450
2016-2017	265,311,937	2,670,213	4,530,599	0	7,200,813	1,102,156	0	8,302,969
2017-2018	286,638,497	2,883,776	4,538,459	0	7,422,235	1,094,437	1,375,279	9,891,951
2018-2019	287,971,689	2,896,811	4,340,985	0	7,237,796	1,106,731	0	8,344,527
2019-2020	289,311,547	2,910,209	4,343,443	0	7,253,653	1,109,470	0	8,363,122
2020-2021	290,658,105	2,923,675	4,351,103	0	7,274,778	1,112,215	0	8,386,993
2021-2022	292,011,396	2,937,208	4,353,430	0	7,290,638	1,114,967	0	8,405,605
2022-2023	293,371,453	2,950,809	4,355,689	0	7,306,498	1,117,726	0	8,424,223
2023-2024	294,738,310	2,964,477	4,363,147	0	7,327,625	1,120,492	0	8,448,116
2024-2025	296,112,002	2,978,214	4,365,271	0	7,343,485	1,123,265	0	8,466,750
2025-2026	297,492,562	2,992,020	4,372,593	0	7,364,612	1,126,045	0	8,490,657
2026-2027	298,880,024	3,005,894	4,374,581	0	7,380,475	1,128,832	0	8,509,307
2027-2028	393,674,424	3,955,975	4,376,499	0	8,332,474	562,959	0	8,895,434
2028-2029	386,975,797	3,886,852	3,449,617	0	7,336,468	1,108,565	0	8,445,033
2029-2030	380,284,176	3,819,936	3,532,392	0	7,352,328	1,111,110	0	8,463,438
2030-2031	373,599,596	3,753,090	3,620,368	0	7,373,458	1,113,653	0	8,487,111
2031-2032	366,922,094	3,686,315	3,703,005	0	7,389,320	1,116,194	0	8,505,514

Floydada ISD Financial Impact of Chapter 313 Agreement

Current School Finance Law

A major overhaul of the school finance formulas was implemented as a result of House Bill 1 of the 79th Legislative Session and became effective for the 2006-2007 school year. Those formula changes had an effect on the district's financial impact from granting a property value limitation. Due to the district's "Hold Harmless" provision that was enacted in the funding formulas, some districts had the majority of the district's revenue losses (during the first year that the "limited appraised value" was used as the actual taxable value) offset with additional state funding. The funding that was available to offset those revenue losses was called Additional State Aid for Tax Reduction (ASATR) and those funds were phased out as a result of legislation in the 82nd Legislative Session in 2011. This legislation eliminated the ASATR funding for fiscal year 2017-2018 and thereafter and can have a significant financial impact for LAVA agreements that have a year three in 2017-2018 or later. The loss of ASATR funding can again cause a district to experience a significant loss of funds in year three of the agreement and consequently cause the company to have revenue protection payments during that year that are similar to those experienced prior to 2006-2007.

Floydada ISD Financial Impact of Chapter 313 Agreement

Payments in Lieu of Taxes

Assuming that the District and Old Settler Wind, LLC mutually agree in the LAVA that \$100 per student in average daily attendance (ADA) will be paid to Floydada ISD by Old Settler Wind, the projected amount of these payments over the life of the agreement is \$974,274 of the \$14.73 million net tax savings amount. This amount will be computed annually according to Section IV of the Agreement.

TABLE VI - Calculation of the Payment in Lieu of Taxes:

Fiscal Year	Net Tax Savings	Floydada ISD \$100/ADA	Old Settler Wind's Share
2015-2016	0	0	0
2016-2017	0	69,591	(69,591)
2017-2018	630,321	69,591	560,730
2018-2019	1,945,710	69,591	1,876,119
2019-2020	1,850,940	69,591	1,781,349
2020-2021	1,756,170	69,591	1,686,579
2021-2022	1,661,400	69,591	1,591,809
2022-2023	1,566,630	69,591	1,497,039
2023-2024	1,471,860	69,591	1,402,269
2024-2025	1,377,090	69,591	1,307,499
2025-2026	1,282,320	69,591	1,212,729
2026-2027	1,187,550	69,591	1,117,959
2027-2028	0	69,591	(69,591)
2028-2029	0	69,591	(69,591)
2029-2030	0	69,591	(69,591)
2030-2031	0	0	0
2031-2032	0	0	0
Totals	14,729,991	974,274	13,755,717

Floydada ISD Financial Impact of Chapter 313 Agreement

Impact of Projected Student Growth On District Facilities

TABLE VII – Campus Capacity and Available Growth

Campus Name	Grade Level	# of Regular Classrooms	Building Capacity	Current Enrollment	Enrollment Growth Available
A.B. Duncan Elementary	EE-6	30	600	469	131
Floydada Jr. High	7-8	15	270	125	145
Floydada High	9-12	31	558	201	357
Total		76	1,428	795	633

The building capacities are based on 20 students per classroom for elementary and 18 students per grade level at secondary schools. Floydada ISD is a early-education through 12th grade district.

Old Settler Wind, LLC provided supplemental information with their application that projected the number of full-time employees that are expected for permanent employment after construction of the project is completed. They projected that five full-time employees are expected. It is not known whether these would be new employees to the Floydada ISD, or if current residents would occupy these positions; however, it is assumed that these employees would be new residents to the district.

Based on average statewide figures provided by a demographer, it is projected that each new household would produce .5 students. Thus, the new five positions equates to 3 new students.

This minimal projected student growth can easily be accommodated with the current facilities of Floydada ISD as displayed in Table VII above.

Floydada ISD Financial Impact of Chapter 313 Agreement

Conclusion

This Financial Impact Study displays that entering into a Limited Appraised Value Agreement with Old Settler Wind, LLC, would be beneficial to both Old Settler Wind and Floydada ISD under the current school finance system.

Old Settler Wind, LLC would benefit from reduced property taxes during the ten years of the Value Limitation Period. Although some of the tax savings would be used to offset district's revenue losses and payments in lieu of taxes to the District, Old Settler Wind is projected to benefit from an 87% tax savings during that ten year period of this Agreement. Old Settler Wind also has the option of terminating the Agreement if the amount paid to the District during a tax year is greater than the amount of taxes that would have been paid without the agreement; therefore, there is no inherent risk for the company from entering into the Agreement.

Floydada ISD would also have no inherent risk under the current school finance system and with the provisions in the LAVA that require Old Settler Wind to offset any district losses caused by the LAVA. An annual calculation will be performed each year to determine if a loss to the District has been incurred. The revenue impact to the District will be computed by comparing the District's revenues with and without the LAVA in effect.



Texas Education Agency

Commissioner Mike Morath

1701 North Congress Avenue • Austin, Texas 78701-1494 • 512 463-9734 • 512 463-9838 FAX • tea.texas.gov

March 1, 2016

Mr. Lyle Miller, President
Board of Trustees
Floydada Independent School District
226 West California Street
Floydada, TX 79235-2705

Dear Mr. Miller:

As required by the Tax Code, §313.025 (b-1), the Texas Education Agency (TEA) has evaluated the impact of the proposed Old Settler Wind LLC project on the number and size of school facilities in Floydada Independent School District (FISD). Based on an examination of FISD enrollment and the number of potential new jobs, the TEA has determined that the Old Settler Wind LLC project should not have a significant impact on the number or size of school facilities in FISD.

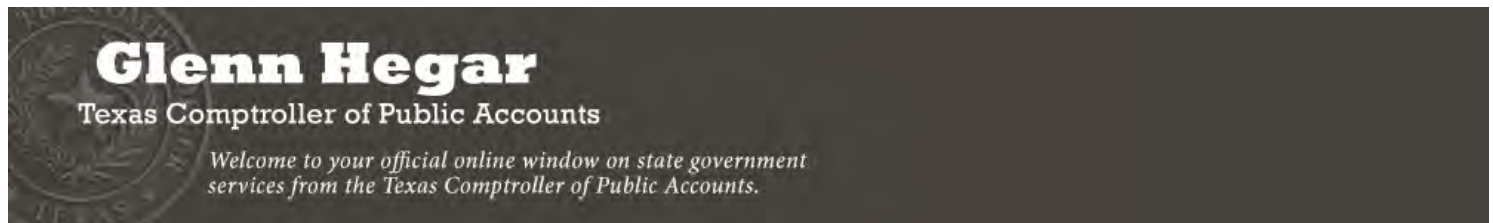
Please feel free to contact me by phone at (512) 463-9186 or by email at al.mckenzie@tea.state.tx.us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Al McKenzie", with a stylized flourish at the end.

Al McKenzie, Manager
Foundation School Program Support

AM/rk
Cc: Gilbert Trevino



2015 ISD Summary Worksheet

077/Floyd

077-901/Floydada ISD

Category	Local Tax Roll Value	2015 WTD Mean Ratio	2015 PTAD Value Estimate	2015 Value Assigned
A. Single-Family Residences	47,888,090	.9340	51,272,045	47,888,090
B. Multi-Family Residences	246,220	N/A	246,220	246,220
C1. Vacant Lots	675,700	N/A	675,700	675,700
C2. Colonia Lots	0	N/A	0	0
D1. Rural Real(Taxable)	75,707,950	1.2769	59,292,599	75,707,950
D2. Real Prop Farm & Ranch	2,309,810	N/A	2,309,810	2,309,810
E. Real Prop NonQual Acres	17,765,910	.8136	21,836,173	17,765,910
F1. Commercial Real	8,194,340	N/A	8,194,340	8,194,340
F2. Industrial Real	51,028,020	N/A	51,028,020	51,028,020
G. Oil, Gas, Minerals	100,240	N/A	100,240	100,240
J. Utilities	78,907,730	1.0143	77,795,258	78,907,730
L1. Commercial Personal	9,617,370	N/A	9,617,370	9,617,370
L2. Industrial Personal	6,090,630	N/A	6,090,630	6,090,630
M. Other Personal	80,800	N/A	80,800	80,800
N. Intangible Personal Prop	0	N/A	0	0
O. Residential Inventory	0	N/A	0	0
S. Special Inventory	0	N/A	0	0
Subtotal	298,612,810		288,539,205	298,612,810
Less Total Deductions	29,950,757		31,461,646	29,950,757
Total Taxable Value	268,662,053		257,077,559	268,662,053 T2

The taxable values shown here will not match the values reported by your appraisal district

See the ISD DEDUCTION Report for a breakdown of deduction values

Government code subsections 403.302 (J) AND (K) require the Comptroller to certify alternative measures of school district wealth. These measures are reported for taxable values for maintenance and operation (M&O) tax purposes and for interest and sinking fund (I&S) tax purposes. For districts that have not entered into value limitation agreements, T1 through T4 will be the same as T7 through T10.

Value Taxable For M&O Purposes

T1	T2	T3	T4
275,803,353	268,662,053	275,803,353	268,662,053
Loss To the Additional \$10,000 Homestead Exemption		50% of the loss to the Local Optional Percentage Homestead Exemption	
7,141,300	0		

T1 = School district taxable value for M&O purposes before the loss to the additional \$10,000 homestead exemption

T2 = School district taxable value for M&O purposes after the loss to the additional \$10,000 homestead exemption and the tax ceiling reduction

T3 = T1 minus 50% of the loss to the local optional percentage homestead exemption

T4 = T2 minus 50% of the loss to the local optional percentage homestead exemption

Value Taxable For I&S Purposes

T7	T8	T9	T10
275,803,353	268,662,053	275,803,353	268,662,053

T7 = School district taxable value for I&S purposes before the loss to the additional \$10,000 homestead exemption

T8 = School district taxable value for I&S purposes after the loss to the additional \$10,000 homestead exemption and the tax ceiling reduction

T9 = T7 minus 50% of the loss to the local optional percentage homestead exemption

T10 = T8 minus 50% of the loss to the local optional percentage homestead exemption

The PVS found your local value invalid, but local value was certified because local value is greater than PTAD value.

In 2015, the Texas Legislature passed House Bill 855, which requires state agencies to publish a list of the three most commonly used Web browsers on their websites. The Texas Comptroller's most commonly used Web browsers are Microsoft Internet Explorer, Google Chrome and Apple Safari.

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

by and between

FLOYDADA INDEPENDENT SCHOOL DISTRICT

and

OLD SETTLER WIND, LLC

(Texas Taxpayer ID #32058265235)

Comptroller Application #1124

Dated

March 22, 2016

appraised value of the property described in the Application and provided the certificate to the District;

WHEREAS, the Board of Trustees has reviewed and carefully considered the economic impact evaluation and certificate for limitation on appraised value submitted by the Texas Comptroller's Office pursuant to Section 313.025 of the TEXAS TAX CODE;

WHEREAS, on March 22, 2016, 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;

WHEREAS, on March 22, 2016, the Board of Trustees made factual findings pursuant to Section 313.025(f) of the TEXAS TAX CODE, including, but not limited to findings that: (i) the information in the Application is true and correct; (ii) the Applicant is eligible for the limitation on appraised value of the Applicant's Qualified Property; (iii) the project proposed by the Applicant is reasonably likely to generate tax revenue in an amount sufficient to offset the District's maintenance and operations ad valorem tax revenue lost as a result of the Agreement before the 25th anniversary of the beginning of the limitation period; (iv) the limitation on appraised value is a determining factor in the Applicant's decision to invest capital and construct the project in this State; and (v) this Agreement is in the best interest of the District and the State of Texas;

WHEREAS, on March 22, 2016, pursuant to the provisions of 313.025(f-1) of the TEXAS TAX CODE, the Board of Trustees waived the job creation requirement set forth in Section 313.021(3) the TEXAS TAX CODE;

WHEREAS, on March 18, 2016, the Texas Comptroller's Office approved the form of this Agreement for a Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes;

WHEREAS, on March 22, 2016, 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 or, in the event the Board President and Secretary are unavailable or have disclosed a conflict of interest, the Board of Trustees has authorized [insert name] to execute and deliver such Agreement to the Applicant; and

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

ARTICLE I **DEFINITIONS**

Section 1.1 DEFINITIONS. Wherever used in this Agreement, the following terms shall have the following meanings, unless the context in which used clearly indicates another

meaning. Words or terms defined in 34 TEXAS ADMIN. CODE Section 9.1051 and not defined in this Agreement shall have the meanings provided by 34 TEXAS ADMIN. CODE Section 9.1051.

“Act” means the Texas Economic Development Act set forth in Chapter 313 of the TEXAS TAX CODE, including any statutory amendments that are applicable to Applicant.

“Agreement” means this Agreement, as the same may be modified, amended, restated, amended and restated, or supplemented as approved pursuant to Sections 10.2 and 10.3.

“Applicant” means **OLD SETTLER WIND, LLC**, (Texas Taxpayer ID # 32058265235), the entity listed in the Preamble of this Agreement and that is listed as the Applicant on the Application as of the Application Approval Date. The term “Applicant” shall also include the Applicant’s assigns and successors-in-interest as approved according to Sections 10.2 and 10.3 of this Agreement.

“Applicant’s Qualified Investment” means the Qualified Investment of the Applicant during the Qualifying Time Period and as more fully described in **EXHIBIT 3** of this Agreement.

“Applicant’s Qualified Property” means the Qualified Property of the Applicant to which the value limitation identified in the Agreement will apply and as more fully described in **EXHIBIT 4** of this Agreement.

“Application” means the Application for Appraised Value Limitation on Qualified Property (Chapter 313, Subchapter B or C of the TEXAS TAX CODE) filed with the District by the Applicant on February 11, 2016. The term includes all forms required by the Comptroller, the schedules attached thereto, and all other documentation submitted by the Applicant for the purpose of obtaining an Agreement with the District. The term also includes all amendments and supplements thereto submitted by the Applicant.

“Application Approval Date” means the date that the Application is approved by the Board of Trustees of the District and as further identified in Section 2.3.B of this Agreement.

“Application Review Start Date” means the later date of either the date on which the District issues its written notice that the Applicant has submitted a completed Application or the date on which the Comptroller issues its written notice that the Applicant has submitted a completed Application and as further identified in Section 2.3.A of this Agreement.

“Appraised Value” shall have the meaning assigned to such term in Section 1.04(8) of the TEXAS TAX CODE.

“Appraisal District” means the Floyd County Appraisal District.

“Board of Trustees” means the Board of Trustees of the Floydada Independent School District.

“Comptroller” means the Texas Comptroller of Public Accounts, or the designated representative of the Texas Comptroller of Public Accounts acting on behalf of the Comptroller.

“Comptroller’s Rules” means the applicable rules and regulations of the Comptroller set forth in Chapter 34 TEXAS ADMIN. CODE Chapter 9, Subchapter F, together with any court or administrative decisions interpreting same.

“County” means Floyd County, Texas.

“District” or “School District” means the Floydada Independent School District, being a duly authorized and operating 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.

“Final Termination Date” means the last date of the final year in which the Applicant is required to Maintain Viable Presence and as further identified in Section 2.3.E of this Agreement.

“Force Majeure” means those causes generally recognized under Texas law as constituting impossible conditions. Each Party must inform the other in writing with proof of receipt within thirty (30) business days of the existence of such Force Majeure or otherwise waive this right as a defense.

“Land” means the real property described on **EXHIBIT 2**, which is attached hereto and incorporated herein by reference for all purposes.

“Maintain Viable Presence” means (i) the operation during the term of this Agreement of the facility or facilities for which the tax limitation is granted; and (ii) the Applicant’s maintenance of jobs and wages as required by the Act and as set forth in its Application.

“Market Value” shall have the meaning assigned to such term in Section 1.04(7) of the TEXAS TAX CODE.

“New Qualifying Jobs” means the total number of jobs to be created by the Applicant after the Application Approval Date in connection with the project that is the subject of its Application that meet the criteria of Qualifying Job as defined in Section 313.021(3) of the TEXAS TAX CODE and the Comptroller’s Rules.

“New Non-Qualifying Jobs” means the number of Non-Qualifying Jobs, as defined in 34 TEXAS ADMIN. CODE Section 9.1051(14), to be created by the Applicant after the Application Approval Date in connection with the project which is the subject of its Application.

“Qualified Investment” has the meaning set forth in Section 313.021(1) of the TEXAS TAX CODE, as interpreted by the Comptroller’s Rules.

“Qualified Property” has the meaning set forth in Section 313.021(2) of the TEXAS TAX CODE and as interpreted by Comptroller’s Rules and the Texas Attorney General, as these provisions existed on the Application Review Start Date.

“Qualifying Time Period” means the period defined in Section 2.3.C, during which the Applicant shall make investment on the Land where the Qualified Property is located in the amount required by the Act, the Comptroller’s Rules, and this Agreement.

“State” means the State of Texas.

“Supplemental Payment” means any payments or transfers of things of value made to the District or to any person or persons in any form if such payment or transfer of thing of value being provided is in recognition of, anticipation of, or consideration for the Agreement and that is not authorized pursuant to Sections 313.027(f)(1) or (2) of the TEXAS TAX CODE, and specifically includes any payments required pursuant to Article VI of this Agreement.

“Tax Limitation Amount” means the maximum amount which may be placed as the Appraised Value on the Applicant’s Qualified Property for maintenance and operations tax assessment in each Tax Year of the Tax Limitation Period of this Agreement pursuant to Section 313.054 of the TEXAS TAX CODE.

“Tax Limitation Period” means the Tax Years for which the Applicant’s Qualified Property is subject to the Tax Limitation Amount and as further identified in Section 2.3.D of this Agreement.

“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.

Section 1.2 NEGOTIATED DEFINITIONS. Wherever used in Articles IV, V, and VI, the following terms shall have the following meanings, unless the context in which used clearly indicates another meaning or otherwise; provided however, if there is a conflict between a term defined in this section and a term defined in the Act, the Comptroller's Rules, or Section 1.1 of Agreement, the conflict shall be resolved by reference to Section 10.9.C.

“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 District, and the Constitution and general laws of the State applicable to the 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 Applicant's ad valorem tax obligation to District, either with or without the limitation of property values made pursuant to this Agreement.

"Consultant" shall have the same meaning as assigned to such term in Section 4.5 of the Agreement.

"M&O Amount" shall have the meaning assigned to such term in Section 4.2 of the Agreement.

"Maintenance and Operations Revenue" or "M&O Revenue" means (i) those revenues which District receives from the levy of its annual ad valorem maintenance and operations tax pursuant to Section 45.002 of the TEXAS EDUCATION CODE 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.

"Net Tax Savings" shall have the same meaning as assigned to such term in Section 6.3 of the Agreement.

"New M&O Revenue" shall have the same meaning as assigned to such term in Section 4.2.A.ii of the Agreement.

"Original M&O Revenue" shall have the same meaning as assigned to such term in Section 4.2.A.i of the Agreement.

ARTICLE II

AUTHORITY, PURPOSE AND LIMITATION AMOUNTS

Section 2.1. 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 Section 313.027 of the TEXAS TAX CODE.

Section 2.2. PURPOSE. In consideration of the execution and subsequent performance of the terms and obligations by the Applicant pursuant to this Agreement, identified in Sections 2.5 and 2.6 and as more fully specified in this Agreement, the value of the Applicant's Qualified

Property listed and assessed by the County Appraiser for the District's maintenance and operation ad valorem property tax shall be the Tax Limitation Amount as set forth in Section 2.4 of this Agreement during the Tax Limitation Period.

Section 2.3. TERM OF THE AGREEMENT.

A. The Application Review Start Date for this Agreement is February 24, 2016, which will be used to determine the eligibility of the Applicant's Qualified Property and all applicable wage standards.

B. The Application Approval Date for this Agreement is March 22, 2016.

C. The Qualifying Time Period for this Agreement:

- i. Starts on March 22, 2016, the Application Approval Date; and
- ii. Ends on December 31, 2018, the last day of the second complete Tax Year following the Qualifying Time Period start date.

D. The Tax Limitation Period for this Agreement:

- i. Starts on January 1, 2017, first complete Tax Year that begins after Application Review Start Date; and,
- ii. Ends on December 31, 2026.

E. The Final Termination Date for this Agreement is December 31, 2031.

F. This Agreement, and the obligations and responsibilities created by this Agreement, shall be and become effective on the Application Approval Date identified in Section 2.3.B. This Agreement, and the obligations and responsibilities created by this Agreement, terminate on the Final Termination Date identified in Subsection 2.3.E, unless extended by the express terms of this Agreement.

Section 2.4. TAX LIMITATION. So long as the Applicant makes the Qualified Investment as required by Section 2.5, during the Qualifying Time Period, and unless this Agreement has been terminated as provided herein before such Tax Year, on January 1 of each Tax Year of the Tax Limitation Period, 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:

A. the Market Value of the Applicant's Qualified Property; or

B. Twenty Million Dollars (\$20,000,000).

This Tax Limitation Amount is based on the limitation amount for the category that applies to the District on the Application Approval Date, as set out by Section 313.052 of the TEXAS TAX CODE.

Section 2.5. TAX LIMITATION ELIGIBILITY. In order to be eligible and entitled to receive the value limitation identified in Section 2.4 for the Qualified Property identified in Article III, the Applicant shall:

A. have completed the Applicant's Qualified Investment in the amount of \$10,000,000 during the Qualifying Time Period;

B. have created and maintained, subject to the provisions of Section 313.0276 of the TEXAS TAX CODE, New Qualifying Jobs as required by the Act; and

C. pay an average weekly wage of at least \$636.75 for all New Non-Qualifying Jobs created by the Applicant.

Section 2.6. TAX LIMITATION OBLIGATIONS. In order to receive and maintain the limitation authorized by Section 2.4, Applicant shall:

A. provide payments to District sufficient to protect future District revenues through payment of revenue offsets and other mechanisms as more fully described in Article IV;

B. provide payments to the District that protect the District from the payment of extraordinary education related expenses related to the project, as more fully specified in Article V;

C. provide such Supplemental Payments as more fully specified in Article VI;

D. create and Maintain Viable Presence on or with the Qualified Property and perform additional obligations as more fully specified in Article VIII of this Agreement; and

E. no additional conditions are identified in the certificate for a limitation on appraised value by the Comptroller for this project.

ARTICLE III **QUALIFIED PROPERTY**

Section 3.1. LOCATION WITHIN ENTERPRISE OR REINVESTMENT ZONE. At the time of the Application Approval Date, the Land is within an area designated either as an enterprise zone, pursuant to Chapter 2303 of the TEXAS GOVERNMENT CODE, or a reinvestment zone, pursuant to Chapter 311 or 312 of the TEXAS TAX CODE. The legal description, and information concerning the designation, of such zone is attached to this Agreement as **EXHIBIT 1** and is incorporated herein by reference for all purposes.

Section 3.2. LOCATION OF QUALIFIED PROPERTY AND INVESTMENT. The Land on which the Qualified Property shall be located and on which the Qualified Investment shall be made is described in **EXHIBIT 2**, which is attached hereto and 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** unless amended pursuant to the

provisions of Section 10.2 of this Agreement.

Section 3.3. DESCRIPTION OF QUALIFIED PROPERTY. The Qualified Property that is subject to the Tax Limitation Amount is described in **EXHIBIT 4**, which is attached hereto and incorporated herein by reference for all purposes. Property which is not specifically described in **EXHIBIT 4** shall not be considered by the District or the Appraisal District to be part of the Applicant's Qualified Property for purposes of this Agreement, unless by official action the Board of Trustees provides that such other property is a part of the Applicant's Qualified Property for purposes of this Agreement in compliance with Section 313.027(e) of the TEXAS TAX CODE, the Comptroller's Rules, and Section 10.2 of this Agreement.

Section 3.4. CURRENT INVENTORY OF QUALIFIED PROPERTY. In addition to the requirements of Section 10.2 of this Agreement, if there is a material change in the Qualified Property described in **EXHIBIT 4**, then within 60 days from the date commercial operation begins, the Applicant shall provide to the District, the Comptroller, the Appraisal District or the State Auditor's Office a specific and detailed description of the tangible personal property, buildings, and/or permanent, nonremovable building components (including any affixed to or incorporated into real property) on the Land to which the value limitation applies including maps or surveys of sufficient detail and description to locate all such described property on the Land.

Section 3.5. QUALIFYING USE. The Applicant's Qualified Property described in Section 3.3 qualifies for a tax limitation agreement under Section 313.024(b)(5) of the TEXAS TAX CODE as a renewable energy electric generation facility.

ARTICLE IV

PROTECTION AGAINST LOSS OF FUTURE DISTRICT REVENUES

Section 4.1. INTENT OF THE PARTIES. Subject to the limitations contained in this Agreement (including Section 7.1), it is the intent of the Parties that the District shall, in accordance with the provisions of Section 313.027(f)(1) of the TEXAS TAX CODE, be compensated by Applicant for any loss that District incurs in its Maintenance and Operations Revenue as a direct result of, or on account of, entering into this Agreement, after taking into account any payments to be made under this Agreement. Such payments shall be independent of, and in addition to such other payments as set forth in Articles V and VI in this Agreement. Subject to the limitations contained in this Agreement (including Section 7.1), IT IS THE INTENT OF THE PARTIES THAT THE RISK OF ANY NEGATIVE FINANCIAL CONSEQUENCE TO DISTRICT IN MAKING THE DECISION TO ENTER INTO THIS AGREEMENT WILL BE BORNE SOLELY BY APPLICANT AND NOT BY DISTRICT. Applicant recognizes and acknowledges the calculations relating to the District's loss of Maintenance and Operations Revenue under this Agreement will be affected by changes to the timing of construction of the Project and any change to the Qualified Investment/Qualified Property. As such, Applicant acknowledges that it will bear any and all losses of Maintenance and Operations Revenue suffered by the District as a result of the Agreement, including any Revenue Protection Payment calculated under Section 4.2. To the extent not otherwise in conflict with this Agreement, Applicant is entitled to the full

benefit resulting from the limitation set out in Section 2.4.

Section 4.2. CALCULATING THE AMOUNT OF LOSS OF REVENUES BY THE DISTRICT. Subject to the provisions of Section 7.1, the amount to be paid by Applicant to compensate District for loss of Maintenance and Operations Revenue resulting from, or on account of, this Agreement for each year starting in the year of the Application Review Start Date and ending on December 31st of the first year after the Tax Limitation Period has ended (as set out in **EXHIBIT 5**), the “M&O Amount” shall be determined in compliance with the Applicable School Finance Law in effect for such year and according to the following formula:

A. The M&O Amount owed by Applicant to District means the Original M&O Revenue *minus* the New M&O Revenue; based on the following definitions:

- i. “Original M&O Revenue” means the total State and local Maintenance and Operations Revenue that 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 had been subject to the full ad valorem maintenance & operations tax without any limitation on value.
- ii. “New M&O Revenue” means the total State and local Maintenance and Operations Revenue that District actually received for such school year.

B. In making the calculations for the M&O Amount required by this Section 4.2 of this Agreement:

- 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 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 4.2 of this Agreement results in a negative number for the M&O Amount, the negative number will be considered to be zero.
- iv. Except as otherwise provided in this Agreement, the Applicant shall not be responsible for payment of more ad valorem taxes for the District’s Maintenance and Operations Revenue during the Tax Limitation Period than the Tax Limitation Amount.
- v. All calculations made for the New M&O Revenue during the Tax Limitation Period under Section 4.2.A.ii of this Agreement will reflect the Tax Limitation Amount for such year.
- vi. All calculations for the M&O Amount made under this Section 4.2 of this Agreement shall be made by a methodology which isolates only the revenue impact caused by this Agreement. Applicant shall not be responsible to reimburse District for other revenue losses created by other agreements or any other factors.

Section 4.3. STATUTORY CHANGES AFFECTING M&O REVENUE. Notwithstanding any other provision in this Agreement, but subject to the limitations contained in Section 7.1 of this

Agreement, in the event that, by virtue of statutory changes to the Applicable School Finance Law, administrative interpretations by Comptroller, Commissioner of Education, or the Texas Education Agency, or for any other reason attributable to statutory change, District will receive less Maintenance and Operations Revenue, or, if applicable, will be required to increase its payment of funds to the State or another school district, pursuant to Chapter 41 of the TEXAS EDUCATION CODE, because of its participation in this Agreement, Applicant shall make payments to District, up to the Revenue Protection Amount limit set forth in Section 7.1 that are necessary to offset any negative impact on District as a result of its participation in this Agreement and secure for the District an amount of Maintenance and Operation Revenue not less than what the District would have received had the District not entered into 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 District.

Section 4.4. COMPENSATION FOR LOSS OF OTHER REVENUES. To the extent not included in the amounts calculated pursuant to Section 4.2 above, Applicant shall also pay to the District on an annual basis all non-reimbursed costs arising from entering this Agreement, including but not limited to: (a) any loss incurred by the District resulting from successful judicial challenge to this Agreement; (b) 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 (c) any non-reimbursed costs incurred by the District and related to this Agreement, either directly or indirectly, including costs paid to the Appraisal District caused by increased appraised values arising solely from the Qualified Property that is subject to the limitation provided in Section 2.4 herein.

Section 4.5. 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 and approved by the Applicant with such approval to not be unreasonably withheld, conditioned or delayed. Applicant will be solely responsible for the payment of Consultant's fees up to Seven Thousand Dollars, (\$7,000.00) 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 4.6. 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 TEXAS TAX 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 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 4.7. DELIVERY OF CALCULATIONS.

A. All calculations required under Articles IV, V, or VI 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.

B. 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 4.8. 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 7.1, the Applicant shall pay all amounts determined to be due and owing to the District, all amounts billed by the Consultant pursuant to Section 4.5, and any 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; provided however that the District and the Applicant may mutually agree in writing to extend the date of payment. The District, upon request of Applicant, shall provide supporting documentation to substantiate such reasonable and necessary expenses to the extent such supporting documentation is not excepted from disclosure as attorney-client privilege or otherwise excepted from disclosure under the Texas Public Information Act (TEXAS GOVERNMENT CODE § 552.001, *et seq.*).

Section 4.9. 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 GF (LOCAL).

Section 4.10. 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 IV 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 4.11. EFFECT STATUTORY OR OTHER LEGAL CHANGES. If the District will receive less M&O Revenue, or, if applicable, will be required to increase its payment of funds to the State or another school district due to the District's participation in this Agreement because of changes to Applicable 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 limitation set forth in Section 7.1 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 M&O Revenue not less than that which the District would have received had the District not entered into this Agreement.

ARTICLE V

PAYMENT OF EXTRAORDINARY EDUCATION RELATED EXPENSES

Section 5.1. EXTRAORDINARY EXPENSES. In addition to the amounts determined pursuant to Article IV or Article VI of this Agreement above, Applicant on an annual basis shall also indemnify and reimburse District for the following:

A. all non-reimbursed costs, certified by District's external auditor to have been incurred by District for extraordinary education-related expenses directly related to the project that are not directly funded in state aid formulas, including expenses for the use of portable classrooms and the hiring of additional personnel to accommodate a temporary increase in student enrollment caused by the project; and

B. any other loss of District revenues or funds which are, or may be attributable to the payment by Applicant to or on behalf any other third party beneficiary.

Section 5.2. PAYMENTS. Payments of amounts due under this Article shall be made as set forth in Section 4.8 above.

ARTICLE VI

SUPPLEMENTAL PAYMENTS

Section 6.1. SUPPLEMENTAL PAYMENTS. Applicant shall make Supplemental Payments as set out in Section 6.2 annually, starting with the first year of the Agreement, and continuing through the third year following the end of the Tax Limitation Period.

Section 6.2. SUPPLEMENTAL PAYMENT LIMITATION. Notwithstanding the foregoing:

A. The total of the Supplemental Payments made pursuant to this Article shall not exceed for any calendar year of this Agreement an amount equal to the greater of One Hundred Dollars (\$100.00) per student per year in average daily attendance, as defined by Section 42.005

of the TEXAS EDUCATION CODE, or Fifty Thousand Dollars (\$50,000.00) per year times the number of years beginning with the first complete or partial year of the Qualifying Time Period identified in Section 2.3.C and ending with the year for which the Supplemental Payment is being calculated minus all Supplemental Payments previously made by the Applicant;

B. Supplemental Payments may only be made during the period starting the first year of the Qualifying Time Period and ending December 31 of the third year following the end of the Tax Limitation Period.

C. The limitation in Section 6.2.A does not apply to amounts described by Section 313.027(f)(1)–(2) of the TEXAS TAX CODE as implemented in Articles IV and V of this Agreement.

D. For purposes of this Agreement, the calculation of the limit of the annual Supplemental Payment shall be the greater of \$50,000 or \$100 multiplied by the District's Average Daily Attendance as calculated pursuant to Section 42.005 of the TEXAS EDUCATION CODE, based upon the District's 2014-15 Average Daily Attendance of 696, rounded to the whole number. In the event the District is consolidated with another school district during the term of this Agreement, the calculations will be based on the District's ADA rather than the consolidated district's ADA.

Section 6.3. SUPPLEMENTAL PAYMENT CHANGES. In the event Chapter 313 is modified or amended to allow the District to receive supplemental payments in excess of the foregoing limitation, Applicant agrees to cooperate with the District to amend this Agreement to allow District to receive the maximum amount of supplemental payments as allowed by law; provided however, the total supplemental payments 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 the amount calculated as set out in Section 6.2.A above, as determined for that school year. "Net Tax Savings" means an amount equal to (but not less than zero): (i) the sum of 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; 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 successor, *plus* (B) any and all payments due to the District under Article IV of this Agreement. For clarification, Net Tax Savings in respect of a particular year pursuant to Section 6.2 shall mean an amount equal to (but not less than zero): (i) the sum of the amount of maintenance and operations ad valorem taxes which the Applicant would have paid to the District for such year if this Agreement had not been entered into by the Parties; 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 successor for such year, *plus* (B) any and all payments due to the District under Article IV of this Agreement for such year. This Section 6.3 shall only apply if Chapter 313 of the TEXAS TAX CODE is amended so that the District is permitted to receive payments in lieu of taxation greater than as described in Section 6.2 above; otherwise, Section 6.2 shall apply.

Section 6.4. PAYMENT BY APPLICANT. Payment of amounts due under this Article shall be made as set forth in Section 4.8 of this Agreement and is subject to the limitations contained in Section 7.1.

ARTICLE VII

ANNUAL LIMITATION OF PAYMENTS BY APPLICANT

Section 7.1 ANNUAL LIMITATION. Notwithstanding anything contained in this Agreement to the contrary, and with respect to each Tax Year of the Tax Limitation Period beginning after the first Tax Year of the Tax Limitation Period, 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 IV, V, and VI of this Agreement 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 Article IV of this Agreement, 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 IV, V, and VI shall be reduced until such excess is eliminated.

Section 7.2. OPTION TO TERMINATE AGREEMENT. In the event that any payment otherwise due from the Applicant to the District under Article IV, Article V, or Article VI of this Agreement with respect to a Tax Year is subject to reduction in accordance with the provisions of Section 7.1, then the Applicant shall have the option to terminate this Agreement. The Applicant may exercise such option to terminate this Agreement by notifying the District of its election in writing not later than the July 31 of the year following the Tax Year with respect to which a reduction under Section 7.1 is applicable. Any termination of this Agreement under the foregoing provisions of this Section 7.2 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.

Section 7.3. EFFECT OF OPTIONAL TERMINATION. Upon the exercise of the option to terminate pursuant to Section 7.2, this Agreement shall terminate and be of no further force or effect; provided, however, that:

A. 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; and

B. the provisions of this Agreement regarding payments (including liquidated damages and tax payments), records and dispute resolution shall survive the termination or expiration of

this Agreement.

ARTICLE VIII

ADDITIONAL OBLIGATIONS OF APPLICANT

Section 8.1. APPLICANT'S OBLIGATION TO MAINTAIN VIABLE PRESENCE. In order to receive and maintain the limitation authorized by Section 2.4 in addition to the other obligations required by this Agreement, the Applicant shall Maintain Viable Presence in the District commencing at the start of the Tax Limitation Period through the Final 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, provided the Applicant makes commercially reasonable efforts to remedy the cause of such Force Majeure.

Section 8.2. REPORTS. In order to receive and maintain the limitation authorized by Section 2.4 in addition to the other obligations required by this Agreement, the Applicant shall submit all reports required from time to time by the Comptroller, listed in 34 TEXAS ADMIN. CODE Section 9.1052 and as currently located on the Comptroller's website, including all data elements required by such form to the satisfaction of the Comptroller on the dates indicated on the form or the Comptroller's website and starting on the first such due date after the Application Approval Date.

Section 8.3. COMPTROLLER'S REPORT ON CHAPTER 313 AGREEMENTS. During the term of this Agreement, both Parties shall provide the Comptroller with all information reasonably necessary for the Comptroller to assess performance under this Agreement for the purpose of issuing the Comptroller's report, as required by Section 313.032 of the TEXAS TAX CODE.

Section 8.4. DATA REQUESTS. Upon the written request of the District, the State Auditor's Office, the Appraisal District, or the Comptroller during the term of this Agreement, the Applicant, the District or any other entity on behalf of the District shall provide the requesting party with all information reasonably necessary for the requesting party to determine whether the Applicant is in compliance with its rights, obligations, or responsibilities, including, but not limited to, any employment obligations which may arise under this Agreement.

Section 8.5. SITE VISITS AND RECORD REVIEW. The Applicant shall allow authorized employees of the District, the Comptroller, the Appraisal District, and the State Auditor's Office to have reasonable access to the Applicant's Qualified Property and business records from the Application Review Start Date through the Final Termination Date, 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.

A. 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.

B. 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, the Comptroller, or the Appraisal District with any technical or business information that is proprietary, a trade secret, or is subject to a confidentiality agreement with any third party.

Section 8.6. RIGHT TO AUDIT; SUPPORTING DOCUMENTS; AUTHORITY OF STATE AUDITOR.

By executing this Agreement, implementing the authority of, and accepting the benefits provided by Chapter 313 of the TEXAS TAX CODE, the Parties agree that this Agreement and their performance pursuant to its terms are subject to review and audit by the State Auditor as if they are parties to a State contract and subject to the provisions of Section 2262.154 of the TEXAS GOVERNMENT CODE and Section 313.010(a) of the TEXAS TAX CODE. The Parties further agree to comply with the following requirements:

A. The District and the Applicant shall maintain and retain supporting documents adequate to ensure that claims for the Tax Limitation Amount are in accordance with applicable Comptroller and State of Texas requirements. The Applicant and the District shall maintain all such documents and other records relating to this Agreement and the State's property for a period of four (4) years after the latest occurring date of:

- i. date of submission of the final payment;
- ii. Final Termination Date; or
- iii. date of resolution of all disputes or payment.

B. During the time period defined under Section 8.6.A, the District and the Applicant shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to this Agreement; the Applicant's Application; and the Applicant's Qualified Property, Qualified Investment, New Qualifying Jobs, and wages paid for New Non-Qualifying Jobs such as work papers, reports, books, data, files, software, records, calculations, spreadsheets and other supporting documents pertaining to this Agreement, for purposes of inspecting, monitoring, auditing, or evaluating by the Comptroller, State Auditor's Office, State of Texas or their authorized representatives. The Applicant and the District shall cooperate with auditors and other authorized Comptroller and State of Texas representatives and shall provide them with prompt access to all of such property as requested by the Comptroller or the State of Texas. By example and not as an exclusion to other breaches or failures, the Applicant's or the District's failure to comply with this Section shall constitute a Material Breach of this Agreement.

C. In addition to and without limitation on the other audit provisions of this Agreement, the acceptance of tax benefits or funds by the Applicant or the District or any other entity or person directly under this Agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in

connection with those funds. Under the direction of the legislative audit committee, the Applicant or the District or other entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The Parties agree that this Agreement shall for its duration be subject to all rules and procedures of the State Auditor acting under the direction of the legislative audit committee.

D. The Applicant shall include the requirements of this Section 8.6 in its subcontract with any entity whose employees or subcontractors are subject to wage requirements under the Act, the Comptroller's Rules, or this Agreement, or any entity whose employees or subcontractors are included in the Applicant's compliance with job creation or wage standard requirement of the Act, the Comptroller's Rules, or this Agreement.

Section 8.7. FALSE STATEMENTS; BREACH OF REPRESENTATIONS. The Parties acknowledge that this Agreement has been negotiated, and is being executed, in reliance upon the information contained in the Application, and any supplements or amendments thereto, without which the Comptroller would not have approved this Agreement and the District would not have executed this Agreement. By signature to this Agreement, the Applicant:

A. represents and warrants that all information, facts, and representations contained in the Application are true and correct to the best of its knowledge;

B. agrees and acknowledges that the Application and all related attachments and schedules are included by reference in this Agreement as if fully set forth herein; and

C. acknowledges that if the Applicant submitted its Application with a false statement, signs this Agreement with a false statement, or submits a report with a false statement, or it is subsequently determined that the Applicant has violated any of the representations, warranties, guarantees, certifications, or affirmations included in the Application or this Agreement, the Applicant shall have materially breached this Agreement and the Agreement shall be invalid and void except for the enforcement of the provisions required by Section 9.2 of this Agreement.

ARTICLE IX

MATERIAL BREACH OR EARLY TERMINATION

Section 9.1. EVENTS CONSTITUTING MATERIAL BREACH OF AGREEMENT. The Applicant shall be in Material Breach of this Agreement if it commits one or more of the following acts or omissions (each a "Material Breach"):

A. The Application, any Application Supplement, or any Application Amendment on which this Agreement is approved is determined to be inaccurate as to any material representation, information, or fact or is not complete as to any material fact or representation or such application;

B. The Applicant failed to complete Qualified Investment as required by Section 2.5.A. of this Agreement during the Qualifying Time Period;

C. The Applicant failed to create and maintain the number of New Qualifying Jobs required by the Act;

D. The Applicant failed to create and maintain the number of New Qualifying Jobs specified in Schedule C of the Application;

E. The Applicant failed to pay at least the average weekly wage of all jobs in the county in which the jobs are located for all New Non-Qualifying Jobs created by the Applicant;

F. The Applicant failed to provide payments to the District sufficient to protect future District revenues through payment of revenue offsets and other mechanisms as more fully described in Article IV of this Agreement;

G. The Applicant failed to provide the payments to the District that protect the District from the payment of extraordinary education-related expenses related to the project, to the extent and in the amounts that the Applicant agreed to provide such payments in Article V of this Agreement;

H. The Applicant failed to provide the Supplemental Payments to the extent and in the amounts that the Applicant agreed to provide such Supplemental Payments in Article VI of this Agreement;

I. The Applicant failed to create and Maintain Viable Presence on or with the Qualified Property as more fully specified in Article VIII of this Agreement;

J. The Applicant failed to submit the reports required to be submitted by Section 8.2 to the satisfaction of the Comptroller;

K. The Applicant failed to provide the District or the Comptroller with all information reasonably necessary for the District or the Comptroller to determine whether the Applicant is in compliance with its obligations, including, but not limited to, any employment obligations which may arise under this Agreement;

L. The Applicant failed to allow authorized employees of the District, the Comptroller, the Appraisal District, or the State Auditor's Office to have access to the Applicant's Qualified Property or business records 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 under Sections 8.5 and 8.6;

M. The Applicant failed to comply with a request by the State Auditor's office to review and audit the Applicant's compliance with this Agreement;

N. The Applicant has made any payments to the District or to any other person or persons 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 TEXAS TAX CODE, in excess of the amounts set forth in Articles IV, V and VI of this Agreement;

O. The Applicant failed to comply with the conditions included in the certificate for limitation issued by the Comptroller.

Section 9.2. DETERMINATION OF BREACH AND TERMINATION OF AGREEMENT.

A. Prior to making a determination that the Applicant has failed to comply in any material respect with the terms of this Agreement or to meet any material obligation under this Agreement, the District shall provide the Applicant with a written notice of the facts which it believes have caused the breach of this Agreement, and if cure is possible, the cure proposed by the District. After receipt of the notice, the Applicant shall be given ninety (90) days to present any facts or arguments to the Board of Trustees showing that it is not in breach of its obligations under this Agreement, or that it has cured or undertaken to cure any such breach.

B. If the Board of Trustees is not satisfied with such response 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:

- i. whether or not a breach of this Agreement has occurred;
- ii. whether or not such breach is a Material Breach;
- iii. the date such breach occurred, if any;
- iv. whether or not any such breach has been cured; and,

C. In the event that the Board of Trustees determines that such a breach has occurred and has not been cured, it shall at that time determine:

- i. the amount of recaptured taxes under Section 9.4.C (net of all credits under Section 9.4.C);
- ii. the amount of any penalty or interest under Section 9.4.E that are owed to the District; and
- iii. in the event of a finding of a Material Breach, whether to terminate this Agreement.

D. After making its determination regarding any alleged breach, the Board of Trustees shall cause the Applicant to be notified in writing of its determination (a "Determination of Breach and Notice of Contract Termination") and provide a copy to the Comptroller.

Section 9.3. DISPUTE RESOLUTION.

A. After receipt of notice of the Board of Trustee's Determination of Breach and Notice of Contract Termination under Section 9.2, 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 initiates mediation, 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 presiding in Floyd 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.

B. In the event that any mediation is not successful in resolving the dispute or that payment is not received within the time period described for mediation in Section 9.3.A, either the District or the Applicant may seek a judicial declaration of their respective rights and duties under this Agreement or otherwise, in a judicial proceeding in a state district court in Floyd County, 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 contract, agreement or undertaking made by a Party pursuant to this Agreement.

C. If payments become due under this Agreement and are not received before the expiration of the sixty (60) days provided for such payments in Section 9.3.A, and if the Applicant has not contested such payment calculations under the procedures set forth herein, including judicial proceedings, the District shall have the remedies for the collection of the amounts determined under Section 9.4 as are set forth in Chapter 33, Subchapters B and C, of the TEXAS TAX CODE 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 to the attorneys representing the District pursuant to Section 6.30 of the TEXAS TAX CODE and a tax lien shall attach to the Applicant's Qualified Property and the Applicant's Qualified Investment pursuant to Section 33.07 of the TEXAS TAX CODE to secure payment of such fees.

Section 9.4. 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 7.2 of this Agreement, the Applicant shall pay to the District liquidated damages for such failure within thirty (30) days after receipt of the notice of breach.

B. In the event that the District determines that the Applicant has failed to comply in any material respect with the terms of this Agreement or to meet any material obligation under this Agreement, the Applicant shall pay to the District liquidated damages, as calculated by Section 9.4.C, prior to, and the District may terminate the Agreement effective on the later of: (i) the expiration of the sixty (60) days provided for in Section 9.3.A, and (ii) thirty (30) days after any mediation and judicial proceedings initiated pursuant to Sections 9.3.A and 9.3.B are resolved in favor of the District.

C. 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 9.4.E. For purposes of this liquidated damages calculation, the Applicant shall be entitled to a credit for all payments made to the District pursuant to Articles IV, V, and VI. Upon payment of such liquidated damages, the Applicant's obligations under this Agreement shall be deemed fully satisfied, and such payment shall constitute the District's sole remedy.

D. In the event that the District determines that the Applicant has committed a Material Breach identified in Section 9.1, after the notice and mediation periods provided by Sections 9.2 and 9.3, then the District may, in addition to the payment of liquidated damages required pursuant to Section 9.4.C, terminate this Agreement.

E. 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 less all credits under Section 9.4.C owed for each Tax Year during the Tax Limitation Period. The District shall calculate penalty or interest for each Tax Year during the Tax Limitation Period 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 9.4.C 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 Section 33.01(a) of the TEXAS TAX CODE, or its successor statute. Interest on said amounts shall be calculated in accordance with the methodology set forth in Section 33.01(c) of the TEXAS TAX CODE, or its successor statute.

Section 9.5. 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 amounts calculated under Section 9.4. 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 9.5 shall be the sole and exclusive remedies available to the District, whether at law or under principles of equity.

Section 9.6. STATUTORY PENALTY FOR INADEQUATE QUALIFIED INVESTMENT. Pursuant to Section 313.0275 of the TEXAS TAX CODE, in the event that the Applicant fails to make \$10,000,000 of Qualified Investment, in whole or in part, during the Qualifying Time Period, the Applicant is liable to the State for a penalty. The amount of the penalty is the amount determined by: (i) multiplying the maintenance and operations tax rate of the school district for that tax year that the penalty is due by (ii) the amount obtained after subtracting (a) the Tax Limitation Amount identified in Section 2.4.B from (b) the Market Value of the property identified on the Appraisal District's records for the Tax Year the penalty is due. This penalty shall be paid on or before February 1 of the year following the expiration of the Qualifying Time Period and is subject to the delinquent penalty provisions of Section 33.01 of the TEXAS TAX CODE. The Comptroller may grant a waiver of this penalty in the event of Force Majeure which prevents compliance with this provision.

Section 9.7. REMEDY FOR FAILURE TO CREATE AND MAINTAIN REQUIRED NEW QUALIFYING JOBS

A. Pursuant to Section 313.0276 of the TEXAS TAX CODE, for any full Tax Year that commences after the project has become operational, in the event that it has been determined that the Applicant has failed to meet the job creation or retention requirements defined in Sections 9.1;C, the Applicant shall not be deemed to be in Material Breach of this Agreement until such time as the Comptroller has made a determination to rescind this Agreement under Section 313.0276 of TEXAS TAX CODE, and that determination is final.

Section 9.8. REMEDY FOR FAILURE TO CREATE AND MAINTAIN COMMITTED NEW QUALIFYING JOBS

A. In the event that the Applicant fails to create and maintain the number of New Qualifying Jobs specified in Schedule C of the Application, an event constituting a Material Breach as defined in Section 9.1.D, the Applicant and the District may elect to remedy the Material Breach through a penalty payment.

B. Following the notice and mediation periods provided by Sections 9.2 and 9.3, the District may request the Applicant to make a payment to the State in an amount equal to: (i) multiplying the maintenance and operations tax rate of the school district for that Tax Year that the Material Breach occurs by (ii) the amount obtained after subtracting (a) the Tax Limitation Amount identified in Section 2.4.B from (b) the market value of the property identified on the Appraisal District's records for each tax year the Material Breach occurs.

C. In the event that there is no tax limitation in place for the tax year that the Material Breach occurs, the payment to the State shall be in an amount equal to: (i) multiplying the maintenance and operations tax rate of the School District for each tax year that the Material Breach occurs by (ii) the amount obtained after subtracting (a) the tax limitation amount identified in Section 2.4.B from (b) the Market Value of the property identified on the Appraisal District's records for the last Tax Year for which the Applicant received a tax limitation.

D. The penalty shall be paid no later than 30 days after the notice of breach and is subject to the delinquent penalty provisions of Section 33.01 of the TEXAS TAX CODE.

ARTICLE X.

MISCELLANEOUS PROVISIONS

Section 10.1. INFORMATION AND NOTICES.

A. 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 or email transmission, with notice 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 or email 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.

B. Notices to the District shall be addressed to the District's Authorized Representative as follows:

To the District:

Floydada Independent School District
Attn: Gilbert Trevino, Superintendent
(or the successor Superintendent)
226 W. California St.
Floydada, TX 79235
Phone #: (806) 983-3498
Fax #: (806) 983-5739
Email: gtrevino@floydadaisd.esc17.net

With a copy to:

Underwood Law Firm, P.C.
Attn: Fred Stormer
P.O. Box 9158
Amarillo, TX 79105-9158
Phone #: (806) 379-1306
Fax #: (806) 379-0316
Email: fred.stormer@uwlaw.com

C. Notices to the Applicant shall be addressed to its Authorized Representative as follows:

To Applicant:

Old Settler Wind, LLC
c/o Apex Clean Energy, Inc.
310 4th St., NE, Suite 200
Charlottesville, VA 22902
Attn: President
Phone #: (432) 220-7595
Email: apex@apexcleanenergy.com

With a copy to:

Old Settler Wind, LLC
c/o Apex Clean Energy, Inc.
310 4th St., NE, Suite 200
Charlottesville, VA 22902
Attn: Deputy General Counsel
Phone #: (432) 220-7595
Email: legal@apexcleanenergy.com

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

Section 10.2. AMENDMENTS TO APPLICATION AND AGREEMENT; WAIVERS.

A. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by all of the Parties and after completing the requirements of Section 10.2.B. 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.

B. By official action of the District's Board of Trustees, the Application and this Agreement may only be amended according to the following:

- i. The Applicant shall submit to the District and the Comptroller:
 - a. a written request to amend the Application and this Agreement, which shall specify the changes the Applicant requests;
 - b. any changes to the information that was provided in the Application that was approved by the District and considered by the Comptroller;
 - c. and any additional information requested by the District or the Comptroller necessary to evaluate the amendment or modification;
- ii. The Comptroller shall review the request and any additional information for compliance with the Act and the Comptroller's Rules and provide a revised Comptroller certificate for a limitation within 90 days of receiving the revised Application and, if the request to amend the Application has not been approved by the Comptroller by the end of the 90-day period, the request is denied; and
- iii. If the Comptroller has not denied the request, the District's Board of Trustees shall approve or disapprove the request before the expiration of 150 days after the request is filed.

C. Any amendment of the Application and this Agreement adding additional or replacement Qualified Property pursuant to this Section 10.2 of this Agreement shall:

- i. require that all property added by amendment be eligible property as defined by Section 313.024 of the TEXAS TAX CODE;
- ii. clearly identify the property, investment, and employment information added by amendment from the property, investment, and employment information in the original Agreement; and

D. The Application and this Agreement may not be amended to extend the value limitation time period beyond its ten-year statutory term.

E. The Comptroller determination made under Section 313.026(c)(2) of the TEXAS TAX CODE in the original certificate for a limitation satisfies the requirement of the Comptroller to make the same determination for any amendment of the Application and this Agreement, provided that the facts upon which the original determination was made have not changed.

Section 10.3. ASSIGNMENT.

A. Any assignment of any rights, benefits, obligations, or interests of the Parties in this Agreement, other than a collateral assignment purely for the benefit of creditors of the project, is considered an amendment to the Agreement and such Party may only assign such rights, benefits, obligations, or interests of this Agreement after complying with the provisions of Section 10.2 regarding amendments to the Agreement. Other than a collateral assignment to a creditor, this Agreement may only be assigned to an entity that is eligible to apply for and execute an agreement for limitation on appraised value pursuant to the provisions of Chapter 313 of the TEXAS TAX CODE and the Comptroller's Rules.

B. 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.

C. In the event of an assignment to a creditor, the Applicant must notify the District and the Comptroller in writing no later than 30 days after the assignment. This Agreement shall be binding on the assignee.

Section 10.4. 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 10.5. 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 a state district court in Floyd County.

Section 10.6. 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 10.7. 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 so that the transactions contemplated hereby are fulfilled to the extent possible. As used in this Section 10.7, 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 10.8. 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 10.9. INTERPRETATION.

A. 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.

B. 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.

C. The provisions of the Act and the Comptroller’s Rules are incorporated by reference as if fully set forth in this Agreement. In the event of a conflict, the conflict will be resolved by reference to the following order of precedence:

- i. The Act;
- ii. The Comptroller’s Rules as they exist at the time the Agreement is executed, except as allowed in the definition of Qualified Property in Section 1.1; and
- iii. This Agreement and its Attachments including the Application as incorporated by reference.

Section 10.10. 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 10.11. 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; and the approved and executed copy of this Agreement or any amendment thereto, as follows:

A. Within seven (7) days of receipt of such document, the District shall submit a copy to the Comptroller for publication on the Comptroller's Internet website;

B. The 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 Section 313.028 of the TEXAS TAX CODE.

Section 10.12. CONTROL; OWNERSHIP; LEGAL PROCEEDINGS. The Applicant shall immediately notify the District in writing of any actual or anticipated change in the control or ownership of the Applicant and of any legal or administrative investigations or proceedings initiated against the Applicant related to the project regardless of the jurisdiction from which such proceedings originate.

Section 10.13. DUTY TO DISCLOSE. If circumstances change or additional information is obtained regarding any of the representations and warranties made by the Applicant in the Application or this Agreement, or any other disclosure requirements, subsequent to the date of this Agreement, the Applicant's duty to disclose continues throughout the term of this Agreement.

Section 10.14. CONFLICTS OF INTEREST.

A. The District represents that, after diligent inquiry, each local public official or local government officer, as those terms are defined in Chapters 171 and 176 of the TEXAS LOCAL GOVERNMENT CODE, has disclosed any conflicts of interest in obtaining or performing this Agreement and related activities, appropriately recused from any decisions relating to this Agreement when a disclosure has been made, and the performance of this Agreement will not create any appearance of impropriety. The District represents that it, the District's local public officials or local government officer, as those terms are defined in Chapters 171 and 176 of the TEXAS LOCAL GOVERNMENT CODE, have not given, nor intend to give, at any time hereafter, any future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant, employee, or representative of the other Party or the State of Texas in connection with this Agreement.

B. The Applicant represents that, after diligent inquiry, each of its agents, as defined in Chapter 176 of the TEXAS LOCAL GOVERNMENT CODE, involved in the representation of the Applicant with the District has complied with the provisions of Chapter 176 of the TEXAS LOCAL GOVERNMENT CODE. The Applicant represents that it and its agents, as defined in Chapter 176 of the TEXAS LOCAL GOVERNMENT CODE, have not given, nor intend to give, at any time hereafter,

any future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant, employee, or representative of the other Party or the State of Texas in connection with this Agreement.

C. The District and the Applicant each separately agree to notify the other Party and the Comptroller immediately upon learning of any conflicts of interest.

Section 10.15. PROVISIONS SURVIVING EXPIRATION OR TERMINATION. Notwithstanding the expiration or termination (by agreement, breach, or operation of time) of this Agreement, the provisions of this Agreement regarding payments (including liquidated damages and tax payments), reports, records, and dispute resolution of the Agreement shall survive the termination or expiration dates of this Agreement until the following occurs:

- A. all payments, including liquidated damage and tax payments, have been made;
- B. all reports have been submitted;
- C. all records have been maintained in accordance with Section 8.6.A; and
- D. all disputes in controversy have been resolved.

Section 10.16. FACSIMILE OR ELECTRONIC DELIVERY.

A. This Agreement may be duly executed and delivered in person, by mail, or by facsimile or other electronic format (including portable document format (pdf) transmitted by e-mail). The executing Party must promptly deliver a complete, executed original or counterpart of this Agreement to the other executing Parties. This Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original or counterpart.

- B. Delivery is deemed complete as follows:
- i. When delivered if delivered personally or sent by express courier service;
 - ii. Three (3) business days after the date of mailing if sent by registered or certified U.S. mail, postage prepaid, with return receipt requested;
 - iii. When transmitted if sent by facsimile, provided a confirmation of transmission is produced by the sending machine; or
 - iv. When the recipient, by an e-mail sent to the e-mail address for the executing Parties acknowledges having received that e-mail (an automatic "read receipt" does not constitute acknowledgment of an e-mail for delivery purposes).

[signatures follow on next page]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties in multiple originals on this 22nd day of March, 2016.

OLD SETTLER WIND, LLC

By: Cotton Plains Holdings, LLC, its sole member

By: Apex GCL, LLC, its sole member

By: Apex Clean Energy Holdings, LLC, its sole member

FLOYDADA INDEPENDENT SCHOOL DISTRICT

BY: _____

NAME: _____

TITLE: _____

BY: _____

NAME: _____

TITLE: _____

ATTEST:

BY: _____

NAME: _____

TITLE: _____

EXHIBIT 1

DESCRIPTION AND LOCATION OF ENTERPRISE OR REINVESTMENT ZONE

By Order No. 2013-11-03, the Floyd County Commissioners Court created Floyd County Reinvestment Zone No. 1 on March 11, 2013 which is more particularly described below.

Beginning in the northwest corner of Floyd County and then:

- following the northerly Floyd County line eastward to the northeast corner of Floyd County,
- Then following the easterly Floyd County line southward to the southeast corner of Floyd County,
- Then following the southerly Floyd County line westward to the east side of US Highway 62.
- Then following the east boundary of US Highway 62 northward to the city limits of Floydada, TX
- Then following the Floydada city limits around the east and north sides of the city to the east side of US Highway 70
- Then following the east side of US Highway 70 northward to CR 23
- Then following the north side of CR 232 westward to the east side of CR 91
- Then following the east side of CR 91 northward until it joins and turns into FM 378
- Then following the east side of FM 378 northward to the southeastly [sic] city limits of Lockney, TX
- Then following the Lockney city limits around the east, north, and finally the west side of the city back to north side of US Highway 70
- Then following north side of US Highway 70 northwestward to the Floyd/Hale county line.
- Then following the westerly boundary of Floyd County northward to the beginning point, being the northwest corner of Floyd County

For the avoidance of doubt, this area specifically excludes the incorporated municipalities of Lockney and Floydada and that area within the boundaries of the Whirlwind Reinvestment Zone No. 2 as described in Exhibit A of Order 11-10-08 of the Commissioners Court of Floyd County, Texas Designating Reinvestment Zone.

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

EXHIBIT 2

DESCRIPTION OF LAND

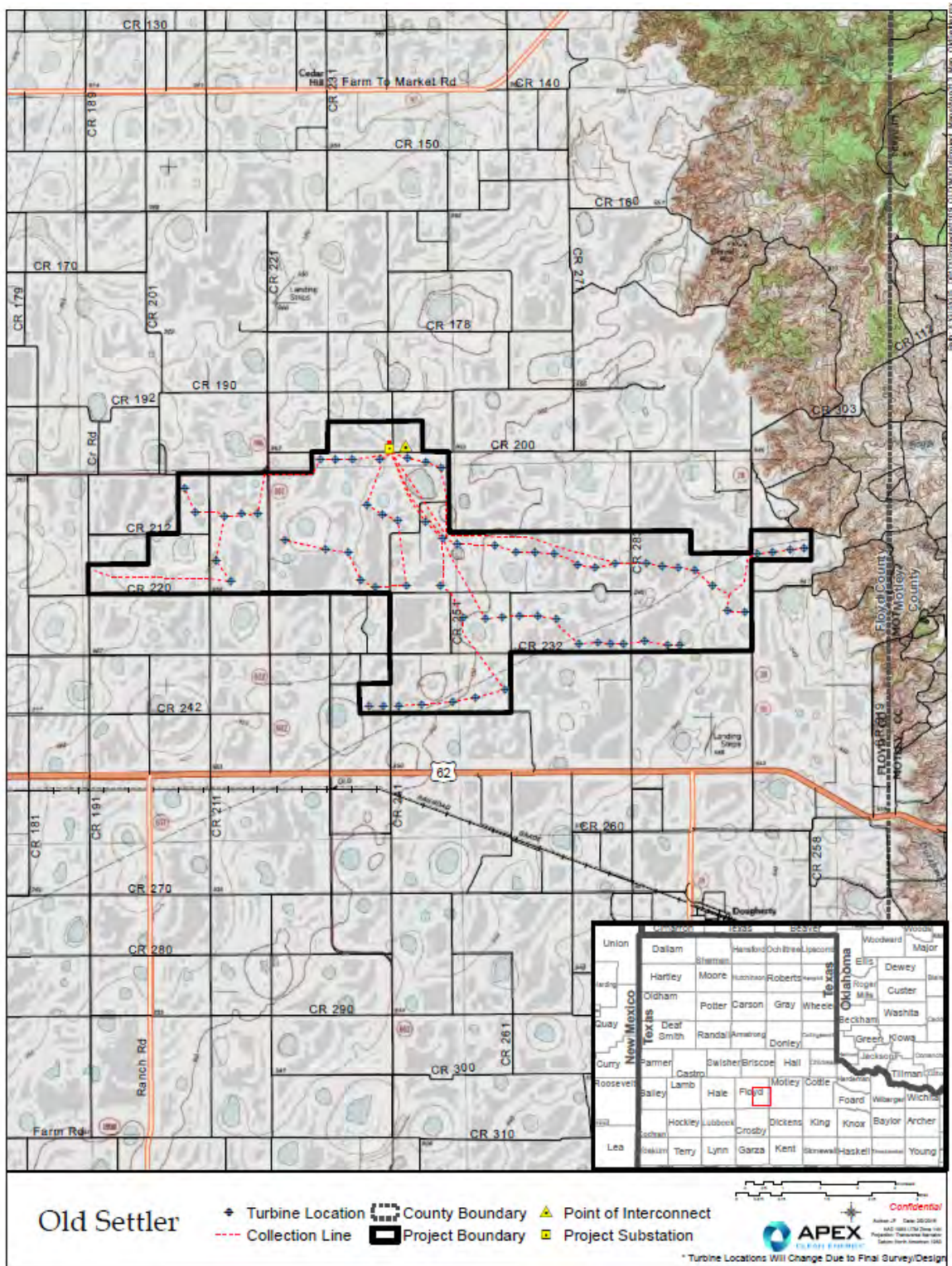
All Qualified Property owned by the Applicant is located within the boundaries of both the Floydada Independent School District and the Floyd County Reinvestment Zone 1, as shown on the Project Map attached to **EXHIBIT 3**.

EXHIBIT 3

APPLICANT'S QUALIFIED INVESTMENT

The qualified investment would initially consist of up to 75 wind turbines or more located in Floydada ISD with an initial operating capacity of 150 MW, depending on the wind turbine model selected and the nameplate capacity of each turbine and may be augmented by utility scale solar depending on market demand and interest. In addition to the wind turbines and potential solar equipment, electrical connections will be installed to permit the interconnection and transmission of electricity generated by the wind turbines. The size and number of turbines will ultimately be determined by the timing of development and construction of the project and availability of turbines. There will be an electrical collector substation within the project boundary, a short transmission line to the point of interconnection, permanent buildings and offices, office equipment and computers, anemometer towers, electrical transmission interconnects, cables, towers, spare parts, control systems for commercial generation of electricity, fencing and other equipment as needed for safety and security and related office and control buildings and personal property supporting the Project.

MAP OF QUALIFIED INVESTMENT



Agreement for Limitation on Appraised Value
Between Floydada ISD and Old Settler Wind, LLC
(App No. 1124), March 22, 2016
Exhibit 3

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

EXHIBIT 4

DESCRIPTION AND LOCATION OF QUALIFIED PROPERTY

See **EXHIBIT 3**.

EXHIBIT 5**AGREEMENT SCHEDULE**

	<u>Year of Agreement</u>	<u>Date of Appraisal</u>	<u>School Year</u>	<u>Tax Year</u>	<u>Summary Description</u>
Limitation Pre-Year	1	January 1, 2016	2015-16	2016	Limitation Pre-Year
Limitation Period (10 Years)	2	January 1, 2017	2017-18	2017	\$20 million appraisal limitation
	3	January 1, 2018	2018-19	2018	\$20 million appraisal limitation
	4	January 1, 2019	2019-20	2019	\$20 million appraisal limitation
	5	January 1, 2020	2020-21	2020	\$20 million appraisal limitation
	6	January 1, 2021	2021-22	2021	\$20 million appraisal limitation
	7	January 1, 2022	2022-23	2022	\$20 million appraisal limitation
	8	January 1, 2023	2023-24	2023	\$20 million appraisal limitation
	9	January 1, 2024	2024-25	2024	\$20 million appraisal limitation
	10	January 1, 2025	2025-26	2025	\$20 million appraisal limitation
	11	January 1, 2026	2026-27	2026	\$20 million appraisal limitation
Maintain a Viable Presence (5 Years)	12	January 1, 2027	2027-28	2027	No appraisal limitation; must maintain a viable presence
	13	January 1, 2028	2028-29	2028	No appraisal limitation; must maintain a viable presence
	14	January 1, 2029	2029-30	2029	No appraisal limitation; must maintain a viable presence
	15	January 1, 2030	2030-31	2030	No appraisal limitation; must maintain a viable presence
	16	January 1, 2031	2031-32	2031	No appraisal limitation; must maintain a viable presence

Agreement for Limitation on Appraised Value
Between Floydada ISD and Old Settler Wind, LLC
(App No. 1124), March 22, 2016
Exhibit 5

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



GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

P.O.Box 13528 • Austin, TX 78711-3528

March 18, 2016

Gilbert Trevino
Superintendent
Floydada Independent School District
226 W. California Street
Floydada, Texas 79235

Re: Agreement for Limitation on Appraised Value of Property for School District
Maintenance and Operations Taxes by and between Floydada Independent
School District and Old Settler Wind, LLC

Dear Superintendent Trevino:

This office has been provided with the "Agreement for Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes" by and between Floydada Independent School District and Old Settler Wind, LLC (the "Agreement"). As requested, the Agreement has been reviewed pursuant to 34 TAC 9.1055(e)(1).

Based on our review, this office concludes that it complies with the provisions of Tax Code, Chapter 313 and 34 TAC Chapter 9, Subchapter F.

If you need additional information or have questions, please contact Stephanie Jones, Economic Development & Local Government Section, at (512) 463-4594.

Sincerely,

Korry Castillo
Director
Data Analysis & Transparency Division

cc: James Wester, Underwood Law Firm
Bob Kirby, Old Settler Wind, LLC
Allen Espinosa, Merit Advisors

Old Settler Wind, LLC

Floyd County, Texas

February 9, 2016

Re: Old Settler Wind, LLC Employment Estimate

To whom it may concern:

Wind projects create a large number of construction jobs but require a small number of highly skilled technicians to operate a wind project once commercial operations begin. The permanent employees of a wind farm maintain and service the wind turbines, underground electrical connections, substations and other infrastructure associated with the safe and reliable operation of the project. Based upon Apex's extensive experience in wind development and a survey of experienced developers and operators of large scale wind projects, we find that the industry standard for ratio for permanent employment is one (1) full-time employee for every fifteen (15) turbines. This number can and does vary depending upon the operator, turbine type and size, and support and technical assistance offered by the turbine manufacturer. Thus, there are five (5) full-time employees anticipated for this seventy five (75) turbine project. In addition to the on-site employees described above, there may be asset managers or technicians who supervise, monitor and support wind project operations from off-site locations.

Therefore, we respectfully request that the job creation requirement be waived for this project.

If you have any questions please do not hesitate to contact me at 434.220.6353.

Sincerely,



Mark Goodwin