

**THE STATE OF TEXAS** §  
§  
**COUNTY OF WEBB** §

**INTERLOCAL AGREEMENT**

This Interlocal Agreement (the “Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the **COUNTY OF WEBB** (the “County”) and the **WEBB CONSOLIDATED INDEPENDENT SCHOOL DISTRICT** (“WCISD”).

**PREAMBLE**

**WHEREAS**, Chapter 791 of the Texas Government Code authorizes local governments and political subdivisions, including the County and WCISD, to contract with each other to perform governmental functions and services: and

**WHEREAS**, WCISD is a duly organized political subdivision of the State of Texas who wishes to enter into an agreement with the County to assist WCISD with monies for the construction of a community and educational building (“Project”) in Bruni, Texas to be used primarily for the students of WCISD and the families of the WCISD area; and

**WHEREAS**, the County and Javelina Wind Energy, LLC ("Javelina") entered into a Tax Abatement Agreement that required Javelina to contribute **\$400,000.00** to the County for the purposes of continuing the installation and equipping of a community/agricultural/educational building in or around Bruni, Texas; and

**WHEREAS**, the County and WCISD have each entered into this Agreement by the action of their respective governing bodies in the appropriate manner prescribed by law.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following:

**SECTION I**  
**SCOPE OF SERVICES**

**1.1 County will contribute the following to the Project:**

- (a) County will contribute up to \$400,000.00 to WCISD for the construction of the Project;
- (b) County will inspect the Project during the time of construction by the County Engineer’s Department;
- (c) County will monitor the construction of the Project by the County’s Engineering Department in addition to the Economic Development Department; and
- (d) All personnel acting for County under this Agreement will be employees of County.

**1.2 WCISD will contribute the following to the Project:**

- (a) WCISD will be responsible for all aspects of the construction of the project, including but not limited to, hiring of architects, engineers and construction contractor;
- (b) WCISD will be responsible for satisfying the procurement requirements of the hiring of all individuals/companies in regards to the construction of the Project;
- (c) WCISD, via its architect, will be responsible for the monitoring of the construction of the Project to ensure it meets the proposed plans and specifications;
- (d) WCISD shall be responsible for all costs associated with the Project that exceed the **\$400,000.00** allocated by the County towards the construction of the Project; and
- (e) WCISD shall incur all costs associated with the construction of the Project and shall submit reimbursement request to the County within thirty (30) days of payment of the invoice. Thereafter, the County shall reimburse WCISD within thirty (30) days of their receipt of the WCISD's request for reimbursement up to \$400,000.00. If County disputes any request for reimbursement submitted by WCISD, the County shall inform, in writing, the WCISD within ten (10) days of their receipt of the WCISD's request for reimbursement. All disputes regarding request for payment shall be settled within thirty (30) days of the County's dispute notice to WCISD. If the dispute is not resolved, either party can elect to exercise adequate remedies at law consistent with the provisions of this Agreement.

**SECTION II  
TERM**

**2.1** The initial term of this Agreement shall begin upon execution of this Agreement by both parties and shall end upon completion of the construction of the Project and when all monies referenced in Section I are paid by the County to WCISD.

**SECTION III  
TERMINATION**

**3.1** If either party determines that it can no longer participate in the requirements of this Agreement for any reason, that party shall notify the other party in writing at least **thirty (30) calendar days** in advance of its intent to withdraw from this Agreement and terminate its participation in the activities required hereunder. Such termination shall become effective upon the thirty-first (31<sup>st</sup>) day after receipt of such notice.

## **SECTION IV CONTRACTURAL RELATIONSHIP**

**4.1** The parties to this Agreement are governmental entities that are entering into this Agreement pursuant to Chapter 791, Texas Government Code, which establishes the legal relationship between the parties. No other legal relationship is intended to be created by this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

**4.2** WCISD acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the County to any obligation other than the obligations set forth in this Agreement. The County also acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind WCISD to any obligation other than the obligations set forth in this Agreement.

## **SECTION V RISK ALLOCATION-LIMITATION OF LIABILITY-INSURANCE**

### **5.1 Liability.**

This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

### **5.2 Exclusion of Incidental and Consequential Damages.**

Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, neither party shall be liable to the other party (nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive mental anguish and emotional distress as a result of breach of any term of this Agreement, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein. Neither party hereto shall be liable to the other party or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided and maintained by the other party regardless of whether the party receiving said information from the other party was advised, had other reason to know, or in fact knew thereof.

### **5.3 Intentional Risk Allocation.**

The County and WCISD each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

#### **5.4 No Indemnification.**

The parties expressly agree that, except as provided therein, neither party shall have the right to seek indemnification or contribution from the other party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

#### **5.5 Fines and Penalties.**

Each party shall be solely responsible for fiscal penalties, fines or any other sanctions occasioned as a result of a finding that violations of any applicable local, state, or federal regulations, codes or laws occurred as a result of that parties actions, except as may be specifically provided by law.

### **SECTION VI GOVERNMENTAL FUNCTION AND IMMUNITY**

#### **6.1 Governmental Function.**

The parties expressly agree that, in all things relating to this Agreement, the County enters into this Agreement for the purposes of performing a governmental function and are performing governmental functions, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or omission of each party, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

#### **6.2 Sovereign Immunity.**

The County and WCISD reserve, and do not waive, their respective rights of sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act. The parties expressly agree that neither party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its powers or functions or pursuant to the Texas Tort Claims Act or other applicable statutes, laws, rules, or regulations.

### **SECTION VII GENERAL PROVISIONS**

#### **7.1 Compliance with Laws.**

The County and WCISD shall comply with all applicable local, state, and federal laws in performance of their obligations under this Agreement.

#### **7.2 Complete Agreement.**

This Agreement constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party thereto.

**7.3 Amendment/Assignment.**

This Agreement and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner, unless done so in writing and signed by the authorized representatives of the parties.

**7.4 Governing Law.**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law.

**7.5 Venue.**

The Parties hereto agree that this Agreement shall be enforceable in Webb County, Texas and if legal action is necessary to enforce it, exclusive venue shall lie in Webb County, Texas. Should the need for dispute resolution arise, venue is in Webb County, Texas.

**7.6 Severability.**

All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.

**7.7 Section Headings.**

The section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

**7.8 Notices.**

All notices provided under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

County:

Judge Tano Tijerina  
County Judge  
County of Webb  
1000 Houston Street, 3<sup>rd</sup> Floor  
Laredo, Texas 78040

WCISD:

Robert Marshall  
Board President  
Webb Consolidated Independent School District  
P.O. Box 206/619 Avenue F  
Bruni, Texas 78344-0206

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Either party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other party in the manner set forth herein.

**7.9 Representation of Counsel; Mutual Negotiation.**

Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

**7.10 Execution and Counterparts.**

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement and no party shall be required to produce an original or all of such counterparts when making such proof.

**7.11. Warranty of Capacity to Execute Contract.**

The person signing this Agreement on behalf of the County and WCISD warrant that he has the authority to do so and to bind the County and WCISD to this Agreement and all the terms and conditions herein.

**EXECUTED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

COUNTY OF WEBB

\_\_\_\_\_  
Tano Tijerina  
County Judge

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Marco Montemayor  
County Attorney

**EXECUTED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

WEBB CONSOLIDATED  
INDEPENDENT SCHOOL DISTRICT

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Robert Marshall  
Board President

**APPROVED AS TO FORM:**

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Juan J. Cruz  
Attorney for Webb CISD