

## **WEBB COUNTY, TEXAS, WIND FARM PROJECT MITIGATION AGREEMENT**

**This WEBB COUNTY, TEXAS, WIND FARM PROJECT MITIGATION AGREEMENT (“Agreement”)** is made and entered into as of [ August 21, 2015 ], 2015 (**“Effective Date”**) by and among Javelina Wind Energy, LLC, a Delaware limited liability company (**“Javelina”**), with offices at 700 Universe Boulevard, Juno Beach, Florida 33408, the United States Department of Defense (**“DoD”**), acting through the DoD Siting Clearinghouse and the United States Department of Homeland Security (**“DHS”**), acting through Long Range Radar, Joint Planning Office. Javelina, the DoD, and the DHS are hereinafter collectively referred to as the **“Parties”**. The DoD, as a party, does not include, for purposes of this Agreement, the United States Army Corps of Engineers.

**WHEREAS**, Javelina intends to develop, construct and operate a wind powered electric generating facility located in Webb County, Texas (**the “Project”**);

**WHEREAS**, it is an objective of the DoD to ensure that the robust development of renewable energy sources and the increased resiliency of the commercial electrical grid may move forward in the United States, while minimizing or mitigating any adverse impacts on military operations and readiness;

**WHEREAS**, the Parties have worked cooperatively to meet the desired goals of supporting military operations and readiness simultaneously with the production of renewable energy;

**WHEREAS**, in connection with Javelina’s development of the Project, the United States Department of Transportation’s Federal Aviation Administration (**“FAA”**) conducted aeronautical studies, 2015-WTW-2884 thru 2910, 2922 thru 2958, 2967, 3003 thru 3006, 3012 and 3013-OE, under the provisions of 49 U.S.C., § 44718;

**WHEREAS**, DHS has filed an objection to 71 of the 130 wind turbines that Javelina proposed for the Project, as described in the Notice of Presumed Hazard, issued by the FAA to Javelina on June 26, 2013, and DoD has indicated that, in the absence of mitigation, the Project may have an adverse impact on military operations and readiness (collectively, the **“Objections”**);

**WHEREAS**, DoD and DHS have advised Javelina that the concerns raised in the Objections can be mitigated through the purchase, installation, and operation of certain radar equipment (the **“Equipment”**), as contemplated by Section 358(g) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Pub. L. 111-383 (the **“2011 NDAA”**);

**WHEREAS**, Javelina, directly or through its affiliate, Tower Associates, LLC, has entered into (a) that certain Lease Agreement for Placement of Equipment, dated December 29,

2014 with Triana Bruni Sames, Trustee of the Triani Bruni Sames 1994 Trust, and (b) that certain U.S. Government Lease for Real Property, Lease No. HSBP-7415-L-DA0610, dated August 8, 2015, with CBP (collectively, the “Leases”); and

**WHEREAS**, Javelina desires to pay \$2,851,020 toward the cost of mitigation, and DoD desires to accept such payment from Javelina, for the purpose of mitigating the concerns raised in the Objections;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree to the following:

1. Voluntary Contribution. Subject to the terms and conditions of this Agreement Javelina shall pay to DoD, within 5 calendar days of the Effective Date, the amount of \$2,851,020 for purposes of offsetting the costs of acquisition, installation, maintenance, and operation of the Equipment (the “**Mitigation Payment**”), and DoD shall accept such Mitigation Payment as a voluntary contribution of funds pursuant to Section 358(g) of the 2011 NDAA.

2. Withdrawal of Objections. In exchange for Javelina’s obligations hereunder, DHS and DoD shall deliver to the FAA a complete withdrawal of the Objections within 5 calendar days of receipt by DoD of the Mitigation Payment. This withdrawal of DHS and DoD Objections, however, is limited only to permanent turbine sites, heights, ground elevation, and latitude and longitude for each of the numbered turbines as provided in aeronautical studies, 2015-WTW-2884 thru 2910, 2922 thru 2958, 2967, 3003 thru 3006, 3012 and 3013-OE. A copy of the executed mitigation agreement will be filed with the FAA with the Government’s Withdrawal of Objections.

3. Project Operations.

(a) Javelina represents and warrants that the Project will not commence electricity-generating commercial operations before September 1, 2015; provided, however, the Parties acknowledge and agree that Javelina may operate individual turbines (but not multiple turbines simultaneously) prior to such date for construction and testing purposes.

(b) DHS and DoD shall be responsible for the acquisition, installation, maintenance, and operation of the Equipment after the receipt of the Mitigation Payment and shall determine, as between them, which will perform any such functions.

(c) Javelina represents and warrants that it has an obligation to secure, through purchase, lease, or other agreement, the real property necessary for DoD and DHS to install, maintain and operate the Equipment, notwithstanding the terms of the Leases. This obligation shall survive any termination of either of the Leases.

4. No Third Party Beneficiaries. Nothing in this instrument, express or implied, is intended to or shall be construed to confer upon, or give to, any person any remedy or claim under or by reason of this Agreement or any agreements, terms, covenants, or conditions hereof, and all the agreements, terms, covenants, and conditions in this Agreement contained shall be for the sole and exclusive benefit of the Parties and their respective successors and permitted assigns.

5. Binding Effect; Assignment. This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

6. CFIUS. Notwithstanding Section 3 hereof, nothing in this Agreement shall relieve Javelina or its successors or assigns of complying with 31 CFR Part 800 (Mergers, Acquisitions, and Takeovers by Foreign Persons) nor prevent or limit the Parties from communicating in any form with the Committee on Foreign Investment in the United States (CFIUS).

7. Anti-Deficiency. This Agreement is subject to the availability of appropriated funds and sufficient resources. No provision in this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of Florida, as may be applicable.

9. Complete Agreement. This Agreement contains the entire agreement between the Parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations by the Parties with respect to such subject matter. The completion of the obligations of each of the Parties under this Agreement constitutes the full and complete satisfaction of those obligations.

10. Amendments. Any Party to this Agreement may request that it be amended, whereupon the Parties agree to consult to consider such amendments. Any amendment to this Agreement shall become effective when signed by all of the Parties unless its terms provide for a different effective date.

11. Expiration. This Agreement shall expire and have no further force and effect upon the occurrence of the earlier of the following:

- (a) Construction of the project has not commenced within the time prescribed under 14 CFR §§ 77.33 and 77.35;
- (b) The project is decommissioned;
- (c) Termination of the Agreement by written mutual agreement of the Parties;

Any activities engaged in by DoD and DHS (including their expenditure of part or all of the Mitigation Payment and continued operation and maintenance of the Equipment) that occurred prior to expiration of this Agreement shall remain valid and continue in effect, notwithstanding the expiration of the Agreement.

12. Points of Contact and Notification. The following persons shall be the primary points of contact (POC) for the Parties for purposes of this Agreement. Any Party may change its point of contact provided that written notification of any such change is provided to the other Parties at least thirty (30) days in advance of the change taking effect or sooner if the receiving Parties acknowledge receipt of the change notice.

(a) DoD - Executive Director, DoD Siting Clearinghouse, 3400 Defense Pentagon, Room 5C646, Washington, DC 20301-3400.

(b) DHS - Chief, Wind Farm Policy, 245 Murray Lane, Mail Stop 0205, Washington, DC 20528.

(c) Javelina - Javelina Wind Energy, LLC, Attention: John DiDonato, Vice President, 700 Universe Boulevard, Juno Beach, FL 33408.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.


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**SIGNATURE PAGE TO FOLLOW]**

**Signature Page to Webb County, Texas, Wind Farm Project Mitigation Agreement**

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

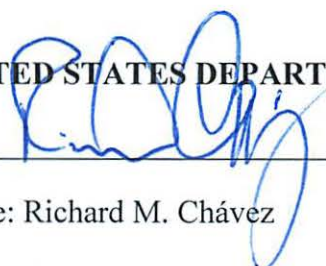
**JAVELINA WIND ENERGY, LLC,**  
a Delaware Limited Liability Company

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

Name: John DiDonato

Title: Vice President

**UNITED STATES DEPARTMENT OF HOMELAND SECURITY**

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

Name: Richard M. Chávez

Title: Director  
Office of Operations Coordination

**UNITED STATES DEPARTMENT OF DEFENSE**

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

Name: Mr. Frank Kendall

Title: Under Secretary of Defense  
Acquisition, Technology, and Logistics