

AMENDMENT NO. 2
TO AGREEMENT FOR LIMITATION ON APPRAISED VALUE OF PROPERTY FOR
SCHOOL DISTRICT MAINTENANCE AND OPERATIONS TAXES
BETWEEN ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT
AND NACERO TX 1 LLC
(Comptroller Application No. 1568)

This **AMENDMENT NO. 2 TO THE AGREEMENT FOR LIMITATION ON APPRAISED VALUE OF PROPERTY FOR SCHOOL DISTRICT MAINTENANCE AND OPERATIONS TAXES** (this “**Amendment No. 2**”) is entered into by and between **ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT** (the “**District**”), a lawfully created independent school district of the State of Texas operating under and subject to the TEXAS EDUCATION CODE, and **NACERO TX 1 LLC**, a limited liability company, Texas Taxpayer Identification Number 32075161326 (“**Applicant**” or “**Applicant Parties**”). The Applicant and the District may hereafter be referred together as the “**Parties**” and individually as a “**Party**.” Undefined capitalized terms herein shall have the meaning given to them in the Agreement (as defined below).

WHEREAS, on or about June 15, 2021, pursuant to Chapter 313 of the TEXAS TAX CODE, after conducting a public hearing on the matter, the District made factual findings (the “**Findings of Fact**”), and passed, approved, and executed that certain Agreement for Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes, dated June 15, 2021, as amended by Amendment No. 1 dated December 21, 2022, by and between the District and Applicant (the “**Agreement**”);

WHEREAS, pursuant to Section 10.2 of the Agreement, Applicant has requested to (i) delay the start of the Tax Limitation Period to January 1, 2027 and (ii) omit Supplemental Payments accruing in the Gap Years, being Tax Years 2024, 2025, and 2026 (School Years 2024-2025, 2025-2026 and 2026-2027);

WHEREAS, the Parties agree to modify the Agreement to the extent necessary to comport with the foregoing requested changes;

WHEREAS, the Parties notified the Texas Comptroller of Public Accounts (the “**Comptroller**”) of the Application Amendment after Execution No. 2 and the request for this Amendment No. 2 on February 7, 2023, and the Comptroller issued its notice of amended completeness, certificate and agreement approval on March 1, 2023; and

WHEREAS, on March 28, 2023, after conducting a public hearing and providing interested persons an opportunity to be heard on the matter, the Board of Trustees determined that this Amendment No. 2 is in the best interest of the District and the State of Texas and is consistent with and authorized by Chapter 313 of the TEXAS TAX CODE, and hereby approves this Amendment No. 2 and authorizes the District’s representative, whose signature appears below, to execute and deliver such Amendment No. 2 to the Applicant.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual benefits to be derived by the Parties and other good and valuable considerations, the receipt and adequacy of

which are hereby acknowledged, and in compliance with Section 10.2 of the Agreement, the undersigned Parties intending to be legally bound, do hereby covenant and agree as follows:

1. **Amendment.** The Agreement is hereby amended as follows:
 - a. **Section 2.3.D and E.** Sections 2.3.D and E of the Agreement are deleted in their entirety and replaced with the following:
 - A. The Tax Limitation Period for this Agreement:
 1. Starts on January 1, 2027, the first complete Tax Year that begins after the commencement of Commercial Operation; and,
 2. Ends on December 31, 2036.
 - B. The Final Termination Date for this Agreement is December 31, 2041.
 - b. **Section 6.5.** Section 6.5 of the Agreement is deleted in its entirety and replaced with following:

Section 6.5. ANNUAL LIMITATION. Notwithstanding anything contained in this Agreement to the contrary, and with respect to each Tax Year of the Tax Limitation Period beginning with the second 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, excluding all QTP Deferred Payments and Gap Year Deferred Payments pursuant to Sections 6.7.A & 6.7.C, 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 such excess amount of payments otherwise due from the Applicant to the District under Articles IV, V, and VI shall be deferred and carried forward from year to year until paid in full.

- c. **Section 6.6.** Section 6.6 of the Agreement is deleted in its entirety and replaced with the following:

Section 6.6. OPTIONS TO TERMINATE AGREEMENT.

A. In the event 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, excluding all QTP Deferred Payments and Gap Year

Deferred Payments pursuant to Sections 6.7.A & 6.7.C, is subject to a deferral in accordance with the provisions of Section 6.5, 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 deferral under Section 6.5 is applicable. Any termination of this Agreement under the foregoing provisions of this Section 6.6 shall be effective immediately prior to the second Tax Year next following the Tax Year in which the deferral giving rise to the option occurred.

B. In the event the Applicant determines that it will not commence or complete construction, the Applicant shall have the option, prior to the commencement of the Tax Limitation Period, to terminate this Agreement pursuant to Section 7.1 by notifying the District in writing of its exercise of such option. Any termination of this Agreement under this provision shall be effective immediately. This option shall expire upon commencement of the Tax Limitation Period.

- d. **Section 6.7.** The following shall be added as a new Section 6.7 of the Agreement:

Section 6.7. DEFERRAL OF SUPPLEMENTAL PAYMENTS IN QUALIFYING TIME PERIOD AND NO SUPPLEMENTAL PAYMENTS IN GAP YEARS.

A. Notwithstanding Section 6.1, for the Supplemental Payments accruing on January 1 and owed to the District during the Qualifying Time Period, being Tax Years 2022 and 2023 (School Years 2022-2023 and 2023-2024) and calculated in accordance with Section 6.2, shall be deferred and carried forward from year-to-year (the “QTP Deferred Payments”). Beginning in the second year of the Tax Limitation Period, and in addition to the Supplemental Payment for that year, all QTP Deferred Payments owed to the District shall be paid by Applicant to the District in accordance with Section 4.8. Any portion of QTP Deferred Payments subject to the Annual Limitation of Section 6.5 that remain unpaid shall be carried forward from year-to-year until paid in full.

B. Notwithstanding Section 6.1, no Supplemental Payment shall accrue on January 1 during the Gap Year 2024, being Tax Year 2024 (School Year 2024-2025).

C. Notwithstanding Section 6.1, Supplemental Payments accruing on January 1 for Gap Years 2025 and 2026 (School Years 2025-2026 and 2026-2027) and calculated in accordance with Section 6.2, shall be deferred and carried forward from year-to-year (the “Gap Year Deferred Payments”). Beginning in the third year of the Tax Limitation Period, and in addition to the Supplemental Payment for that year, all Gap Year Deferred

Payments owed to the District shall be paid by Applicant to the District in accordance with Section 4.8. Any portion of Gap Year Deferred Payments subject to the Annual Limitation of Section 6.5 that remain unpaid shall be carried forward from year-to-year until paid in full.

D. In addition to the Supplemental Payments as provided in Sections 6.7.A and 6.7.B, Supplemental Payments shall accrue on January 1 for each year of the Tax Limitation Period and continuing through the third year of viable presence period. All Supplemental Payments owed to the District shall be paid by Applicant to the District in accordance with Section 4.8. No Supplemental Payments shall accrue after December 31 of the third year following the end of the Tax Limitation Period.

E. Should Applicant fail to make the minimum Qualified Investment during the Qualifying Time Period causing this Agreement to become null and void as set out in Section 9.1.B. or if Applicant exercises its right to terminate this Agreement as provided in section 6.6.B herein, Applicant's obligation to make any QTP Deferred Payments and Gap Year Deferred Payments shall be cancelled and no longer owed to the District.

2. **Effect.** Except as modified and amended by the terms of this Amendment No. 2, all of the terms, conditions, provisions and covenants of the Agreement are ratified and shall remain in full force and effect, and the Agreement and this Amendment No. 2 shall be deemed to constitute a single instrument or document. Should there be any inconsistency between the terms of this Amendment No. 2 and the Agreement; the terms of this Amendment No. 2 shall prevail. A copy of this Amendment No. 2 shall be delivered to the Texas Comptroller to be posted to the Texas Comptroller's internet website. A copy of this Amendment No. 2 shall be recorded with the official Minutes of the meeting at which it has been approved and a copy of this Amendment No. 2 shall also be recorded with the Findings of Fact in the official Minutes of the meeting of June 15, 2021.

3. **Fees and Expenses for Amendment.** Applicant agrees to pay District's legal fees at normal hourly rates to the District's attorneys, plus expenses, incurred by the District in furtherance of this Amendment No. 2, in an amount not to exceed \$35,000 within 15 days of Applicant's receipt of the invoice from District's counsel.

4. **Binding on Successors and Assigns.** The Agreement, as amended by this Amendment No. 2, shall be binding upon and inure to the benefit of the Parties and each other person and entity having any interest therein during their ownership thereof, and their respective successors and assigns.

5. **Counterparts.** This Amendment No. 2 may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

6. **Electronic Delivery.** This Amendment No. 2 may be duly executed and delivered in person, by mail, or by facsimile or other electronic format (including portable document format (pdf) transmitted by email). The executing Party agrees to promptly deliver a complete, executed original or counterpart of this Amendment No. 2 to the other executing Parties. This Amendment No. 2 shall be binding on and enforceable against the executing Party whether or not it delivers such original or counterpart.

[signature page follows]

IN WITNESS HEREOF, the District and Applicant have caused this Amendment No. 2 to be executed and delivered by their duly authorized representatives as of the Effective Date below.

APPROVED AND EFFECTIVE as of the ____ day of _____, 2023.

NACERO TX 1 LLC

**ECTOR COUNTY INDEPENDENT SCHOOL
DISTRICT**

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DISTRICT ATTEST:

BY: _____

NAME: _____

TITLE: _____

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-Years	0	January 1, 2021	2021-22	2021	QTP Pre Year
	QTP 1	January 1, 2022	2022-23	2022	QTP year 1, begins January 1, 2022
	QTP 2	January 1, 2023	2023-24	2023	QTP year 2, ends December 31, 2023
	Gap Year	January 1, 2024	2024-25	2024	Gap Year
	Gap Year	January 1, 2025	2025-26	2025	Gap Year
	Gap Year	January 1, 2026	2026-27	2026	Gap Year
Limitation Period (10 Years)	1	January 1, 2027	2027-28	2027	\$100 million appraisal limitation
	2	January 1, 2028	2028-29	2028	\$100 million appraisal limitation
	3	January 1, 2029	2029-30	2029	\$100 million appraisal limitation
	4	January 1, 2030	2030-31	2030	\$100 million appraisal limitation
	5	January 1, 2031	2031-32	2031	\$100 million appraisal limitation
	6	January 1, 2032	2032-33	2032	\$100 million appraisal limitation
	7	January 1, 2033	2033-34	2033	\$100 million appraisal limitation
	8	January 1, 2034	2034-35	2034	\$100 million appraisal limitation
	9	January 1, 2035	2035-36	2035	\$100 million appraisal limitation
	10	January 1, 2036	2036-37	2036	\$100 million appraisal limitation
Maintain a Viable Presence (5 Years)	11	January 1, 2037	2037-38	2037	No appraisal limitation; must maintain a viable presence
	12	January 1, 2038	2038-39	2038	No appraisal limitation; must maintain a viable presence
	13	January 1, 2039	2039-40	2039	No appraisal limitation; must maintain a viable presence
	14	January 1, 2040	2040-41	2040	No appraisal limitation; must maintain a viable presence
	15	January 1, 2041	2041-42	2041	No appraisal limitation; must maintain a viable presence

Agreement for Limitation on Appraised Value
Between Ector County ISD and Nacero TX 1 LLC
(App. No. 1568), March 28, 2023
Exhibit 5

Texas Economic Development Act Agreement
Comptroller Form 50-826 (October 2020)