

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

by and between

BAY CITY INDEPENDENT SCHOOL DISTRICT

and

OXEA CORPORATION

(Texas Taxpayer ID # 13006113081)

Dated

October 19, 2015

*Texas Economic Development Act Agreement
Comptroller Form 50-286 (January 2014)
as amended by the Parties hereto*

WHEREAS, the Texas Comptroller's Office reviewed the Application pursuant to Section 313.025 of the TEXAS TAX CODE, conducted an economic impact evaluation pursuant to Section 313.026 of the TEXAS TAX CODE, and on June 8, 2015, issued a certificate for limitation on 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 313.026 of the TEXAS TAX CODE;

WHEREAS, on October 19, 2015, 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 October 19, 2015, 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) Applicant is eligible for the Limitation on Appraised Value of Applicant's Qualified Property; (iii) the project proposed by Applicant is reasonably likely to generate tax revenue in an amount sufficient to offset District's maintenance and operations ad valorem tax revenue lost as a result of this Agreement before the 25th anniversary of the beginning of the limitation period; (iv) the limitation on appraised value is a determining factor in Applicant's decision to invest capital and construct the project in this state; and (v) this Agreement is in the best interest of District and the State of Texas;

WHEREAS, on September 22, 2015, 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; and

WHEREAS, on October 19, 2015, 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 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 herein, the following terms shall have the following meanings, unless the context in which used clearly indicates another meaning. Words or terms defined in 34 TEX. ADMIN. CODE §9.1051 and not defined in this Agreement shall have the meanings provided by 34 TEX. ADMIN. CODE §9.1051.

“Act” means the Texas Economic Development Act set forth in Chapter 313 of the TEXAS TAX CODE, as amended.

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

“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.

“Applicant” means OXEA CORPORATION, Texas Taxpayer # Number 13006113081, the company listed in the Preamble of this Agreement and that listed as the Applicant on the Application as of the Application Approval Date. The term “Applicant” shall also include Applicant’s assigns and successors-in-interest as approved according to Section 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 Section 3.3 of this Agreement.

“Application” means the Application for Appraised Value Limitation on Qualified Property (Chapter 313, Subchapter C, of the Texas Tax Code) filed with District by Applicant on August 25, 2014. The term includes all forms required by Comptroller, the schedules attached thereto, and all other documentation submitted by Applicant for the purpose of obtaining an Agreement with District. The term also includes all amendments and supplements thereto submitted by Applicant.

“Application Approval Date” means the date that the Application is approved by the Board of Trustees of 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 District issues its written notice that Applicant has submitted a completed application or the date on which Comptroller issues its written notice that 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 Matagorda County Appraisal District.

“Board of Trustees” means the Board of Trustees of the Bay City 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 Comptroller.

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

“County” means Matagorda County, Texas.

“District” or “School District” means the Bay City 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 Applicant’s Qualified Property or the Applicant’s Qualified Investment.

“Final Termination Date” means the last date of the final year in which 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 three 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 1** which is attached hereto and incorporated herein by reference for all purposes.

“Maintain Viable Presence” means (i) the development, construction and operation during the term of this Agreement of the facility or facilities for which the tax limitation is granted, as the same may from time to time be expanded, upgraded, improved, modified, changed, remodeled, repaired, restored, reconstructed, reconfigured, and/or reengineered; (ii) the retention

during the term of this Agreement of the number of New Qualifying Jobs set forth in its Application by Applicant; (iii) and continue the average weekly wage paid by Applicant for all Non-Qualifying Jobs created by Applicant that exceeds the county average weekly wage for all jobs in the county where the administrative office of District is maintained.

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

"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 and maintained by Applicant after the Application Approval Date in connection with the project which is the subject of its Application that meet the criteria of Qualifying Job as defined in Section 313.021(4) of the TEXAS TAX CODE.

"Qualified Investment" has the meaning set forth in Chapter 313 of the TEXAS TAX CODE, as interpreted by Comptroller's Rules, as these provisions existed on the Application Review Start Date.

"Non-Qualifying Jobs" means the number of New Non-Qualifying Jobs, as defined in 34 TEXAS ADMIN. CODE §9.0151, to be created and maintained by the Applicant after the Application Approval Date in connection with the project which is the subject of its Application.

"Qualified Property" has the meaning set forth in Chapter 313 of the Texas Tax Code and as interpreted by Comptroller's Rules and the Texas Attorney General, as these provisions existed on the date of the Application is approved by District,

"Qualifying Time Period" means the period that begins on the date of approval of this Agreement by District's Board of Trustees and ends on December 31st of the second Tax Year that begins after such date of approval as is defined in Section 313.021(4)(A) of the Texas Tax Code and during which Applicant shall make investment on the land where the qualified property in the amount required by the Act, the Comptroller's rules, and this Agreement and as further identified in Section 2.3.C. of this Agreement.

"Revenue Protection Amount" means the amount calculated pursuant to Section 4.2 of this Agreement.

"State" means the State of Texas.

"Substantive Document" means a document or other information or data in electronic media determined by the Comptroller to substantially involve or include information or data significant to an application, the evaluation or consideration of an application, or the agreement or implementation of an agreement for limitation of appraised value pursuant to Chapter 313 of the Texas Tax Code. The term includes, but is not limited to, any application requesting a limitation on appraised value and any amendments or supplements, any economic impact evaluation made in connection with an application, any agreement between applicant and the school district and any subsequent amendments or assignments, and any school district written finding or report filed with the comptroller as required under this subchapter.

"Supplemental Payment" has the meaning as set forth in Article VI of this Agreement.

"Tax Limitation Amount" means the maximum amount which may be placed as the Appraised Value on Applicant's Qualified Property for 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.

"Texas Education Agency Rules" means the applicable rules and regulations adopted by the Texas Commissioner of Education in relation to the administration of Chapter 313 of the TEXAS TAX CODE, which are set forth at 19 TEX. ADMIN. CODE, Part 2, together with any court or administrative decisions interpreting same.

ARTICLE II

AUTHORITY, PURPOSE AND LIMITATION AMOUNTS

Section 2.1. AUTHORITY. This Agreement is executed by District as its written agreement with Applicant pursuant to the provisions and authority granted to District in Section 313.027 of the TEXAS TAX CODE.

Section 2.2. PURPOSE. In consideration of the execution of and subsequent performance of the terms and obligations by Applicant pursuant to this Agreement, identified in Sections 2.5 and 2.6 and as more fully specified in this Agreement, the value of Applicant's Qualified Property listed and assessed by the County Appraiser for 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 March 17, 2015, which will be used to determine the eligibility of Applicant's Qualified Property and the applicable wage standard.

B. The Application Approval Date for this Agreement is 2015 (date of public hearing).

C. The Qualifying Time Period for this Agreement:

1. Starts on October 19, 2015, and
2. Ends on December 31, 2017.

D. The Tax Limitation Period for this Agreement:

1. Starts on January 1, 2018.
2. Ends on December 31, 2027.

E. The Final Termination Date for this Agreement is December 31, 2032.

F. This Agreement, and the obligations and responsibilities created by this Agreement, shall be and become effective on the Application Approval Date identified in Subsection 2.3.B. This Agreement, and the obligation 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 Applicant makes the Qualified Investment as required by Section 2.5 below, 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. \$30,000,000.00.

This Tax Limitation Amount is based on the limitation amount for the category that applies to the District on the effective date of this Agreement, as set out by Section 313.052 of the TEXAS TAX

CODE.

Section 2.5 QUALIFIED INVESTMENT FOR 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, Applicant shall:

- A. have completed Qualified Investment in the amount of \$30,000,000.00 by the end of the Qualifying Time Period;
- B. have created 19 Qualifying Jobs as specified in, and in the time period specified on, Schedule C of the Application; and
- C. be paying the average weekly wage of all jobs in Matagorda County for all 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 the 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 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; and
- D. Create and Maintain Viable Presence on and/or with the Qualified Property and perform additional obligations as more fully specified in Article VIII of this Agreement.

ARTICLE III QUALIFIED PROPERTY

Section 3.1. LOCATION WITHIN ENTERPRISE OR REINVESTMENT ZONE. At the time of making the Qualified Investment and during the period starting with the Application Approval Date and ending on the Final Termination Date, the Land is and shall be 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 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 on **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 3**, which is attached hereto and incorporated herein by reference for all purposes. Property which is not specifically described in **EXHIBIT 3** 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 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. If at any time after the Application Approval Date there is a material change in the Qualified Property located on the land described in **EXHIBIT 2**; or, upon a reasonable request of District, Comptroller, the Appraisal District, or the State Auditor's Office, Applicant shall provide to District, Comptroller, the Appraisal District or the State Auditor's Office a specific and detailed description of the tangible personal property, buildings, or permanent, nonremovable building components (including any affixed to or incorporated into real property) on the 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. Applicant's Qualified Property described above in Section 3.3 qualifies for a tax limitation agreement under Section 313.024(b)(1) of the TEXAS TAX CODE as manufacturing establishment primarily engaged in activities described in sectors 31-33 of the 2007 North American Industry Classification System.

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 result of, or on account of, the Parties' entering into this Agreement. Such compensation shall be independent of, and in addition to, all such other payments as set forth in Article V and Article VI. **SUBJECT ONLY 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 THE DISTRICT AS A RESULT OF APPLICANT'S LOCATION OF APPLICANT'S QUALIFIED INVESTMENT AND APPLICANT'S QUALIFIED PROPERTY IN THE DISTRICT AND THE PARTIES' ENTERING INTO THIS AGREEMENT WILL BE BORNE SOLELY BY APPLICANT AND NOT BY THE DISTRICT AND BE PAID BY THE APPLICANT TO THE DISTRICT IN ADDITION TO ANY AND ALL PAYMENTS DUE UNDER ARTICLE V AND ARTICLE VI.**

Section 4.2. CALCULATING THE AMOUNT OF LOSS OF REVENUES BY THE DISTRICT. Subject to the provisions of Sections 7.1 and 7.2, the amount to be paid by Applicant to compensate the District for loss of Maintenance and Operations Revenue resulting from, or on account of, this Agreement for each year during term of this Agreement, 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 been subject to the ad valorem maintenance & operations tax actually levied for the applicable year.

ii. "New M&O Revenue" means the total State and local Maintenance and Operations Revenue that District actually received for such school year, after all adjustments have been made to such Maintenance and Operations Revenue because of any portion of this Agreement.

B. In making the calculations 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 and/or Applicant's Qualified Investment 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 results in a negative number, the negative number will be considered to be zero.

iv. All calculations made under this Section 4.2 will reflect the Limitation on Appraised Value for such year.

v. All calculations made under this Section 4.2 shall be made by a methodology which isolates the full M&O 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 not contained in this Agreement.

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, 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. 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. In addition to the amounts determined pursuant to Section 4.2 above, the Applicant, on an annual basis, shall also indemnify and pay the District all reimbursable costs arising from entering into this Agreement, including, but not limited to the following:

- 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;
- C. Any other loss of District revenues which are, or may be, attributable to the payment by the Applicant to or on behalf of any other third party beneficiary;
- D. Any reimbursable costs incurred by the District and related to his 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; and
- E. Any other cost to the District, including, but not limited to, costs under Section 8.6.C. below, which are or may be attributable to compliance with State-imposed cost of compliance with the terms of this Agreement.

Section 4.5. CALCULATIONS TO BE MADE BY THIRD PARTY. All calculations under this Agreement shall be made annually by an independent third party (the "Consultant") selected each year by the District. Applicant shall be solely responsible for payment of the Consultant's fees up to TEN THOUSAND DOLLARS (\$10,000.00) for the first year of this Agreement. This fee 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 USED FOR CALCULATIONS. The calculations for payments under this Agreement shall be initially based upon the valuations placed upon the Applicant's Qualified Investment

and/or the Applicant's Qualified Property by the Appraisal District in its annual certified tax rolls submitted to the District pursuant to Texas Tax Code § 26.01 on or about July 25 of each year of this Agreement. Immediately upon receipt of the valuation information by the District, the District shall submit the valuation information to the Consultant selected under Section 4.4. The certified tax roll data shall form the basis of the calculation of any and all amounts due under this Agreement. All other data utilized by the Consultant to make the calculations contemplated by this Agreement shall be based upon the best available current estimates. The data utilized by the Consultant shall be adjusted from time to time by the Consultant to reflect actual amounts, subsequent adjustments by the Appraisal District to the District's certified tax rolls or any other changes in student counts, tax collections, or other data.

Section 4.7. DELIVERY OF CALCULATIONS. All calculations required under Articles IV, V, or VI shall be made by the Consultant appointed pursuant to Section 4.5 of this Agreement on or before December 1 of each year for which this Agreement is effective. The Consultant shall forward to the Parties such calculations in sufficient detail to allow the Parties to understand the manner in which the calculations were made. The Consultant shall simultaneously submit his, her or its invoice for fees for services rendered to the Parties, if any fees are being claimed. Upon reasonable prior notice, the employees and agents of the Parties shall have access, at all reasonable times, to the Consultant's offices, personnel, books, records, and correspondence pertaining to the calculation and fee for the purpose of verification. The Consultant shall maintain supporting data consistent with generally accepted accounting practices, and the employees and agents of the Parties shall have the right to reproduce and retain for purpose of audit, any of these documents. The Consultant shall preserve all documents pertaining to the calculation and fee for a period of three (3) years after payment.

Section 4.8. PAYMENT BY APPLICANT. The Applicant shall pay any amount determined to be due and owing to the District under this Agreement on or before the January 31 next following the tax levy for each year for which this Agreement is effective. By such date, the Applicant shall also pay any amount billed by the Consultant for all calculations under this Agreement under Section 4.5, above, plus any reasonable and necessary legal expenses paid by the District to its attorneys, auditors, or financial consultants for the preparation and filing of any financial reports, disclosures, or Tax Credit or other reimbursement applications filed with or sent to the State of Texas which are, or may be required under the terms or because of the execution of this Agreement. 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. RESOLUTION OF DISPUTES. Should the Applicant disagree with the Consultant's calculations, the Applicant may appeal the Consultant's results, in writing, to the Consultant within fifteen (15) days of receipt of such results. Within fifteen (15) days of receipt of the Applicant's appeal, the Consultant will issue, in writing, a final determination of the Consultant's calculations. Thereafter, the Applicant may appeal the final determination of calculations to the District's Board of Trustees, in writing, within fifteen (15) days of its receipt of the final determination of the calculations.

Section 4.10. EFFECT OF PROPERTY VALUE APPEAL OR OTHER ADJUSTMENT.

A. If at the time the Consultant selected under Section 4.5 makes its calculations under this Agreement, the Applicant has appealed any matter relating to the valuations placed by the Appraisal District on the Applicant's Qualified Property, and such appeal remains unresolved, the Consultant shall base its calculations upon the values placed upon the Applicant's Qualified Property by the Appraisal District.

B. If as a result of an appraisal appeal or for any other reason, the Taxable Value of the Applicant's Qualified Investment and/or the Applicant's Qualified Property is changed, or the Taxable Value is otherwise altered for any reason, once the determination of the new Taxable Value becomes final, the Parties shall immediately notify the Consultant who shall immediately issue new calculations for the applicable year or years using the new Taxable Value at the Applicant's sole expense. In the event the new calculations result in a change in any amount paid or payable by the Applicant under this Agreement, the Party from whom the adjustment is payable shall remit such amounts to the other Party within thirty (30) days of the receipt of the new calculations from the Consultant.

Section 4.11. EFFECT OF STATUTORY CHANGES. Notwithstanding any other provision in this Agreement, but subject to the limitations contained in Section 7.1, in the event that, by virtue of statutory changes to the Applicable School Finance Law, administrative interpretations by the Comptroller, Commissioner of Education, or 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, or for any other reason attributable to statutory change, the District will receive less Maintenance and Operations Revenue, or, if applicable, will be required to increase its payment of funds to the State, because of its participation in this Agreement, the Applicant shall make payments to the District, up to the Revenue Protection Amount limit set forth in Section 7.1, that are necessary to offset any negative impact on the District as a result of its participation in this Agreement. Such calculation shall take into account any adjustments to the Revenue Protection Amount calculated for the current fiscal year that should be made in order to reflect the actual impact on the District. 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.

Section 4.12 THE FOREGOING NOTWITHSTANDING, AND FOR THE AVOIDANCE OF ANY DOUBT, APPLICANT SHALL HAVE NO LIABILITY TO THE DISTRICT UNDER ANY OF THE PROVISIONS OF ARTICLE IV IF APPLICANT NEVER COMMENCES THE PROPOSED PROJECT AND HAS ACCEPTED NO TAX ADVANTAGE UNDER THIS AGREEMENT.

ARTICLE V

PAYMENT OF EXTRAORDINARY EDUCATION RELATED EXPENSES

Section 5.1. EXTRAORDINARY EXPENSES. In addition to the amounts determined pursuant to

Articles IV and VI, Applicant on an annual basis shall also indemnify and reimburse the District for

A. All reimbursable costs, certified by the District's external auditor to have been incurred by the District for extraordinary education-related expenses related to the Applicant's Qualified Investment that are not directly funded in state aid formulas, including expenses for the purchase of portable classrooms and the hiring of additional personnel to accommodate a temporary increase in student enrollment attributable to the Applicant's Qualified Investment; 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 of 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. In addition to undertaking the responsibility for the payment of all of the amounts set forth under Articles IV and V, and as further consideration for the execution of this Agreement by the District, the Applicant shall also be responsible for supplemental payments (the "Supplemental Payments") set forth in this Article VI.

A. Amounts Exclusive of Indemnity Amounts. It is the express intent of the Parties that the Applicant's obligation to make Supplemental Payments under this Article VI is separate and independent of the obligation of the Applicant to pay the amounts described in Articles IV and V; provided, however, that all payments under Articles IV and VI are subject to the limitations contained in Section 7.1.

B. Adherence to Statutory Limits on Supplemental Payments. It is the express intent of the Parties that any Supplemental Payments made to or on behalf of the District by the Applicant, under this Article VI, shall not exceed the limit imposed by the provisions of Texas Tax Code § 313.027(i), as such limit is allowed or required to be increased by the Legislature in a future year of this Agreement.

C. Explicit Identification of Payments to District. The Applicant shall not be responsible 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 made pursuant to Chapter 313, Texas Tax Code, unless it is explicitly set forth in this Agreement.

Section 6.2. SUPPLEMENTAL PAYMENT LIMITATION.

A. Notwithstanding the foregoing, the total annual Supplement Payment made pursuant to this article shall:

- i. not exceed in 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; and

ii. 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.

B. This limitation 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.

C. For purposes of this Agreement, the amount of the Annual Limit shall be the greater of \$344,130.00 based upon the District's 2014-2015 Average Daily Attendance of 3,441.3, rounded to the whole number, or \$50,000.00.

Section 6.3. SUPPLEMENTAL PAYMENT CHANGES. In the event this Agreement is amended to include additional Qualified Property than what is described in **EXHIBIT 3**, the parties further agree to amend Section 6.2 of the Agreement to provide for a proportionate increase in the supplemental payments called for under Section 6.2.A, subject only to the limitation in Section 6.2.C.

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, in no event shall (i) the sum of the maintenance and operations ad valorem taxes paid by Applicant to District for such Tax Year, plus the sum of all payments otherwise due from Applicant to 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 Applicant would have paid to District for such Tax Year (determined by using 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 Applicant to 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 Applicant to District under Article IV, Article V, and/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 above,

then Applicant shall have the option to terminate this Agreement. Applicant may exercise such option to terminate this Agreement by notifying District of its election in writing not later than the July 31 of the year next 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 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 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, records and dispute resolution shall survive the termination or expiration dates 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, Applicant shall Maintain Viable Presence in 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, 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 Applicant makes commercially reasonable efforts to remedy the cause of such Force Majeure. The Final Termination Date will only be extended for the mutually agreed length of the 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, Applicant shall submit the following reports completed by Applicant to the satisfaction of Comptroller on the dates indicated on the form or Comptroller website and starting on the first such due date after the Application Approval Date:

A. The Annual Eligibility Report, Form 50-772A located at Comptroller website http://www.texasahead.org/tax_programs/chapter313/forms.php;

B. The Biennial Progress Report, Form 50-773A, located at Comptroller website http://www.texasahead.org/tax_programs/chapter313/forms.php; and

C. The Job Creation Compliance Report, Form 50-825, as currently located at the Comptroller website http://www.texasahead.org/tax_programs/chapter313/forms.php.

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

Section 8.4. DATA REQUESTS. During the term of this Agreement, and upon the written request of District, the State Auditor's Office, or Comptroller, the Applicant shall provide the requesting party with all information reasonably necessary for the requesting party 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.

Section 8.5. SITE VISITS AND RECORD REVIEW. Applicant shall allow authorized employees of District, the Comptroller, the Appraisal District, and/or the State Auditor's Office to have access to Applicant's Qualified Property and/or business records, in accordance with Section 22.07 of the TEXAS TAX CODE, 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 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 Applicant's Qualified Property.

B. All inspections may be accompanied by one or more representatives of Applicant, and shall be conducted in accordance with Applicant's safety, security, and operational standards. Notwithstanding the foregoing, nothing contained in this Agreement shall require the Applicant to provide District, 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; INDEPENDENT AUDITS. This Agreement is subject to review and audit by the State Auditor pursuant to Section 2262.154 of the TEXAS GOVERNMENT CODE and Section 313.010(a) of the TEXAS TAX CODE, and the following requirements:

A. District and 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. Applicant and 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

later of:

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

B. District and Applicant shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the Applicant's Qualified Property, Qualified Investment, Qualifying Jobs, and wages paid for 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 Comptroller, State Auditor's Office, State of Texas or their authorized representatives. Applicant and 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 Comptroller or the State of Texas. By example and not as an exclusion to other breaches or failures, Applicant's failure to comply with this Section shall constitute a material breach of this Agreement.

C. Comptroller may require, at Applicant's or District's sole cost and expense, as applicable, independent audits by a qualified certified public accounting firm of Applicant's, District's, or the Comptroller's books, records, or property. The independent auditor shall provide Comptroller with a copy of such audit at the same time it is provided to Applicant and/or District.

D. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.154 of the TEXAS GOVERNMENT CODE, the State Auditor may conduct an audit or investigation of Applicant or District or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by Applicant or District or any other entity or person directly under this Agreement or indirectly through a subcontract 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, Applicant or 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. This Agreement may be amended unilaterally by Comptroller to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the TEXAS GOVERNMENT CODE.

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 Comptroller would not have approved this Agreement and District would not have executed this Agreement. By signature to this Agreement, Applicant:

A. represents and warrants that all information, facts, and representations contained in the Application are true and correct; and

B. acknowledges that if 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 Applicant has violated any of the representations, warranties, guarantees, certifications or affirmations included in the Application or this Agreement, Applicant shall have materially breached this Agreement and this Agreement shall be invalid and void except for the enforcement of the provisions required by 34 Tex. Admin. Code § 9.1053(f)(2)(L).

ARTICLE IX MATERIAL BREACH OR EARLY TERMINATION

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

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

B. Applicant failed to have complete Qualified Investment as required by Section 2.5 of this Agreement;

C. Applicant failed to create the number of Qualifying Jobs specified in Schedule C of the Application;

D. Applicant failed to pay the average weekly wage of all jobs in the county in which District's administrative office is located for all Non-Qualifying Jobs created by Applicant;

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

F. Applicant failed to provide payments to the District that protect District from the

payment of extraordinary education related expenses related to the project, as more fully specified in Article V of this Agreement;

G. Applicant failed to provide such supplemental payments as more fully specified in Article VI of this Agreement;

H. Applicant failed to create and Maintain Viable Presence on and/or with the qualified property as more fully specified in Article VIII of this Agreement;

I. Applicant failed to submit the reports required to be submitted by section 8.2 to the satisfaction of Comptroller on the dates indicated on the form;

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

K. Applicant failed to allow authorized employees of District, Comptroller, the Appraisal District, and/or the State Auditor's Office to have access to Applicant's Qualified Property and/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 Applicant's Qualified Property;

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

M. 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 III and IV, of this Agreement; or

N. Applicant fails either to:

i. Implement a plan to remedy non-compliance as required by Comptroller pursuant to 34 TAC Section 9.1059; or

ii. Pay a penalty assessed by Comptroller pursuant to 34 TAC Section 9.1059.

Section 9.2. CONSEQUENCES OF EARLY TERMINATION OR OTHER BREACH BY APPLICANT.

A. In the event that Applicant terminates this Agreement without the consent of District, except as provided in Section 7.2 of this Agreement, or in the event that Applicant fails to comply in any material respect with the terms of this Agreement or to meet any material

obligation under this Agreement, after the notice and cure period provided by Section 9.3, then District shall be entitled to the recapture of all ad valorem tax revenue lost as a result of this Agreement together with the payment of penalty and interest, as calculated in accordance with Section 9.2.C on that recaptured ad valorem tax revenue. For purposes of this recapture calculation, Applicant shall be entitled to a credit for all payments made to District pursuant to Articles IV, V, and VI of this Agreement.

B. Notwithstanding Section 9.2.A., in the event that District determines that Applicant has failed to Maintain Viable Presence and provides written notice of termination of this Agreement, then Applicant shall pay to District liquidated damages for such failure within thirty (30) days after receipt of such termination notice. The sum of liquidated damages due and payable shall be the sum total of 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 Applicant to District without the benefit of this Agreement, including penalty and interest, as calculated in accordance with Section 9.2.C. For purposes of this liquidated damages calculation, Applicant shall be entitled to a credit for all payments made to District pursuant to Articles IV, V, and VI. Upon payment of such liquidated damages, Applicant's obligations under this Agreement shall be deemed fully satisfied, and such payment shall constitute the District's sole remedy.

C. In determining the amount of penalty or interest, or both, due in the event of a breach of this Agreement, District shall first determine the base amount of recaptured taxes less all credits under Section 9.2.A. owed for each Tax Year during the Tax Limitation Period. 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 9.2.A 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 9.3. LIMITED STATUTORY CURE OF MATERIAL BREACH. In accordance with the provisions of Section 313.0275 of the Texas Tax Code, for any full Tax Year which commences after the project has become operational, Applicant may cure the Material Breaches of this Agreement, defined in Sections 9.1.C. or 9.1.D, above, without the termination of the remaining term of this Agreement. In order to cure its non-compliance with Sections 9.1.C. or 9.1.D for the particular Tax Year of non-compliance only, Applicant may make the liquidated damages payment required by Section 313.0275(b) of the Texas Tax Code, in accordance with the provisions of Section 313.0275(c) of the Texas Tax Code.

Section 9.4. DETERMINATION OF MATERIAL BREACH AND TERMINATION OF AGREEMENT.

A. Prior to making a determination that the Applicant has committed a material breach of this Agreement, such as making a misrepresentation in the Application, failing to Maintain Viable Presence in District as required by Section 8.1 of this Agreement, failing to make any payment required under this Agreement when due, or has otherwise committed a material breach of this Agreement, District shall provide Applicant with a written notice of the facts which it believes have caused the material breach of this Agreement, and if cure is possible, the cure proposed by District. After receipt of the notice, Applicant shall be given ninety (90) days to present any facts or arguments to the Board of Trustees showing that it is not in material breach of its obligations under this Agreement, or that it has cured or undertaken to cure any such material breach.

B. If the Board of Trustees is not satisfied with such response and/or that such breach has been cured, then the Board of Trustees shall, after reasonable notice to 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, 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 whether or not a material breach of this Agreement has occurred, the date such breach occurred, if any, and whether or not any such breach has been cured. In the event that the Board of Trustees determines that such a breach has occurred and has not been cured, it shall also terminate this Agreement and determine the amount of recaptured taxes under Section 9.2.A and B (net of all credits under Section 9.2.A and B), and the amount of any penalty and/or interest under Section 9.2.C that are owed to District.

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

Section 9.5. DISPUTE RESOLUTION.

A. After receipt of notice of the Board of Trustee's Determination of Breach and Notice of Contract Termination under Section 9.4, Applicant shall have ninety (90) 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 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 ninety (90) days after the Applicant's receipt of notice of the Board of Trustee's determination of breach under Section 9.4, 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 residing in Matagorda 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) District shall bear one-half of such mediator's fees and expenses and 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 before the expiration of such ninety (90) days, District shall have the remedies for the collection of the amounts determined under Section 9.2 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 District successfully prosecutes legal proceedings under this section, the Applicant shall also be responsible for the payment of attorney's fees and a tax lien on Applicant's Qualified Property and Applicant's Qualified Investment pursuant to Section 33.07 of the Texas Tax Code to the attorneys representing District pursuant to Section 6.30 of the Texas Tax Code.

C. In any event where a dispute between District and Applicant under this Agreement cannot be resolved by the Parties, after completing the procedures required above in this Section, either District or Applicant may seek a judicial declaration of their respective rights and duties under this Agreement or otherwise, in any judicial proceeding, assert any rights or defenses, or seek any remedy in law or in equity, against the other Party with respect to any claim relating to any breach, default, or nonperformance of any covenant, agreement or undertaking made by a Party pursuant to this Agreement.

Section 9.6. 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, District's damages for such a default shall under no circumstances exceed the greater of either any amounts calculated under Sections 9.2, or the monetary sum of the difference between the payments and credits due and owing to Applicant at the time of such default and District taxes that would have been lawfully payable to District had this Agreement not been executed. In addition, 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 9.6 shall be the sole and exclusive remedies available to the District, whether at law or under principles of equity.

Section 9.7. BINDING ON SUCCESSORS. In the event of a merger or consolidation of District with another school district or other governmental authority, this Agreement shall be binding on the successor school district or other governmental authority.

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 transmission, with “answer back” or other “advice 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 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 District shall be addressed to District’s Authorized Representative as follows:

Bay City Independent School District
520 Seventh Street
Bay City, Texas 77414
Phone: 979.245.5766
Fax: 979.245.3175

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

Oxea Corporation
1505 West LBJ Freeway, Suite 400
Dallas, Texas 75234
Phone: 972.481.2710
Fax: 972.481.2777

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

Section 10.2. AMENDMENTS TO 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 subsection B hereof. 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, this Agreement may only be amended according to the following:

- i. Applicant shall submit to District and Comptroller:
 - a. a written request to amend the Application and this Agreement which shall specify the changes Applicant requests;
 - b. any changes to the information that was provided in the Application that was

approved by District and considered by Comptroller;

c. and any additional information requested by District or Comptroller necessary to evaluate the amendment or modification; and

ii. Comptroller shall review the request and any additional information 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 Comptroller by the end of the 90 day period, the request is denied;

iii. If Comptroller has not denied the request, 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 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

iii. define minimum eligibility requirements for the recipient of limited value.

D. This Agreement may not be amended to extend the value limitation time period beyond its ten year statutory term.

Section 10.3. ASSIGNMENT. Any assignment of the interests of Applicant in this Agreement is considered an amendment to the Agreement and Applicant may only assign this Agreement, or a portion of this Agreement, after complying with the provisions of Section 10.2 regarding amendments to the Agreement.

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. MAINTENANCE OF COUNTY APPRAISAL DISTRICT RECORDS. When appraising the Applicant's Qualified Property and the Applicant's Qualified Investment subject to a limitation on Appraised Value under this Agreement, the Chief Appraiser of the Appraisal District shall determine the Market Value thereof and include both such Market Value and the appropriate value

thereof under this Agreement in its appraisal records.

Section 10.6. 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 the County.

Section 10.7. 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 10.8. 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 to the end that the transactions contemplated hereby are fulfilled to the extent possible. As used in this Section 10.8, 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 10.9. 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 10.10. INTERPRETATION. 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. 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. This Agreement is the joint product of the Parties and each provision of this Agreement has been subject to the mutual consultation, negotiation and agreement of each Party and shall not be construed for or against any Party.

Section 10.11. 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 10.12. PUBLICATION OF DOCUMENTS. The Parties acknowledge that the District is required to publish Application and its required schedules, or any amendment thereto; all economic analyses of the proposed project submitted to District; and the approved and executed copy of this Agreement or any amendment thereto, as follows:

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

B. District shall provide on its website a link to the location of those documents posted on 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 10.13. CONTROL; OWNERSHIP; LEGAL PROCEEDINGS. Applicant shall immediately notify District in writing of any actual or anticipated change in the control or ownership of Applicant and of any legal or administrative investigations or proceedings initiated against Applicant regardless of the jurisdiction from which such proceedings originate.

Section 10.14. DUTY TO DISCLOSE. If circumstances change or additional information is obtained regarding any of the representations and warranties made by Applicant in the Application or this Agreement, or any other disclosure requirements, subsequent to the date of this Agreement, Applicant's duty to disclose continues throughout the term of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties in multiple originals on this 19th day of October, 2015.

OXEA CORPORATION

By: W. H.

Name: Wolfgang Hackenberg

Title: VP / Treasurer

**BAY CITY INDEPENDENT
SCHOOL DISTRICT**

By: Tim Powell

Tim Powell
President, Board of Trustees



ATTEST:

Bobby Kimball
Bobby Kimball, Secretary, Board of Trustees

EXHIBIT 1

DESCRIPTION AND LOCATION OF ENTERPRISE OR REINVESTMENT ZONE

That certain area of land designated as a reinvestment zone by the Matagorda County Commissioner's Court on December 2, 2013, such reinvestment zone area being described in that certain Special Warranty Deed recorded under Instrument No. 071569, Official Records of Matagorda County, Texas and as further described on the fieldnotes, plat and map attached, immediately following this page of Exhibit 1.

EXHIBIT A

DESCRIPTION OF 898.57 ACRES, MORE OR LESS, OF LAND AREA BEING IN THE JAMES MOORE LEAGUE, ABSTRACT NO. 62, MATAGORDA COUNTY, TEXAS AND BEING THE REMAINING PORTION OF THAT TRACT DESCRIBED AS 1000.0 ACRES IN A DEED FROM WALTER W. FONDREN, JR. TO CELANESE CORPORATION OF AMERICA DATED DECEMBER 8, 1960 AND RECORDED IN VOLUME 362, PAGE 16, MATAGORDA COUNTY DEED RECORDS AND ALL THAT TRACT DESCRIBED AS 8.9876 ACRES IN A DEED FROM CHAMPLIN PETROLEUM COMPANY TO CELANESE CORPORATION DATED APRIL 22, 1968 AND RECORDED IN VOLUME 462, PAGE 123, MATAGORDA COUNTY DEED RECORDS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a capped pin found at the common northeast corner of that tract described as 9.06 acres in a deed from Celanese, Ltd. to Port Assets, LLC dated December 21, 2001 and recorded in Volume 641, Page 596 and an exterior corner in the north line of the 1000.0 acre Celanese tract and in the approximate common north line of the James Moore League, Abstract No. 62 and the south line of the AJM Smalley League, Abstract No. 90, Matagorda County, Texas;

THENCE with the north line of the Celanese 1000.0 acre tract and the approximate common north line of the James Moore League and the south line of the AJM Smalley League N 88°37'38" E 3874.50 feet to a 1 ¼ inch iron pipe found at the northeast corner of the Celanese 1000.0 acre tract;

THENCE leaving the approximate common north line of the James Moore League and the south line of the AJM Smalley League, S 01°23'00" E (this course being the bearing basis for this description) with the east line of the Celanese 1000.0 acre tract, and joining the west line at a calculated point at a record distance of 175.29 feet at the northwest corner of that tract described as 1341.5857 acres in a Correction Deed from the Estate of Walter W. Fondren, Jr. and Doris Ledwidge Fondren to Cities Service Company dated January 20, 1981 and recorded in Volume 668, Page 184, Matagorda County Deed Records at a total distance of 5638.97 feet to 1 ¼ inch iron pipe found at the common southeast corner of the 1000.0 acre Celanese tract and an interior corner of the 1341.5857 acre Walter W. Fondren, Jr. tract;

THENCE with the common south line of the Celanese 1000.0 tract and the north line of the 1341.5857 acre Walter W. Fondren Jr. tract, North 88°36'15" E 6727.30 feet to a ½ inch iron pin set at the common southwest corner of the remaining portion of the 1000.0 acre Celanese tract and the southeast corner of that tract described as 94.024 acres in a deed from Celanese Corporation of America to Baycel Club dated May 6, 1963 and recorded in Volume 402, Page 51, Matagorda County Deed Records;

THENCE with the common southwest line of the remaining portion of the 1000.0 acre Celanese tract and the northeast line of the 94.024 Baycel Club tract
N 39°56'53" W 2720.20 feet to a ½ inch iron rod set at a common interior corner of the remaining portion of the Celanese 1000.0 acre tract and the Baycel Club tract;

THENCE with the common west line of the remaining portion of the Celanese 1000.0 acre tract and the east line of the Baycel Club tract N 01°31'51" W 267.24 feet to a ½ inch iron pin set at the common northeast corner of the Baycel Club tract and the southeast corner of that tract described as 1.649 acres in a deed from Celanese Corporation of America to Matagorda County Navigation District No. 2 dated January 15, 1963 and recorded in Volume 4, Page 145, Matagorda County Deed Records;

THENCE with the continuing with the west line of the remaining portion of the Celanese 1000.0 acre tract and the east line of the 1.649 acre Matagorda Navigation tract N 01°31'51" W 169.20 feet to a ½

inch iron rod set at the common southeast corner of that tract described as 180.83 acres in a deed from Walter W. Fondren Jr. to Matagorda County Navigation District No. 2 dated June 9, 1961 and recorded in Volume 3, Page 611, Matagorda County Deed Records and the southwest corner of the Celanese 8.9876 acre tract;

THENCE with the common west line of the 8.9876 acre Celanese tract and the east line of the 180.83 acre Matagorda Navigation tract N 02°38'36" W 92.00 feet to a 5/8 inch rebar found at the common southerly northwest corner of the Celanese 8.9876 acre tract and the southwest corner of the remaining portion of that tract described in a deed from Doris Ledwidge Fondren to Walter W. Fondren III, et al dated January 15, 1981 and recorded in Volume 665, Page 753, Matagorda County Deed Records;

THENCE leaving the east line of the Matagorda Navigation tract with the common northwest line of the 8.9876 acre Celanese tract and the southeast line of the remaining portion of the Walter W. Fondren III tract N 48°26'02" E 2039.10 feet to a 5/8 inch rebar found said to be in the south line of FM 3057 at the common northeasterly north corner of the 8.9876 acre Celanese tract and an exterior corner of the remaining portion of the Walter W. Fondren III tract;

THENCE with the common line of the 8.9876 acre Celanese tract, the south line of the remaining portion of the Walter W. Fondren III tract and the south line of FM 3057 the following eight (8) tracts:

- 1) N 87°39'29" E 45.63 feet to a calculated point;
- 2) N 79°15'29" E 94.00 feet to a calculated point;
- 3) N 78°31'29" E 40.94 feet to a 5/8 inch rebar found;
- 4) leaving the south line of FM 3057 S 48°21'35" W 107.35 feet to a 1/2 inch iron rod set;
- 5) S 45°44'35" W 92.61 feet to a 1/2 inch iron rod set;
- 6) S 38°12'35" W 102.70 feet to a 1/2 inch iron rod set;
- 7) S 31°32'35" W 102.99 feet to a 1/2 inch iron rod set;
- 8) S 31°12'35" W 163.74 feet to a 1/2 inch iron rod set in the common northwest line of the Celanese 1000.0 acre tract and the southwest line of the Walter W. Fondren III tract for an interior corner of this description;

THENCE with the common northwest line of the remaining portion of the 1000.0 acre Celanese tract and the southeast line of the Walter W. Fondren III tract N 48°22'34" E 2624.62 feet to a 1/2 inch iron rod set (pass at 1189.00 a 1/2 inch iron rod set at the intersection of the northwest line of the Celanese 1000.0 acre tract and FM 3057) at a common exterior corner of the remaining portion of the 1000.0 acre Celanese tract and the northwest corner of the 9.06 acre Port Assets, LLC tract;

THENCE leaving the common northwest line of the Celanese 1000.0 acre tract and the southeast line of the Walter W. Fondren III tract with a common east line of the remaining portion of the 1000.0 acre Celanese tract and the west line of the 9.06 acre Port Assets, LLC tract the following three (3) courses:

- 1) S 19°24'50" E 207.56 feet to a 1/2 inch iron rod set;
- 2) N 70°35'10" E 111.45 feet to a 1/2 inch iron rod set;
- 3) S 19°24'50" E 338.56 feet to a capped pin found at the common interior corner of the remaining portion of the 1000.0 acre Celanese tract and the southwest corner of the 9.06 acre Port Assets, LLC tract;

THENCE with the common north line of the remaining portion of the 1000.0 acre Celanese tract and the south line of the 9.06 acre Port Assets, LLC tract N 70°32'53" E 404.69 feet to a 5/8 inch rebar found at the common southeast corner of the 9.06 acre Port Assets, LLC tract and the southwest corner of that tract described as 8.10 acres in a deed from Celanese, Ltd. to Port Assets, LLC dated October 9, 2001 and recorded in Volume 655, Page 135, Matagorda County Deed Records and on the north line of the remaining portion of the 1000.0 acre Celanese tract;

THENCE with the common north line of the remaining portion of the 1000.0 acre Celanese tract and the south line of the 8.10 acre Port Assets, LLC tract N 70°53'14" E 603.14 feet to capped pin found at a common interior corner of the remaining portion of the 1000.0 acre Celanese tract and the southeast corner of the 8.10 acre Port Assets, LLC tract;

THENCE with a common west line of the remaining portion of the 1000.0 acre Celanese tract and the east line of the 8.10 acre Port Assets, LLC tract N 07°46'51" W 506.07 feet to a capped pin found at the common northeast corner of the 8.10 acre Port Assets, LLC tract and the northerly southeast corner of the 9.06 acre Port Assets, LLC tract;

THENCE continuing with a west line of the remaining portion of the 1000.0 acre Celanese tract and the east line of the 9.06 acre Port Assets, LLC tract N 07°45'39" W 60.40 feet to the PLACE OF BEGINNING.

There are contained within these metes and bounds 898.57 acres, more or less, of land area as prepared from public records and a survey made on the ground March 23, 2004 by Bock & Clark Corporation of Austin, Texas. All ½ inch iron rods set are capped with a plastic cap stamped "B&C RPLS'5671."

ALSO THAT CERTAIN Barge Dook parcel being described as 3.680 acres of land out of the James Moore League, Abstract No. 62, in Matagorda County, Texas, and is a portion of the Navigation District No. 2 properties, and is more particularly described as follows:

BEGINNING at a point in the northwest line of the land described in a deed from Walter W. Fondren, Jr. to the Celanese Corporation of America, dated December 8, 1960, and recorded in Volume 362, on page 16, Deed Records of Matagorda County, Texas, which northwest line is the southwest line of the above-mentioned Navigation District No. 2 properties, and the said beginning point is set South 48 deg. 23 min. West 184.0 feet from a 1-1/4 inch pipe at the northwest corner of the land described in the above-mentioned deed, and an interior corner of the said Navigation District No. 2 properties;

THENCE South 48 deg. 23 min. West 316.0 feet along the recognized common line between the above-mentioned Navigation District No. 2 properties, and the land described in the above-mentioned deed, to a point for the point of curve of a 4 deg. 09 min. curve to the left;

THENCE along a 4 deg. 09 min. curve to the left, 761.2 feet, to the edge of the Turning Basin Channel, for the south corner of this tract;

THENCE North 12 deg. 25 min. East 878.0 feet along the edge of the above-mentioned Channel, to a point for the northwest corner of this tract;

THENCE South 86 deg. 26 min. East 477.9 feet, to the place of beginning, containing 3.680 acres of land, more or less, of which there is 2.996 acres in the right-of-way for the Turning Basin Channel.

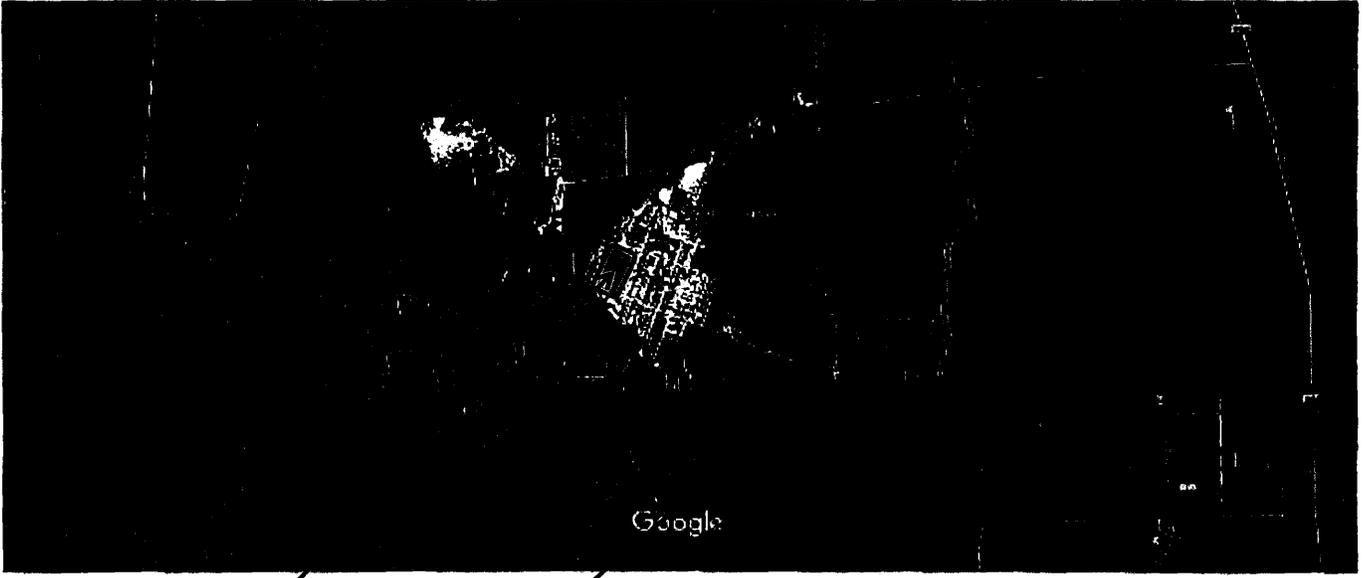
ALSO LESS AND EXCEPTING any property previously conveyed by Grantor to other parties as reflected in the public records including the following described property to the extent included, if at all, in the above description of real estate: (1) 94.024 acres conveyed from Celanese Corporation of America to BayCel Club by deed dated May 6, 1963, recorded in Volume 402 at page 51 of the Official Records of Matagorda County, Texas; (2) 1.649 acres conveyed from Celanese Corporation of America to Matagorda County Navigation District No. 2 by deed dated January 15, 1963, recorded in Volume 4 at page 145 of the Official Records of Matagorda County, Texas; (3) Road Easement of 20.99 acres for F.M. 3057 from Celanese Corporation of America to the County of Matagorda, State of Texas, by deed dated July 26, 1961, recorded in Volume 4 at page 19 of the Official Records of Matagorda County, Texas; (4) 8.10 acres conveyed from Celanese, Ltd. to Port Assets, LLC, by deed recorded October 22, 2001 in Volume 635 at page 135 of the Official Records of Matagorda County, Texas; (5) 9.06 acres conveyed from

Colanese, Ltd. to Port Assets, LLC, by deed recorded December 21, 2001 in Volume 641 at page 596 of the Official Records of Matagorda County, Texas.

ALSO LESS AND EXCEPTING all gas, oil and mineral rights previously conveyed to others.

2015

Google Maps 2001 Farm-To-Market 3057

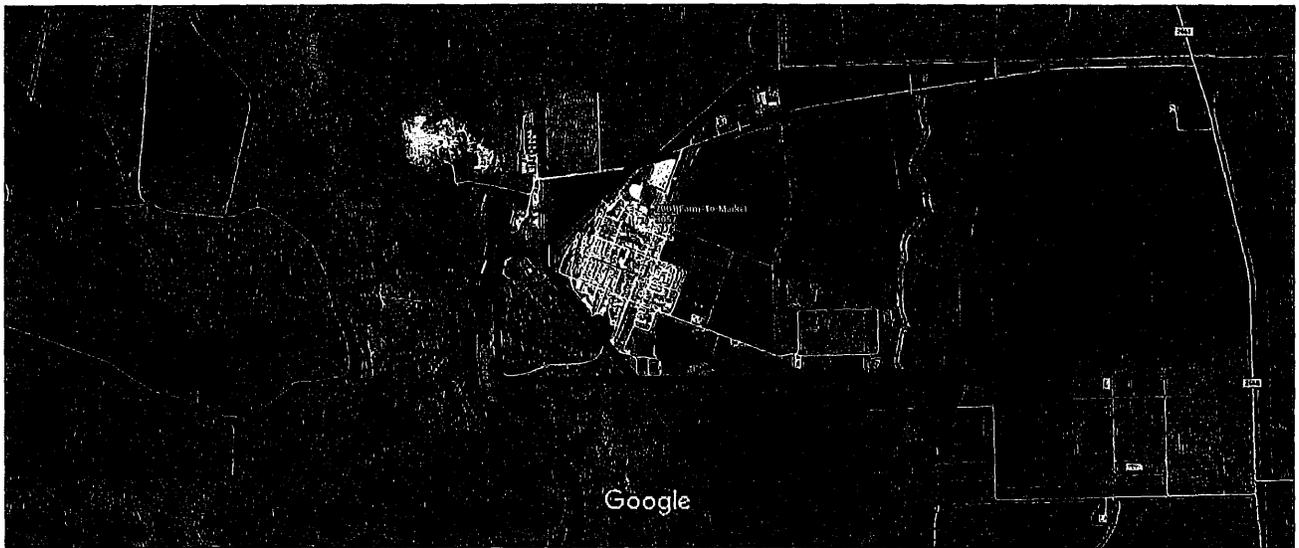


Imagery ©2015 Google, Map data ©2015 Google 1000 ft

Project Area (Area where new unit would be constructed)

Represents OXEA Bay City Site Reinvestment Zone

Google Maps 2001 Farm-To-Market 3057



Imagery ©2015 Google, Map data ©2015 Google 1000 ft

EXHIBIT 2

**LOCATION AND DESCRIPTION OF THE
APPLICANT'S QUALIFIED INVESTMENT**

All Qualified Investment owned by the Applicant is located within the boundaries of Bay City Independent School District and the Matagorda County Reinvestment Zone, which is more particularly described in **EXHIBIT 1** will be included in and subject to this Agreement. Specifically, all of Applicant's Qualified Investment is located in the sections of land described on the following pages.

EXHIBIT 3

LOCATION AND DESCRIPTION OF QUALIFIED PROPERTY

The Project includes the design and construction of the following three units:

1. n-Propanol manufacturing unit, including tankage;
2. 2-Ethylhexanol manufacturing unit, including tankage; and
3. Synthesis gas supply, raw material for the 2 units referenced above with the option to build a 3rd train to existing 2-train operation to increase capacity

All of the Qualified Property is within the Project area as described in **EXHIBIT 1**. Qualified Property does not include any property identified in the application as non-qualified property, including but not limited to, existing property, new property affixed to existing equipment or structures, or property replacing existing property.