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

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by and between

CALVERT INDEPENDENT SCHOOL DISTRICT

and

NGC INDUSTRIES, LLC

(*Texas Taxpayer ID #32057100854)*

Comptroller Application #1075

Dated

October 18, 2016

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

STATE OF TEXAS	*§*
	§
COUNTY OF ROBERTSON	*§*

THIS AGREEMENT FOR LIMITATION ON APPRAISED VALUE OF PROPERTY FOR SCHOOL DISTRICT MAINTENANCE AND OPERATIONS TAXES, hereinafter referred to as this "Agreement," is executed and delivered by and between the **CALVERT INDEPENDENT SCHOOL DISTRICT,** hereinafter referred to as the "District," a lawfully created independent school district within the State of Texas operating under and subject to the TEXAS EDUCATION CODE, and **NGC INDUSTRIES, LLC,** Texas Taxpayer Identification Number 32057100854 hereinafter referred to as the "Applicant." The Applicant and the District are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, on June 16, 2015, the Superintendent of Schools of the Calvert Independent School District, acting as agent of the Board of Trustees of the District, received from the Applicant an Application for Appraised Value Limitation on Qualified Property, pursuant to Chapter 313 of the TEXAS TAX CODE;

WHEREAS, on June 16, 2015, the Board of Trustees has acknowledged receipt of the Application, and along with the requisite application fee as established pursuant to Section 313.025(a) of the TEXAS TAX CODE and Local District Policy CCG (Local), and agreed to consider the Application;

WHEREAS, the Application was delivered to the Texas Comptroller's Office for review pursuant to Section 313.025of the TEXAS TAX CODE;

WHEREAS, on August 5, 2015, the District and the Texas Comptroller's Office determined that the Application was complete;

WHEREAS, pursuant to 34 TEXAS ADMIN. CODE Section 9.1054, the Application was delivered to the Robertson County Appraisal District established in Robertson County, Texas (the "Robertson County Appraisal District"), pursuant to Section 6.01 of the TEXAS TAX CODE;

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 November 3, 2015, issued a certificate for limitation on appraised value of the property described in the Application and provided the certificate to the District;

WHEREAS, on November 30, 2015, the Board of Trustees, by resolution, agreed to extend the time period to for final action on Application 1075 for a property value limitation until March 5, 2016;

WHEREAS, on February 16, 2016, the Board of Trustees approved the Applicant's request for an extension of the 150-day deadline to review the Application until August 31, 2016;

WHEREAS, on August 16, 2016 the Board of Trustees received an amended Application, and the Board of Trustees, by resolution, approved the Applicant's request for an extension of the 150-day deadline to review the Application until October 31, 2016;

WHEREAS, the District and the Texas Comptroller's Office have determined that the Application, as amended, is complete and August 25, 2016 is the Application Review Start Date as that term is defined by 34 TEXAS ADMIN. CODE Section 9.1051 with respect to the Application, as amended;

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 August 26, 2016, issued a certificate for limitation on appraised value of the property described in the Application, as amended, and provided the certificate to the District;

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

WHEREAS, on October 18, 2016, the Board of Trustees conducted a public hearing on the Application at which it solicited input into its deliberations on the Application from all interested parties within the District;

WHEREAS, on October 18, 2016, the Board of Trustees made factual findings pursuant to Section 313.025(f) of the TEXAS TAX CODE, including, but not limited to findings that: (i) the information in the Application is true and correct; (ii) the Applicant is eligible for the limitation on appraised value of the Applicant's Qualified Property; (iii) the project proposed by the Applicant is reasonably likely to generate tax revenue in an amount sufficient to offset the District's maintenance

and operations ad valorem tax revenue lost as a result of the Agreement before the 25th anniversary of the beginning of the limitation period; (iv) the limitation on appraised value is a determining factor in the Applicant's decision to invest capital and construct the project in this State; and (v) this Agreement is in the best interest of the District and the State of Texas;

WHEREAS, on October 14, 2016, the Texas Comptroller's Office approved the form of this Agreement for a Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes;

WHEREAS, on October 18, 2016, the Board of Trustees approved the form of this Agreement for a Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes, and authorized the Board President and Secretary to execute and deliver such Agreement to the Applicant; and,

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

ARTICLE I
DEFINITIONS

Section 1.1. DEFINITIONS.

Wherever used in this Agreement, the following terms shall have the following meanings, unless the context in which used clearly indicates another meaning. Words or terms defined in 34 TEXAS ADMIN. CODE Section 9.1051 and not defined in this Agreement shall have the meanings provided by 34 TEXAS ADMIN. CODE Section 9.1051.

"*Act*" means the Texas Economic Development Act set forth in Chapter 313 of the Texas Tax Code, as amended.

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

"*Applicant*" means NGC Industries, LLC, *(Texas Taxpayer ID #32057100854*), the entity listed in the Preamble of this Agreement and that is listed as the Applicant on the Application as of the Application Approval Date. The term "Applicant" shall also include the Applicant's assigns and successors-in-interest as approved according to Sections 10.2 and 10.3 of this Agreement.

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

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

"*Application"* means the Application for Appraised Value Limitation on Qualified Property (Chapter 313, Subchapter B or C of the TEXAS TAX CODE) filed with the District by the Applicant on June 16, 2015. The term includes all forms required by the Comptroller, the schedules attached thereto, and all other documentation submitted by the Applicant for the purpose of obtaining an Agreement with the District. The term also includes all amendments and supplements thereto submitted by the Applicant.

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

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

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

"*Appraisal District"* means the Robertson County Appraisal District.

"*Board of Trustees"* means the Board of Trustees of the Calvert Independent School District.

"*Commercial Operations"* shall mean the date on which the Project described in the Application for Value Limitation Agreement becomes commercially operational and capable of being placed into service, such that it has been constructed and is capable of producing gypsum board and achieving a Qualifying Investment of $10 million dollars.

"*Comptroller"* means the Texas Comptroller of Public Accounts, or the designated representative of the Texas Comptroller of Public Accounts acting on behalf of the Comptroller.

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

"County" means Robertson County, Texas.

"*District" or* "*School District"* means the Calvert Independent School District, being a duly authorized and operating school district in the State, having the power to levy, assess, and collect ad valorem taxes within its boundaries and to which Subchapter C of the Act applies. The term also includes any successor independent school district or other successor governmental authority having the power to levy and collect ad valorem taxes for school purposes on the Applicant's Qualified Property or the Applicant's Qualified Investment.

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

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

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

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

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

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

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

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

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

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

"*State*" means the State of Texas.

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

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

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

"*Tax Year*" shall have the meaning assigned to such term in Section 1.04(13) of the TEXAS TAX CODE (*i.e.*, the calendar year).

"*Taxable Value*" shall have the meaning assigned to such term in Section 1.04(10) of the TEXAS TAX CODE.

Section 1.2. NEGOTIATED DEFINITIONS.

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

"*Applicable School Finance Law*" means the state laws, agency regulations and/or judicial rulings then controlling the public school finance system for Texas public schools generally and the District specifically at the time the computation, calculation or obligation of either party under this Agreement is performed.

"Cumulative Payments" means for each year of this Agreement the total of all payments, calculated under Articles IV, V and VI of this Agreement for the current Tax Year which are paid by or owed by Applicant to the District, plus (to the extent not duplicative of other payments made hereunder) payments paid by Applicant to compensate District for loss of revenue under this Agreement.

"*Cumulative Unadjusted Tax Benefit*" means for each Tax Year of this Agreement, the Unadjusted Tax Benefit for the applicable Tax Year added to the Unadjusted Tax Benefit from all previous Tax Years of this Agreement.

"*Lost M&O Revenue*" means the reduction in Maintenance and Operations ad valorem tax revenue to the District resulting from, or on account of, this Agreement for each year starting in the year of the Application Review Start Date and ending on the Final Termination Date of this Agreement.

"New M&O Revenue" means the total State and local Maintenance and Operations revenue that the District received from Applicant or accrued, after all adjustments have been made to such Maintenance and Operations revenue because of any portion of this Agreement in accordance with the provisions of the Applicable School Finance Law for such school year.

"Net Tax Benefit" means an amount equal to (but not less than zero): (i) the amount of maintenance and operations ad valorem taxes which the Applicant would have paid to the District for all Tax Years during the term of this Agreement if this Agreement had not been entered into by the Parties; *minus*, (ii) an amount equal to the sum of (A) all maintenance and operations ad valorem school taxes actually due to the District from Applicant or any other governmental entity, including the State of Texas, for all Tax Years during the term of this Agreement, plus (B) any and all Cumulative Payments.

"*Original M&O Revenue*" means the total State and local Maintenance and Operations revenue that the 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 Applicant's Qualified Property and/or the Applicant's Qualified Investment been subject to the ad valorem maintenance and operations tax at the tax rate actually adopted by the District for the applicable year. For purposes of this calculation, the Third Party will base its calculations upon actual local taxable values for each applicable year as certified by the County Appraisal District for all other taxable accounts in the District, save and except for the Qualified Property and/or the Applicant's Qualified Investment subject to this Agreement, *plus* the total appraised value of the Qualified Property and/or the Applicant's Qualified Investment subject to this Agreement which is or would be used for the calculation of the District's tax levy for debt tax purposes. For the calculation of Original M&O Revenue, Applicant's Taxable value for its Qualified Property and/or the Applicant's Qualified Investment for M&O purposes will not be used.

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

"*Unadjusted Tax Benefit*" means for each Tax Year of this Agreement the total of all gross tax savings calculated for each year of the Agreement by multiplying the Applicant's taxable value for debt service taxes for each applicable Tax Year, minus the Tax Limitation Amount of Twenty Million Dollars ($20,000,000.00), multiplied by the District's Maintenance & Operations tax rate for the applicable Tax Year.

ARTICLE II
AUTHORITY, PURPOSE AND LIMITATION AMOUNTS

Section 2.1. AUTHORITY.

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

Section 2.2. PURPOSE.

In consideration of the execution and subsequent performance of the terms and obligations by the Applicant pursuant to this Agreement, identified in Sections 2.5 and 2.6 as more fully specified in this Agreement, the value of the Applicant's Qualified Property listed and assessed by the County Appraiser for the District's maintenance and operation ad valorem property tax shall be the Tax Limitation Amount as set forth in Section 2.4 of this Agreement during the Tax Limitation Period.

Section 2.3. TERM OF THE AGREEMENT.

A. The Application Review Start Date for this Agreement is August 25, 2016, which will be used to determine the eligibility of the Applicant's Qualified Property and all applicable wage standards.
B. The Application Approval Date for this Agreement is October 18, 2016.
C. The Qualifying Time Period for this Agreement:
    i. Starts on the Application Approval Date; and
    ii. Ends on December 31, 2018, the last day of the second complete Tax Year following the Qualifying Time Period start date.
D. The Tax Limitation Period for this Agreement:
    i. Starts on January 1, 2019, the first complete Tax Year that begins after the date of commencement of Commercial Operation; and

ii. Ends on December 31, 2028 which is the year the Tax Limitation Period starts as identified in Section 2.3.D.i plus 9 years.

E. The Final Termination Date for this Agreement is December 31, 2032, which is the last year of the Tax Limitation Period as defined in Section 2.3.D.ii. plus 5 years.

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

Section 2.4. TAX LIMITATION.

So long as the Applicant makes the Qualified Investment as required by Section 2.5, during the Qualifying Time Period, and unless this Agreement has been terminated as provided herein before such Tax Year, on January 1 of each Tax Year of the Tax Limitation Period, the Appraised Value of the Applicant's Qualified Property for the District's maintenance and operations ad valorem tax purposes shall not exceed the lesser of:

A. The Market Value of the Applicant's Qualified Property; or,
B. Twenty Million Dollars ($20,000,000.00)

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

Section 2.5. TAX LIMITATION ELIGIBILITY.

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

A. Have completed the Applicant's Qualified Investment in the amount of Ten Million Dollars ($10,000,000.00) during the Qualifying Time Period;

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

C. Pay an average weekly wage of at least $880.00 for all New Non-Qualifying Jobs created by the Applicant.

Section 2.6. TAX LIMITATION OBLIGATIONS.

In order to receive and maintain the limitation authorized by Section 2.4, Applicant shall:

A. Provide payments to District sufficient to protect future District revenues through payment of revenue offsets and other mechanisms as more fully described in Article IV;
B. Provide payments to the District that protect the District from the payment of extraordinary education- related expenses related to the project, as more fully specified in Article V;
C. Provide such Supplemental Payments as more fully specified in Article VI;
D. Create and Maintain Viable Presence on or with the Qualified Property and perform additional obligations as more fully specified in Article VIII of this Agreement; and
E. No additional conditions are identified in the certificate for a limitation on appraised value by the Comptroller for this project.

ARTICLE III
QUALIFIED PROPERTY

Section 3.1. LOCATION WITHIN ENTERPRISE OR REINVESTMENT ZONE.

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

Section 3.2. LOCATION OF QUALIFIED PROPERTY AND INVESTMENT.

The Land on which the Qualified Property shall be located and on which the Qualified Investment shall be made is described in **EXHIBIT 2**, which is attached hereto and incorporated herein by reference for all purposes. The Parties expressly agree that the boundaries of the Land may not be materially changed from its configuration described in **EXHIBIT 2** unless amended pursuant to the provisions of Section 10.2 of this Agreement.

Section 3.3. DESCRIPTION OF QUALIFIED PROPERTY.

The Qualified Property that is subject to the Tax Limitation Amount is described in **EXHIBIT 4**, which is attached hereto and incorporated herein by reference for all purposes. Property which is not specifically described in **EXHIBIT 4** shall not be considered by the District or the Appraisal District to be part of the Applicant's Qualified Property for purposes of this Agreement, unless by official action the Board of Trustees provides that such other property is a

part of the Applicant's Qualified Property for purposes of this Agreement in compliance with Section 313.027(e) of the TEXAS TAX CODE, the Comptroller's Rules, and Section 10.2 of this Agreement.

Section 3.4. CURRENT INVENTORY OF QUALIFIED PROPERTY.

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

Section 3.5. QUALIFYING USE.

The Applicant's Qualified Property described in Section 3.3 qualifies for a tax limitation agreement under Section 313.024(b)(1) of the TEXAS TAX CODE as a manufacturing facility.

ARTICLE IV
PROTECTION AGAINST LOSS OF FUTURE DISTRICT REVENUES

Section 4.1. INTENT OF PARTIES.

Subject to the limitations contained in this Agreement (including Section 7.1), and in accordance with the provisions of Section 313.027(f)(1) of the TEXAS TAX CODE, it is the intent of the Parties that the District shall be compensated by the Applicant as provided in this Article IV for any and all losses that the District incurs in its Maintenance and Operations revenue as a result of, or on account of, entering into this Agreement, after taking into account any payments to be made under this Agreement. Such payments shall be independent of, and in addition to such other payments as set forth in Article V and Article VI of this Agreement. Subject to the limitations contained in this Agreement (including Section 7.1), it is the intent of the Parties that the risk of any and all negative financial consequence to the District in making the decision to enter into this Agreement will be borne by the Applicant and not by the District.

The calculation of any Lost M&O Revenue required to be paid by the Applicant under this Article IV shall be made for the first time for the first complete Tax Year following the start of Commercial Operations, and every year thereafter during the term of this Agreement.

Within 60 days from the date commercial operations begin, the Applicant shall provide to the District and the Appraisal District a written statement, describing in reasonable detail the land, tangible

personal property, buildings, or permanent, nonremovable building components (including any affixed to or incorporated into real property) to which the value limitation applies including maps or surveys of sufficient detail and description to locate all such qualified property within the boundaries of the land which is subject to the agreement, if such final description is different than the description provided in the application or any supplemental application information, or if no substantial changes have been made, a written statement verifying the fact that no substantial changes have been made.

The Parties further agree that the printouts and projections produced during the negotiations and approval of this Agreement are:

i. For illustrative purposes only, are not intended to be relied upon, and have not been relied upon by the Parties as a prediction of future consequences to either Party to the Agreement;
ii. Are based upon current School Finance Law, which is subject to change by statute, by administrative regulation, or by judicial decision at any time; and,
iii. May change in future years to reflect changes in the Applicable School Finance Law.

Section 4.2 CALCULATING LOST M&O REVENUE.

The amount to be paid by the Applicant to compensate the District for Lost M&O Revenue resulting from, or on account of, this Agreement for each year starting in the year of the Application Review Start Date and ending on the Final Termination Date shall be determined in compliance with the Applicable School Finance Law in effect for such year and according to the following formula: The Lost M&O Revenue owed by the Applicant to District means the Original M&O Revenue *minus* the New M&O Revenue. In making the calculations required by this Section 4.2:

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 the 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 of this Agreement, results in a negative number, the negative number will be considered to be zero.

iv. For all calculations made for years during the Tax Limitation Period under Section 4.2 of this Agreement, Subsection *ii* of this subsection will reflect the Tax Limitation Amount for such year.

v. All calculations made under this Section 4.2 shall be made by a methodology which isolates the full Maintenance and Operation Revenue impact caused by this Agreement.

Section 4.3. CUMULATIVE PAYMENT LIMITATION.

In no event shall the Cumulative Payments made by Applicant during any year of the Tax Limitation Period exceed an amount equal to One Hundred Percent (100%) of Applicant's Cumulative Unadjusted Tax Benefit for that tax year. For each year of this Agreement, amounts due and owing by Applicant to the District which, by virtue of the application of this Cumulative Payment limitation set forth in this Section 4.3 are not payable to the District for that given year, such sums shall be carried forward to and paid to the District in the succeeding year or years, subject, in each succeeding year, to the limit set forth in this Section.

Section 4.4. CALCULATIONS TO BE MADE BY THIRD PARTY.

All calculations under this Agreement shall be made annually by an independent third party (the "Third Party") selected each year by the District. In addition to the amounts determined pursuant to Section 4.2 above, the Applicant, on an annual basis, shall also indemnify and reimburse the District for any other loss of District revenues which are, or may be reasonably attributable to the District's compliance with this Agreement**,** including, but not limited to:

A. All non-reimbursed costs, certified by the District's external auditor to have been incurred by the District for extraordinary education-related expenses related to the project that are not directly funded in state aid formulas, including expenses for the acquisition of portable classrooms and the hiring of additional personnel to accommodate a temporary increase in student enrollment attributable to the project. Applicant shall have the right to contest the findings of the District's external auditor pursuant to Section 4.10 herein.

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

C. Any other costs to the District, including costs under Subsection 8.6(C), below, which are or may be attributable to compliance with State-imposed costs of compliance with the terms of this Agreement.

Section 4.5. DATA USED FOR CALCULATIONS.

The calculations for payments under this Agreement shall be initially based upon the valuations that are placed upon all taxable property in the District, including the Applicant's Qualified Investment and/or the Applicant's Qualified Property by the Appraisal District in its annual certified tax roll submitted to the District for each Tax Year 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 Third Party 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 Third Party to make the calculations contemplated by this Agreement shall be based upon the best available current estimates. The data utilized by the Third Party shall be adjusted from time to time by the Third Party to reflect actual amounts, subsequent adjustments by the Appraisal District to the District's certified tax roll or any other changes in student counts, tax collections, or other data.

Section 4.6. EFFECT OF PROPERTY VALUE APPEAL OR OTHER ADJUSTMENT.

If the Applicant has appealed any matter relating to the valuations placed by the Appraisal District on the Applicant's Qualified Property, and/or the Applicant's Qualified Investment at the time the Third Party selected under Section 4.4 makes its calculations under this Agreement, and such appeal remains unresolved, the Third Party shall base its calculations upon the values placed upon the Applicant's Qualified Property and/or the Applicant's Qualified Investment by the Appraisal District.

If as a result of an appeal or for any other reason, the Taxable Value of the Applicant's Qualified Investment and/or the Applicant's Qualified Property is changed, once the determination of the new Taxable Value becomes final, the Parties shall immediately notify the Third Party who shall immediately issue new calculations for the applicable year or years using the new Taxable Value. 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 amount to the other Party within thirty (30) days of the receipt of the new calculations from the Third Party.

Section 4.7. DELIVERY OF CALCULATIONS.

On or before November 1 of each year for which this Agreement is effective, the Third Party appointed pursuant to Section 4.3 of this Agreement shall forward to the Parties a certification containing the calculations required under Sections 4.2 and/or 4.3, Article VI, and/or Section 7.1 of this Agreement in sufficient detail to allow the Parties to understand the manner in which the calculations were made. The Third Party shall simultaneously submit his, her or its invoice for fees for services rendered to the Parties, if any fees are being claimed, which fee shall be the sole responsibility of the District, but subject to the provisions of Section 4.8, below. Upon reasonable prior notice, the employees and agents of the Applicant shall have access, at all reasonable times, to

the Third Party's calculations, records, and correspondence pertaining to the calculation and fee for the purpose of verification. The Third Party shall maintain supporting data consistent with generally accepted accounting practices, and the employees and agents of the Applicant shall have the right to reproduce and retain for purpose of audit, any of these documents. The Third Party shall preserve all documents pertaining to the calculation until the Final Termination Date of this Agreement. The Applicant shall not be liable for any of the Third Party's costs resulting from an audit of the Third Party's books, records, correspondence, or work papers pertaining to the calculations contemplated by this Agreement.

Section 4.8. STATUTORY CHANGES AFFECTING MAINTENANCE & OPERATION 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 the Comptroller, Commissioner of Education, or the Texas Education Agency, 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 that are necessary to fully reimburse and hold the District harmless from any actual negative impact on the 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 the District. Such payment shall be made no later than thirty (30) days following notice from the District of such determination and calculation. The District shall use reasonable efforts to mitigate the economic effects of any such statutory change or administrative interpretation, and if the Applicant disagrees with any calculation or determination by the District of any adverse impact described in this Section 4, the Applicant shall have the right to appeal such calculation or determination in accordance with the procedures set forth in Section 4.10.

Section 4.9. PAYMENT BY APPLICANT.

The Applicant shall pay any amount determined by the Third Party to be due and owing to the District under this Agreement on or before the January 31 of the year 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 Third Party for all calculations under this Agreement under Section 4.4, 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 other reimbursement applications filed with or sent to the State of Texas, for any audits conducted by the State Auditor's Office, or for other legal expenses which are, or may be required under the terms of, or because of, the execution of this Agreement. For no Tax Year during the term of this Agreement shall the Applicant be responsible for the payment of fees and expenses under this Section 4.9 that exceeds the necessary and reasonable costs incurred by the District for compliance with this Agreement. In any year in which such compliance is anticipated to exceed an aggregate amount of

Fifteen Thousand Dollars ($15,000) per year, the District shall provide the Applicant with prior written notice of the anticipated annual aggregate amount the District anticipates it will incur, and if the Applicant disagrees that such fees are necessary and reasonable, the parties may resolve such dispute as provided in Section 4.10.

Section 4.10. RESOLUTION OF DISPUTES.

Should the Applicant disagree with the notice of anticipated fees or Third Party calculations made pursuant to Article 4 of this Agreement, the Applicant may appeal the findings, in writing, to the Third Party within thirty (30) days of receipt of the calculation. Within thirty (30) days of receipt of the Applicant's appeal, the Third Party will issue, in writing, a final determination of the calculations. Thereafter, the Applicant may appeal the final determination of the certification containing the calculations to the District's Board of Trustees. Any appeal by the Applicant of the final determination of the Third Party may be made, in writing, to the District's Board of Trustees within thirty (30) days of the final determination of the calculations.

ARTICLE V
PAYMENT OF EXTRAORDINARY EDUCATION-RELATED EXPENSES

Section 5.1. PAYMENT OF EXTRAORDINARY EDUCATION-RELATED EXPENSES.

In addition to the amounts determined pursuant to Articles IV and VI of this Agreement, Applicant on an annual basis shall also indemnify and reimburse District for the following:

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

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

ARTICLE VI
SUPPLEMENTAL PAYMENTS

Section 6.1. INTENT OF PARTIES WITH RESPECT TO SUPPLEMENTAL PAYMENTS.

In interpreting the provisions of Article IV and VI, the Parties agree as follows:

A. Amounts Exclusive of Indemnity Amounts

In addition to undertaking the responsibility for the payment of all of the amounts set forth under Article IV and Article V, and as further consideration for the execution of this Agreement by the District, the Applicant shall also be responsible for the supplemental payments set forth in this Article VI. 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 for limitation on appraised value made pursuant to Chapter 313 of the TEXAS TAX CODE, unless it is explicitly set forth in this Agreement. It is the express intent of the Parties that the obligation for Supplemental Payments under Article VI of this agreement are separate and independent of the obligation of the Applicant to pay the amounts described in Article IV and Article V; provided, however, that all payments under Articles IV and VI are subject to such limitations as are contained in Section 7.1, and that all payments under Article VI are subject to the separate limitations contained in Section 6.3.

B. 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) unless that limit is increased by the Legislature at a future date, in which case Applicant agrees to cooperate with the District to amend this Agreement to allow the District to receive the maximum amount of Supplemental Payments as allowed by applicable law; provided, however, that that total Supplemental Payments for any given year of this Agreement shall not exceed the greater of (i) fifty percent (50%) of Applicant's Net Tax Benefit under this Agreement, and (ii) the amount calculated pursuant to Section 6.2.A below.

Section 6.2. SUPPLEMENTAL PAYMENT LIMITATION.

A. The total of the Supplemental Payments made pursuant to this Article shall not exceed for any calendar year of this Agreement an amount equal to the greater of One Hundred Dollars ($100.00) per student per year in average daily attendance, as defined by Section 42.005 of the TEXAS EDUCATION CODE, or Fifty Thousand Dollars ($50,000.00) per year times the number of years beginning with the first complete or partial year of the Qualifying Time Period identified in Section 2.3.C and ending with the year for which the Supplemental Payment is being calculated minus all Supplemental Payments previously made by the Application. In the event of a merger or consolidation of the District with another school district or other governmental authority, the total of the Supplemental Payments made pursuant to this Article shall be calculated by using the number of students in the legacy District per year in average daily attendance rather than the consolidated district's average daily attendance.

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

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

i. For purposes of this Agreement, the amount of the annual Supplemental Payment shall be $50,000, unless a larger amount is subsequently authorized by law and adjusted pursuant to Section 6.1.B.

Section 6.3. LIMITATION BASED ON NET TAX BENEFIT

A. Notwithstanding the provisions set forth in Section 6.1, for any supplemental Payment occurring prior to the start of the Tax Limitation Period, if the amount of the Supplemental Payments calculated in Section 6.2 exceeds Applicant's Net Tax Benefit, the difference between the amount of the Supplemental Payments and Applicant's Net Tax Benefit shall be carried forward from year-to-year (the "Deferred Payments"). Beginning in the first year of the Tax Limitation Period, and in additional to the Supplemental Payment for that year, all Deferred Payments owed to the District shall be paid by the Applicant to the extent all Supplemental Payments from Applicant to the District for that year do not exceed fifty percent (50%) of the Applicant's total Net Tax Benefit to date. Any amount of Deferred Payments that remain unpaid shall be carried forward from year to year until paid in full; provided, however, that the total of the Supplemental Payments paid to the District over the Term of the Agreement pursuant to this Article shall not exceed forty percent (40%) of the Applicant's total Net Tax Benefit under this Agreement.

B. In the event that Applicant fails to make the Minimum Qualified Investment during the Qualifying Time Period, causing this Agreement to become null and void, Applicant's obligation to make any deferred payments that were carried over by operation of Section 6.3.A shall be cancelled.

ARTICLE VII
ANNUAL LIMITATION OF PAYMENTS BY APPLICANT

Section 7.1. ANNUAL LIMITATION.

Notwithstanding anything contained in this Agreement to the contrary, and with respect to each Tax Year of the Tax Limitation Period beginning after the first Tax Year of the Tax Limitation Period, in no event shall (i) the sum of the maintenance and operations ad valorem taxes paid by the Applicant to the District for such Tax Year, plus the sum of all payments otherwise due from the Applicant to the District under Articles IV, V, and VI of this Agreement with respect to such Tax Year, exceed (ii) the amount of the maintenance and operations ad valorem taxes that the Applicant would have paid to the District for such Tax Year (determined by using the District's actual maintenance and operations tax rate for such Tax Year) if the Parties had not entered into

this Agreement. The calculation and comparison of the amounts described in clauses (i) and (ii) of the preceding sentence shall be included in all calculations made pursuant to Article IV of this Agreement, and in the event the sum of the amounts described in said clause (i) exceeds the amount described in said clause (ii), then the payments otherwise due from the Applicant to the District under Articles IV, V, and VI shall be reduced until such excess is eliminated.

Section 7.2. OPTION TO TERMINATE AGREEMENT.

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

Section 7.3. EFFECT OF OPTIONAL TERMINATION.

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

A. The Parties respective rights and obligations under this Agreement with respect to the Tax Year or Tax Years (as the case may be) through and including the Tax Year during which such notification is delivered to the District, shall not be impaired or modified as a result of such termination and shall survive such termination unless and until satisfied and discharged; and
B. The provisions of this Agreement regarding payments (including liquidated damages and tax payments), records and dispute resolution shall survive the termination or expiration of this Agreement.

ARTICLE VIII
ADDITIONAL OBLIGATIONS OF APPLICANT

Section 8.1. APPLICANT'S OBLIGATION TO MAINTAIN VIABLE PRESENCE.

In order to receive and maintain the limitation authorized by Section 2.4 in addition to the other obligations required by this Agreement, the Applicant shall Maintain Viable Presence in the District commencing at the start of the Tax Limitation Period through the Final Termination Date of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the Applicant

shall not be in breach of, and shall not be subject to any liability for failure to Maintain Viable Presence to the extent such failure is caused by Force Majeure, provided the Applicant makes commercially reasonable efforts to remedy the cause of such Force Majeure.

Section 8.2. REPORTS.

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

Section 8.3. COMPTROLLER'S REPORT ON CHAPTER 313 AGREEMENTS.

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

Section 8.4. DATA REQUESTS.

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

Section 8.5. SITE VISITS AND RECORD REVIEW.

The Applicant shall allow authorized employees of the District, the Comptroller, the Appraisal District, and the State Auditor's Office to have reasonable access to the Applicant's Qualified Property and business records from the Application Review Start Date through the Final Termination Date, in order to inspect the project to determine compliance with the terms hereof or as necessary to properly appraise the Taxable Value of the Applicant's Qualified Property.

A. All inspections will be made at a mutually agreeable time after the giving of not less than forty-eight (48) hours prior written notice, and will be conducted in such a manner so as not to unreasonably interfere with either the construction or operation of the Applicant's Qualified Property.

B. All inspections may be accompanied by one or more representatives of the Applicant, and shall be conducted in accordance with the Applicant's safety, security, and operational standards. Notwithstanding the foregoing, nothing contained in this Agreement shall require the Applicant to provide the District, the Comptroller, or the Appraisal District with any technical or business information that is proprietary, a trade secret, or is subject to a confidentiality agreement with any third party.

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

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

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

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

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

C. In addition to and without limitation on the other audit provisions of this Agreement, the acceptance of tax benefits or funds by the Applicant or the District or any other entity or person directly under this Agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Applicant or the District or other entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The Parties agree that this Agreement shall for its duration be subject to all rules and procedures of the State Auditor acting under the direction of the legislative audit committee.

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

Section 8.7. FALSE STATEMENTS; BREACH OF REPRESENTATIONS.

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

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

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

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

ARTICLE IX
MATERIAL BREACH OR EARLY TERMINATION

Section 9.1. EVENTS CONSTITUTING MATERIAL BREACH OF AGREEMENT.

The Applicant shall be in Material Breach of this Agreement if it commits one or more of the following acts or omissions (each a "Material Breach"):

A. The Application, any Application Supplement, or any Application Amendment on which this Agreement is approved is determined to be inaccurate as to any material representation, information, or fact or is not complete as to any material fact or representation or such application;
B. The Applicant failed to complete Qualified Investment as required by Section 2.5.A. of this Agreement during the Qualifying Time Period;
C. The Applicant failed to create and maintain the number of New Qualifying Jobs required by the Act;
D. The Applicant failed to create and maintain the number of New Qualifying Jobs specified in Schedule C of the Application;
E. The Applicant failed to pay at least the average weekly wage of all jobs in the county in which the jobs are located for all New Non-Qualifying Jobs created by the Applicant;
F. The Applicant failed to provide payments to the District sufficient to protect future District revenues through payment of revenue offsets and other mechanisms as more fully described in Article IV of this Agreement;
G. The Applicant failed to provide the payments to the District that protect the District from the payment of extraordinary education-related expenses related to the project to the extent and in the amounts that the Applicant agreed to provide such payments in Article V of this Agreement;
H. The Applicant failed to provide the Supplemental Payments to the extent and in the amounts that the Applicant agreed to provide such Supplemental Payments in Article VI of this Agreement;
I. The Applicant failed to create and Maintain Viable Presence on or with the Qualified Property as more fully specified in Article VIII of this Agreement;
J. The Applicant failed to submit the reports required to be submitted by Section 8.2 to the satisfaction of the Comptroller;
K. The Applicant failed to provide the District or the Comptroller with all information reasonably necessary for the District or the Comptroller to determine whether the Applicant is in compliance with its obligations, including, but not limited to, any employment obligations which may arise under this Agreement;
L. The Applicant failed to allow authorized employees of the District, the Comptroller, the Appraisal District, or the State Auditor's Office to have access to the Applicant's Qualified Property or business records in order to inspect the project to determine

compliance with the terms hereof or as necessary to properly appraise the Taxable Value of the Applicant's Qualified Property under Sections 8.5 and 8.6;

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

N. The Applicant has made any payments to the District or to any other person or persons in any form for the payment or transfer of money or any other thing of value in recognition of, anticipation of, or consideration for this Agreement for limitation on Appraised Value made pursuant to Chapter 313 of the TEXAS TAX CODE, in excess of the amounts set forth in Articles IV, V and VI of this Agreement; or,

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

Section 9.2. DETERMINATION OF BREACH AND TERMINATION OF AGREEMENT.

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

B. If the Board of Trustees is not satisfied with such response or that such breach has been cured, then the Board of Trustees shall, after reasonable notice to the Applicant, conduct a hearing called and held for the purpose of determining whether such breach has occurred and, if so, whether such breach has been cured. At any such hearing, the Applicant shall have the opportunity, together with their counsel, to be heard before the Board of Trustees. At the hearing, the Board of Trustees shall make findings as to:

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

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

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

Agreement.

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

Section 9.3. DISPUTE RESOLUTION.

A. After receipt of notice of the Board of Trustee's Determination of Breach and Notice of Contract Termination under Section 9.2, the Applicant shall have not greater than 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 the District, in which case the District and the Applicant shall be required to make a good faith effort to resolve, without resort to litigation and within ninety (90) days after the Applicant initiates mediation, such dispute through mediation with a mutually agreeable mediator and at a mutually convenient time and place for the mediation. If the Parties are unable to agree on a mediator, a mediator shall be selected by the senior state district court judge then presiding in Robertson County, Texas. The Parties agree to sign a document that provides the mediator and the mediation will be governed by the provisions of Chapter 154 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE and such other rules as the mediator shall prescribe. With respect to such mediation, (i) the District shall bear one-half of such mediator's fees and expenses and the Applicant shall bear one-half of such mediator's fees and expenses, and (ii) otherwise each Party shall bear all of its costs and expenses (including attorneys' fees) incurred in connection with such mediation.

B. In the event that any mediation is not successful in resolving the dispute or that payment is not received within the time period described for mediation in Section 9.3.A, either the District or the Applicant may seek a judicial declaration of their respective rights and duties under this Agreement or otherwise, in a judicial proceeding in a state district court in Robertson County, Texas, assert any rights or defenses, or seek any remedy in law or in equity, against the other Party with respect to any claim relating to any breach, default, or nonperformance of any contract, agreement or undertaking made by a Party pursuant to this Agreement.

C. If payments become due under this Agreement and are not received before the expiration of the ninety (90) days provided for such payment in Section 9.3.A, and if the Applicant has not contested such payment calculations under the procedures set forth herein, including judicial proceedings, the District shall have the remedies for the collection of the amounts determined under Section 9.4 as are set forth in Chapter 33, Subchapters B and C, of the TEXAS TAX CODE for the collection of delinquent taxes. In the event that the District successfully prosecutes legal proceedings under this section, the Applicant shall also be responsible for the payment of attorney's fees to the attorneys representing the District pursuant to Section

6.30 of the TEXAS TAX CODE and a tax lien shall attach to the Applicant's Qualified Property and the Applicant's Qualified Investment pursuant to Section 33.07 of the TEXAS TAX CODE to secure payment of such fees.

Section 9.4. CONSEQUENCES OF EARLY TERMINATION OR OTHER BREACH BY APPLICANT.

A. In the event that the Applicant terminates this Agreement without the consent of the District, except as provided in Section 7.2 of this Agreement, the Applicant shall pay to the District liquidated damages for such failure within thirty (30) days after receipt of the notice of breach.

B. In the event that the District determines that the Applicant has failed to comply in any material respect with the terms of this Agreement or to meet any material obligation under this Agreement, the Applicant shall pay to the District liquidated damages, as calculated by Section 9.4.C, prior to, and the District may terminate the Agreement effective on the later of: (i) the expiration of the ninety (90) days provided for in Section 9.3.A, and (ii) thirty (30) days after any mediation and judicial proceedings initiated pursuant to Sections 9.3.A and 9.3.B are resolved in favor of the District.

C. The sum of liquidated damages due and payable shall be the sum total of the District ad valorem taxes for all of the Tax Years for which a tax limitation was granted pursuant to this Agreement prior to the year in which the default occurs that otherwise would have been due and payable by the Applicant to the District without the benefit of this Agreement, including penalty and interest, as calculated in accordance with Section 9.4.E. For purposes of this liquidated damages calculation, the Applicant shall be entitled to a credit for all payments made to the District pursuant to Articles IV, V, and VI. Upon payment of such liquidated damages, the Applicant's obligations under this Agreement shall be deemed fully satisfied, and such payment shall constitute the District's sole remedy.

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

E. In determining the amount of penalty or interest, or both, due in the event of a breach of this Agreement, the District shall first determine the base amount of recaptured taxes less all credits under Section 9.4.C owed for each Tax Year during the Tax Limitation Period. The District shall calculate penalty or interest for each Tax Year during the Tax Limitation Period in accordance with the methodology set forth in Chapter 33 of the TEXAS TAX CODE, as if the base amount calculated for such Tax Year less all credits under Section 9.4.C had become due and payable on February 1 of the calendar year following such Tax Year.

Penalties on said amounts shall be calculated in accordance with the methodology set forth in Section 33.01(a) of the TEXAS TAX CODE, or its successor statute. Interest on said amounts shall be calculated in accordance with the methodology set forth in Section 33.01(c) of the TEXAS TAX CODE, or its successor statute.

Section 9.5. LIMITATION OF OTHER DAMAGES.

Notwithstanding anything contained in this Agreement to the contrary, in the event of default or breach of this Agreement by the Applicant, the District's damages for such a default shall under no circumstances exceed the amounts calculated under Section 9.4. In addition, the District's sole right of equitable relief under this Agreement shall be its right to terminate this Agreement. The Parties further agree that the limitation of damages and remedies set forth in this Section 9.5 shall be the sole and exclusive remedies available to the District, whether at law or under principles of equity.

Section 9.6. STATUTORY PENALTY FOR INADEQUATE QUALIFIED INVESTMENT.

Pursuant to Section 313.0275 of the TEXAS TAX CODE, in the event that the Applicant fails to make Ten Million Dollars ($10,000,000.00) of Qualified Investment, in whole or in part, during the Qualifying Time Period, the Applicant is liable to the State for a penalty. The amount of the penalty is the amount determined by: (i) multiplying the maintenance and operations tax rate of the school district for that tax year that the penalty is due by (ii) the amount obtained after subtracting (a) the Tax Limitation Amount identified in Section 2.4.B from (b) the Market Value of the property identified on the Appraisal District's records for the Tax Year the penalty is due. This penalty shall be paid on or before February 1 of the year following the expiration of the Qualifying Time Period and is subject to the delinquent penalty provisions of Section 33.01 of the TEXAS TAX CODE. The Comptroller may grant a waiver of this penalty in the event of Force Majeure which prevents compliance with this provision.

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

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

B. Following the notice and mediation periods provided by Sections 9.2 and 9.3, the District may request the Applicant to make a payment to the State in an amount equal to: (i) multiplying the maintenance and operations tax rate of the school district for that Tax Year that the Material Breach occurs by (ii) the amount obtained after subtracting (a) the Tax

Limitation Amount identified in Section 2.4.B from (b) the market value of the property identified on the Appraisal District's records for each tax year the Material Breach occurs.

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

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

ARTICLE X.
MISCELLANEOUS PROVISIONS

Section 10.1. INFORMATION AND NOTICES.

A. Unless otherwise expressly provided in this Agreement, all notices required or permitted hereunder shall be in writing and deemed sufficiently given for all purposes hereof if:
   i. Delivered in person, by courier (*e.g.*, by Federal Express) or by registered or certified United States Mail to the Party to be notified, with receipt obtained, or
   ii. Sent by facsimile or email transmission, with notice of receipt obtained, in each case to the appropriate address or number as set forth below. Each notice shall be deemed effective on receipt by the addressee as aforesaid; provided that, notice received by facsimile or email transmission after 5:00 p.m. at the location of the addressee of such notice shall be deemed received on the first business day following the date of such electronic receipt.

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

To the District		**With Copy to**
Name:	Calvert ISD	Powell & Leon. LLP
Attn:	Superintendent Maxie Morgan, Or his successor	Sara Hardner Leon
Address:	310 Hickory Street	115 Wild Basin Road #106
City/Zip:	Calvert, Texas 77837	West Lake Hills TX 78746
Phone :	979-364-2824	Phone : (512) 494-1177
Fax :	979- 364-2468	Fax : (512) 494-1188
Email:	mmorgan@calvertisd.com	sleon@powell-leon.com

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

To the Applicant		**With Copy to**
Name:	National Gypsum Company	National Gypsum Company
Attn:	Mundise Mortimer Director of Strategic Planning	General Counsel
Address:	2001 Rexford Road	2001 Rexford Road
City/Zip:	Charlotte, NC 28211	Charlotte, NC 28211
Phone :	704-365-7476	704-365-7425
Email:	MMortimer@NationalGypsum.com	Legal@NationalGypsum.com

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

Section 10.2. AMENDMENTS TO APPLICATION AND AGREEMENT; WAIVERS.

A. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by all of the Parties and after completing the requirements of Section 10.2.B. Waiver of any term, condition, or provision of this Agreement by any Party shall only be effective if in writing and shall not be construed as a waiver of any subsequent breach of, or failure to comply with, the same term, condition, or provision, or a waiver of any other term, condition, or provision of this Agreement.

B. By official action of the District's Board of Trustees, the Application and this Agreement may only be amended according to the following:
   i. The Applicant shall submit to the District and the Comptroller:
      a. a written request to amend the Application and this Agreement, which shall

specify the changes the Applicant requests;

b. any changes to the information that was provided in the Application that was approved by the District and considered by the Comptroller;

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

ii. The Comptroller shall review the request and any additional information for compliance with the Act and the Comptroller's Rules and provide a revised Comptroller certificate for a limitation within 90 days of receiving the revised Application and, if the request to amend the Application has not been approved by the Comptroller by the end of the 90-day period, the request is denied; and,

iii. If the Comptroller has not denied the request, the District's Board of Trustees shall approve or disapprove the request before the expiration of 150 days after the request is filed.

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

i. Require that all property added by amendment be eligible property as defined by Section 313.024 of the TEXAS TAX CODE;

ii. Clearly identify the property, investment, and employment information added by amendment from the property, investment, and employment information in the original Agreement; and

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

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

Section10.3. ASSIGNMENT.

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

provisions of Chapter 313 of the TEXAS TAX CODE and the Comptroller's Rules.

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

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

Section 10.4. MERGER.

This Agreement contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence, and preliminary understandings between the Parties and others relating hereto are superseded by this Agreement.

Section 10.5. GOVERNING LAW.

This Agreement and the transactions contemplated hereby shall be governed by and interpreted in accordance with the laws of the State of Texas without giving effect to principles thereof relating to conflicts of law or rules that would direct the application of the laws of another jurisdiction. Venue in any legal proceeding shall be in a state district court in Robertson County, Texas.

Section 10.6. AUTHORITY TO EXECUTE AGREEMENT.

Each of the Parties represents and warrants that its undersigned representative has been expressly authorized to execute this Agreement for and on behalf of such Party.

Section 10.7. SEVERABILITY.

If any term, provision or condition of this Agreement, or any application thereof, is held invalid, illegal, or unenforceable in any respect under any Law (as hereinafter defined), this Agreement shall be reformed to the extent necessary to conform, in each case consistent with the intention of the Parties, to such Law, and to the extent such term, provision, or condition cannot be so reformed, then such term, provision, or condition (or such invalid, illegal or unenforceable application thereof) shall be deemed deleted from (or prohibited under) this Agreement, as the case may be, and the validity, legality, and enforceability of the remaining terms, provisions, and conditions contained herein (and any other application such term, provision, or condition) shall not in any way be affected or impaired thereby. Upon such determination that any term or other

provision is invalid, illegal, or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement in an acceptable manner so as to effect the original intent of the Parties as closely as possible so that the transactions contemplated hereby are fulfilled to the extent possible. As used in this Section 10.7, the term "Law" shall mean any applicable statute, law (including common law), ordinance, regulation, rule, ruling, order, writ, injunction, decree, or other official act of or by any federal, state or local government, governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, or judicial or administrative body having jurisdiction over the matter or matters in question.

Section 10.8. PAYMENT OF EXPENSES.

Except as otherwise expressly provided in this Agreement, or as covered by the application fee, each of the Parties shall pay its own costs and expenses relating to this Agreement, including, but not limited to, its costs and expenses of the negotiations leading up to this Agreement, and of its performance and compliance with this Agreement.

Section 10.9. INTERPRETATION.

A. When a reference is made in this Agreement to a Section, Article, or Exhibit, such reference shall be to a Section or Article of, or Exhibit to, this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

B. The words "include," "includes," and "including" when used in this Agreement shall be deemed in such case to be followed by the phrase, "but not limited to". Words used in this Agreement, regardless of the number or gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context shall require.

C. The provisions of the Act and the Comptroller's Rules are incorporated by reference as if fully set forth in this Agreement. In the event of a conflict, the conflict will be resolved by reference to the following order of precedence:
   i. The Act;
   ii. The Comptroller's Rules as they exist at the time the Agreement is executed, except as allowed in the definition of Qualified Property in Section 1.1; and
   iii. This Agreement and its Attachments including the Application as incorporated by reference.

Section 10.10. EXECUTION OF COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an

original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

Section 10.11. PUBLICATION OF DOCUMENTS.

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

A. Within seven (7) days of receipt of such document, the District shall submit a copy to the Comptroller for publication on the Comptroller's Internet website.
B. The District shall provide on its website a link to the location of those documents posted on the Comptroller's website.
C. This Section does not require the publication of information that is confidential under Section 313.028 of the TEXAS TAX CODE.

Section 10.12. CONTROL; OWNERSHIP; LEGAL PROCEEDINGS.

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

Section 10.13. DUTY TO DISCLOSE.

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

Section 10.14. CONFLICTS OF INTEREST.

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

discount, trip, favor, or service to a public servant, employee, or representative of the other Party or the State of Texas in connection with this Agreement.

B. The Applicant represents that, after diligent inquiry, each of its agents, as defined in Chapter 176 of the TEXAS LOCAL GOVERNMENT CODE, involved in the representation of the Applicant with the District has complied with the provisions of Chapter 176 of the TEXAS LOCAL GOVERNMENT CODE. The Applicant represents that it and its agents, as defined in Chapter 176 of the TEXAS LOCAL GOVERNMENT CODE, have not given, nor intend to give, at any time hereafter, any future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant, employee, or representative of the other Party or the State of Texas in connection with this Agreement.

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

Section 10.15. PROVISIONS SURVIVING EXPIRATION OR TERMINATION.

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

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

Section 10.16. FACSIMILE OR ELECTRONIC DELIVERY.

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

B. Delivery is deemed complete as follows:
   i. When delivered if delivered personally or sent by express courier service;
   ii. Three (3) business days after the date of mailing if sent by registered or certified U.S. mail, postage prepaid, with return receipt requested;
   iii. When transmitted if sent by facsimile, provided a confirmation of transmission is produced by the sending machine; or

iv. When the recipient, by an e-mail sent to the e-mail address for the executing Parties acknowledges having received that e-mail (an automatic "read receipt" does not constitute acknowledgment of an e-mail for delivery purposes).

IN WITNESS WHEREOF, this Agreement has been executed by the Parties in multiple originals on this 18th day of October, 2016.

NGC INDUSTRIES, LLC

By: _____

CALVERT INDEPENDENT SCHOOL DISTRICT

By: _____
Volney Alston, III
President, Board of Trustees

ATTEST:

By: _____
~~Jane Manterola~~ Louise A. Grigsby
~~Secretary~~, Board of Trustees
V-Pres.

EXHIBIT 1

DESCRIPTION AND LOCATION OF ENTERPRISE OR REINVESTMENT ZONE

The reinvestment zone was created and is in effect at the time of the approval of this Application. The *City of Calvert NGC Reinvestment Zone* was created on August 20, 2015, by action of the City of Calvert Council. As a result, all of the following real property is within the boundaries of the *City of Calvert NGC Reinvestment Zone.* A map of the reinvestment zone is attached as the last page of this **EXHIBIT 1** following the legal description of the zone.

AMENDED

Exhibit A

REINVESTMENT ZONE LEGAL DESCRIPTION

BASE TRACT – 261.35 ACRES

All that certain lot, tract, or parcel of land situated in the J. Fisher Survey, A-12, and the G. W. Browning Survey, A-63, Robertson County, Texas, being 261.35 acres, more or less, and being a part of a called 274.95 acre tract, First Tract, as described in a deed dated May 14, 1974, from Lena Faye Allday to William Carl Allday, Sr. and recorded in Volume 291, Page 583, Deed Records, Robertson County, Texas, to which reference is hereby made. Said 274.95 acre tract being comprised of an acclaimed 72 acre tract conveyed to John McLendon in a deed dated December 6, 1883, and recorded in Volume 11, Page 421; an acclaimed 67 acre tract conveyed to John McLendon in a dated April 1876, and recorded in Volume Z, Page 423; an acclaimed 40 acre tract conveyed to John McLendon in a deed dated April 12, 1876, and recorded in Volume Z, Page 407; a part of a called 116 acre tract, First Tract, conveyed to W. C. Allday, et ux in a deed dated January 24, 1949, and recorded in Volume 162, Page 339; a called ¼ acre tract conveyed to William Carl Allday by a deed dated May 14, 1974, and recorded in Volume 291, Page 581; a called ¼ acre tract conveyed to Mrs. Eloise H. Allday by a deed dated March 9, 1948, and recorded in Volume 149, Page 500, Deed Records, Robertson County, Texas, to which references are hereby made to for any and all purposes. Said tract described as follows, to wit:

BEGINNING at a ½" iron rod, capped Goodwin-Lasiter, set for the western corner of the referenced 274.95 acre tract near an existing fence corner post in the northeastern right of way of State Highway 6 (variable width right of way). Same being the occupied western corner of the aforesaid 72 acre tract and a southern corner of a called 195.00 acre tract conveyed to Arthur G. Higgins, et ux by deed of record in Volume 755, Page 537;

THENCE NORTH 57°21'35" EAST 1046.72 feet, generally along an existing wire fence and with the common line of said 72 acre tract and said 195.00 acre tract, to a ½" iron rod found at the common occupied "ell" corner of said 72 acre tract and said 195.00 acre tract;

THENCE SOUTH 31°39'34" EAST 1123.88 feet, continuing generally along an existing wire fence and with the common occupied line of said 72 acre tract and said 195.00 acre tract, to a point at the base of an existing fence corner. Same being the western corner of the aforesaid 67 acre tract and an "ell" corner of said 195.00 acre tract;

THENCE NORTH 57°44'33" EAST 1826.46 feet, generally along an existing wire fence and with the common line of said 67 acre tract and said 195.00 acre tract, to a ½" capped iron rod set for the northern corner of said 67 acre tract, the western corner of a 3.087 acre tract described on January 13, 2015, and the western corner of a tract conveyed to Randall D. Rychlik, Tract 2, by deed of record in Volume 1135, Page 473. Said point being in or near the common line of the J. Fisher Survey, A-12, and the J. Fisher Survey, A-13. From said point the intersection of the northwestern line of said 67 acre tract, the southeastern line of said 195.00 acre tract, and the northwestern line of said Rychlik tract with the southwestern line of the Houston & Central Texas Railway right of way, 100 feet from the centerline of same (right of way of record in Volume R, Page 174) bears N51°06'41"E 296.41 feet and an iron rod found for the eastern corner of said 195.00 acre tract (found fifty feet from the railroad centerline) bears N51°06'41" E 349.61 feet. Said intersection also being the northern corner of the aforementioned 3.087 acre tract;

AMENDED

THENCE SOUTH 32°37'53" EAST 907.49 feet, along or near said common survey line, with the northeastern line of said 67 acre tract, the southwestern line of said Rychlik tract, and along the southwestern line of said 3.087 acre tract, to a capped ½" iron rod set for corner in the southwestern right of way of said railroad (100 feet from the centerline). From said point a capped ½" iron rod set in the northeastern right of way of said railroad for the northern corner of a 0.128 acre tract described January 13, 2015, bears S39°15'45"E 642.93 feet and from said point a capped ½" iron rod set for the northeastern corner of said 67 acre tract bears S39°15'45"E 185.13 feet;

THENCE in a southerly direction along the southwestern right of way of said railroad, 100 feet from and parallel to the centerline, and with the northeastern lines of said 67 acre tract, the referenced 40 acre tract, the referenced 116 acre tract, and the first referenced ¼ acre tract, as follows:

SOUTH 14°30'27" EAST 4733.52 feet to a capped ½" iron rod set for the beginning of a curve to the left,

SOUTH 14°52'21" EAST 95.63 feet to a capped ½" iron rod set for an angle point,

SOUTH 15°06'43" EAST 105.88 feet to a capped ½" iron rod set for an angle point,

SOUTH 16°27'38" EAST 100.00 feet to a capped ½" iron rod set for an angle point, and

SOUTH 17°39'48" EAST 66.36 feet to a capped ½" iron rod set for the eastern corner of said ¼ acre tract. Same being near the occupied eastern corner of a tract conveyed to Larry Smith by deed of record in Volume 890, Page 321 (described in Volume 426, Page 564). From said point an unreferenced iron rod, found capped RPLS 2547, bears N81°26'41"E 16.46 feet;

THENCE SOUTH 62°30'29" WEST 177.84 feet, with the southern line of said ¼ acre tract, a southern line of said 116 acre tract, and generally along an existing wire fence (old wire fence) to a ½" capped iron rod set for a bend;

THENCE SOUTH 56°05'29" WEST 55.88 feet, continuing with the southern line of said 116 acre tract, picking up the southern line of the second referenced ¼ acre tract, and generally along said old wire fence, to a point in an existing creek for corner. Same being the northeastern right of way of State Highway 6 (variable width right of way). From said point a capped ½" iron rod set for reference bears N45°28'34"W 75.0 feet;

THENCE in a northwesterly direction, crossing the remainder of the referenced tracts, and with the northeastern right of way of State Highway 6, as follows:

NORTH 38°50'42" WEST 449.96 feet to a TxDOT Type II right of way monument (brass monument),

NORTH 61°50'08" WEST 70.92 feet to an aluminum TxDOT monument,

NORTH 42°51'14" WEST 657.24 feet to a TxDOT Type I right of way monument (concrete),

NORTH 50°27'25" WEST 220.07 feet to a capped ½" iron rod set for bend,

NORTH 45°31'53" WEST 583.92 feet to a capped ½" iron rod set for bend,

NORTH 46°15'10" WEST 351.76 feet to a capped ½" iron rod set for bend,

AMENDED

Map 3, provided by the Southern Pacific Railroad, identifies a right of way width which is less than 100 feet from the centerline and varies in width). Same being the northwestern corner of a called 26 ¼ acre tract, Tract 3, conveyed to Randall D. Rychlik by the aforementioned deed;

THENCE NORTH 14°30'27" WEST 194.83 feet, along said railroad right of way, 100 feet perpendicular and parallel, to a capped ½" iron rod set for this northern corner in the intersection of said right of way with the eastern line of the referenced tract and the southwestern line of the aforementioned 40 acre tract. Same being in or near the common division line between the aforesaid Fisher Surveys. From said point a capped ½" iron rod set in the intersection of said line(s) with the southwestern railroad right of way, for the southern corner of a 3.087 acre tract described this same date, bears N32°37'53"W 642.93 feet;

THENCE SOUTH 32°37'53" EAST 185.13 feet, along the common line of the referenced tract and said 40 acre tract, along or near said common division line, to the Point of Beginning and containing 0.128 acre, more or less, as shown on the accompanying survey plat of even date herewith.

Bearing

Note:
Bearings are based on N.A.D. 83 Grid values.

PLUS 3.087 ACRES DESCRIBED AS FOLLOWS:

All that certain lot, tract, or parcel of land situated in the J. Fisher Survey, A-13, Robertson County, Texas, being 3.087 acres, more or less, and being a part of a called 40 acre tract, Tract 2, as described in a deed dated May 18, 2011, from Linda Ables Deal to Randall Duane Rycklik, and recorded in Volume 1135, Page 473, Deed Records, Robertson County, Texas, to which references are hereby made to for any and all purposes. Said tract described as follows, to wit:

BEGINNING at a ½" iron rod, capped Goodwin-Lasiter, set for the northwest corner of the referenced tract, the northeast corner of a called 67.45 acre tract conveyed to John McClendon by deed of record in Volume Z, Page 423, (further being a part of the First Tract in Volume 291, Page 583), and in the southeastern line of a called 195.00 acre tract conveyed to Arthur G. Higgins, et ux by deed of record in Volume 755, Page 537. Same being in or near the common division line between the J. Fisher Survey, A-12, and the J. Fisher, A-13;

THENCE NORTH 57°44'33" EAST 296.41 feet, generally along an existing wire fence and with the common line of the referenced tract and said 195.00 acre tract, to a capped ½" iron rod set for this northern corner. Same being 100 feet perpendicular to the centerline of the existing rail which is claimed by prescription according to Houston & Texas Central Railroad Map, V.S. #2, Map #33 (provided by the Southern Pacific Railroad). From said point a ½" iron rod found for the eastern corner of the aforesaid 195.00 acre tract bears N57°44'33"E 53.20 feet;

THENCE SOUTH 14°30'27" EAST 952.83 feet, across the referenced tract and 100 feet southwesterly of and parallel to the centerline of said railroad (Volume R, Page 174, establishes the railroad right of way as a 200 foot wide strip), to a capped ½" iron rod set for this southern corner in the intersection of the southwestern railroad right of way with the southwestern line of the referenced tract and the northeastern line of the aforesaid 67.45 acre tract. From said point a capped ½" iron rod set for the beginning of a curve to the left, in said right of way, bears S14°30'27"E 4733.52 feet and another capped ½" iron rod, set in the intersection of the northeastern railroad right of way with the common line of the referenced tract and said 67.45 acre tract bears S32°37'53"E 642.93 feet (same being the northern corner of a 0.128 acre tract described this same date);

AMENDED

THENCE NORTH 32°37'53" WEST 907.49 feet, with the common line of the referenced tract and the aforementioned 67.45 acre tract, along or near said common division line, to the Point of Beginning and containing 3.087 acres, more or less, as shown on the accompanying survey plat of even date herewith.

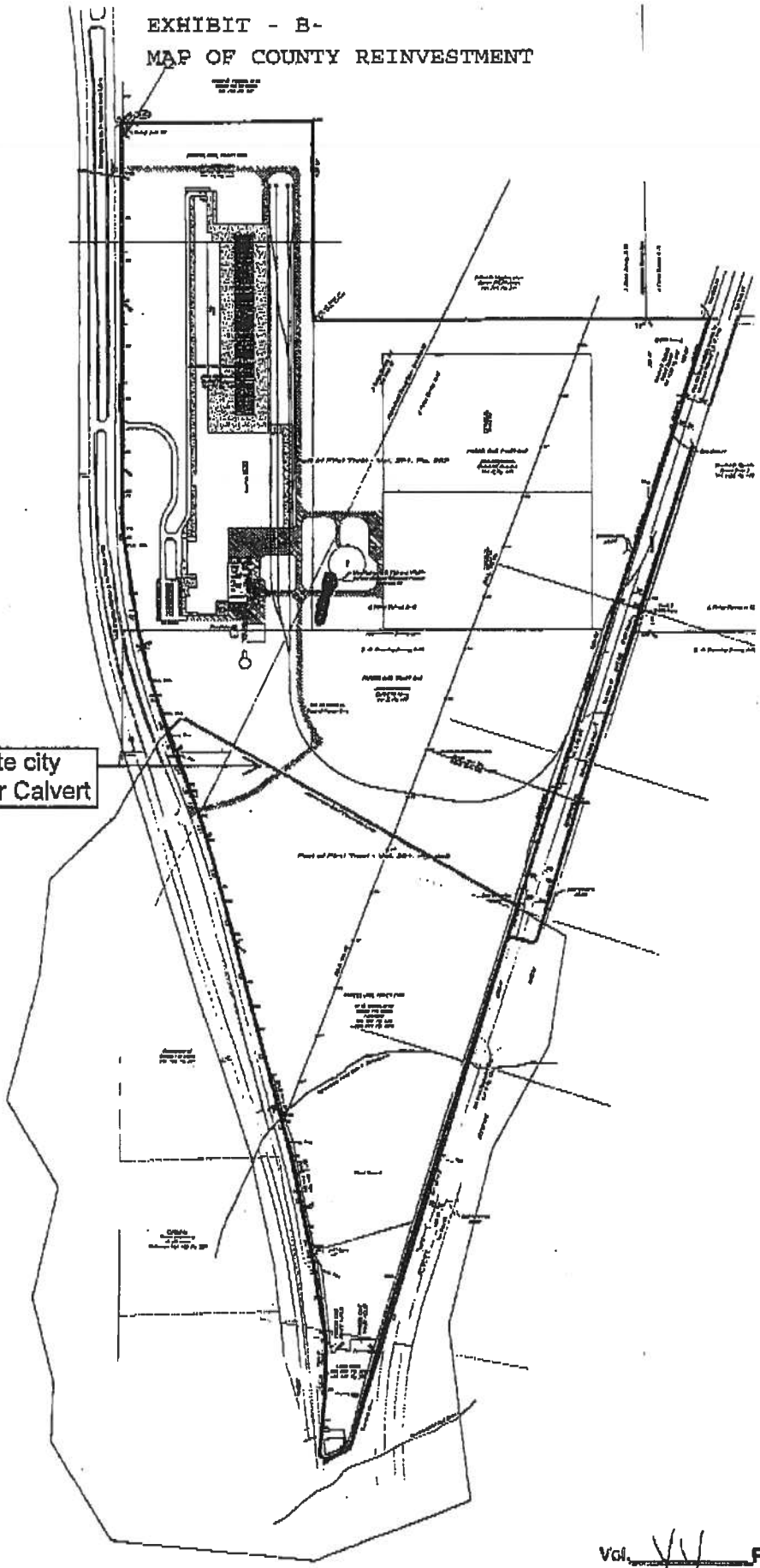
Bearing

Note:
Bearings are based on N.A.D. 83 Grid values.

SAVE AND EXCEPT approximately 75 acres of land within the boundaries of the City of Calvert.

AMENDED

EXHIBIT - B-
MAP OF COUNTY REINVESTMENT



11 B & C MAP OF QUALIFIED INVESTMENT AND PROPERTY

AMENDED

The reinvestment zone boundary outlined in red is also the project boundary.

Proposed improvements shown with black lines. All proposed improvements will be wholly within the created reinvestment zones.

approximate city limit line for Calvert

County Reinvestment Zone shaded in red

City Reinvestment Zone shaded in blue

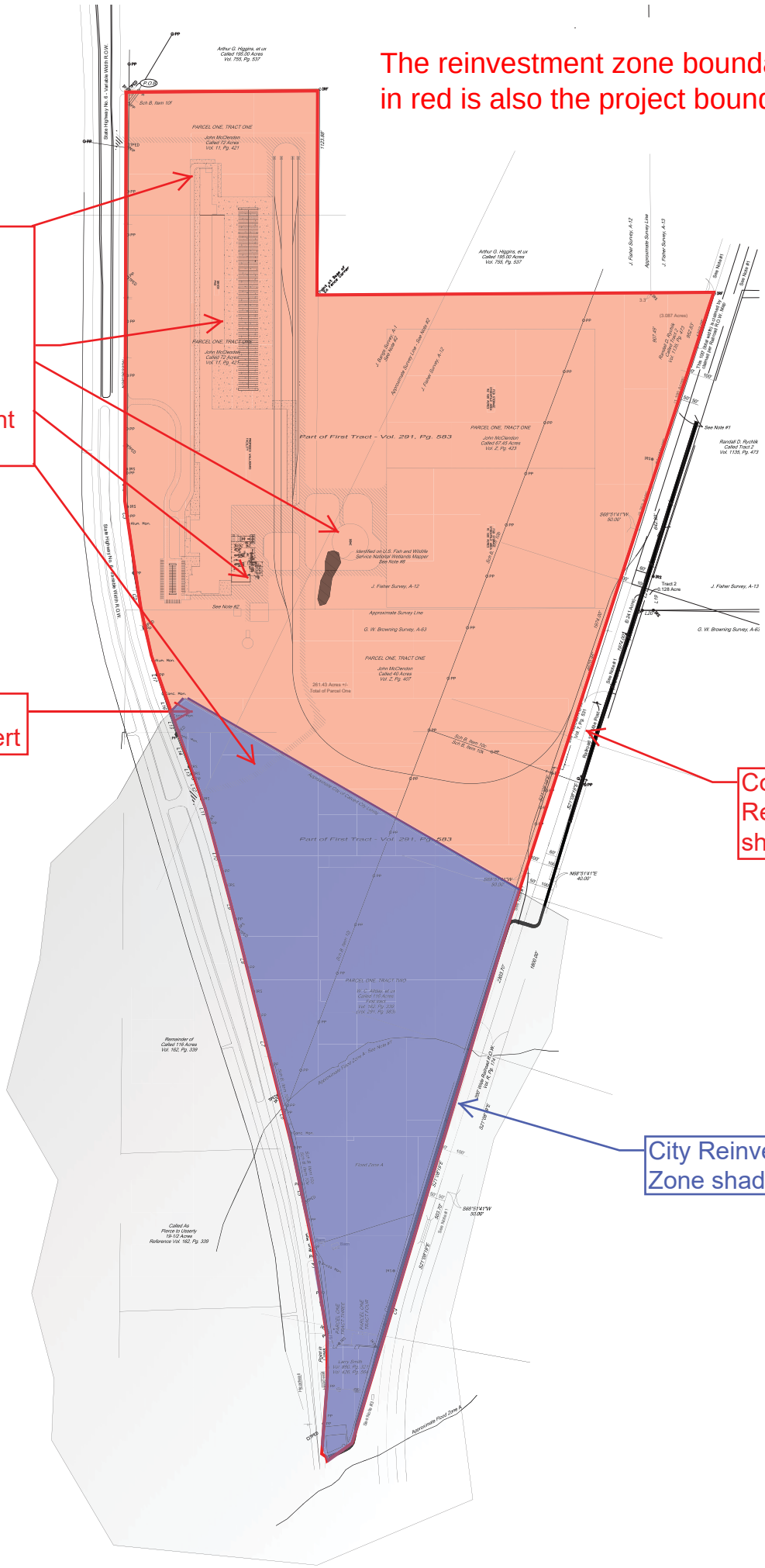


EXHIBIT 2

DESCRIPTION AND LOCATION OF LAND

The Land on which the Qualified Property shall be located and on which the Qualified Investment shall be made is described in Tab 9 of the Application (attached) and by the map attached to **Exhibit 1.** The project boundary is also the Reinvestment Zone boundary as noted on the map included in Exhibit 1 to this Agreement.

EXHIBIT 3

APPLICANT'S QUALIFIED INVESTMENT

All Qualified Investment owned or leased by the Applicant, as more fully described in Tab 7 of the Application, located within the boundaries of both the Calvert Independent School District and the reinvestment zone first placed in service after October 18, 2016 will be included in and subject to this Agreement. Specifically, all Qualified Investment of the Applicant located in the sections of land identified in **EXHIBIT 2** and within the boundaries indicated on the map attached at **EXHIBIT 1**.

EXHIBIT 4

DESCRIPTION AND LOCATION OF QUALIFIED PROPERTY

This Agreement covers all qualified property within Calvert ISD necessary for the commercial operations of the manufacturing facility described in Tab 4 of the Application. Furthermore, all Qualified Property will be located within the boundaries indicated on the map attached on **EXHIBIT 1**.

The proposed project will include, but is not limited to, the following:

- Site preparation including grading, soil stabilization and storm water management
- Laydown area improvements for receipt, storage, and handling of byproduct gypsum

- Manufacturing facilities
  - Process and mill equipment to convey, grind, and calcine byproduct gypsum
  - Wallboard Production equipment to process calcined gypsum with other ingredients including mixing tanks, wallboard production line conveyors, cutters, kiln, and taping and bundling equipment.
  - Quality control lab for testing
- Warehouse areas
  - Receiving and storage area for raw materials
  - Loading and shipping area for finished goods
- Office area
- Railroad spurs
- Roadways and paved areas for plant entry and exit, employee parking, and inbound/outbound truck and trailer staging
- Electric power infrastructure including supply lines and substation
- Natural gas pipeline and associated gas delivery infrastructure
- Water wells and water piping infrastructure to support manufacturing operations
- Pollution control equipment to facilitate a clean, safe manufacturing environment