

**FINDINGS OF THE  
WHARTON INDEPENDENT SCHOOL DISTRICT  
BOARD OF TRUSTEES  
UNDER THE  
TEXAS ECONOMIC DEVELOPMENT ACT  
ON THE APPLICATION SUBMITTED BY  
GULFSTAR POWER, LLC (#1588)**

**NOVEMBER 18, 2021**

**RESOLUTION AND FINDINGS OF FACT  
OF THE WHARTON INDEPENDENT SCHOOL DISTRICT  
BOARD OF TRUSTEES ON THE APPLICATION FOR  
LIMITATION ON APPRAISED VALUE OF PROPERTY  
SUBMITTED BY GULFSTAR POWER, LLC**

On the 2nd day of November, 2021, the Board of Trustees of the Wharton Independent School District (the “District”) held a public hearing to solicit input from interested parties on the Application for Appraised Value Limitation on Qualified Property, GulfStar Power, LLC Project (“Application”) by GulfStar Power, LLC (“Applicant”) for an appraised value limitation on qualified property under Chapter 313 of the Texas Tax Code (“Tax Code”). On this the 18<sup>th</sup> day of November, 2021, the Board of Trustees held a public meeting duly posted in accordance with the provisions of the Texas Open Meetings Act, Chapter 551, Texas Government Code. At this meeting, the Board of Trustees considered the Application by GulfStar Power, LLC, pursuant to Chapter 313 of the Texas Tax Code.

Having solicited input into its deliberations from interested parties within the District, after hearing presentations from the public, District’s administrative staff, and others and having reviewed the Comptroller’s Economic Impact Analysis under Tax Code section 313.026, the Board of Trustees of the Wharton Independent School District, in accordance with Tax Code section 313.025(e) and (f) and 34 T.A.C. section 9.1054, makes the following Findings regarding the Application:

On April 15, 2021, the Superintendent of Schools of the Wharton 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 Tax Code, attached as Attachment A. The Applicant’s investment identified in the Application is a renewable energy electric generation project, specifically a solar powered electric generating storage facility (the “Property”).

On April 15, 2021, the Board of Trustees acknowledged receipt of the Application, and along with the requisite application fee as established pursuant to section 313.025(a) of the Tax Code and Local District Policy CCG (Local), and agreed to consider the Application. The Application was determined to be complete, and by letter dated May 28, 2021, was delivered to the Texas Comptroller’s Office for review pursuant to section 313.025 of the Tax Code. The Comptroller acknowledged receipt of the Application.

On May 28, 2021, the Comptroller determined the Application was completed, and established the Application Review Start Date of May 28, 2021, as that term is defined by 34 Tex. Admin. Code section 9.1051. See Comptroller’s Completion Letter, attached as Attachment B.

Pursuant to 34 Tex. Admin. Code section 9.1054, the Application was delivered to the Wharton County Appraisal District pursuant to section 6.01 of the Tax Code.

The Texas Comptroller's Office reviewed the Application according to section 313.025 of the Tax Code, conducted an economic impact evaluation pursuant to section 313.026 of the Tax Code. On August 13, 2021, the Comptroller issued a certificate for limitation on appraised value of the property described in the Application (the "Comptroller's Certificate Letter," attached as Attachment C) and provided the certificate to the District.

As represented by the Application and the Comptroller, the Texas Taxpayer Identification number for Applicant is 32078246876, and Applicant is an entity subject to Chapter 171 of the Tax Code, is active, and has the right to transact business in Texas. See Applicant's Franchise Tax Account Status, attached as Attachment D.

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 Tax Code, and on November 2, 2021, 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.

After receipt of the completed Application, the District entered into negotiations with Applicant regarding the specific language to be included in the Agreement for Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes (the "Agreement") pursuant to Chapter 313 of the Texas Tax Code, including appropriate revenue protection provisions for the District pursuant to section 48.256(d) of the Texas Education Code. The parties agreed upon language for inclusion into a draft agreement pursuant to Texas Tax Code section 313.027. As required by the Comptroller's Office, the parties changed only the provisions of the template that the Comptroller permitted (2020 Form 50-826). The proposed Agreement is attached to these Findings as Attachment E, and that form of the Agreement was submitted to and approved by the Comptroller on November 15, 2021, as required by 34 Tex. Admin. Code §9.1055(e)(1). See Comptroller's Agreement Review Letter, attached as Attachment F.

After review of the Comptroller's Certificate Decision and Economic Impact Analysis, and in consideration of its own analysis of GulfStar Power, LLC's Application and all other related documentation attached hereto, the Board makes the following additional Findings as follows:

**Board Finding 1: The Applicant meets the requirements of Tex. Tax Code section 313.024 and is eligible for the limitation on the appraised value of the Property as property used for renewable energy electric generation (Tax Code section 313.024(b)(5)).**

In support of Board Finding 1, the Comptroller's Certificate Letter provides "Based on the information provided by the applicant, the Comptroller has determined that the property meets the

requirements of section 313.024 for eligibility for a limitation on appraised value under Chapter 313, Subchapter C.” See Attachment C at page 2.

**Board Finding 2: The Project proposed by Applicant is reasonably likely to generate tax revenue in an amount sufficient to offset the school district maintenance and operations ad valorem tax revenue lost as a result of the agreement before the 25<sup>th</sup> anniversary of the beginning of the limitation period.**

In support of Board Finding 2, the Comptroller’s Certificate Letter provides:

“The Comptroller has determined that the project proposed by the applicant is reasonably likely to generate tax revenue in an amount sufficient to offset the school 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, see Attachment B.”

Further, the Comptroller’s Economic Impact Analysis contains the following supporting data, and notes the determination “is based on an analysis of the estimated M&O portion of the school district property tax levy and direct, indirect and induced tax effects from project employment directly related to this project, using estimated taxable values provided in the application.” See Attachment C at the internal Attachment B.

	Tax Year	Estimated ISD M&O Tax Levy Generated (Annual)	Estimated ISD M&O Tax Levy Generated (Cumulative)	Estimated ISD M&O Tax Levy Loss as Result of Agreement (Annual)	Estimated ISD M&O Tax Levy Loss as Result of Agreement (Cumulative)
<b>Limitation Pre-Years</b>	2021	\$0	\$0	\$0	\$0
	2022	\$0	\$0	\$0	\$0
	2023	\$714,495	\$714,495	\$0	\$0
<b>Limitation Period (10 Years)</b>	2024	\$300,840	\$1,015,335	\$3,051,434	\$3,051,434
	2025	\$300,840	\$1,316,175	\$2,783,097	\$5,834,531
	2026	\$300,840	\$1,617,015	\$2,493,550	\$8,328,081
	2027	\$300,840	\$1,917,855	\$2,180,636	\$10,508,717
	2028	\$300,840	\$2,218,695	\$1,842,917	\$12,351,634
	2029	\$300,840	\$2,519,535	\$1,478,237	\$13,829,871
	2030	\$300,840	\$2,820,375	\$1,084,437	\$14,914,307
	2031	\$300,840	\$3,121,215	\$659,001	\$15,573,308
	2032	\$300,840	\$3,422,055	\$422,322	\$15,995,630
	2033	\$300,840	\$3,722,895	\$422,220	\$16,417,850
<b>Maintain Viable Presence (5 Years)</b>	2034	\$722,960	\$4,445,855	\$0	\$16,417,850
	2035	\$722,862	\$5,168,717	\$0	\$16,417,850
	2036	\$722,767	\$5,891,484	\$0	\$16,417,850
	2037	\$722,675	\$6,614,159	\$0	\$16,417,850
	2038	\$722,585	\$7,336,744	\$0	\$16,417,850
<b>Additional Years as Required by 313.026(c)(1) (10 Years)</b>	2039	\$722,496	\$8,059,240	\$0	\$16,417,850
	2040	\$722,411	\$8,781,651	\$0	\$16,417,850
	2041	\$722,328	\$9,503,979	\$0	\$16,417,850
	2042	\$722,247	\$10,226,225	\$0	\$16,417,850
	2043	\$722,167	\$10,948,393	\$0	\$16,417,850
	2044	\$686,137	\$11,634,530	\$0	\$16,417,850
	2045	\$672,399	\$12,306,929	\$0	\$16,417,850
	2046	\$672,326	\$12,979,255	\$0	\$16,417,850
	2047	\$672,254	\$13,651,509	\$0	\$16,417,850
	2048	\$672,184	\$14,323,693	\$0	\$16,417,850
		<b>\$14,323,693</b>	is less than	<b>\$16,417,850</b>	
<b>Analysis Summary</b>					
Is the project reasonably likely to generate tax revenue in an amount sufficient to offset the M&O levy loss as a result of the limitation agreement?					No
NOTE: The analysis above only takes into account this project's estimated impact on the M&O portion of the school district property tax levy directly related to this project.					

Source: CPA, GulfStar Power LLC

Year	Employment			Personal Income			Revenue & Expenditure		
	Direct	Indirect + Induced	Total	Direct	Indirect + Induced	Total	Revenue	Expenditure	Net Tax Effect
2022	300	823	1123	\$15,600,000	\$63,013,000	\$78,613,000	6775000	-2098000	\$8,873,000
2023	300	1,780	2080	\$15,600,000	\$139,429,000	\$155,029,000	14961000	-3021000	\$17,982,000
2024	2	92	94	\$103,200	\$23,334,800	\$23,438,000	1068000	2205000	-\$1,137,000
2025	2	21	23	\$103,200	\$14,056,800	\$14,160,000	916000	2228000	-\$1,312,000
2026	2	(25)	-23	\$103,200	\$7,098,800	\$7,202,000	679000	2144000	-\$1,465,000
2027	2	(45)	-43	\$103,200	\$3,070,800	\$3,174,000	465000	1968000	-\$1,503,000
2028	2	(59)	-57	\$103,200	\$628,800	\$732,000	343000	1793000	-\$1,450,000
2029	2	(57)	-55	\$103,200	-\$1,568,200	-\$1,465,000	298000	1617000	-\$1,319,000
2030	2	(49)	-47	\$103,200	-\$2,544,200	-\$2,441,000	275000	1442000	-\$1,167,000
2031	2	(41)	-39	\$103,200	-\$2,056,200	-\$1,953,000	259000	1244000	-\$985,000
2032	2	(25)	-23	\$103,200	-\$1,812,200	-\$1,709,000	275000	1099000	-\$824,000
2033	2	(16)	-14	\$103,200	-\$1,324,200	-\$1,221,000	259000	954000	-\$695,000
2034	2	(10)	-8	\$103,200	-\$591,200	-\$488,000	214000	847000	-\$633,000
2035	2	(0)	2	\$103,200	-\$103,200	\$0	198000	740000	-\$542,000
2036	2	6	8	\$103,200	\$628,800	\$732,000	191000	633000	-\$442,000
2037	2	8	10	\$103,200	\$1,605,800	\$1,709,000	183000	557000	-\$374,000
2038	2	6	8	\$103,200	\$2,582,800	\$2,686,000	198000	496000	-\$298,000
2039	2	16	18	\$103,200	\$3,314,800	\$3,418,000	183000	443000	-\$260,000
2040	2	16	18	\$103,200	\$3,558,800	\$3,662,000	168000	374000	-\$206,000
2041	2	16	18	\$103,200	\$3,558,800	\$3,662,000	153000	343000	-\$190,000
2042	2	16	18	\$103,200	\$4,535,800	\$4,639,000	183000	313000	-\$130,000
2043	2	12	14	\$103,200	\$4,779,800	\$4,883,000	153000	275000	-\$122,000
2044	2	10	12	\$103,200	\$4,779,800	\$4,883,000	153000	275000	-\$122,000
2045	2	18	20	\$103,200	\$4,779,800	\$4,883,000	137000	145000	-\$8,000
2046	2	8	10	\$103,200	\$5,755,800	\$5,859,000	198000	175000	\$23,000
2047	2	18	20	\$103,200	\$6,732,800	\$6,836,000	259000	114000	\$145,000
2048	2	19	21	\$103,200	\$7,220,800	\$7,324,000	229000	114000	\$115,000
2049	2	16	18	\$103,200	\$7,220,800	\$7,324,000	259000	76000	\$183,000
						<b>Total</b>	\$29,632,000	\$17,495,000	\$12,137,000
							\$26,460,693	is greater than	\$16,417,850
<b>Analysis Summary</b>									
Is the project reasonably likely to generate tax revenue in an amount sufficient to offset the M&O levy loss as a result of the limitation agreement?									Yes

Additional calculation and analysis by the District’s consultant further support this finding. See Culwell Consulting Report, attached as Attachment G.

**Board Finding 3: The ability of the Applicant to locate the proposed renewable energy facility in another state or another region of this state is significant because of the highly competitive marketplace for electricity and economic development. Therefore, the limitation on appraised value is a determining factor in the Applicant’s decision to invest capital and construct the project in Texas and Wharton ISD.**

In support of Board Finding 3, see Attachment A at Tab 5. Further, the Comptroller’s Certificate Letter determines “the limitation on appraised value is a determining factor in the applicant’s decision to invest capital and construct the project in this state.” See Attachment C at page 2.

**Board Finding 4: The jobs creation requirement under Tax Code section 313.051(b) exceeds the industry standard for the number of employees reasonably necessary for the operation of the Applicant’s facility described in the Application, and Applicant qualifies for a waiver of the new jobs requirement pursuant to Tax Code section 313.025(f-1).**

In support of Board Finding 4, see GulfStar Power, LLC’s Application, Attachment A at Tab 12. The Applicant provides that industry experts identify the industry standard for employment to be one permanent employee per 300 MW. The Applicant, therefore, anticipates two (2) full time employees. This is further supported by previously certified limitation agreement applications by solar developers who also requested a waiver of the job requirements. Therefore, Applicant has the appropriate number of jobs for this project at two (2) permanent jobs for the planned facility.

**Board Finding 5: The Applicant will create two (2) new qualifying jobs, as defined by Tax Code section 313.021(3), which Applicant affirms will require at least 1,600 hours of work a year; are not transferred from one area in this state to another area in this state; is not created to replace a previous employee; is covered by a group health benefit plan for which the business offers to pay at least 80 percent of the premiums or other charges assessed for employee-only coverage under the plan, regardless of whether an employee may voluntarily waive the coverage; and pays at least 110 percent of the county average weekly wage or manufacturing jobs. The Applicant does not intend to create any non-qualifying jobs.**

In support of Board Finding 5, see Attachment A at page 9, Tab 12, and Tab 13. In the event Applicant creates any non-qualifying job, it will be required to pay an amount meeting the requirements of Tax Code section 313.024(d).

**Board Finding 6: The proposed limitation on appraised value for the qualified property is \$30,000,000.**

In support of Board Finding 6, see Attachment C, at page 4. Further, the Comptroller’s Minimum School District Limitation Values, located online at: <https://comptroller.texas.gov/economy/local/ch313/values.php>, provides Wharton ISD is a Subchapter C, Category I district, with a minimum limitation of \$30,000,000.

**Board Finding 7: The revenue gains that will be realized by the school district if the Application is approved will be significant in the long term, with special reference to revenues used for supporting school district debt.**

In support of Board Finding 7, Culwell Consulting, LLC estimates, based on the property values recited in the Application, that the project would add \$334,000,000 to the tax base at the peak investment level for tax year 2024 (school year 2024-2025). The additional project value is fully taxable for debt service taxes and can be used to meet any current or future debt needs serviced by an interest and sinking fund tax of the District. See Comptroller’s Certification Letter and Culwell Consulting Report, attached as Attachments C and G, respectively. In addition, the potential revenue gains from Supplemental Payments provided for in the proposed Agreement are estimated to be approximately \$175,000 per year (\$100 per ADA per year), beginning with the first year of the Qualifying Time Period and ending on after the third year following the end of the limitation period. See Culwell Consulting Report, attached as Attachment G.

**Board Finding 8: The projected dollar amount of the maintenance and operations taxes imposed on the qualified property for each year of the Agreement if the property does not receive a limitation on appraised value, based on the further depreciations of investment provided by Applicant, is shown in Attachment G (column labeled “M&O Taxes Paid Before Limitation”), and is further based on the assumption that the projected total maintenance and**

**operations tax rate per \$100 in valuation in each year of the Agreement will be as indicated in the column labeled “M&O Tax Rate #.”**

In support of Board Finding 8, see Culwell Consulting Report, attached as Attachment G.

**Board Finding 9: The projected dollar amount of the maintenance and operations taxes imposed on the qualified property for each year of the Agreement if the property *does* receive a limitation on appraised value, based on the further depreciations of investment provided by Applicant, is shown in Attachment G (column labeled “M&O Taxes Paid *After* Limitation”), and is further based on the assumption that the projected total maintenance and operations tax rate per \$100 in valuation in each year of the Agreement will be as indicated in the column labeled “M&O Tax Rate #.”**

In support of Board Finding 9, see Culwell Consulting Report, attached as Attachment G.

**Board Finding 10: Based upon the Applicant’s certification that the Application is true and correct, the Comptroller’s Economic Impact Analysis, the Comptroller’s Certificate Decision, and the District’s review of these and other documents, the Board has determined that the information provided by the Applicant in its Application was true and correct when submitted.**

Upon acceptance of the Application, the District requested the Comptroller undertake an economic impact evaluation and retained certain consultants to help the Board determine: (1) that Applicant's information contained in the Application as to existing facts is true and correct; (2) that Applicant's information contained in the Application with respect to projections of future events are commercially reasonable and within the ability of Applicant to execute; (3) that information related to job creation is commercially reasonable and within the ability of Applicant to execute; (4) that Applicant’s representations concerning the economic incentives available are a determining factor; and, (5) the proposed project meets eligibility requirements for an Agreement under Tax Code Chapter 313.

As a part of its review process, the Board notes that the Application was submitted by Applicant under oath. A Chapter 313 application is a governmental record under Tex. Penal Code section 37.01(2)(A), and all representations contained therein are statements of fact within the meaning of Tex. Penal Code section 37.01(3). Since Board action upon the adoption of these Findings and the approval of the Agreement is an “official proceeding,” a false statement in the Application would constitute perjury under Tex. Penal Code section 37.03.

**Board Finding 11: The Applicant is eligible for the limitation on the appraised value of the entity’s qualified property.**

In support of Board Finding 11, see Applicant’s Application, Comptroller’s Certification Letter, and Applicant’s Franchise Tax Status, attached as Attachments A, C, and D, respectively.

**Board Finding 12: The Project will be located within an area that is currently designated as a reinvestment zone pursuant to Tax Code Chapters 312 and 313. The District will cooperate with the Applicant’s efforts to ensure the area remains designated as a reinvestment zone as permitted by law.**

In support of Board Finding 12, see Application at Tab 11, attached as Attachment A, and Resolution of the Wharton Independent School District Board of Trustees Designating a Reinvestment Zone, adopted on November 2, 2021.

**Board Finding 13: As certified by the Applicant, no construction of Qualified Property has begun on the project site.**

In support of Board Finding 13, see Application at section 7, attached as Attachment A.

**Board Finding 14: The Board finds there are no conflicts of interest at the time of its consideration of the Agreement.**

In support of this Finding, the Board finds that it has taken appropriate action to ensure that all District Trustees have disclosed any potential conflicts of interest, and that disclosures will be made if any conflict of interest is discovered or arises in the future, in compliance with the requirements of Texas Local Government Code, Chapters 171 and 176.

The Board further finds that it has taken appropriate action to ensure that all District employees and/or consultants have disclosed any potential conflicts of interest, and that disclosures will be made if any conflict of interest is discovered or arises in the future, in compliance with the requirements of Texas Local Government Code, Chapters 171 and 176.

**Board Finding 15: The effect of the Applicant's proposed project is not expected to increase the District's instructional facility needs. Wharton ISD's existing facilities can easily accommodate any student growth anticipated from Applicant's project.**

The Application provides that two (2) full-time permanent jobs are expected after construction of the project is completed. It is unknown whether such employees be existing or new residents of Wharton ISD. It is assumed that they will be new residents. Assuming the new households contain students, the Board finds that any resulting projected student growth can be accommodated with existing Wharton ISD facilities.

**Board Finding 16: Considering the purpose and effect of Tax Code Chapter 313 and the terms of the Agreement, it is in the best interest of the District and the State to approve the Application and enter into the attached Agreement for Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes.**

In support of Board Finding 16, see Attachments A through G.

**Board Finding 17: The Agreement for Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes, pursuant to Chapter 313 of the Texas Tax Code is in the form of the template Texas Economic Development Act Agreement adopted by the Comptroller, as of October 2020 – Form 50-826, meets all the requirements of Tax Code section 313.027, and the Comptroller has verified that the Agreement complies with the provisions of Chapter 313 of the Texas Tax Code and 34 T.A.C. Chapter 9, Subchapter F.**

In support of Board Finding 17, see the Comptroller's Agreement Review Letter, attached as Attachment F.

Any potential negative consequences of granting the value limitation are offset through the revenue protection provisions agreed to by the Applicant and the District as set out in Article IV of the Agreement. In further support of Board Finding 17, see the Agreement and Comptroller's Agreement Review Letter, attached as Attachments E and F, respectively.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED THAT:**

SECTION 1. All of the Findings above are adopted and approved as the Findings of the Wharton Independent School District Board of Trustees, and the Board of Trustees has made the above factual Findings in accordance with the Texas Tax Code § 313.025(e) and (f) and Texas Administrative Code 34, Chapter 9, subchapter F; and;

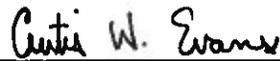
SECTION 2. The attached Application, attached as Attachment A is hereby APPROVED;

SECTION 3. The new jobs requirement pursuant to Tax Code section 313.051(b) is hereby WAIVED;

SECTION 4. The Agreement, attached as Attachment E is APPROVED contemporaneously with these Findings and is authorized to be executed and delivered by the Trustees whose signatures appear below on behalf of the Wharton Independent School District, along with a copy of these Findings, which shall be binding upon the parties upon receipt of an executed original of the Agreement from Applicant; and

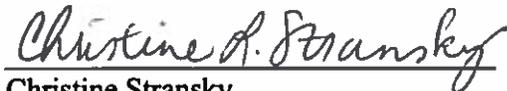
SECTION 5. These Findings and referenced Attachments shall be made a part of the official minutes of this meeting, and maintained in the permanent records of the Wharton Independent School District Board of Trustees.

ADOPTED and EXECUTED this 18th day of November, 2021.



\_\_\_\_\_  
Curtis Evans  
President, Board of Trustees

ATTEST:



\_\_\_\_\_  
Christine Stransky  
Secretary, Board of Trustees

## **RESOLUTION ATTACHMENTS**

Attachment A – GulfStar Power, LLC’s Application

Attachment B – Comptroller’s Completion Letter

Attachment C – Comptroller’s Certificate Letter and Economic Impact Analysis

Attachment D – Applicant’s Franchise Tax Account Status

Attachment E – Agreement for Limitation on Appraised Value of Property for School District  
Maintenance and Operations Taxes

Attachment F – Comptroller’s Agreement Review Letter

Attachment G – Culwell Consulting Report

# **ATTACHMENT A**



TAB 1

Pages 1 through 9 of application

# Application for Appraised Value Limitation on Qualified Property

(Tax Code, Chapter 313, Subchapter B or C)

**INSTRUCTIONS:** This application must be completed and filed with the school district. In order for an application to be processed, the governing body (school board) must elect to consider an application, but — by Comptroller rule — the school board may elect to consider the application only after the school district has received a completed application. Texas Tax Code, Section 313.025 requires that any completed application and any supplemental materials received by the school district must be forwarded within seven days to the Texas Comptroller of Public Accounts.

If the school board elects to consider the application, the school district must:

- notify the Comptroller that the school board has elected to consider the application. This notice must include:
  - the date on which the school district received the application;
  - the date the school district determined that the application was complete;
  - the date the school board decided to consider the application; and
  - a request that the Comptroller prepare an economic impact analysis of the application;
- provide a copy of the notice to the appraisal district;
- must complete the sections of the application reserved for the school district and provide information required in the Comptroller rules located at 34 Texas Administrative Code (TAC) Section 9.1054; and
- forward the completed application to the Comptroller, separating each section of the documents. See 34 TAC Chapter 9, Subchapter F.

The governing body may, at its discretion, allow the applicant to supplement or amend the application after the filing date, subject to the restrictions in 34 TAC Chapter 9, Subchapter F.

When the Comptroller receives the notice and required information from the school district, and has determined that all assertions of confidentiality are appropriate, the Comptroller will publish all submitted non-confidential application materials on its website. The Comptroller is authorized to treat some application information as confidential and withhold it from publication on the Internet. To do so, however, the information must be segregated and comply with the other requirements set out in the Comptroller's rules. For more information, see guidelines on Comptroller's website.

The Comptroller will independently determine whether the application has been completed according to the Comptroller's rules (34 TAC Chapter 9, Subchapter F). If the Comptroller finds the application is not complete, the Comptroller will request additional materials from the school district. Pursuant to 9.1053(a)(1)(C), requested information shall be provided within 20 days of the date of the request. When the Comptroller determines that the application is complete, it will send the school district a notice indicating so. The Comptroller will determine the eligibility of the project and issue a certificate for a limitation on appraised value to the school board regarding the application by the 90th day after the Comptroller receives a complete application—as determined by the Comptroller.

The school board must approve or disapprove the application not later than the 150th day after the application review start date (the date the application is finally determined to be complete by the Comptroller), unless an extension is granted. The Comptroller and school district are authorized to request additional information from the applicant that is reasonably necessary to issue a certificate, complete the economic impact evaluation or consider the application at any time during the application review period.

Please visit the Comptroller's website to find out more about the program at [comptroller.texas.gov/economy/local/ch313/](http://comptroller.texas.gov/economy/local/ch313/). There are links to the Chapter 313 statute, rules, guidelines and forms. Information about minimum limitation values for particular districts and wage standards may also be found at that site.

## SECTION 1: School District Information

### 1. Authorized School District Representative

April 15, 2021

Date Application Received by District

Dr. Michael

First Name

O'Guin

Last Name

Superintendent

Title

Wharton Independent School District

School District Name

2100 North Fulton

Street Address

2100 North Fulton

Mailing Address

Wharton

City

979-532-3612

Phone Number

N/A

Mobile Number (optional)

TX

State

77488

ZIP

N/A

Fax Number

moguin@whartonisd.net

Email Address

2. Does the district authorize the consultant to provide and obtain information related to this application? . . . . .

Yes

No

**SECTION 1: School District Information (continued)**

**3. Authorized School District Consultant (If Applicable)**

Chris	Grammer
First Name	Last Name
Partner	
Title	
Culwell Consulting, LLC	
Firm Name	
512-914-1328	
Phone Number	Fax Number
	chris@culwellconsulting.com
Mobile Number (optional)	Email Address
4. On what date did the district determine this application complete? ..... April 22, 2021	

**SECTION 2: Applicant Information**

**1. Authorized Company Representative (Applicant)**

Richard	Gruber	
First Name	Last Name	
Chief Commercial Officer	Merit SI, LLC	
Title	Organization	
717 Texas Avenue, 12th Floor		
Street Address		
717 Texas Avenue, 12th Floor		
Mailing Address		
Houston	TX	77002
City	State	ZIP
512-771-1555	N/A	
Phone Number	Fax Number	
N/A	rgruber@meritsi.com	
Mobile Number (optional)	Business Email Address	

2. Will a company official other than the authorized company representative be responsible for responding to future information requests? .....  Yes  No

2a. If yes, please fill out contact information for that person.

Aaron	Hall	
First Name	Last Name	
Project Manager	Merit SI, LLC	
Title	Organization	
717 Texas Avenue, 12th Floor		
Street Address		
717 Texas Avenue, 12th Floor		
Mailing Address		
Houston	TX	77002
City	State	ZIP
832-693-6089	N/A	
Phone Number	Fax Number	
832-693-6089	ahall@meritsi.com	
Mobile Number (optional)	Business Email Address	

3. Does the applicant authorize the consultant to provide and obtain information related to this application? .....  Yes  No

SECTION 2: Applicant Information (continued)

4. Authorized Company Consultant (If Applicable)

Steven \_\_\_\_\_ Van Dyck \_\_\_\_\_  
 First Name Last Name  
 Partner \_\_\_\_\_  
 Title  
 Cummings Westlake LLC \_\_\_\_\_  
 Firm Name  
 713-266-4456 xt 104 \_\_\_\_\_ 713-266-2333 \_\_\_\_\_  
 Phone Number Fax Number  
 svandyck@cwlp.net \_\_\_\_\_  
 Business Email Address

SECTION 3: Fees and Payments

1. Has an application fee been paid to the school district?  Yes  No

The total fee shall be paid at the same time the application is submitted to the school district. Any fees not accompanying the original application shall be considered supplemental payments.

1a. If yes, include all transaction information below. Include proof of application fee paid to the school district in **Tab 2**. Any confidential banking information provided will not be publicly posted.

\$75,000 \_\_\_\_\_ Check \_\_\_\_\_  
 Payment Amount Transaction Type  
 Merit SI \_\_\_\_\_ Wharton ISD \_\_\_\_\_  
 Payor Payee  
 April 5, 2021 \_\_\_\_\_  
 Date transaction was processed

For the purpose of questions 2 and 3, "payments to the school district" include any and all payments or transfers of things of value made to the school 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 for limitation on appraised value.

2. Will any "payments to the school district" that you may make in order to receive a property tax value limitation agreement result in payments that are not in compliance with Tax Code §313.027(i)?  Yes  No  N/A

3. If "payments to the school district" will only be determined by a formula or methodology without a specific amount being specified, could such method result in "payments to the school district" that are not in compliance with Tax Code §313.027(i)?  Yes  No  N/A

SECTION 4: Business Applicant Information

1. What is the legal name of the applicant under which this application is made? \_\_\_\_\_ GulfStar Power LLC \_\_\_\_\_  
 2. Texas Taxpayer I.D. number of entity subject to Tax Code, Chapter 171 (11 digits) \_\_\_\_\_ 32078246876 \_\_\_\_\_  
 3. Parent Company Name \_\_\_\_\_ Merit SI, LLC \_\_\_\_\_  
 4. Parent Company Tax ID \_\_\_\_\_ 32062803732 \_\_\_\_\_  
 5. NAICS code \_\_\_\_\_ 221114 \_\_\_\_\_  
 6. Is the applicant a party to any other pending or active Chapter 313 agreements?  Yes  No  
 6a. If yes, please list application number, name of school district and year of agreement \_\_\_\_\_

SECTION 5: Applicant Business Structure

1. Business Organization of Applicant (corporation, limited liability corporation, etc) \_\_\_\_\_ Limited Liability Company \_\_\_\_\_  
 2. Is applicant a combined group, or comprised of members of a combined group, as defined by Tax Code §171.0001(7)?  Yes  No  
 2a. If yes, attach in **Tab 3** a copy of the most recently submitted Texas Comptroller Franchise Tax Form No. 05-165, No. 05-166, or any other documentation from the Franchise Tax Division to demonstrate the applicant's combined group membership and contact information.

**SECTION 5: Applicant Business Structure (continued)**

2b. Texas Franchise Tax Reporting Entity Taxpayer Name

Merit SI, LLC

2c. Reporting Entity Taxpayer Number

32062803732

3. Is the applicant current on all tax payments due to the State of Texas?  Yes  No
4. Are all applicant members of the combined group current on all tax payments due to the State of Texas?  Yes  No  N/A

**SECTION 6: Eligibility Under Tax Code Chapter 313.024**

1. Are you an entity subject to the tax under Tax Code, Chapter 171?  Yes  No
2. The property will be used for one of the following activities:
- (1) manufacturing  Yes  No
  - (2) research and development  Yes  No
  - (3) a clean coal project, as defined by Section 5.001, Water Code  Yes  No
  - (4) an advanced clean energy project, as defined by Section 382.003, Health and Safety Code  Yes  No
  - (5) renewable energy electric generation  Yes  No
  - (6) electric power generation using integrated gasification combined cycle technology  Yes  No
  - (7) nuclear electric power generation  Yes  No
  - (8) a computer center that is used as an integral part or as a necessary auxiliary part for the activity conducted by applicant in one or more activities described by Subdivisions (1) through (7)  Yes  No
  - (9) a Texas Priority Project, as defined by 313.024(e)(7) and TAC 9.1051\*  Yes  No
3. Are you requesting that any of the land be classified as qualified investment?  Yes  No
4. Will any of the proposed qualified investment be leased under a capitalized lease?  Yes  No
5. Will any of the proposed qualified investment be leased under an operating lease?  Yes  No
6. Are you including property that is owned by a person other than the applicant?  Yes  No
7. Will any property be pooled or proposed to be pooled with property owned by the applicant in determining the amount of your qualified investment?  Yes  No

\*Note: Applicants requesting eligibility under this category should note that there are additional application and reporting data submission requirements.

**SECTION 7: Project Description**

1. In **Tab 4**, attach a detailed description of the scope of the proposed project, including, at a minimum, the type and planned use of real and tangible personal property, the nature of the business, a timeline for property construction or installation, and any other relevant information. If the project is an amendment or a reapplication please specify and provide details regarding the original project.
2. Check the project characteristics that apply to the proposed project:
- Land has no existing improvements
  - Land has existing improvements (complete Section 13)
  - Expansion of existing operation on the land (complete Section 13)
  - Relocation within Texas

**SECTION 8: Limitation as Determining Factor**

1. Does the applicant currently own the land on which the proposed project will occur?  Yes  No
2. Has the applicant entered into any agreements, contracts or letters of intent related to the proposed project?  Yes  No
3. Does the applicant have current business activities at the location where the proposed project will occur?  Yes  No
4. Has the applicant made public statements in SEC filings or other documents regarding its intentions regarding the proposed project location?  Yes  No
5. Has the applicant received any local or state permits for activities on the proposed project site?  Yes  No
6. Has the applicant received commitments for state or local incentives for activities at the proposed project site?  Yes  No
7. Is the applicant evaluating other locations not in Texas for the proposed project?  Yes  No
8. Has the applicant provided capital investment or return on investment information for the proposed project in comparison with other alternative investment opportunities?  Yes  No
9. Has the applicant provided information related to the applicant's inputs, transportation and markets for the proposed project?  Yes  No
10. Are you submitting information to assist in the determination as to whether the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in Texas?  Yes  No

**Chapter 313.026(e) states "the applicant may submit information to the Comptroller that would provide a basis for an affirmative determination under Subsection (c)(2)." If you answered "yes" to any of the questions in Section 8, attach supporting information in Tab 5.**

**SECTION 9: Projected Timeline**

**NOTE:** Only construction beginning after the application review start date (the date the Texas Comptroller of Public Accounts deems the application complete) can be considered qualified property and/or qualified investment.

1. Estimated school board ratification of final agreement September 2021
2. Estimated commencement of construction May 2022
3. Beginning of qualifying time period (MM/DD/YYYY) January 1, 2022
4. First year of limitation (YYYY) January 1, 2024
  - 4a. For the beginning of the limitation period, notate which **one of the following** will apply according to provision of 313.027(a-1)(2):
    - A. January 1 following the application date
    - B. January 1 following the end of QTP
    - C. January 1 following the commencement of commercial operations
5. Commencement of commercial operations October 2023

**SECTION 10: The Property**

1. County or counties in which the proposed project will be located Wharton
2. Central Appraisal District (CAD) that will be responsible for appraising the property Wharton CAD
3. Will this CAD be acting on behalf of another CAD to appraise this property?  Yes  No
4. List all taxing entities that have jurisdiction for the property, the portion of project within each entity and tax rates for each entity:
 

M&O (ISD): <u>Wharton ISD; 100% ; \$1.0028</u> <small>(Name, tax rate and percent of project)</small>	I&S (ISD): <u>Wharton ISD; 100%; \$0.2836</u> <small>(Name, tax rate and percent of project)</small>
County: <u>Wharton; 100%; \$0.45869</u> <small>(Name, tax rate and percent of project)</small>	City: <u>N/A</u> <small>(Name, tax rate and percent of project)</small>
Hospital District: <u>ESD #1; 100%; \$0.05</u> <small>(Name, tax rate and percent of project)</small>	Water District: <u>Cons Groundwater; 100%; \$0.00799</u> <small>(Name, tax rate and percent of project)</small>
Other (describe): <u>ESD #3; 100%; \$0.08358</u> <small>(Name, tax rate and percent of project)</small>	Other (describe): <u>Wharton Co Jr College; 100%; \$0.13684</u> <small>(Name, tax rate and percent of project)</small>



**SECTION 12: Texas Tax Code 313.021(2) Qualified Property (continued)**

2. Is the land upon which the new buildings or new improvements will be built part of the qualified property described by §313.021(2)(A)?  Yes  No
- 2a. If yes, attach complete documentation including:
- a. legal description of the land (Tab 9);
  - b. each existing appraisal parcel number of the land on which the new improvements will be constructed, regardless of whether or not all of the land described in the current parcel will become qualified property (Tab 9);
  - c. owner (Tab 9);
  - d. the current taxable value of the land, attach estimate if land is part of larger parcel (Tab 9); and
  - e. a detailed map showing the location of the land with vicinity map (Tab 11).
3. Is the land on which you propose new construction or new improvements currently located in an area designated as a reinvestment zone under Tax Code Chapter 311 or 312 or as an enterprise zone under Government Code Chapter 2303?  Yes  No
- 3a. If yes, attach the applicable supporting documentation:
- a. evidence that the area qualifies as an enterprise zone as defined by the Governor’s Office (Tab 16);
  - b. legal description of reinvestment zone (Tab 16);
  - c. order, resolution or ordinance establishing the reinvestment zone (Tab 16);
  - d. guidelines and criteria for creating the zone (Tab 16); and
  - e. a map of the reinvestment zone or enterprise zone boundaries with vicinity map (Tab 11)
- 3b. If no, submit detailed description of proposed reinvestment zone or enterprise zone with a map indicating the boundaries of the zone on which you propose new construction or new improvements to the Comptroller’s office within 30 days of the application date.
- What is the anticipated date on which you will submit final proof of a reinvestment zone or enterprise zone? July 2021

**SECTION 13: Information on Property Not Eligible to Become Qualified Property**

1. In Tab 10, attach a specific and detailed description of all **existing property within the project boundary**. This includes buildings and improvements existing as of the application review start date (the date the application is determined to be complete by the Comptroller). The description must provide sufficient detail to locate all existing property on the land that will be subject to the agreement and distinguish existing property from future proposed property.
2. In Tab 10, attach a specific and detailed description of all **proposed new property within the project boundary that will not become new improvements** as defined by TAC 9.1051. This includes proposed property that: functionally replaces existing or demolished/removed property; is used to maintain, refurbish, renovate, modify or upgrade existing property; or is affixed to existing property; or is otherwise ineligible to become qualified property. The description must provide sufficient detail to distinguish existing property (statement 1) and all proposed new property that cannot become qualified property from proposed qualified property that will be subject to the agreement (as described in Section 12 of this application).
3. For the property not eligible to become qualified property within the project boundary in response to statements 1 and 2 of this section, provide the following supporting information in Tab 10:
- a. maps and/or detailed site plan;
  - b. surveys;
  - c. appraisal district values and parcel numbers;
  - d. inventory lists;
  - e. existing and proposed property lists;
  - f. model and serial numbers of existing property; or
  - g. other information of sufficient detail and description.
4. Total estimated market value of existing property within the project boundary (that property described in response to statement 1): ..... \$ 0.00
5. In Tab 10, include an appraisal value by the CAD of all the buildings and improvements existing as of a date within 15 days of the date the application is received by the school district.
6. Total estimated market value of proposed property not eligible to become qualified property (that property described in response to statement 2): ..... \$ 0.00

**Note:** Investment for the property listed in statement 2 may count towards qualified investment in Column C of Schedules A-1 and A-2, if it meets the requirements of 313.021(1). Such property **cannot** become qualified property on Schedule B.

SECTION 14: Wage and Employment Information

1. What is the number of new qualifying jobs you are committing to create? ..... 2
2. What is the number of new non-qualifying jobs you are estimating you will create? (See TAC 9.1051(14)) ..... 0
3. Do you intend to request that the governing body waive the minimum new qualifying job creation requirement, as provided under Tax Code §313.025(f-1)? .....  Yes  No
  - 3a. If yes, attach evidence of industry standard in **Tab 12** documenting that the new qualifying job creation requirement above exceeds the number of employees necessary for the operation, according to industry standards.
4. Attach in **Tab 13** the four most recent quarters of data for each wage calculation below, including documentation from the Texas Workforce Commission website. The final actual statutory minimum annual wage requirement for the applicant for each qualifying job — which may differ slightly from this estimate — will be based on information available at the time of the application review start date (date of a completed application). See TAC §9.1051(21) and (22). **Note:** If a more recent quarter of information becomes available before the application is deemed complete, updated wage information will be required.
  - a. Non-qualified job wages  
- average weekly wage for all jobs (all industries) in the county is ..... \$ 832.00
  - b. Qualifying job wage minimum option §313.021(5)(A)  
-110% of the average weekly wage for manufacturing jobs in the county is ..... \$ 991.93
  - c. Qualifying job wage minimum option §313.021(5)(B)  
-110% of the average weekly wage for manufacturing jobs in the region is ..... \$ 1,269.55
5. Which Tax Code section are you using to estimate the qualifying job wage standard required for this project? .....  §313.021(5)(A) or  §313.021(5)(B)
6. What is the minimum required annual wage for each qualifying job based on the qualified property? ..... \$ 51,580.10
7. What is the annual wage you are committing to pay for each of the new qualifying jobs you create on the qualified property? ..... \$ 51,600.00
8. Will the qualifying jobs meet all minimum requirements set out in Tax Code §313.021(3)? .....  Yes  No
9. Do you intend to satisfy the minimum qualifying job requirement through a determination of cumulative economic benefits to the state as provided by §313.021(3)(F)? .....  Yes  No
  - 9a. If yes, attach in **Tab 13** supporting documentation from the TWC, pursuant to §313.021(3)(F).
10. Do you intend to rely on the project being part of a single unified project, as allowed in §313.024(d-2), in meeting the qualifying job requirements? .....  Yes  No
  - 10a. If yes, attach in **Tab 6** supporting documentation including a list of qualifying jobs in the other school district(s).

SECTION 15: Economic Impact

1. Complete and attach Schedules A1, A2, B, and C in **Tab 14**. **Note:** Excel spreadsheet versions of schedules are available for download and printing at URL listed below.
2. Attach an Economic Impact Analysis, if supplied by an entity other than the Comptroller's office, in **Tab 15**. (not required)
3. If there are any other payments made in the state or economic information that you believe should be included in the economic analysis, attach a separate schedule showing the amount for each year affected, including an explanation, in **Tab 15**.

## APPLICATION TAB ORDER FOR REQUESTED ATTACHMENTS

ATTACHMENT	
1	Sections 1-16
2	Proof of Payment of Application Fee
3	Documentation of Combined Group membership under Texas Tax Code 171.0001(7), history of tax default, delinquencies and/or material litigation (if applicable)
4	Detailed description of the project
5	Documentation to assist in determining if limitation is a determining factor
6	Description of how project is located in more than one district, including list of percentage in each district and, if determined to be a single unified project, documentation from the Office of the Governor (if applicable)
7	Description of Qualified Investment
8	Description of Qualified Property
9	Description of Land
10	Description of all property not eligible to become qualified property (if applicable)
11	<p>Maps that clearly show:</p> <ul style="list-style-type: none"> <li>a) Project boundary and project vicinity, including county and school district boundaries</li> <li>b) Qualified investment including location of tangible personal property to be placed in service during the qualifying time period and buildings to be constructed during the qualifying time period</li> <li>c) Qualified property including location of new buildings or new improvements</li> <li>d) Any existing property within the project area</li> <li>e) Any facilities owned or operated by the applicant having interconnections to the proposed project</li> <li>f) Location of project, and related nearby projects within vicinity map</li> <li>g) Reinvestment or Enterprise Zone within vicinity map, showing the actual or proposed boundaries and size</li> </ul> <p><b>Note:</b> Maps should be high resolution files. Include map legends/markers.</p>
12	Request for Waiver of Job Creation Requirement and supporting information (if applicable)
13	Calculation of non-qualifying wage target and two possible qualifying job wage requirements with TWC documentation
14	Schedules A1, A2, B, and C completed and signed Economic Impact (if applicable)
15	Economic Impact Analysis, other payments made in the state or other economic information (if applicable)
16	<p>Description of Reinvestment or Enterprise Zone, including:</p> <ul style="list-style-type: none"> <li>a) evidence that the area qualifies as an enterprise zone as defined by the Governor's Office</li> <li>b) legal description of reinvestment zone</li> <li>c) order, resolution or ordinance establishing the reinvestment zone</li> <li>d) guidelines and criteria for creating the zone</li> </ul>
17	Signature and Certification page, signed and dated by Authorized School District Representative and Authorized Company Representative (applicant)



TAB 2

*Proof of Payment of Application Fee*

Please find on the attached page, copy of the check for the \$75,000 application fee to Wharton Independent School District.

MERIT SI LLC  
50 BEAVER AVE  
ANNANDALE, NJ 08801-3064

637  
55-136/312  
4793

4/15/2021

Date

Pay to the  
Order of

Wharton Independent School District \$ 75,000.00  
Seventy-five thousand and no/100

Dollars



America's Most Convenient Bank®

For

Fee for 313 Abstract for Getstun

MP

53# 0637



TAB 3

Documentation of Combined Group membership under Texas Tax Code 171.0001(7), history of tax default, delinquencies and/or material litigation (if applicable)

GulfStar Power, LLC will be reported on the 2020 report for Merit SI, LLC.  
Attached is page 1 of the 2019 report.

# Texas Franchise Tax Public Information Report

*To be filed by Corporations, Limited Liability Companies (LLC), Limited Partnerships (LP), Professional Associations (PA) and Financial Institutions*

■ Tcode 13196

■ Taxpayer number 32062803732	■ Report year 2019
----------------------------------	-----------------------

**You have certain rights under Chapter 552 and 559, Government Code, to review, request and correct information we have on file about you. Contact us at 1-800-252-1381.**

Taxpayer name <b>Merit SI LLC</b>			<input type="checkbox"/> Check box if the mailing address has changed.
Mailing address 50 Beaver Avenue		Secretary of State (SOS) file number or Comptroller file number 0802642857	
City Annandale	State NJ	ZIP code plus 4 08801	

Check box if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office 50 Beaver Avenue, Annandale, NJ 08801
Principal place of business 50 Beaver Avenue, Annandale, NJ 08801



*You must report officer, director, member, general partner and manager information as of the date you complete this report.*

**Please sign below! This report must be signed to satisfy franchise tax requirements.**

3206280373219

**SECTION A** Name, title and mailing address of each officer, director, member, general partner or manager.

Name Richard Gruber	Title	Director <input checked="" type="checkbox"/> YES	Term expiration	m m d d y y _____
Mailing address 6625 Dogwood Creek Drive	City Austin	State TX	ZIP Code 78746	
Name Thomas Kuster	Title	Director <input checked="" type="checkbox"/> YES	Term expiration	m m d d y y _____
Mailing address 7 Foxfire Lane	City Clinton	State NJ	ZIP Code 08809	
Name	Title	Director <input type="checkbox"/> YES	Term expiration	m m d d y y _____
Mailing address	City	State	ZIP Code	

**SECTION B** Enter information for each corporation, LLC, LP, PA or financial institution, if any, in which this entity owns an interest of 10 percent or more.

Name of owned (subsidiary) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership
Name of owned (subsidiary) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership

**SECTION C** Enter information for each corporation, LLC, LP, PA or financial institution, if any, that owns an interest of 10 percent or more in this entity.

Name of owned (parent) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership
--	--------------------	-------------------------------	-------------------------

Registered agent and registered office currently on file *(see instructions if you need to make changes)* *You must make a filing with the Secretary of State to change registered agent, registered office or general partner information.*

Office:	City	State	ZIP Code
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The information on this form is required by Section 171.203 of the Tax Code for each corporation, LLC, LP, PA or financial institution that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director, member, general partner or manager and who is not currently employed by this or a related corporation, LLC, LP, PA or financial institution.

sign here ▶	Title Member	Date	Area code and phone number (908) 229-9922
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**Texas Comptroller Official Use Only**



VE/DE <input type="checkbox"/>	PIR IND <input type="checkbox"/>
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## Franchise Tax Account Status

As of : 03/22/2021 08:09:12

This page is valid for most business transactions but is not sufficient for filings with the Secretary of State

GULFSTAR POWER LLC	
<b>Texas Taxpayer Number</b>	32078246876
<b>Mailing Address</b>	211 E 7TH ST STE 620 AUSTIN, TX 78701-3218
<b>Right to Transact Business in Texas</b>	ACTIVE
<b>State of Formation</b>	DE
<b>Effective SOS Registration Date</b>	03/15/2021
<b>Texas SOS File Number</b>	0803974173
<b>Registered Agent Name</b>	CORPORATION SERVICE COMPANY
<b>Registered Office Street Address</b>	211 E. 7TH STREET SUITE 620 AUSTIN, TX 78701



## TAB 4

*Detailed Description of the Project*

*Provide a detailed description of the scope of the proposed project, including, at a minimum, the type and planned use of real and tangible personal property, the nature of the business, a timeline for property construction or installation, and any other relevant information.*

GulfStar Power, LLC is requesting an Appraised Value Limitation from Wharton Independent School District for the GulfStar Power, LLC Project (the “Project”), a proposed solar powered electric generating storage facility in Wharton County. The proposed Wharton ISD Project (this Application) would be constructed within the GulfStar Solar Reinvestment Zone that will be created by the Wharton Independent School District prior to finalizing a Value Limitation Agreement. A map showing the location of the project is included in Tab 11. The project is also known by the name GSPC. The Project IGNR Number is 23INR0111 and was assigned in December 2020. This application covers all qualified property in the reinvestment zone and project boundary within Wharton ISD necessary for commercial operations.

The proposed Project is anticipated to have a total generating capacity of 600 MW ac, 95% of which would be located in Wharton ISD with the 5% located in Boling ISD. This Application covers only the portion of the Project to be located in Wharton ISD. Solar equipment selection is ongoing at this time and has not been finalized. The exact number of PV panels and their capacity will depend upon the panels and inverters selected, manufacturers availability and prices, ongoing engineering design optimization and the final megawatt generating capacity of the Project when completed. Current plans are to install approximately 1,615,000 PV panel and 178 solar inverters, 95% of which would be within Wharton ISD. The Applicant requests a Value Limitation for all materials and equipment installed for the Project, including collection systems, transmission lines, electrical interconnections, roads, control systems necessary for commercial generation of electricity, solar modules/panels, foundations, racking and mounting structures, inverters boxes, combiner boxes, meteorological equipment, roadways, maintenance and operations building, paving, fencing, electrical substations, and interconnection facilities.

Construction of the Project is anticipated to begin in March of 2022 with completion by November 2023.



## TAB 5

*Documentation to assist in determining if limitation is a determining factor.*

Merit SI founders are experienced entrepreneurs who sold their first venture backed by Turner Enterprises to First Solar, a leading module manufacturer and turnkey plant provider. As former executives of First Solar, they led solar systems engineering and designed the world's first control system enabling solar power to provide essential grid services beyond variable energy. After designing and safely energizing over 2,000 megawatts of the world's largest solar power plants, they founded Merit SI to bring sustainable energy to critical infrastructure operators. A repeat investment of Turner Enterprises brought patient capital, strategic relationships, and additional finance expertise to the team.

Merit SI is keen to develop and build the proposed GulfStar Power, LLC Solar Project which is situated within the Wharton Independent School District. Since this Project is still in early- to mid-stage of development, further investment could be redeployed to other counties within the state of Texas or an entirely different state within the United States. Merit SI is currently considering comparable solar development opportunities within New Mexico, Arizona, and Colorado. This Project, as with the aforementioned projects, are limited to a finite amount of capital investment.

Consistent with the 313 applications filed by these companies on other renewable energy projects, the successful completion of market-competitive tax incentives is a necessity that provides a level playing field for all successful utility-scale solar projects in Texas. Key development characteristics, such as securing tax abatement commercial terms for example, will determine the ultimate location of the GulfStar Power, LLC Solar Project. Tax abatements, along with several other variables, have a significant impact on the competitiveness of the project's generation and ultimately likelihood for success. Therefore, Merit SI is continually comparing investment opportunities, rate of return, and market viability of each project based upon financial metrics.

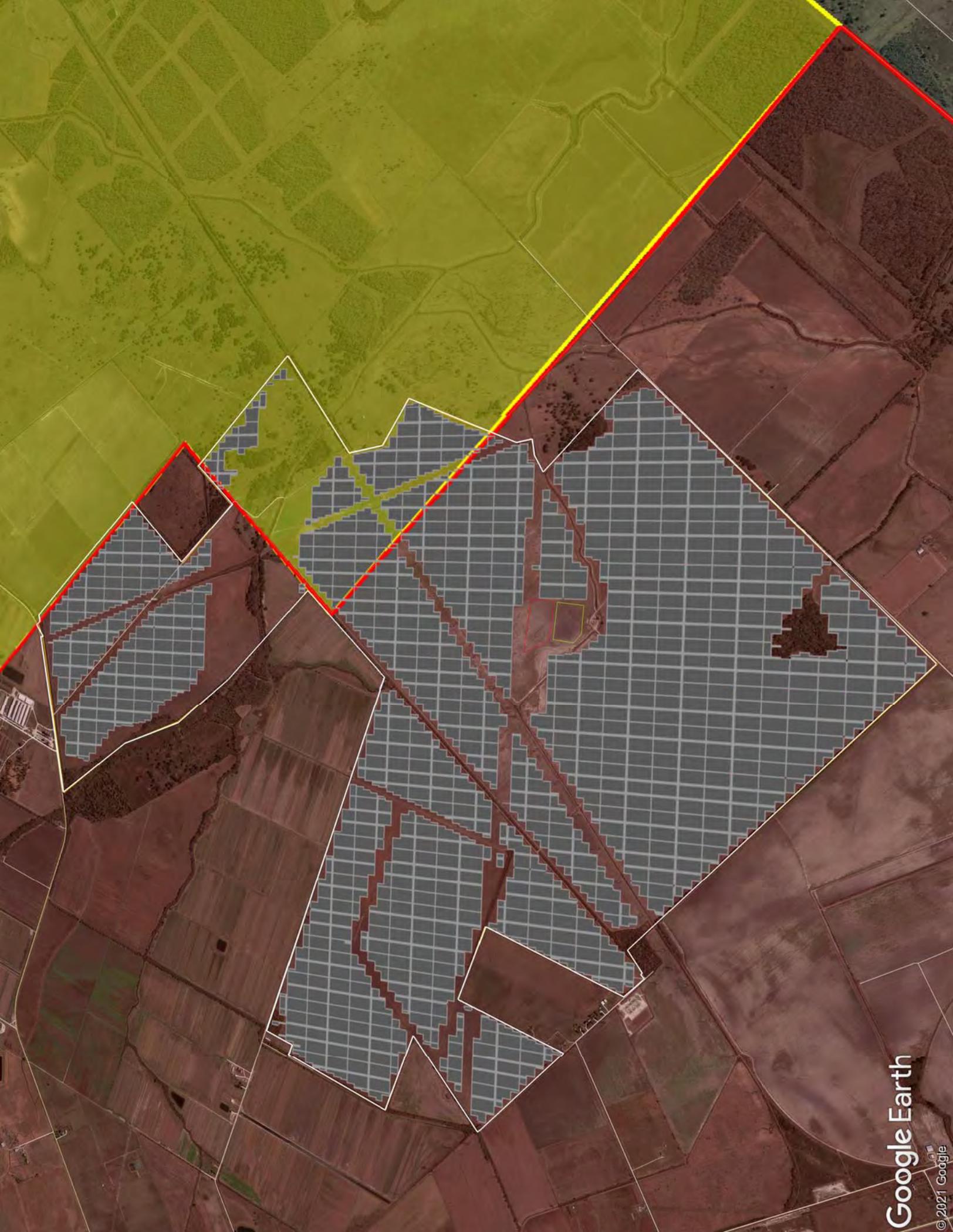
Due to an extremely competitive power market in Texas, the Chapter 313 appraised value limitation agreement is a necessity for a solar project of this size, and the commercial terms associated have a significant impact on the project's likelihood for success. There are only a few developmental variables for solar project which enhance the economics (i.e., property taxes, land rental payment, geotechnical adders), and since solar projects all compete with each other within Texas, a project without an appraised value limitation agreement is not competitive and is very unlikely to reach the point of construction. Therefore, this appraised value limitation is critical to the ability of the proposed project to move forward as currently sited within the Wharton Independent School District.



TAB 6

Description of how project is located in more than one district, including list of percentage in each district and, if determined to be a single unified project, documentation from the Office of the Governor (if applicable)

District	Percentage	Tax Rate
1) Wharton County	100%	\$0.45869
2) Wharton County Jr. College	100%	\$0.13684
3) Conservation Groundwater	100%	\$0.00799
4) ESD # 1	100%	\$0.05000
5) ESD # 3	100%	\$0.08358
6) Wharton ISD	95%	\$1.28640
7) Boling ISD	5%	\$0.96640





## TAB 7

Description of Qualified Investment

GulfStar Power, LLC proposes to construct a 570MW ac (net capacity) Photovoltaic solar facility that would be sited on approximately 3,200 acres of land approximately 3 miles east southeast of Lane City, TX in Wharton County. This application covers all qualified property in the reinvestment zone and project boundary within Wharton ISD necessary for the commercial operations of the proposed solar project described in Tab 4. Approximately 1,615,000 PV panels and 178 solar inverter would be located in Wharton ISD.

Qualified Investment includes

- collection systems
- transmission lines
- electrical interconnections
- roadways
- control systems necessary for commercial generation of electricity
- solar modules/panels
- foundations
- racking and mounting structures
- inverter boxes
- combiner boxes
- meteorological equipment
- maintenance and operations building
- paving and fencing
- electrical substations
- interconnection facilities.

*NOTE-* The map in TAB 11 shows the proposed project area with the preliminary panel and inverter locations. The exact placement of these panels and inverters is subject to ongoing planning, soil studies, and engineering and will be determined before construction begins.



## TAB 8

Description of Qualified Property

GulfStar Power, LLC proposes to construct a 570MW ac (net capacity) Photovoltaic solar facility that would be sited on approximately 3,200 acres of land approximately 3 miles east southeast of Lane City, TX in Wharton County. This application covers all qualified property in the reinvestment zone and project boundary within Wharton ISD necessary for the commercial operations of the proposed solar project described in Tab 4. Approximately 1,615,000 PV panels and 178 solar inverters would be located in Wharton ISD.

Qualified Property includes

- collection systems
- transmission lines
- electrical interconnections
- roadways
- control systems necessary for commercial generation of electricity
- solar modules/panels
- foundations
- racking and mounting structures
- inverter boxes
- combiner boxes
- meteorological equipment
- maintenance and operations building
- paving and fencing
- electrical substations
- interconnection facilities.

*NOTE-* The map in TAB 11 shows the proposed project area with the preliminary panel and inverter locations. The exact placement of these panels and inverters is subject to ongoing planning, soil studies, and engineering and will be determined before construction begins.



TAB 9

Description of Land

Not applicable. The land on which the new buildings and new improvements will be built, is not being claimed as part of the qualified property described by §313.021(2)(A).



TAB 10

Description of all property not eligible to become qualified property (if applicable)

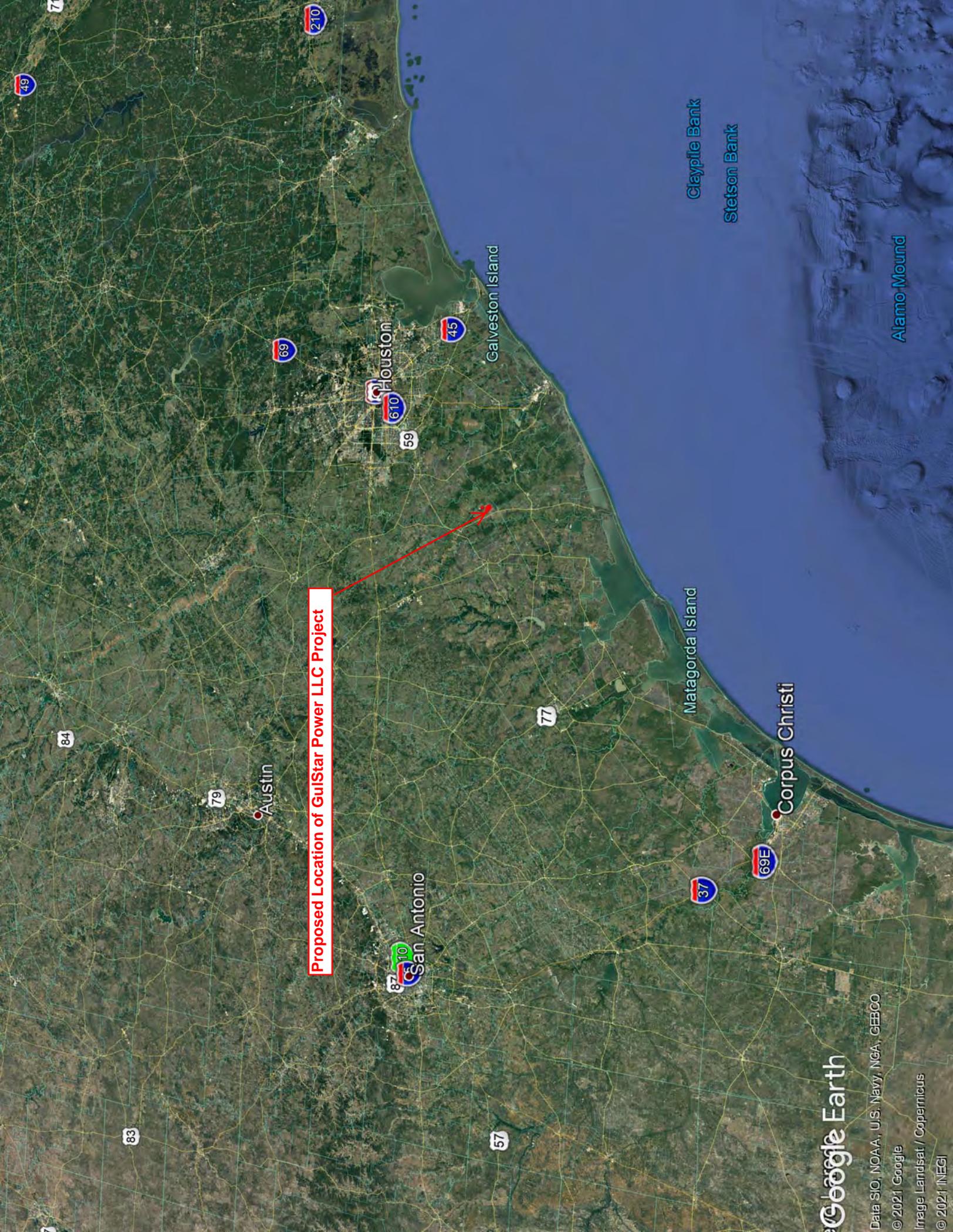
None



TAB 11

*Maps that clearly show:*

- a) Project vicinity
- b) Qualified investment including location of new building or new improvements.
- c) Qualified property including location of new building or new improvements.
- d) Existing property
- e) Land location within vicinity map
- f) Reinvestment or Enterprise Zone within vicinity map, showing the actual or proposed boundaries and size.



Proposed Location of GulStar Power LLC Project

Google Earth

Data SIO, NOAA, U.S. Navy, NGA, GEBCO

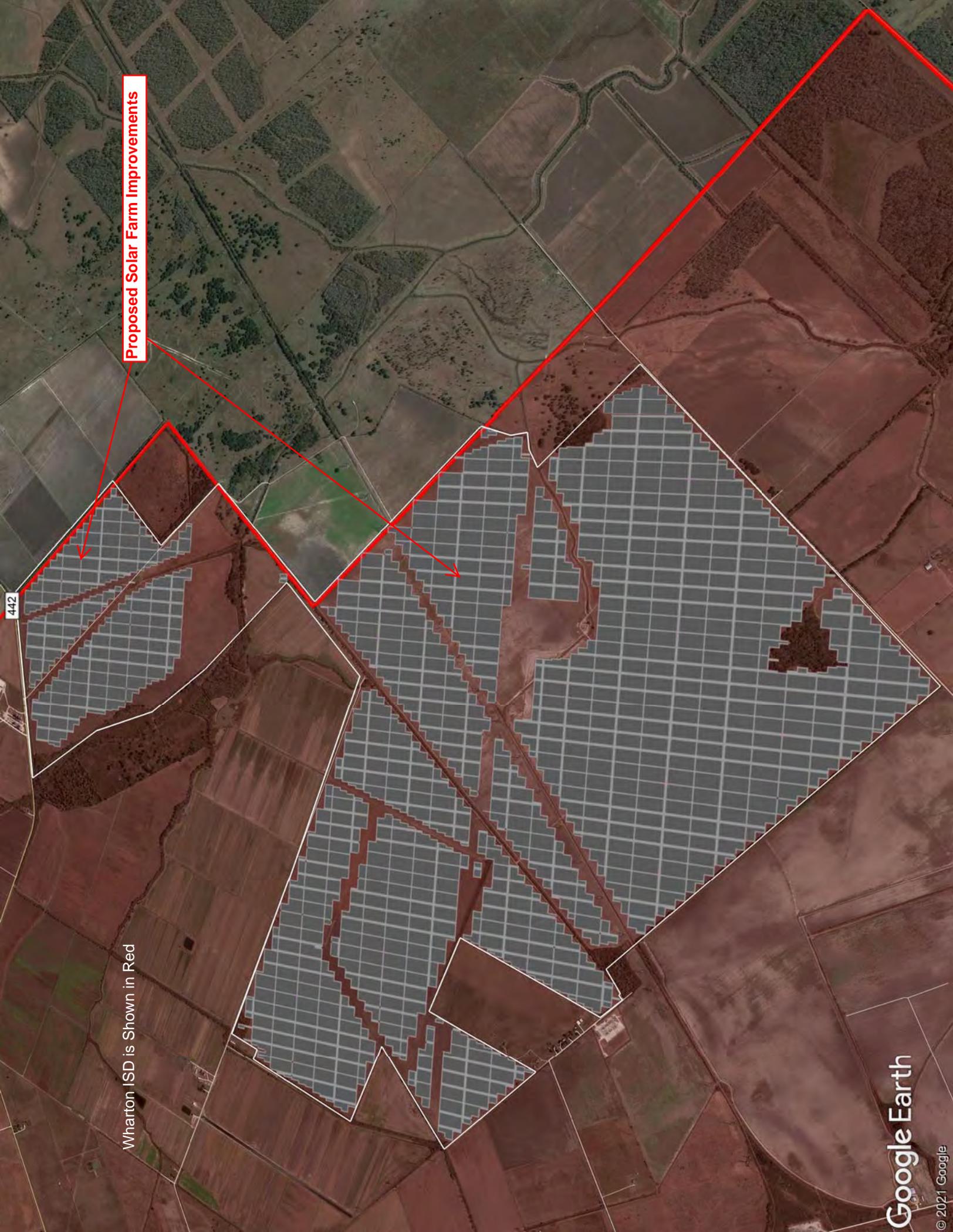
© 2021 Google

Image Landsat / Copernicus

© 2021 INEGI

Proposed Solar Farm Improvements

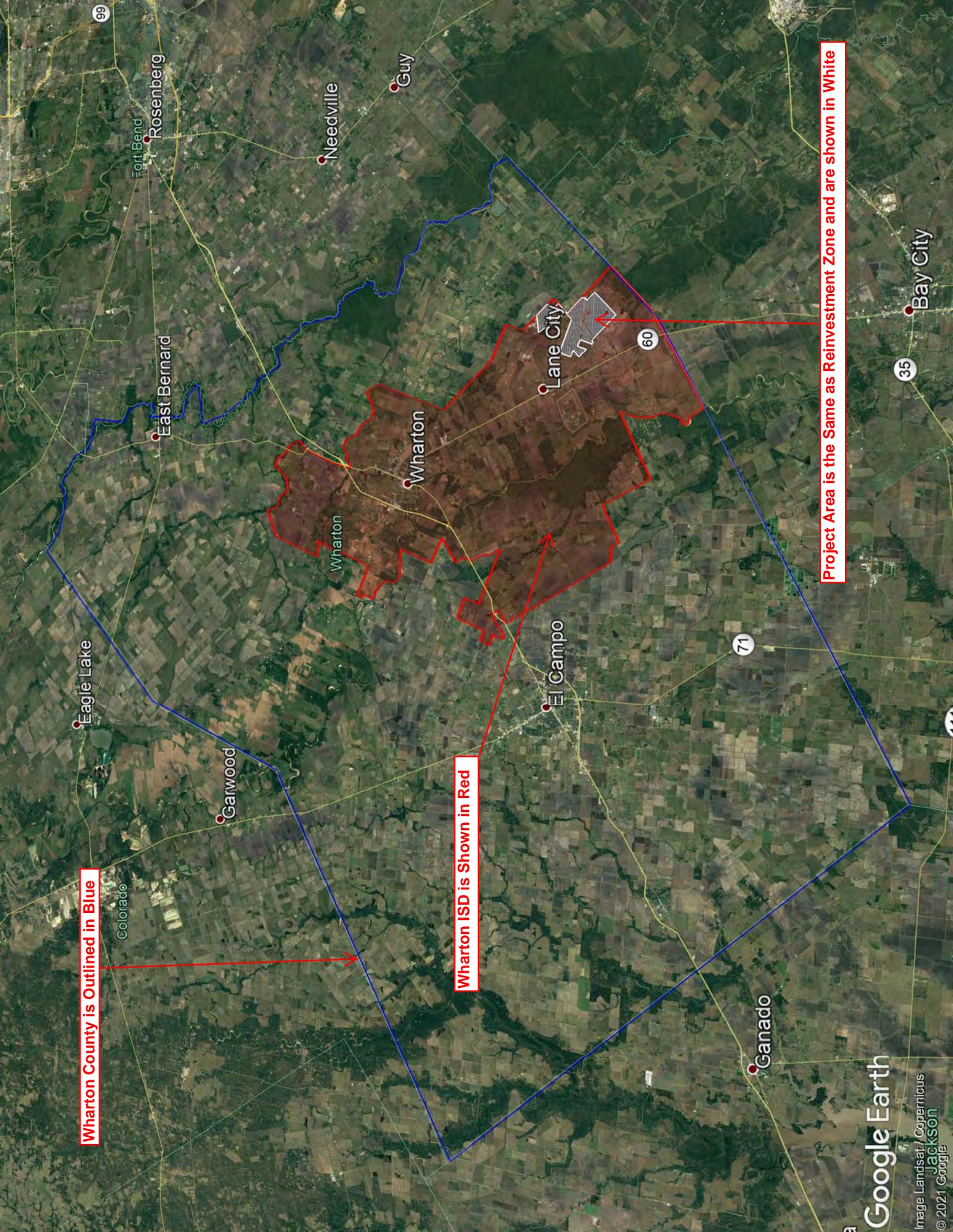
Wharton ISD is shown in Red

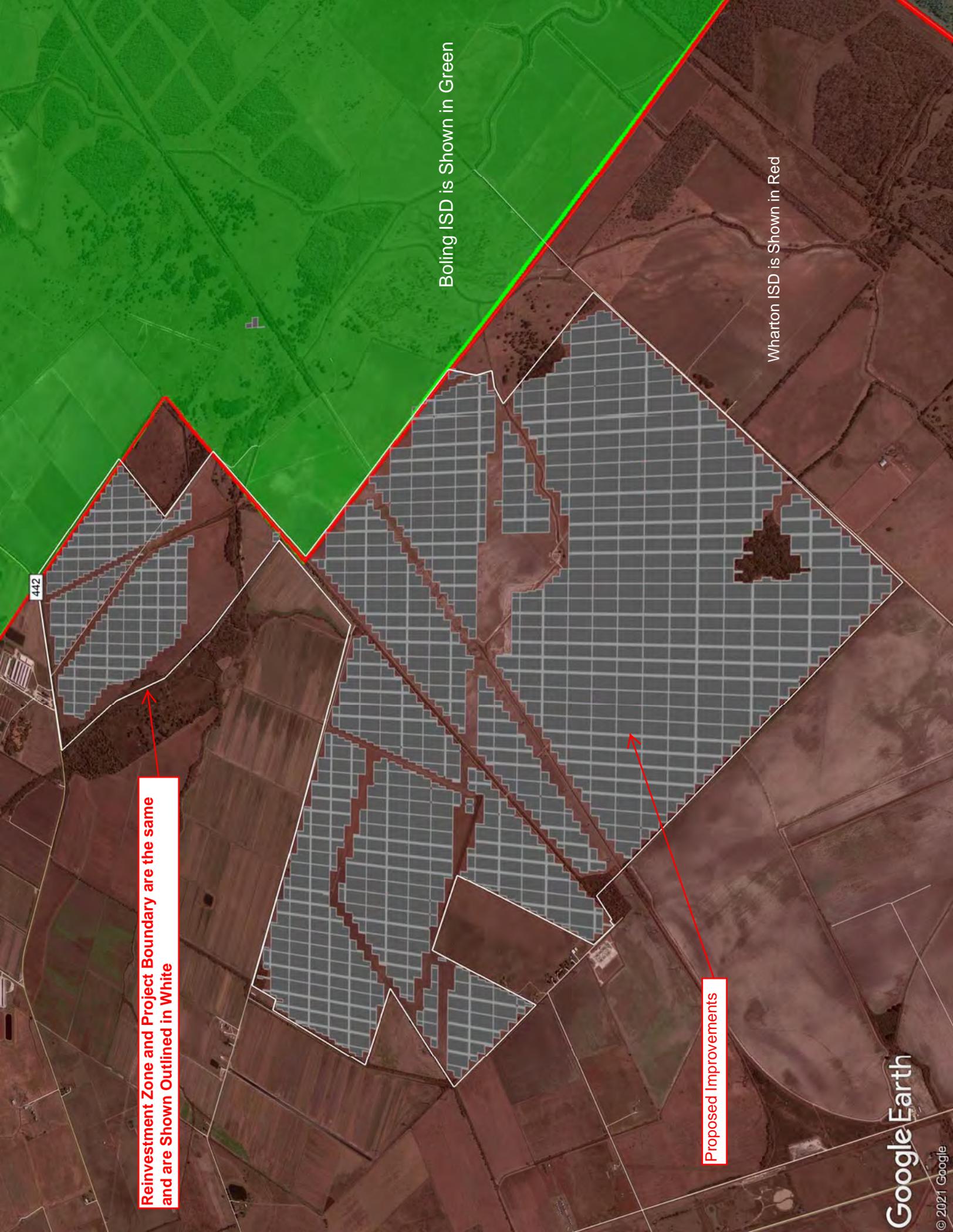


Wharton County is Outlined in Blue

Wharton ISD is Shown in Red

Project Area is the Same as Reinvestment Zone and are shown in White





Boiling ISD is Shown in Green

Wharton ISD is Shown in Red

Reinvestment Zone and Project Boundary are the same and are Shown Outlined in White

Proposed Improvements

442



TAB 12

*Request for Waiver of Job Creation Requirement and supporting information (if applicable)*

See Attached



CUMMINGS WESTLAKE  
PROPERTY TAX ADVISORS

April 15, 2021

Dr. Michael O'Guin  
Superintendent  
Wharton Independent School District  
2100 North Fulton  
Wharton, TX 77488

**Re: Chapter 313 Jobs Waiver Request**

Dear Superintendent O'Guin,

GulfStar Power, LLC requests that the Wharton Independent School District's Board of Trustees waive the job requirement provision as allowed by Section 313.025(f-1) of the Tax Code. This waiver would be based on the school district's board findings that the jobs creation requirement exceeds the industry standard for the number of employees reasonably necessary for the operation of the facility of the property owner that is described in the application.

GulfStar Power, LLC requests that the Board of Trustees make such a finding and waive the job creation requirement for 10 permanent jobs. In line with industry standard of one job for every 300 MW, GulfStar Power, LLC has committed to create two jobs for the project.

Solar projects create many full and part-time, but temporary jobs during the construction phase of the project but require a relatively small number of highly skilled technicians to operate and maintain the project after commercial operation commences.

The permanent employees of a solar project maintain, and service solar panels, underground electrical connections, substations and other infrastructure associate with the safe and reliable operation of the project. In addition to the onsite employees, there may be managers or technicians who support the project from offsite locations.

Sincerely,

Steven Van Dyck  
Partner  
Cummings Westlake, LLC



TAB 13

Calculation of three possible wage requirements with TWC documentation

- Wharton County average weekly wage for all jobs (all industries)
- Wharton County average weekly wage for all jobs (manufacturing)
- See attached Council of Governments Regional Wage Calculation and Documentation

**GulfStar Power, LLC**  
**TAB 13 TO CHAPTER 313 APPLICATION**

**WHARTON COUNTY**  
**CHAPTER 313 WAGE CALCULATION - ALL JOBS - ALL INDUSTRIES**

QUARTER	YEAR	AVG WEEKLY WAGES*	ANNUALIZED
FOURTH	2019	\$ 835	\$ 43,420
FIRST	2020	\$ 839	\$ 43,628
SECOND	2020	\$ 822	\$ 42,744
THIRD	2020	\$ 832	\$ 43,264
AVERAGE		\$ 832.00	\$ 43,264.00

**WHARTON COUNTY**  
**CHAPTER 313 WAGE CALCULATION - MANUFACTURING JOBS**

QUARTER	YEAR	AVG WEEKLY WAGES*	ANNUALIZED
FOURTH	2019	\$ 903	\$ 46,956
FIRST	2020	\$ 916	\$ 47,632
SECOND	2020	\$ 916	\$ 47,632
THIRD	2020	\$ 872	\$ 45,344
AVERAGE		\$ 901.75	\$ 46,891.00
X		110%	110%
		\$ 991.93	\$ 51,580.10

**CHAPTER 313 WAGE CALCULATION - REGIONAL WAGE RATE**

YEAR	AVG WEEKLY WAGES*	ANNUALIZED
2019	\$ 1,154	\$ 60,015
X	110%	110%
	\$ 1,269.55	\$ 66,016.50

\* SEE ATTACHED TWC DOCUMENTATION

Year	Period	Area	Ownership	Industry Code	Industry	Level	Average Weekly Wage
2019	04	Wharton	Total All	10	Total, All Industries	0	835
2020	01	Wharton	Total All	10	Total, All Industries	0	839
2020	02	Wharton	Total All	10	Total, All Industries	0	822
2020	03	Wharton	Total All	10	Total, All Industries	0	832

Year	Period	Area	Ownership	Industry Code	Industry	Level	Average Weekly Wage
2019	04	Wharton	Private	31-33	Manufacturing	2	903
2020	01	Wharton	Private	31-33	Manufacturing	2	916
2020	02	Wharton	Private	31-33	Manufacturing	2	916
2020	03	Wharton	Private	31-33	Manufacturing	2	872

**2019 Manufacturing Average Wages by Council of Government Region  
Wages for All Occupations**

COG	COG Number	Wages	
		Hourly	Annual
<a href="#">Panhandle Regional Planning Commission</a>	1	\$22.31	\$46,399
<a href="#">South Plains Association of Governments</a>	2	\$18.97	\$39,448
<a href="#">NORTEX Regional Planning Commission</a>	3	\$20.38	\$42,395
<a href="#">North Central Texas Council of Governments</a>	4	\$32.92	\$68,476
<a href="#">Ark-Tex Council of Governments</a>	5	\$20.09	\$41,780
<a href="#">East Texas Council of Governments</a>	6	\$28.95	\$60,211
<a href="#">West Central Texas Council of Governments</a>	7	\$21.83	\$45,406
<a href="#">Rio Grande Council of Governments</a>	8	\$18.15	\$37,749
<a href="#">Permian Basin Regional Planning Commission</a>	9	\$21.87	\$45,499
<a href="#">Concho Valley Council of Governments</a>	10	\$26.74	\$55,625
<a href="#">Heart of Texas Council of Governments</a>	11	\$22.41	\$46,614
<a href="#">Capital Area Council of Governments</a>	12	\$29.37	\$61,091
<a href="#">Brazos Valley Council of Governments</a>	13	\$17.60	\$36,613
<a href="#">Deep East Texas Council of Governments</a>	14	\$21.06	\$43,796
<a href="#">South East Texas Regional Planning Commission</a>	15	\$25.52	\$53,079
<b>Houston-Galveston Area Council</b>	<b>16</b>	<b>\$28.85</b>	<b>\$60,015</b>
<a href="#">Golden Crescent Regional Planning Commission</a>	17	\$21.43	\$44,565
<a href="#">Alamo Area Council of Governments</a>	18	\$26.64	\$55,401
<a href="#">South Texas Development Council</a>	19	\$18.70	\$38,889
<a href="#">Coastal Bend Council of Governments</a>	20	\$34.94	\$72,668
<a href="#">Lower Rio Grande Valley Development Council</a>	21	\$20.05	\$41,698
<a href="#">Texoma Council of Governments</a>	22	\$18.40	\$38,280
<a href="#">Central Texas Council of Governments</a>	23	\$21.07	\$43,821
<a href="#">Middle Rio Grande Development Council</a>	24	\$22.74	\$47,296
<b>Texas</b>		\$27.25	\$56,673

110% X \$60,015 = \$66,016.50

Calculated by the Texas Workforce Commission Labor Market and Career Information Department.  
 Data published: August 2020.  
 Data published annually, next update will likely be July 31, 2021  
 Annual Wage Figure assumes a 40-hour work week.

Note: Data is not supported by the Bureau of Labor Statistics (BLS).  
 Wage data is produced from Texas Occupational Employment Statistics (OES) data, and is not to be compared to BLS estimates.  
 Data intended only for use implementing Chapter 313, Texas Tax Code.



TAB 14

Schedules A1, A2, B, C and D completed and signed Economic Impact (if applicable)

See attached Schedules A1, A2, B and C

Applicant Name: GulfStar Power, LLC  
ISD Name: Wharton ISD

					PROPERTY INVESTMENT AMOUNTS				
					(Estimated investment in each year. Do not put cumulative totals.)				
					Column A	Column B	Column C	Column D	Column E
					New investment (original cost) in tangible personal property placed in service during this year that will become Qualified Property	New investment made during this year in buildings or permanent nonremovable components of buildings that will become Qualified Property	Other new investment made during this year that will not become Qualified Property [SEE NOTE]	Other new investment made during this year that may become Qualified Property [SEE NOTE]	Total Investment (Sum of Columns A+B+C+D)
Investment made before filing complete application with district	Year	School Year (YYYY-YYYY)	Tax Year (Fill in actual tax year below) YYYY		Not eligible to become Qualified Property				
Investment made after filing complete application with district, but before final board approval of application	-	Year preceding the first complete tax year of the qualifying time period (assuming no deferrals of qualifying time period)							
Investment made after final board approval of application and before Jan. 1 of first complete tax year of qualifying time period	QTF1	2022-2034	2022		142,500,000	-	-		142,500,000
Complete tax years of qualifying time period	QTF2	2023-2024	2023		398,500,000	500,000	-		399,000,000
					541,000,000	500,000	-		541,500,000
<b>Total Investment through Qualifying Time Period [ENTER this row in Schedule A2]</b>					<b>Enter amounts from TOTAL row above in Schedule A2</b>				
					<b>Total Qualified Investment (sum of green cells)</b>				
					541,500,000				

For All Columns: List amount invested each year, not cumulative totals.

Column A: This represents the total dollar amount of planned investment in tangible personal property. Only include estimates of investment for "replacement" property if the property is specifically described in the application. Only tangible personal property that is specifically described in the application can become qualified property.

Column B: The total dollar amount of planned investment each year in buildings or nonremovable component of buildings. Dollar value of other investment that may affect economic impact and total value. Examples of other investment—described in SECTION 13, question #6 of the application. functionally replaces existing property; is used to maintain, refurbish, renovate, modify or upgrade existing property; or is affixed to existing property—described in SECTION 13, question #6 of the application.

Column C: Dollar value of other investment that may affect economic impact and total value. Examples of other investment that may result in qualified property are land or professional services.

Column D: Dollar value of other investment that may affect economic impact and total value. Examples of other investment that may result in qualified property are land or professional services.

Total Investment: Add together each cell in a column and enter the sum in the blue total investment row. Enter the data from this row into the first row in Schedule A2.

Qualified Investment: For the green qualified investment cell, enter the sum of all the green-shaded cells.

Applicant Name GulfStar Power, LLC  
 ISD Name Wharton ISD

PROPERTY INVESTMENT AMOUNTS

(Estimated Investment in each year. Do not put cumulative totals.)

	Year	School Year (YYYY-YYYY)	Tax Year (Fill in actual tax year below) YYYY	Column A	Column B	Column C	Column D	Column E
				New investment (original cost) in tangible personal property placed in service during this year that will become Qualified Property	New investment made during this year in buildings or permanent nonremovable components of buildings that will become Qualified Property	Other investment made during this year that will become Qualified Property (SEE NOTE)	Other investment made during this year that will become Qualified Property (SEE NOTE)	Total Investment (A+B+C+D)
Total Investment from Schedule A1*	-	TOTALS FROM SCHEDULE A1	2022	541,500,000	-	-	-	541,500,000
Each year prior to start of value limitation period**	0	2022-2023	2022					
Each year prior to start of value limitation period**	0	2023-2024	2023					
Value limitation period**	1	2024-2025	2024	0	0	0	0	0
	2	2025-2026	2025	0	0	0	0	0
	3	2026-2027	2026	0	0	0	0	0
	4	2027-2028	2027	0	0	0	0	0
	5	2028-2029	2028	0	0	0	0	0
	6	2029-2030	2029	0	0	0	0	0
	7	2030-2031	2030	0	0	0	0	0
	8	2031-2032	2031	0	0	0	0	0
	9	2032-2033	2032	0	0	0	0	0
	10	2033-2034	2033	0	0	0	0	0
Total Investment made through limitation				541,500,000				541,500,000
Continue to maintain viable presence								
	11	2034-2035	2034					
	12	2035-2036	2035					
	13	2036-2037	2036					
	14	2037-2038	2037					
	15	2038-2039	2038					
	16	2039-2040	2039					
	17	2040-2041	2040					
	18	2041-2042	2041					
	19	2042-2043	2042					
	20	2043-2044	2043					
	21	2044-2045	2044					
	22	2045-2046	2045					
	23	2046-2047	2046					
	24	2047-2048	2047					
	25	2048-2049	2048					

\* All investments made through the qualifying time period are captured and totaled on Schedule A1 (blue box) and incorporated into this schedule in the first row.  
 \*\* Only investment made during deferrals of the start of the limitation (after the end of qualifying time period but before the start of the Value Limitation Period) should be included in the "Year prior to start of value limitation period" row(s). If the limitation starts at the end of the qualifying time period or the qualifying time period overlaps the limitation, no investment should be included on this line.  
 \*\*\* If your qualifying time period will overlap your value limitation period, do not also include investment made during the qualifying time period in years 1 and/or 2 of the value limitation period, depending on the overlap. Only include investments/years that were not captured on Schedule A1.  
 Column A: List amount invested each year, not cumulative totals. Only include investments in the remaining rows of Schedule A2 that were not captured on Schedule A1.  
 Column A: This represents the total dollar amount of planned investment in tangible personal property. Only include estimates of investment for "replacement" property if the property is specifically described in the application.  
 Column B: Only tangible personal property that is specifically described in the application can become qualified property.  
 Column C: The total dollar amount of planned investment each year in buildings or nonremovable components of buildings.  
 Column D: Dollar value of other investment that may affect economic impact and total value. Examples of other investment that will not become qualified property include investment meeting the definition of 313.021(1) but not creating a new improvement as defined by TAC 9.1051. This is proposed property that functionally replaces existing property; is used to maintain, refurbish, renovate, modify or upgrade existing property; or is affixed to existing property—described in SECTION 1.3, question #5 of the application.  
 Column E: Dollar value of other investment that may affect economic impact and total value. Examples of other investment that may result in qualified property are land or professional services.

# Schedule B: Estimated Market And Taxable Value (of Qualified Property Only)

Date  
 Applicant Name  
 ISD Name

3/15/2021  
 GulfStar Power, LLC  
 Wharton ISD

Form 50-296A  
 Revised October 2020

Each year prior to start of Value Limitation Period <i>Insert as many rows as</i>	Year	School Year (YYYY-YYYY)	Tax Year (Fill in actual tax year) YYYY	Qualified Property			Estimated Taxable Value		
				Estimated Market Value of Land	Estimated Total Market Value of new buildings or other new improvements	Estimated Total Market Value of tangible personal property in the new buildings or "in or on the new improvements"	Market Value less any exemptions (such as pollution control) and before limitation	Final taxable value for I&S after all reductions	Final taxable value for M&O after all reductions
		2022-2023	2022	0	0	0	0	0	0
		2023-2024	2023	0	0	71,250,000	71,250,000	71,250,000	71,250,000
Value Limitation Period	1	2024-2025	2024	0	500,000	333,791,430	334,291,430	334,291,430	30,000,000
	2	2025-2026	2025	0	487,500	307,045,092	307,532,592	307,532,592	30,000,000
	3	2026-2027	2026	0	475,300	278,183,427	278,658,727	278,658,727	30,000,000
	4	2027-2028	2027	0	463,400	246,991,317	247,454,717	247,454,717	30,000,000
	5	2028-2029	2028	0	451,800	213,325,350	213,777,150	213,777,150	30,000,000
	6	2029-2030	2029	0	440,500	176,970,408	177,410,908	177,410,908	30,000,000
	7	2030-2031	2030	0	429,500	137,711,373	138,140,873	138,140,873	30,000,000
	8	2031-2032	2031	0	418,800	95,297,274	95,716,074	95,716,074	30,000,000
	9	2032-2033	2032	0	408,300	71,706,000	72,114,300	72,114,300	30,000,000
	10	2033-2034	2033	0	398,100	71,706,000	72,104,100	72,104,100	30,000,000
11	2034-2035	2034	0	388,100	71,706,000	72,094,100	72,094,100	30,000,000	
12	2035-2036	2035	0	378,400	71,706,000	72,084,400	72,084,400	30,000,000	
13	2036-2037	2036	0	368,900	71,706,000	72,074,900	72,074,900	30,000,000	
14	2037-2038	2037	0	359,700	71,706,000	72,065,700	72,065,700	30,000,000	
15	2038-2039	2038	0	350,700	71,706,000	72,056,700	72,056,700	30,000,000	
16	2039-2040	2039	0	341,900	71,706,000	72,047,900	72,047,900	30,000,000	
17	2040-2041	2040	0	333,400	71,706,000	72,039,400	72,039,400	30,000,000	
18	2041-2042	2041	0	325,100	71,706,000	72,031,100	72,031,100	30,000,000	
19	2042-2043	2042	0	317,000	71,706,000	72,023,000	72,023,000	30,000,000	
20	2043-2044	2043	0	309,100	71,706,000	72,015,100	72,015,100	30,000,000	
21	2044-2045	2044	0	301,400	68,120,700	68,422,100	68,422,100	30,000,000	
22	2045-2046	2045	0	293,900	66,758,286	67,052,186	67,052,186	30,000,000	
23	2046-2047	2046	0	286,600	66,758,286	67,044,886	67,044,886	30,000,000	
24	2047-2048	2047	0	279,400	66,758,286	67,037,686	67,037,686	30,000,000	
25	2048-2049	2048	0	272,400	66,758,286	67,030,686	67,030,686	30,000,000	

Notes: Market value in future years is good faith estimate of future taxable value for the purposes of property taxation. Only include market value for eligible property on this schedule.

Date

3/15/2021

Applicant Name

GulfStar Power, LLC

ISD Name

Wharton ISD

Schedule C: Employment Information

Form 50-296A

Revised October 2020

	Year	School Year (YYYY-YYYY)	Tax Year (Actual tax year) YYYY	Construction		Qualifying Jobs		
				Column A Number of Construction FTE's	Column B Average annual wage rates for construction workers	Column C Non-Qualifying Jobs Number of non-qualifying jobs applicant estimates it will create (cumulative)	Column D Qualifying Jobs Number of new qualifying jobs applicant commits to create meeting all criteria of Sec. 313.021(3) (cumulative)	Column E Annual wage of new qualifying jobs
Value Limitation Period The qualifying time period could overlap the value limitation period.	1	2022-2023	2022	300FTE	52,000	0	0	0
	2	2023-2024	2023	300 FTE	52,000	0	0	0
	3	2024-2025	2024	N/A	N/A	0	2	51,600
	4	2025-2026	2025	N/A	N/A	0	2	51,600
	5	2026-2027	2026	N/A	N/A	0	2	51,600
	6	2027-2028	2027	N/A	N/A	0	2	51,600
	7	2028-2029	2028	N/A	N/A	0	2	51,600
	8	2029-2030	2029	N/A	N/A	0	2	51,600
	9	2030-2031	2030	N/A	N/A	0	2	51,600
	10	2031-2032	2031	N/A	N/A	0	2	51,600
Years Following Value Limitation Period	11 through 25	2032-2033	2032	N/A	N/A	0	2	51,600
		2033-2034	2033	N/A	N/A	0	2	51,600
		2035-2049	2035-2049	N/A	N/A	0	2	51,600

Notes: See TAC 9.1051 for definition of non-qualifying jobs.  
Only include jobs on the project site in this school district.



TAB 15

Economic Impact Analysis, other payments made in the state or other economic information (if applicable)

None



TAB 16

Description of Reinvestment Zone or Enterprise Zone, including:

- a) Evidence that the area qualifies as an enterprise zone as defined by the Governor's office
- b) Legal description of reinvestment zone\*
- c) Order, resolution, or ordinance established the reinvestment zone\*
- d) Guidelines and criteria for creating the zone\*

- a) Not applicable
- b) See Attached
- c) Will be provided once the Reinvestment Zone is Created by Wharton ISD.
- d) Guidelines and Criteria are not required for the school district to create the Zone.



TAB 17

Signature and Certification Page; signed and dated by Authorized School District Representative and Authorized Company Representative (applicant)

See Attached

SECTION 16: Authorized Signatures and Applicant Certification

After the application and schedules are complete, an authorized representative from the school district and the business should review the application documents and complete this authorization page. Attach the completed authorization page in Tab 17.

NOTE: If you amend your application, you will need to obtain new signatures and resubmit this page, Section 16, with the amendment request.

1. Authorized School District Representative Signature

I am the authorized representative for the school district to which this application is being submitted. I understand that this application is a government record as defined in Chapter 37 of the Texas Penal Code.

print here Dr. Michael O'Guin
Print Name (Authorized School District Representative)

Superintendent
Title

sign here [Handwritten Signature]
Signature (Authorized School District Representative)

4/16/2021
Date

2. Authorized Company Representative (Applicant) Signature and Notarization

I am the authorized representative for the business entity for the purpose of filing this application. I understand that this application is a government record as defined in Chapter 37 of the Texas Penal Code. The information contained in this application and schedules is true and correct to the best of my knowledge and belief.

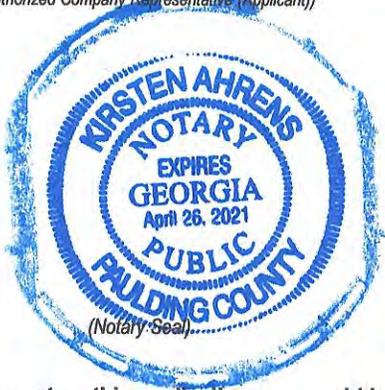
I hereby certify and affirm that the business entity I represent is in good standing under the laws of the state in which the business entity was organized and that no delinquent taxes are owed to the State of Texas.

print here Richard Gruber
Print Name (Authorized Company Representative (Applicant))

Chief Commercial Officer
Title

sign here [Handwritten Signature]
Signature (Authorized Company Representative (Applicant))

April 9, 2021
Date



GIVEN under my hand and seal of office this, the

9 day of April, 2021

[Handwritten Signature]
Notary Public in and for the State of Georgia

My Commission expires: 4-26-21

If you make a false statement on this application, you could be found guilty of a Class A misdemeanor or a state jail felony under Texas Penal Code Section 37.10.

# **ATTACHMENT B**



**GLENN HEGAR** TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

P.O. Box 13528 • Austin, TX 78711-3528

May 28, 2021

Dr. Michael O'Guin  
Superintendent  
Wharton Independent School District  
2100 North Fulton  
Wharton, Texas 77488

Re: Application for Limitation on Appraised Value of Property for School District Maintenance and Operations taxes by and between Wharton Independent School District and GulfStar Power LLC, Application 1588

Dear Superintendent O'Guin:

On April 22, 2021, the Comptroller's office received GulfStar Power LLC's (applicant) application for a limitation on appraised value (Application 1588) from Wharton Independent School District (school district).

The purpose of this letter is to inform you that the Comptroller's office has reviewed the submitted application and determined that it includes the information necessary to be determined as complete on May 28, 2021.

Texas Tax Code §313.025(d) directs the Comptroller's office to issue a certificate for a limitation on the appraised value of the property, or provide the governing body of the school district with a written explanation of the Comptroller's decision to not issue a certificate no later than the 90<sup>th</sup> day after receiving the completed application. The requirements to determine eligibility and to issue a certificate for a limitation do not begin until an application is complete as determined by this agency. The Comptroller's office will move forward with our economic impact evaluation and will send a letter of determination to the school district and the applicant.

This letter does not constitute a review of the application under Section 313.025(h) to determine if the project meets the requirements of Section 313.024 for eligibility for a limitation on appraised value. Likewise, this letter does not address the determinations required under Section 313.026(c).

Should you have any questions, please contact Desiree Caufield with our office. She can be reached by email at [desiree.caufield@cpa.texas.gov](mailto:desiree.caufield@cpa.texas.gov) or by phone toll-free at 1-800-531-5441, ext. 6-8597 or at 512-936-8597.

Sincerely,

DocuSigned by:  
  
8FDFC70F5753487...  
William Cunningham

Director  
Data Analysis & Transparency Division

cc: Chris Grammer, Culwell Consulting, LLC  
Richard Gruber, Merit SI, LLC  
Aaron Hall, Merit SI, LLC  
Steven Van Dyck, Cummings Westlake LLC

# **ATTACHMENT C**



**GLENN HEGAR** TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

P.O. Box 13528 • Austin, TX 78711-3528

August 13, 2021

Dr. Michael O'Guin  
Superintendent  
Wharton Independent School District  
2100 North Fulton  
Wharton, Texas 77488

Re: Certificate for Limitation on Appraised Value of Property for School District  
Maintenance and Operations taxes by and between Wharton Independent School  
District and GulfStar Power LLC, Application 1588

Dear Superintendent O'Guin:

On May 28, 2021, the Comptroller issued written notice that GulfStar Power LLC (applicant) submitted a completed application (Application 1588) for a limitation on appraised value under the provisions of Tax Code Chapter 313.<sup>1</sup> This application was originally submitted on April 15, 2021, to the Wharton Independent School District (school district) by the applicant.

This presents the results of the Comptroller's review of the application and determinations required:

- 1) under Section 313.025(h) to determine if the property meets the requirements of Section 313.024 for eligibility for a limitation on appraised value under Chapter 313, Subchapter C; and
- 2) under Section 313.025(d), to issue a certificate for a limitation on appraised value of the property and provide the certificate to the governing body of the school district or provide the governing body a written explanation of the Comptroller's decision not to issue a certificate, using the criteria set out in Section 313.026.

**Determination required by 313.025(h)**

Sec. 313.024(a)      Applicant is subject to tax imposed by Chapter 171.  
Sec. 313.024(b)      Applicant is proposing to use the property for an eligible project.

<sup>1</sup> All Statutory references are to the Texas Tax Code, unless otherwise noted.

Sec. 313.024(d) Applicant has requested a waiver to create the required number of new qualifying jobs and pay all jobs created that are not qualifying jobs a wage that exceeds the county average weekly wage for all jobs in the county where the jobs are located.

Sec. 313.024(d-2) Not applicable to Application 1588.

Based on the information provided by the applicant, the Comptroller has determined that the property meets the requirements of Section 313.024 for eligibility for a limitation on appraised value under Chapter 313, Subchapter C.

**Certificate decision required by 313.025(d)**

Determination required by 313.026(c)(1)

The Comptroller has determined that the project proposed by the applicant is reasonably likely to generate tax revenue in an amount sufficient to offset the school 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, see Attachment B.

Determination required by 313.026(c)(2)

The Comptroller has determined that the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in this state, see Attachment C.

Based on these determinations, the Comptroller issues a certificate for a limitation on appraised value. This certificate is contingent on the school district's receipt and acceptance of the Texas Education Agency's determination per 313.025(b-1).

The Comptroller's review of the application assumes the accuracy and completeness of the statements in the application. If the application is approved by the school district, the applicant shall perform according to the provisions of the Texas Economic Development Act Agreement (Form 50-826) executed with the school district. The school district shall comply with and enforce the stipulations, provisions, terms, and conditions of the agreement, applicable Texas Administrative Code and Chapter 313, per TAC 9.1054(i)(3).

This certificate is no longer valid if the application is modified, the information presented in the application changes, or the limitation agreement does not conform to the application. Additionally, this certificate is contingent on the school district approving and executing the agreement by December 31, 2021.

Note that any building or improvement existing as of the application review start date of May 28, 2021 or any tangible personal property placed in service prior to that date may not become "Qualified Property" as defined by 313.021(2) and the Texas Administrative Code.

Should you have any questions, please contact Will Counihan, Director, Data Analysis & Transparency, by email at [will.counihan@cpa.texas.gov](mailto:will.counihan@cpa.texas.gov) or by phone toll-free at 1-800-531-5441, ext. 6-0758, or at 512-936-0758.

Sincerely,

DocuSigned by:  
  
11EA6DEF0EC441E...

Lisa Craven  
Deputy Comptroller

Enclosure

cc: Will Counihan

## Attachment A - Economic Impact Analysis

The following tables summarize the Comptroller's economic impact analysis of GulfStar Power LLC (project) applying to Wharton Independent School District (district), as required by Tax Code, 313.026 and Texas Administrative Code 9.1055(d)(2).

**Table 1** is a summary of investment, employment and tax impact of GulfStar Power LLC.

Applicant	GulfStar Power LLC
Tax Code, 313.024 Eligibility Category	Renewable Energy - Solar
School District	Wharton ISD
2019-2020 Average Daily Attendance	1,750
County	Wharton
Proposed Total Investment in District	\$541,500,000
Proposed Qualified Investment	\$541,500,000
Limitation Amount	\$30,000,000
Qualifying Time Period (Full Years)	2022-2023
Number of new qualifying jobs committed to by applicant	2*
Number of new non-qualifying jobs estimated by applicant	0
Average weekly wage of qualifying jobs committed to by applicant	\$992.31
Minimum weekly wage required for each qualifying job by Tax Code, 313.021(5)(A)	\$991.93
Minimum annual wage committed to by applicant for qualified jobs	\$51,600
Minimum weekly wage required for non-qualifying jobs	\$833
Minimum annual wage required for non-qualifying jobs	\$43,316
Investment per Qualifying Job	\$270,750,000
Estimated M&O levy without any limit (15 years)	\$23,754,594
Estimated M&O levy with Limitation (15 years)	\$7,336,744
Estimated gross M&O tax benefit (15 years)	\$16,417,850

\* Applicant is requesting district to waive requirement to create minimum number of qualifying jobs pursuant to Tax Code, 313.025 (f-1).

**Table 2** is the estimated statewide economic impact of GulfStar Power LLC (modeled).

Year	Employment			Personal Income		
	Direct	Indirect + Induced	Total	Direct	Indirect + Induced	Total
2022	300	823	1123	\$15,600,000	\$63,013,000	\$78,613,000
2023	300	1,780	2080	\$15,600,000	\$139,429,000	\$155,029,000
2024	2	92	94	\$103,200	\$23,334,800	\$23,438,000
2025	2	21	23	\$103,200	\$14,056,800	\$14,160,000
2026	2	(25)	-23	\$103,200	\$7,098,800	\$7,202,000
2027	2	(45)	-43	\$103,200	\$3,070,800	\$3,174,000
2028	2	(59)	-57	\$103,200	\$628,800	\$732,000
2029	2	(57)	-55	\$103,200	-\$1,568,200	-\$1,465,000
2030	2	(49)	-47	\$103,200	-\$2,544,200	-\$2,441,000
2031	2	(41)	-39	\$103,200	-\$2,056,200	-\$1,953,000
2032	2	(25)	-23	\$103,200	-\$1,812,200	-\$1,709,000
2033	2	(16)	-14	\$103,200	-\$1,324,200	-\$1,221,000
2034	2	(10)	-8	\$103,200	-\$591,200	-\$488,000
2035	2	(0)	2	\$103,200	-\$103,200	\$0
2036	2	6	8	\$103,200	\$628,800	\$732,000

Source: CPA REMI, GulfStar Power LLC

**Table 3** examines the estimated direct impact on ad valorem taxes to the region if all taxes are assessed.

Year	Estimated Taxable Value for I&S	Estimated Taxable Value for M&O	Tax Rate*	Wharton ISD I&S Tax Levy	Wharton ISD M&O Tax Levy	Wharton M&O and I&S Tax Levies	ESD #1 Tax Levy	ESD #3 Tax Levy	Cons Groundwater Tax Levy	Wharton Co Jr College Tax Levy	Estimated Total Property Taxes
			0.2836	1.0028			0.0500	0.0836	0.0080	0.1368	
2023	\$71,250,000	\$71,250,000		\$202,065	\$714,495	\$916,560	\$35,625	\$59,551	\$5,693	\$97,499	\$1,114,927
2024	\$334,291,430	\$334,291,430		\$948,050	\$3,352,274	\$4,300,325	\$167,146	\$279,401	\$26,710	\$457,444	\$5,231,026
2025	\$307,532,592	\$307,532,592		\$872,162	\$3,083,937	\$3,956,099	\$153,766	\$257,036	\$24,572	\$420,828	\$4,812,301
2026	\$278,658,727	\$278,658,727		\$790,276	\$2,794,390	\$3,584,666	\$139,329	\$232,903	\$22,265	\$381,317	\$4,360,480
2027	\$247,454,717	\$247,454,717		\$701,782	\$2,481,476	\$3,183,257	\$123,727	\$206,823	\$19,772	\$338,617	\$3,872,196
2028	\$213,777,150	\$213,777,150		\$606,272	\$2,143,757	\$2,750,029	\$106,889	\$178,675	\$17,081	\$292,533	\$3,345,206
2029	\$177,410,908	\$177,410,908		\$503,137	\$1,779,077	\$2,282,214	\$88,705	\$148,280	\$14,175	\$242,769	\$2,776,144
2030	\$138,140,873	\$138,140,873		\$391,768	\$1,385,277	\$1,777,044	\$69,070	\$115,458	\$11,037	\$189,032	\$2,161,642
2031	\$95,716,074	\$95,716,074		\$271,451	\$959,841	\$1,231,292	\$47,858	\$79,999	\$7,648	\$130,978	\$1,497,775
2032	\$72,114,300	\$72,114,300		\$204,516	\$723,162	\$927,678	\$36,057	\$60,273	\$5,762	\$98,681	\$1,128,452
2033	\$72,104,100	\$72,104,100		\$204,487	\$723,060	\$927,547	\$36,052	\$60,265	\$5,761	\$98,667	\$1,128,292
2034	\$72,094,100	\$72,094,100		\$204,459	\$722,960	\$927,419	\$36,047	\$60,256	\$5,760	\$98,654	\$1,128,136
2035	\$72,084,400	\$72,084,400		\$204,431	\$722,862	\$927,294	\$36,042	\$60,248	\$5,760	\$98,640	\$1,127,984
2036	\$72,074,900	\$72,074,900		\$204,404	\$722,767	\$927,172	\$36,037	\$60,240	\$5,759	\$98,627	\$1,127,835
2037	\$72,065,700	\$72,065,700		\$204,378	\$722,675	\$927,053	\$36,033	\$60,233	\$5,758	\$98,615	\$1,127,691
2038	\$72,056,700	\$72,056,700		\$204,353	\$722,585	\$926,937	\$36,028	\$60,225	\$5,757	\$98,602	\$1,127,550
			<b>Total</b>	<b>\$6,717,992</b>	<b>\$23,754,594</b>	<b>\$30,472,586</b>	<b>\$1,184,413</b>	<b>\$1,979,865</b>	<b>\$189,269</b>	<b>\$3,241,502</b>	<b>\$37,067,637</b>

Source: CPA, GulfStar Power LLC

\*Tax Rate per \$100 Valuation

**Table 4** examines the estimated direct impact on ad valorem taxes to the school district and Wharton County, with all property tax incentives sought being granted using estimated market value from the application. The project has applied for a value limitation under Chapter 313, Tax Code.

The difference noted in the last line is the difference between the totals in Table 3 and Table 4.

Year	Estimated Taxable Value for I&S	Estimated Taxable Value for M&O	Tax Rate*	Wharton ISD I&S Tax Levy	Wharton ISD M&O Tax Levy	Wharton M&O and I&S Tax Levies	ESD #1 Tax Levy	ESD #3 Tax Levy	Cons Groundwater Tax Levy	Wharton Co Jr College Tax Levy	Estimated Total Property Taxes
2023	\$71,250,000	\$71,250,000	0.2836	\$202,065	\$714,495	\$916,560	\$35,625	\$59,551	\$5,693	\$97,499	\$1,011,736
2024	\$334,291,430	\$30,000,000		\$948,050	\$300,840	\$1,248,890	\$167,146	\$279,401	\$26,710	\$457,444	\$1,695,437
2025	\$307,532,592	\$30,000,000		\$872,162	\$300,840	\$1,173,002	\$153,766	\$257,036	\$24,572	\$420,828	\$1,583,804
2026	\$278,658,727	\$30,000,000		\$790,276	\$300,840	\$1,091,116	\$139,329	\$232,903	\$22,265	\$381,317	\$1,463,348
2027	\$247,454,717	\$30,000,000		\$701,782	\$300,840	\$1,002,622	\$123,727	\$206,823	\$19,772	\$338,617	\$1,333,172
2028	\$213,777,150	\$30,000,000		\$606,272	\$300,840	\$907,112	\$106,889	\$178,675	\$17,081	\$292,533	\$1,192,676
2029	\$177,410,908	\$30,000,000		\$503,137	\$300,840	\$803,977	\$88,705	\$148,280	\$14,175	\$242,769	\$1,040,963
2030	\$138,140,873	\$30,000,000		\$391,768	\$300,840	\$692,608	\$69,070	\$115,458	\$11,037	\$189,032	\$877,136
2031	\$95,716,074	\$30,000,000		\$271,451	\$300,840	\$572,291	\$47,858	\$79,999	\$7,648	\$130,978	\$700,148
2032	\$72,114,300	\$30,000,000		\$204,516	\$300,840	\$505,356	\$36,057	\$60,273	\$5,762	\$98,681	\$601,686
2033	\$72,104,100	\$30,000,000		\$204,487	\$300,840	\$505,327	\$36,052	\$60,265	\$5,761	\$98,667	\$601,644
2034	\$72,094,100	\$72,094,100		\$204,459	\$722,960	\$927,419	\$36,047	\$60,256	\$5,760	\$98,654	\$1,023,722
2035	\$72,084,400	\$72,084,400		\$204,431	\$722,862	\$927,294	\$36,042	\$60,248	\$5,760	\$98,640	\$1,023,584
2036	\$72,074,900	\$72,074,900		\$204,404	\$722,767	\$927,172	\$36,037	\$60,240	\$5,759	\$98,627	\$1,023,449
2037	\$72,065,700	\$72,065,700		\$204,378	\$722,675	\$927,053	\$36,033	\$60,233	\$5,758	\$98,615	\$1,023,319
2038	\$72,056,700	\$72,056,700		\$204,353	\$722,585	\$926,937	\$36,028	\$60,225	\$5,757	\$98,602	\$1,023,191
			<b>Total</b>	<b>\$6,717,992</b>	<b>\$7,336,744</b>	<b>\$14,054,736</b>	<b>\$1,184,413</b>	<b>\$1,979,865</b>	<b>\$189,269</b>	<b>\$3,241,502</b>	<b>\$17,219,015</b>
			<b>Diff</b>	<b>\$0</b>	<b>\$16,417,850</b>	<b>\$16,417,850</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$19,848,622</b>

Source: CPA, GulfStar Power LLC

\*Tax Rate per \$100 Valuation

**Disclaimer:** This examination is based on information from the application submitted to the school district and forwarded to the comptroller. It is intended to meet the statutory requirement of Chapter 313 of the Tax Code and is not intended for any other purpose.

## Attachment B – Tax Revenue before 25<sup>th</sup> Anniversary of Limitation Start

This represents the Comptroller’s determination that GulfStar Power LLC (project) is reasonably likely to generate, before the 25th anniversary of the beginning of the limitation period, tax revenue in an amount sufficient to offset the school district maintenance and operations ad valorem tax revenue lost as a result of the agreement. This evaluation is based on an analysis of the estimated M&O portion of the school district property tax levy and direct, indirect and induced tax effects from project employment directly related to this project, using estimated taxable values provided in the application.

	Tax Year	Estimated ISD M&O Tax Levy Generated (Annual)	Estimated ISD M&O Tax Levy Generated (Cumulative)	Estimated ISD M&O Tax Levy Loss as Result of Agreement (Annual)	Estimated ISD M&O Tax Levy Loss as Result of Agreement (Cumulative)
<b>Limitation Pre-Years</b>	2021	\$0	\$0	\$0	\$0
	2022	\$0	\$0	\$0	\$0
	2023	\$714,495	\$714,495	\$0	\$0
<b>Limitation Period (10 Years)</b>	2024	\$300,840	\$1,015,335	\$3,051,434	\$3,051,434
	2025	\$300,840	\$1,316,175	\$2,783,097	\$5,834,531
	2026	\$300,840	\$1,617,015	\$2,493,550	\$8,328,081
	2027	\$300,840	\$1,917,855	\$2,180,636	\$10,508,717
	2028	\$300,840	\$2,218,695	\$1,842,917	\$12,351,634
	2029	\$300,840	\$2,519,535	\$1,478,237	\$13,829,871
	2030	\$300,840	\$2,820,375	\$1,084,437	\$14,914,307
	2031	\$300,840	\$3,121,215	\$659,001	\$15,573,308
	2032	\$300,840	\$3,422,055	\$422,322	\$15,995,630
	2033	\$300,840	\$3,722,895	\$422,220	\$16,417,850
<b>Maintain Viable Presence (5 Years)</b>	2034	\$722,960	\$4,445,855	\$0	\$16,417,850
	2035	\$722,862	\$5,168,717	\$0	\$16,417,850
	2036	\$722,767	\$5,891,484	\$0	\$16,417,850
	2037	\$722,675	\$6,614,159	\$0	\$16,417,850
	2038	\$722,585	\$7,336,744	\$0	\$16,417,850
<b>Additional Years as Required by 313.026(c)(1) (10 Years)</b>	2039	\$722,496	\$8,059,240	\$0	\$16,417,850
	2040	\$722,411	\$8,781,651	\$0	\$16,417,850
	2041	\$722,328	\$9,503,979	\$0	\$16,417,850
	2042	\$722,247	\$10,226,225	\$0	\$16,417,850
	2043	\$722,167	\$10,948,393	\$0	\$16,417,850
	2044	\$686,137	\$11,634,530	\$0	\$16,417,850
	2045	\$672,399	\$12,306,929	\$0	\$16,417,850
	2046	\$672,326	\$12,979,255	\$0	\$16,417,850
	2047	\$672,254	\$13,651,509	\$0	\$16,417,850
	2048	\$672,184	\$14,323,693	\$0	\$16,417,850
		<b>\$14,323,693</b>	is less than	<b>\$16,417,850</b>	
<b>Analysis Summary</b>					
Is the project reasonably likely to generate tax revenue in an amount sufficient to offset the M&O levy loss as a result of the limitation agreement?					No
NOTE: The analysis above only takes into account this project's estimated impact on the M&O portion of the school district property tax levy directly related to this project.					

Source: CPA, GulfStar Power LLC

Year	Employment			Personal Income			Revenue & Expenditure		
	Direct	Indirect + Induced	Total	Direct	Indirect + Induced	Total	Revenue	Expenditure	Net Tax Effect
2022	300	823	1123	\$15,600,000	\$63,013,000	\$78,613,000	6775000	-2098000	\$8,873,000
2023	300	1,780	2080	\$15,600,000	\$139,429,000	\$155,029,000	14961000	-3021000	\$17,982,000
2024	2	92	94	\$103,200	\$23,334,800	\$23,438,000	1068000	2205000	-\$1,137,000
2025	2	21	23	\$103,200	\$14,056,800	\$14,160,000	916000	2228000	-\$1,312,000
2026	2	(25)	-23	\$103,200	\$7,098,800	\$7,202,000	679000	2144000	-\$1,465,000
2027	2	(45)	-43	\$103,200	\$3,070,800	\$3,174,000	465000	1968000	-\$1,503,000
2028	2	(59)	-57	\$103,200	\$628,800	\$732,000	343000	1793000	-\$1,450,000
2029	2	(57)	-55	\$103,200	-\$1,568,200	-\$1,465,000	298000	1617000	-\$1,319,000
2030	2	(49)	-47	\$103,200	-\$2,544,200	-\$2,441,000	275000	1442000	-\$1,167,000
2031	2	(41)	-39	\$103,200	-\$2,056,200	-\$1,953,000	259000	1244000	-\$985,000
2032	2	(25)	-23	\$103,200	-\$1,812,200	-\$1,709,000	275000	1099000	-\$824,000
2033	2	(16)	-14	\$103,200	-\$1,324,200	-\$1,221,000	259000	954000	-\$695,000
2034	2	(10)	-8	\$103,200	-\$591,200	-\$488,000	214000	847000	-\$633,000
2035	2	(0)	2	\$103,200	-\$103,200	\$0	198000	740000	-\$542,000
2036	2	6	8	\$103,200	\$628,800	\$732,000	191000	633000	-\$442,000
2037	2	8	10	\$103,200	\$1,605,800	\$1,709,000	183000	557000	-\$374,000
2038	2	6	8	\$103,200	\$2,582,800	\$2,686,000	198000	496000	-\$298,000
2039	2	16	18	\$103,200	\$3,314,800	\$3,418,000	183000	443000	-\$260,000
2040	2	16	18	\$103,200	\$3,558,800	\$3,662,000	168000	374000	-\$206,000
2041	2	16	18	\$103,200	\$3,558,800	\$3,662,000	153000	343000	-\$190,000
2042	2	16	18	\$103,200	\$4,535,800	\$4,639,000	183000	313000	-\$130,000
2043	2	12	14	\$103,200	\$4,779,800	\$4,883,000	153000	275000	-\$122,000
2044	2	10	12	\$103,200	\$4,779,800	\$4,883,000	153000	275000	-\$122,000
2045	2	18	20	\$103,200	\$4,779,800	\$4,883,000	137000	145000	-\$8,000
2046	2	8	10	\$103,200	\$5,755,800	\$5,859,000	198000	175000	\$23,000
2047	2	18	20	\$103,200	\$6,732,800	\$6,836,000	259000	114000	\$145,000
2048	2	19	21	\$103,200	\$7,220,800	\$7,324,000	229000	114000	\$115,000
2049	2	16	18	\$103,200	\$7,220,800	\$7,324,000	259000	76000	\$183,000
						<b>Total</b>	<b>\$29,632,000</b>	<b>\$17,495,000</b>	<b>\$12,137,000</b>
							<b>\$26,460,693</b>	is greater than	<b>\$16,417,850</b>
<b>Analysis Summary</b>									
Is the project reasonably likely to generate tax revenue in an amount sufficient to offset the M&O levy loss as a result of the limitation agreement?									Yes

Disclaimer: This examination is based on information from the application submitted to the school district and forwarded to the comptroller. It is intended to meet the statutory requirement of Chapter 313 of the Tax Code and is not intended for any other purpose.

## Attachment C – Limitation as a Determining Factor

Tax Code 313.026 states that the Comptroller may not issue a certificate for a limitation on appraised value under this chapter for property described in an application unless the comptroller determines that “the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in this state.” This represents the basis for the Comptroller’s determination.

### Methodology

Texas Administrative Code 9.1055(d) states the Comptroller shall review any information available to the Comptroller including:

- the application, including the responses to the questions in Section 8 (Limitation as a Determining Factor);
- public documents or statements by the applicant concerning business operations or site location issues or in which the applicant is a subject;
- statements by officials of the applicant, public documents or statements by governmental or industry officials concerning business operations or site location issues;
- existing investment and operations at or near the site or in the state that may impact the proposed project;
- announced real estate transactions, utility records, permit requests, industry publications or other sources that may provide information helpful in making the determination; and
- market information, raw materials or other production inputs, availability, existing facility locations, committed incentives, infrastructure issues, utility issues, location of buyers, nature of market, supply chains, other known sites under consideration.

### Determination

The Comptroller **has determined** that the limitation on appraised value is a determining factor in the GulfStar Power LLC’s decision to invest capital and construct the project in this state. This is based on information available, including information provided by the applicant. Specifically, the comptroller notes the following:

- Per GulfStar Power LLC in Tab 5 of their Application for a Limitation on Appraised Value:
  - A. “Since this Project is still in early- to midstage of development, further investment could be redeployed to other counties within the state of Texas or an entirely different state within the United States. Merit SI is currently considering comparable solar development opportunities within New Mexico, Arizona, and Colorado. This Project, as with the aforementioned projects, are limited to a finite amount of capital investment.”
  - B. “Due to an extremely competitive power market in Texas, the Chapter 313 appraised value limitation agreement is a necessity for a solar project of this size, and the commercial terms associated have a significant impact on the project’s likelihood for success.”
  - C. “Therefore, this appraised value limitation is critical to the ability of the proposed project to move forward as currently sited within the Wharton Independent School District.”

### Supporting Information

- a) Section 8 of the Application for a Limitation on Appraised Value
- b) Attachments provided in Tab 5 of the Application for a Limitation on Appraised Value
- c) Additional information provided by the Applicant or located by the Comptroller

**Disclaimer:** This examination is based on information from the application submitted to the school district and forwarded to the comptroller. It is intended to meet the statutory requirement of Chapter 313 of the Tax Code and is not intended for any other purpose.

# **Supporting Information**

Section 8 of the Application for  
a Limitation on Appraised Value

**SECTION 8: Limitation as Determining Factor**

- 1. Does the applicant currently own the land on which the proposed project will occur?  Yes  No
- 2. Has the applicant entered into any agreements, contracts or letters of intent related to the proposed project?  Yes  No
- 3. Does the applicant have current business activities at the location where the proposed project will occur?  Yes  No
- 4. Has the applicant made public statements in SEC filings or other documents regarding its intentions regarding the proposed project location?  Yes  No
- 5. Has the applicant received any local or state permits for activities on the proposed project site?  Yes  No
- 6. Has the applicant received commitments for state or local incentives for activities at the proposed project site?  Yes  No
- 7. Is the applicant evaluating other locations not in Texas for the proposed project?  Yes  No
- 8. Has the applicant provided capital investment or return on investment information for the proposed project in comparison with other alternative investment opportunities?  Yes  No
- 9. Has the applicant provided information related to the applicant's inputs, transportation and markets for the proposed project?  Yes  No
- 10. Are you submitting information to assist in the determination as to whether the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in Texas?  Yes  No

**Chapter 313.026(e) states "the applicant may submit information to the Comptroller that would provide a basis for an affirmative determination under Subsection (c)(2)." If you answered "yes" to any of the questions in Section 8, attach supporting information in Tab 5.**

**SECTION 9: Projected Timeline**

**NOTE:** Only construction beginning after the application review start date (the date the Texas Comptroller of Public Accounts deems the application complete) can be considered qualified property and/or qualified investment.

- 1. Estimated school board ratification of final agreement September 2021
- 2. Estimated commencement of construction May 2022
- 3. Beginning of qualifying time period (MM/DD/YYYY) January 1, 2022
- 4. First year of limitation (YYYY) January 1, 2024
- 4a. For the beginning of the limitation period, notate which **one of the following** will apply according to provision of 313.027(a-1)(2):
  - A. January 1 following the application date
  - B. January 1 following the end of QTP
  - C. January 1 following the commencement of commercial operations
- 5. Commencement of commercial operations October 2023

**SECTION 10: The Property**

- 1. County or counties in which the proposed project will be located Wharton
- 2. Central Appraisal District (CAD) that will be responsible for appraising the property Wharton CAD
- 3. Will this CAD be acting on behalf of another CAD to appraise this property?  Yes  No
- 4. List all taxing entities that have jurisdiction for the property, the portion of project within each entity and tax rates for each entity:
 

M&O (ISD): <u>Wharton ISD; 100% ; \$1.0028</u> <small>(Name, tax rate and percent of project)</small>	I&S (ISD): <u>Wharton ISD; 100%; \$0.2836</u> <small>(Name, tax rate and percent of project)</small>
County: <u>Wharton; 100%; \$0.45869</u> <small>(Name, tax rate and percent of project)</small>	City: <u>N/A</u> <small>(Name, tax rate and percent of project)</small>
Hospital District: <u>ESD #1; 100%; \$0.05</u> <small>(Name, tax rate and percent of project)</small>	Water District: <u>Cons Groundwater; 100%; \$0.00799</u> <small>(Name, tax rate and percent of project)</small>
Other (describe): <u>ESD #3; 100%; \$0.08358</u> <small>(Name, tax rate and percent of project)</small>	Other (describe): <u>Wharton Co Jr College; 100%; \$0.13684</u> <small>(Name, tax rate and percent of project)</small>

# **Supporting Information**

Attachments provided in Tab 5  
of the Application for a  
Limitation on Appraised Value



## TAB 5

*Documentation to assist in determining if limitation is a determining factor.*

Merit SI founders are experienced entrepreneurs who sold their first venture backed by Turner Enterprises to First Solar, a leading module manufacturer and turnkey plant provider. As former executives of First Solar, they led solar systems engineering and designed the world's first control system enabling solar power to provide essential grid services beyond variable energy. After designing and safely energizing over 2,000 megawatts of the world's largest solar power plants, they founded Merit SI to bring sustainable energy to critical infrastructure operators. A repeat investment of Turner Enterprises brought patient capital, strategic relationships, and additional finance expertise to the team.

Merit SI is keen to develop and build the proposed GulfStar Power, LLC Solar Project which is situated within the Wharton Independent School District. Since this Project is still in early- to mid-stage of development, further investment could be redeployed to other counties within the state of Texas or an entirely different state within the United States. Merit SI is currently considering comparable solar development opportunities within New Mexico, Arizona, and Colorado. This Project, as with the aforementioned projects, are limited to a finite amount of capital investment.

Consistent with the 313 applications filed by these companies on other renewable energy projects, the successful completion of market-competitive tax incentives is a necessity that provides a level playing field for all successful utility-scale solar projects in Texas. Key development characteristics, such as securing tax abatement commercial terms for example, will determine the ultimate location of the GulfStar Power, LLC Solar Project. Tax abatements, along with several other variables, have a significant impact on the competitiveness of the project's generation and ultimately likelihood for success. Therefore, Merit SI is continually comparing investment opportunities, rate of return, and market viability of each project based upon financial metrics.

Due to an extremely competitive power market in Texas, the Chapter 313 appraised value limitation agreement is a necessity for a solar project of this size, and the commercial terms associated have a significant impact on the project's likelihood for success. There are only a few developmental variables for solar project which enhance the economics (i.e., property taxes, land rental payment, geotechnical adders), and since solar projects all compete with each other within Texas, a project without an appraised value limitation agreement is not competitive and is very unlikely to reach the point of construction. Therefore, this appraised value limitation is critical to the ability of the proposed project to move forward as currently sited within the Wharton Independent School District.

# **Supporting Information**

Additional information  
provided by the Applicant or  
located by the Comptroller

# **ATTACHMENT D**



## Franchise Tax Account Status

As of : 11/15/2021 07:31:22

**This page is valid for most business transactions but is not sufficient for filings with the Secretary of State**

<b>GULFSTAR POWER LLC</b>	
<b>Texas Taxpayer Number</b>	32078246876
<b>Mailing Address</b>	211 E 7TH ST STE 620 AUSTIN, TX 78701-3218
<b>? Right to Transact Business in Texas</b>	ACTIVE
<b>State of Formation</b>	DE
<b>Effective SOS Registration Date</b>	03/15/2021
<b>Texas SOS File Number</b>	0803974173
<b>Registered Agent Name</b>	CORPORATION SERVICE COMPANY
<b>Registered Office Street Address</b>	211 E. 7TH STREET SUITE 620 AUSTIN, TX 78701

# **ATTACHMENT E**

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

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by and between

**WHARTON INDEPENDENT SCHOOL DISTRICT**

and

**GULFSTAR POWER LLC**

*(Texas Taxpayer ID #32078246876)*

Comptroller Application #1588

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Dated

November 18, 2021

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

*STATE OF TEXAS* §

*COUNTY OF WHARTON* §

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 **WHARTON INDEPENDENT SCHOOL DISTRICT**, hereinafter referred to as the “District,” a lawfully created [independent or consolidated] school district within the State of Texas operating under and subject to the TEXAS EDUCATION CODE, and **GULFSTAR POWER LLC**, Texas Taxpayer Identification Number 32078246876 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 April 15, 2021, the Superintendent of Schools of the Wharton 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 April 15, 2021, 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 313.025 of the TEXAS TAX CODE;

**WHEREAS**, the District and the Texas Comptroller’s Office have determined that the Application is complete and May 28, 2021 is the Application Review Start Date as that term is defined by 34 TEXAS ADMIN. CODE Section 9.1051;

**WHEREAS**, pursuant to 34 TEXAS ADMIN. CODE Section 9.1054, the Application was delivered to the Wharton County Appraisal District established in Wharton County, Texas (the “Wharton 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 August 13, 2021, issued a certificate for limitation on appraised value of the property described in the Application and provided the certificate to the District;

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

**WHEREAS**, on November 2, 2021, 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 November 18, 2021, 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 November 18, 2021, pursuant to the provisions of 313.025(f-1) of the TEXAS TAX CODE, the Board of Trustees waived the job creation requirements set forth in Section 313.051(b) of the TEXAS TAX CODE;

**WHEREAS**, on November 15, 2021, 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 November 18, 2021, 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 GulfStar Power LLC, (Texas Taxpayer ID #32078246876), 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 April 22, 2021. 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 Wharton County Appraisal District.

“Board of Trustees” means the Board of Trustees of the Wharton Independent School District.

“Comptroller” means the Texas Comptroller of Public Accounts, or the designated representative of the Texas Comptroller of Public Accounts acting on behalf of 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 Wharton County, Texas.

“District” or “School District” means the Wharton 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 acts of God, war, fires, explosions, hurricanes, floods, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each Party must inform the other in writing with proof of receipt within 60 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.

“Aggregate Limit” means, for any Tax Year during the Limitation Period of this Agreement, an amount equal to the Net Tax Benefit to the Applicant.

“Applicable School Finance Law” means the State constitution and laws, agency regulations and/or judicial rulings then controlling the public school finance system for Texas public schools and school districts generally and the District specifically, in accordance with all provisions thereof applicable to any terms of this Agreement at the time any computation, calculation or obligation of either Party under this Agreement is required to be performed or for the period to which such computation, calculation or obligation relates, as applicable. The term includes any amendments or successor statutes that may be adopted in the future which affect the calculation of the District’s Maintenance and Operations Tax Revenue or the Applicant’s ad valorem tax obligation to the District, in each case, either with or without the limitation on appraised value of property pursuant to this Agreement.

“Commercial Operations” means the date on which Applicant declares that the construction of the project has been substantially completed, trial operation of the project has been completed, and the project is ready for dispatch.

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 payments paid by Applicant to compensate District for loss of revenue under this Agreement.

“Lost M&O Revenue” shall have the meaning set forth in Section 4.2

“Maintenance and Operations Tax Revenue” means (i) those revenues which the District receives from the levy of its annual ad valorem maintenance and operations tax pursuant to Section 45.002 of the TEXAS EDUCATION CODE, and Article VII § 3 of the TEXAS CONSTITUTION, plus (ii) all State revenues to which the District is or may be entitled under Chapter 42 of the TEXAS EDUCATION CODE, or any other statutory provision as well as any amendment or successor statute to these provisions, minus (iii) any amounts necessary to reimburse the State of Texas or another school district for the education of additional students pursuant to Chapter 41 of the TEXAS EDUCATION CODE, in each case, as any of the items in clauses (i), (ii), and (iii) above may be amended by Applicable School Finance Law from time to time. Maintenance and Operations Tax Revenue shall be the net amount of all such revenues, payments or other amount which the District is entitled to receive and retain from State and local funding for maintenance and operations purposes under Applicable School Finance Law.

“New M&O Revenue” means, with respect to any school year, the total State and local Maintenance and Operations Tax Revenue that the District actually received for such school year.

“Net Tax Benefit” means, for any Tax Year during the term of this Agreement, 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 such Tax Year 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 or any other governmental entity, including the State of Texas, for such Tax Year, plus (B) any and all payments due to the District under Articles IV, V, and VI of this Agreement for such Tax Year.

“Option to Terminate” means Applicant’s written notice to the District which: (i) in the event that Applicant determines that it will not commence or complete construction of the Applicant’s Qualified Investment prior to the beginning of the Tax Limitation Period notifies the District of Applicant’s unilateral determination to terminate this Agreement and in such event Applicant shall not have liability for any Supplemental Payments for any calendar year after the year in which an option to terminate under this subsection (i) is exercised; or, (ii) with respect to each Tax Year of the Tax Limitation Period beginning after the first Tax Year of the Tax Limitation Period, where 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 (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 Applicant may exercise the Subsection (ii) Option to Terminate this Agreement by notifying the District of its election in writing not later than July 31 of the year following the Tax Year where the payment otherwise due exceeded the amount of taxes

that Applicant would have paid had it not entered into the Agreement. Any termination of this Agreement under Subsection (ii) of this provision shall be effective immediately prior to the second Tax Year next following the Tax Year in which notice is given.

“*Original M&O Revenue*” means, with respect to any school year, the total State and local Maintenance and Operations Tax 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 been subject to the ad valorem maintenance and operations tax at the tax rate actually adopted by the District for the applicable Tax Year. For purposes of this calculation, the Third Party will base its calculations upon the District’s taxable value of property for the preceding year as certified by the Appraisal District for all taxable accounts in the District, *less* the Qualified Property subject to this Agreement, *plus* the total appraised value of the Qualified Property subject to this Agreement which is or would be used for the calculation of the District’s tax levy for debt service (interest and sinking fund) ad valorem tax purposes.

“*Third Party*” shall have the meaning set forth in Section 4.3.

**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 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 May 28, 2021, 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 November 18, 2021.

C. The Qualifying Time Period for this Agreement:

- i. Starts on January 1, 2022 a date not later than January 1 of the fourth Tax Year following the Application Approval Date for deferrals, as authorized by §313.027(h) of the TEXAS TAX CODE; and
- ii. Ends on December 31, 2023, 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, 2024, the first complete Tax Year that begins after the

- end of Qualifying TimePeriod; and
- ii. Ends on December 31, 2033, 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, 2038.

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. THIRTY MILLION DOLLARS (\$30,000,000).

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 \$30,000,000 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 \$883 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 QualifiedProperty 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)(5) of the TEXAS TAX CODE, renewable energy electric generation, as outlined in Section 313.024(b)(5) of the TEXAS TAX CODE and to the extent applicable that is consistent with the definitions of those terms used in Section 313.024(e)(2) of the TEXAS TAX CODE.

## **ARTICLE IV**

### **PROTECTION AGAINST LOSS OF FUTURE DISTRICT REVENUES**

#### **Section 4.1. INTENT OF PARTIES.**

Subject to the limitations contained in this Agreement, it is the intent of the Parties in accordance with the provisions of Section 313.027(f)(1) of the TEXAS TAX CODE and Section 48.256 (d) of the TEXAS EDUCATION CODE that the District shall be compensated by the Applicant as provided in this Article IV for any Lost M&O 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, **it is the intent of the Parties that the risk of any and all Lost M&O Revenue as a result of, or on account of, entering into this Agreement, will be borne by the Applicant and not by the District.**

Subject to the limitations contained in this Agreement, 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 in the first year of the Tax Limitation Period, and every year thereafter during the term of this Agreement.

#### **Section 4.2. CALCULATING LOST M&O REVENUE.**

Subject to the limitations contained in this Agreement, the amount to be paid by the Applicant to compensate the District for loss of M&O Revenue resulting from, or on account of, this Agreement for each year starting in the first year of the Tax Limitation Period and ending on December 31st of the last year of the Tax Limitation Period (the "Lost M&O Revenue") shall be determined in compliance with the Applicable School Finance Law in effect for such year and according to the following formula:

Subject to the limitations contained in this Agreement, 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 for each year for which the calculation is made.
- ii. For purposes of this calculation, the tax collection rate on the Applicant's Qualified Property 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 this 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 only the full Maintenance and Operations Tax Revenue impact caused by this Agreement. The Applicant shall not be responsible to reimburse the District for other revenue losses created by other agreements, or on account of or otherwise arising out of any other factors not contained in this Agreement.

#### **Section 4.3. 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 and appointed each year by the District, subject to approval by Applicant in writing, which approval shall not unreasonably be withheld.

#### **Section 4.4. 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 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 and appointed under Section 4.3. 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 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 4.5. 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 such appeal remains unresolved at the time the Third Party selected under Section 4.3 makes its calculations under this Agreement, the Third Party shall base its calculations upon the values placed upon the Applicant's Qualified Property by the Appraisal District. The calculations shall be readjusted, if necessary, based on the outcome of the appeal as set forth below.

If as a result of an appeal or for any other reason, the Taxable Value of the Applicant's Qualified Investment 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 4.6. 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 this Article IV, Article V, 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 Applicant, but subject to the provisions of Section 4.7 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 four (4) years after 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 4.7. PAYMENT BY APPLICANT.**

Subject to Section 4.9 below, 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. Subject to the limitation set forth in this Section 4.7 below, by such date, the Applicant shall also pay any amount billed by the Third Party for all calculations under this Agreement under Section 4.6 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. In no year shall the Applicant be responsible for the payment of an aggregate amount of fees and expenses under this Section 4.7 exceeding Fifteen Thousand Dollars (\$15,000). For any Tax Year outside of the Tax Limitation Period, Applicant shall not be responsible for payment of an aggregate amount of fees and expenses under this Section which exceeds Ten Thousand Dollars (\$10,000).

**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’s Maintenance and Operation Revenue 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 Article 4, the Applicant shall have the right to appeal such calculation or determination in accordance with the procedures set forth in Section 4.9.

**Section 4.9. RESOLUTION OF DISPUTES.**

Should the Applicant disagree with the Third Party calculations made pursuant to this Article IV of this Agreement, the Applicant may appeal the findings, in writing, to the Third Party within thirty (30) days following the later of (i) receipt of the certification, or (ii) the date the Applicant is granted access to the books, records, and other information in accordance with Section 4.6 for purposes of auditing or reviewing the information in connection with the certification. 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, and shall be without limitation of the Applicant's other rights and remedies available hereunder, at law or in equity.

**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 all non-reimbursed costs, certified by the District's external auditor to have been incurred by the District for extraordinary education-related expenses directly and solely related to the project that are not directly funded in state aid formulas, including expenses for the purchase of portable classrooms and the hiring of additional personnel to accommodate a temporary increase in student enrollment caused directly by such project. Applicant shall have the right to contest the findings of the District's external auditor pursuant to Section 4.9 above.

## **ARTICLE VI SUPPLEMENTAL PAYMENTS**

### **Section 6.1. SUPPLEMENTAL PAYMENTS.**

In interpreting the provisions of this Article VI, the Parties agree that, in addition to undertaking the responsibility for the payment of all of the amounts set forth under Article IV and 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 this Article VI are separate and independent of the obligation of the Applicant to pay the amounts described in Articles IV and V, and that all payments under Article VI are subject to the separate limitations contained in Section 6.2 and Section 6.3. Each Supplemental Payment shall be due and payable on January 31st of the year following that in which such Supplemental Payment accrued.

### **Section 6.2. SUPPLEMENTAL PAYMENT LIMITATION.**

Notwithstanding the foregoing:

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;

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.

D. For purposes of this Agreement, the calculation of the limit of the annual Supplemental Payment shall be the greater of \$50,000 or \$100 multiplied by the District’s Average Daily Attendance as calculated pursuant to Section 42.005 of the TEXAS EDUCATION CODE, based upon the District’s Average Daily Attendance for the previous school year.

Failure to pay such Supplemental Payments shall constitute Material Breach of this Agreement, as set forth more fully herein at Article IX.

**Section 6.3. PROCEDURES FOR SUPPLEMENTAL PAYMENT CALCULATIONS.**

All calculations required by this Article VI, including but not limited to: (i) the calculation of the Applicant’s Cumulative Payment Amount; (ii) the determination of both the Annual Limit and the Aggregate Limit; (iii) the effect, if any, of the Aggregate Limit upon the actual amount of Cumulative Payments eligible to be paid to the District by the Applicant; and (iv) the carry forward and accumulation of any of the Applicant’s Cumulative Payment Amounts unpaid by the Applicant due to the Aggregate Limit in previous years, shall be calculated by the Third Party selected pursuant to Section 4.3.

A. The calculations made by the Third Party shall be made at the same time and on the same schedule as the calculations made pursuant to Article IV.

B. The payment of all amounts due under this Article VI shall be made at the time set forth in Section 6.3.

C. Any appeal by the Applicant of the calculations made by the Third Party under this Article VI shall be done in the same manner as set forth in Article IV, above.

**Section 6.4. DISTRICT’S OPTION TO DESIGNATE SUCCESSOR BENEFICIARY.**

At any time during this Agreement, the Board of Trustees may, in its sole discretion, so long as such decision does not result in additional costs to the Applicant under this Agreement, direct that any of the Applicant’s payments under this Article VI be made to the District’s educational foundation or to a similar entity. Such foundation or entity may only use such funds received under this Article VI to support the educational mission of the District and its students. Any designation of such foundation or entity must be made by recorded vote of the Board of Trustees at a properly posted public meeting of the Board of Trustees. Any such designation will become effective after such public vote and the delivery of notice of said vote to the Applicant in conformance with the provisions of Section 10.1, below. Any designation of a successor beneficiary under this Section 6.5 shall not alter the limits on Supplemental Payments described in Sections 6.2 and 6.3, above. Notwithstanding the foregoing, any payments made by the Applicant shall be made in the manner and to the party designated in this Agreement, unless Applicant receives an unambiguous written notice from the District that such payments are to be made to a different party as provided in this Section 6.5.

**ARTICLE VII**  
**ANNUAL LIMITATION OF PAYMENTS BY APPLICANT**

**Section 7.1. EFFECT OF OPTIONAL TERMINATION.** Upon the exercise of the option to terminate, 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 ninety-six (96) 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;

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 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 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 Wharton 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 Wharton County, 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 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 7.1 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 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 \$30,000,000 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 REQUIRED NEW QUALIFYING JOBS** Pursuant to Section 313.0276 of the TEXAS TAX CODE, for any full Tax Year that commences after the project has become operational, in the event that it has been determined that the Applicant has failed to meet the job creation or retention requirements defined in Sections 9.1.C, the Applicant shall not be deemed to be in Material Breach of this Agreement until such time as the Comptroller has made a determination to rescind this Agreement under Section 313.0276 of TEXAS TAX CODE, and that determination is final.

**Section 9.8. 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:

Wharton Independent School District  
Attn: Superintendent  
2100 N Fulton St.  
Wharton, TX 77488  
Email: [therrington@whartonisd.net](mailto:therrington@whartonisd.net)

With a Copy to:

Michelle R. Morris  
Rogers, Morris & Grover, LLP  
5718 Westheimer Rd., Suite 1200  
Houston, Texas 77057  
[mmorris@rmgllp.com](mailto:mmorris@rmgllp.com)

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

Richard Gruber  
[rgrubder@meritsi.com](mailto:rgrubder@meritsi.com)

512-771-1555  
717 Texas Ave.  
12<sup>th</sup> Floor  
Houston, TX 77002

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.

D. A copy of any notice delivered to the Applicant shall also be delivered to any lender for which the Applicant has provided the District notice of collateral assignment information pursuant to Section 10.3.C, below.

**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.

**Section 10.3. 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 Wharton County.

**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 and Comptroller's office 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 \_\_\_ day of \_\_\_\_\_, 2021.

**GULFSTAR POWER LLC**

**WHARTON INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_  
Richard Gruber  
Chief Commercial Officer

By: \_\_\_\_\_  
Curtis W. Evans  
President, Board of Trustees

**ATTEST:**

\_\_\_\_\_  
Christine Stransky  
Secretary, Board of Trustees

## EXHIBIT 1

### DESCRIPTION AND LOCATION OF ENTERPRISE OR REINVESTMENT ZONE

[See Attached Resolution]

#### RESOLUTION OF THE WHARTON INDEPENDENT SCHOOL DISTRICT BOARD OF TRUSTEES DESIGNATING A REINVESTMENT ZONE

WHEREAS, the WHARTON INDEPENDENT SCHOOL DISTRICT (the "District"), acting by and through its Board of Trustees, desires to promote the development or redevelopment of an area within the District boundaries by the creation of a reinvestment zone pursuant to Texas Tax Code 312.0025 for the purpose of authorizing an Agreement for Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes as authorized by Texas Tax Code Chapter 313; and,

WHEREAS, the reinvestment zone created herein consists of approximately 3622 acres of land located near Lane City. The zone shall be referred to as the GulfStar Solar Reinvestment Zone (the "Reinvestment Zone").

NOW, THEREFORE, BE IT RESOLVED THAT:

SECTION 1. That the facts and recitations contained in the preamble of this Resolution are found and declared to be true and correct;

SECTION 2. The Board of Trustees, based on the evidence and testimony presented to it, makes the following findings:

- A. The boundaries of the Reinvestment Zone are depicted in Exhibit 1, and contain the parcels described in Exhibit 1.
- B. The creation of the Reinvestment Zone will result in benefits to the District and the improvements sought are feasible and practical.
- C. The Reinvestment Zone meets the criteria set forth in Texas Tax Code §312.0025 for the creation of a reinvestment zone in that as a result of the designation as a reinvestment zone and the granting of a limitation on appraised value, it is reasonably likely the designation will contribute to the expansion of primary employment, and/or will attract investment in the zone that will be a benefit to the property and the District, and will contribute to economic development within the District.

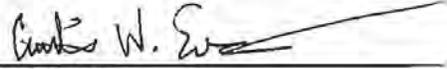
SECTION 3. Pursuant to the Property Redevelopment and Tax Abatement Act, as amended, the District creates a reinvestment zone under the provisions of Texas Tax Code § 312.0025, encompassing the area and tracts depicted and described in **EXHIBIT 1**, and such reinvestment zone is designated and shall be referred to as GulfStar Solar Reinvestment Zone.

SECTION 4. The Reinvestment Zone shall take effect upon adoption by the Board of Trustees and shall remain designated as a reinvestment zone for a period of twenty (20) years from such date of such designation.

SECTION 5. If any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution.

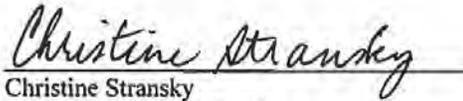
**SECTION 6.** A sufficient notice of the date, hour, place, and subject of the meeting of the District Board of Trustees, at which this Resolution was adopted, was posted at a place convenient and readily accessible at all times, as required by the Texas Open Government Act, Texas Government Code, Chapter 551, as amended.

ADOPTED and EXECUTED this 2nd day of November, 2021.



Curtis W. Evans  
President, Board of Trustees

ATTEST:



Christine Stransky  
Secretary, Board of Trustees

## EXHIBIT 1

### Location and Description of GulfStar Solar Reinvestment Zone



**EXHIBIT A**  
**To Memorandum of Agreement**

**PROPERTY DESCRIPTION**

The Property is generally depicted below and consists of approximately 3,622.554 acres of land located in Wharton County, Texas. The Property is comprised of three parcels, listed in the table below along with their size, geographic ID, legal description, and listed owner(s).

Parcel Number	Size (acres)	Geographic ID	Legal Description	Listed Owner(s)
R072305	1134.7494	20352-002-000-00	A20352 ABST 352 TRACT 2,3,5,6,7,22A,23 THRU 27, Acres. 1134.7494	Brooking 2012 Family Trust (56%) Brooking, Millard B. (44%)
R072306 R063228 R034769	2116.5886	20061-007-000-00	A20061 ABST 61 TRACT 7,7A,8,8A,9A,10,11,11A Acres: 2116.5886	Brooking 2012 Family Trust (56%) Brooking, Millard B. (44%)
R058598	371.2160	20352-000-075-80	A20352 ABST 352 TRACT 29,30,31,32 Acres: 371.2160	Brooking, Sherry C.

The parcels that comprise the Property have deeds recorded in the Wharton County Clerk records. These records can be found in the table below:

Parcel Number	Deed Sequence	Deed Date	Deed Volume	Deed Page
R072305	9	12/26/2012	907	285
R072306 R063228 R034769	9	12/26/2012	907	285
R058598	0	3/08/2004	547	114

## EXHIBIT 2

### DESCRIPTION AND LOCATION OF LAND

#### EXHIBIT A To Memorandum of Agreement

#### PROPERTY DESCRIPTION

The Property is generally depicted below and consists of approximately 3,622.554 acres of land located in Wharton County, Texas. The Property is comprised of three parcels, listed in the table below along with their size, geographic ID, legal description, and listed owner(s).

Parcel Number	Size (acres)	Geographic ID	Legal Description	Listed Owner(s)
R072305	1134.7494	20352-002-000-00	A20352 ABST.352 TRACT 2,3,5,6,7,22A,23 THRU 27, Acres: 1134.7494	Brooking 2012 Family Trust (56%) Brooking, Millard B. (44%)
R072306 R063228 R034769	2116.5886	20061-007-000-00	A20061 ABST.61 TRACT 7,7A,8,8A,9A,10,11,11A Acres: 2116.5886	Brooking 2012 Family Trust (56%) Brooking, Millard B. (44%)
R058598	371.2160	20352-000-075-80	A20352 ABST.352 TRACT 29,30,31,32 Acres: 371.2160	Brooking, Sherry C.

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R072306 R063228 R034769	9	12/26/2012	907	285
R058598	0	3/08/2004	547	114

## EXHIBIT 3

### APPLICANT'S QUALIFIED INVESTMENT



GULFSTAR POWER LLC

Chapter 313 Application Wharton ISD

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#### TAB 7

##### Description of Qualified Investment

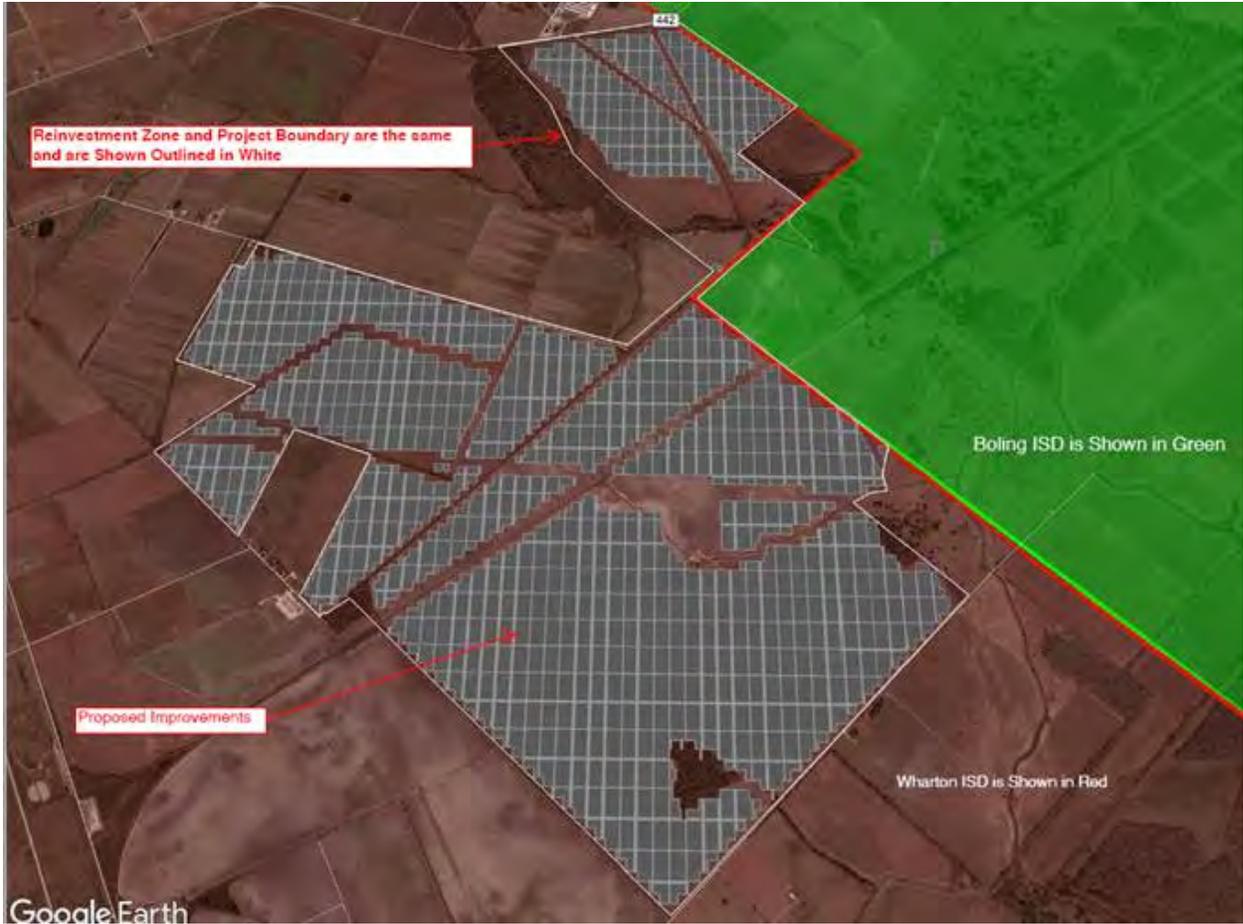
GulfStar Power, LLC proposes to construct a 570MW ac (net capacity) Photovoltaic solar facility that would be sited on approximately 3,200 acres of land approximately 3 miles east southeast of Lane City, TX in Wharton County. This application covers all qualified property in the reinvestment zone and project boundary within Wharton ISD necessary for the commercial operations of the proposed solar project described in Tab 4. Approximately 1,615,000 PV panels and 178 solar inverter would be located in Wharton ISD.

Qualified Investment includes

- collection systems
- transmission lines
- electrical interconnections
- roadways
- control systems necessary for commercial generation of electricity
- solar modules/panels
- foundations
- racking and mounting structures
- inverter boxes
- combiner boxes
- meteorological equipment
- maintenance and operations building
- paving and fencing
- electrical substations
- interconnection facilities.

*NOTE-* The map in TAB 11 shows the proposed project area with the preliminary panel and inverter locations. The exact placement of these panels and inverters is subject to ongoing planning, soil studies, and engineering and will be determined before construction begins.

ATTACHMENT TO APPLICATION FOR APPRAISED VALUE LIMITATION ON QUALIFIED PROPERTY BY  
GULFSTAR POWER LLC TO WHARTON ISD



## EXHIBIT 4

### DESCRIPTION AND LOCATION OF QUALIFIED PROPERTY



GULFSTAR POWER LLC

Chapter 313 Application Wharton ISD

#### TAB 8

##### Description of Qualified Property

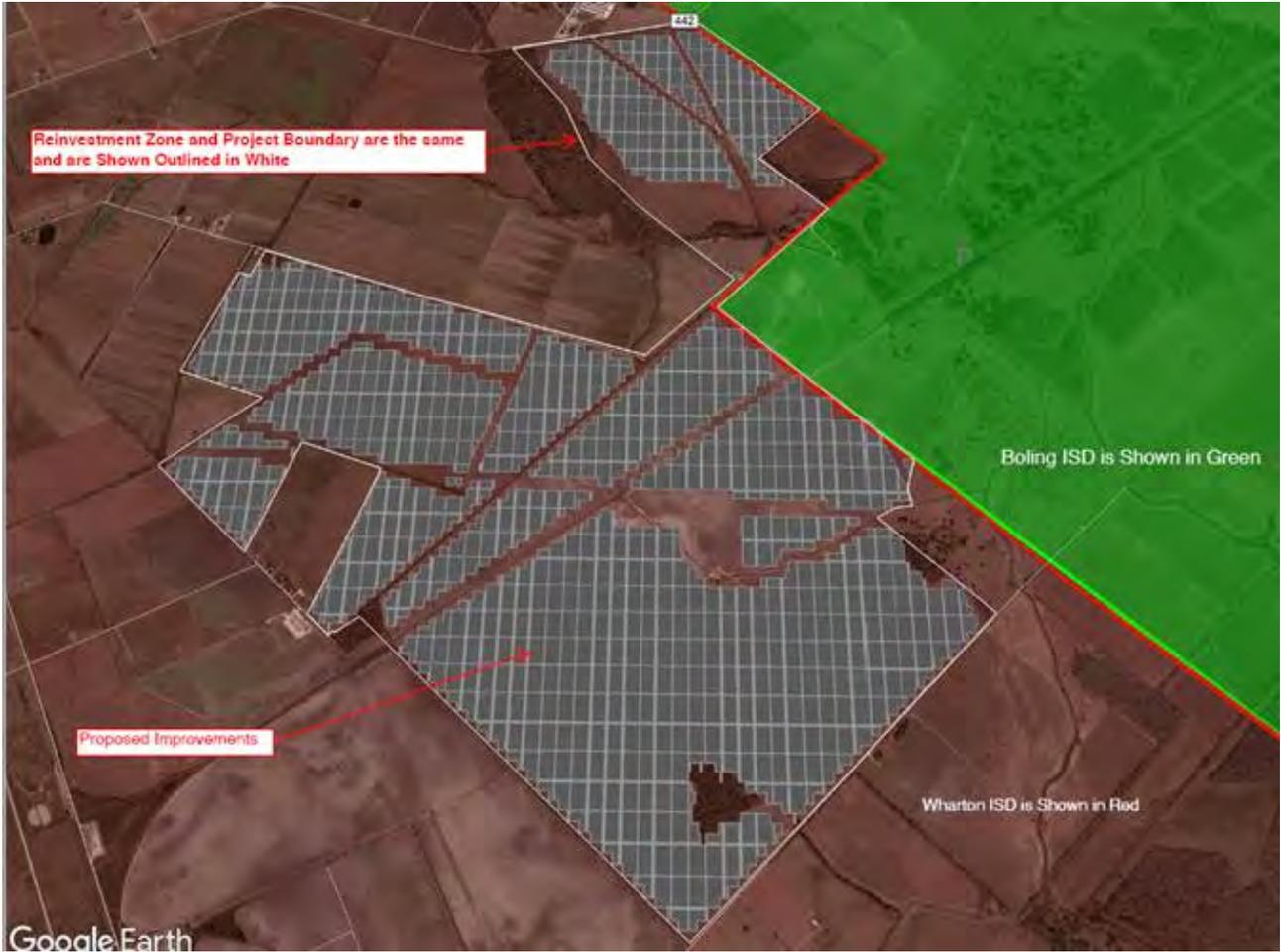
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Qualified Property includes

- collection systems
- transmission lines
- electrical interconnections
- roadways
- control systems necessary for commercial generation of electricity
- solar modules/panels
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- combiner boxes
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- electrical substations
- interconnection facilities.

*NOTE-* The map in TAB 11 shows the proposed project area with the preliminary panel and inverter locations. The exact placement of these panels and inverters is subject to ongoing planning, soil studies, and engineering and will be determined before construction begins.

ATTACHMENT TO APPLICATION FOR APPRAISED VALUE LIMITATION ON QUALIFIED PROPERTY BY  
GULFSTAR POWER LLC TO WHARTON ISD



# **ATTACHMENT F**



**GLENN HEGAR** TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

P.O. Box 13528 • Austin, TX 78711-3528

November 15, 2021

Dr. Michael O'Guin  
Superintendent  
Wharton Independent School District  
2100 North Fulton  
Wharton, Texas 77488

Re: Agreement for Limitation on Appraised Value of Property for School District Maintenance and Operations taxes by and between Wharton Independent School District and GulfStar Power LLC, Application 1588

Dear Superintendent O'Guin:

This office has been provided with the Agreement for Limitation on Appraised Value of Property for School District Maintenance and Operations taxes by and between Wharton Independent School District and GulfStar Power LLC (Agreement). As requested, the Agreement has been reviewed pursuant to 34 TAC 9.1055(e)(1).

Based on our review, this office concludes that the Agreement complies with the provisions of Tax Code, Chapter 313 and 34 TAC Chapter 9, Subchapter F.

Should you have any questions, please contact Desiree Caufield with our office. She can be reached by email at [desiree.caufield@cpa.texas.gov](mailto:desiree.caufield@cpa.texas.gov) or by phone toll-free at 1-800-531-5441, ext. 6-8597, or at 512-936-8597.

Sincerely,

DocuSigned by:

A handwritten signature in blue ink that reads "Will Counihan".

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Will Counihan

Director

Data Analysis & Transparency Division

cc: Chris Grammer, Culwell Consulting, LLC  
Richard Gruber, Merit SI, LLC  
Aaron Hall, Merit SI, LLC  
Steven Van Dyck, Cummings Westlake LLC

# **ATTACHMENT G**

## Chapter 313 Financial Impact Study

*A financial analysis of the potential Chapter 313 Agreement  
between Gulfstar Power LLC and the Wharton Independent  
School District*



Prepared July 15, 2021

## Overview

On April 15, 2021, Gulfstar Power LLC (Applicant) submitted an application for appraised value limitation on qualified property to the Wharton Independent School District (WISD). The Applicant is seeking to develop a renewable energy project and is requesting WISD agree to limit the maintenance and operations (M&O) taxable value of the project to \$30,000,000 for a ten-year period. As put forth in the application, the first year of the value limitation period would be the 2024 tax year.

Culwell Consulting was engaged by WISD to analyze the impact of the potential value limitation agreement upon the overall M&O revenue of WISD. A value limitation agreement entered into by the parties provides WISD protection against any loss in M&O revenue due to the granting of the \$30 million value limitation. This report provides the programmatic details, pertinent aspects of the Texas school finance system, and in-depth analysis needed to understand the long-term impact of such an agreement upon the WISD M&O general fund.

This analysis concludes a value limitation agreement would result in WISD foregoing \$3,276,179 in M&O revenue in the first year of the value limitation period, the 2024-2025 school year. After payout of these losses, the Applicant's tax savings are estimated to be \$13,141,671. This estimate of the Applicant's tax savings does not account for any supplemental payments made to WISD. Any potential Ch. 313 agreement will not affect the Applicant's taxable value for Interest and Sinking (I&S) tax rate purposes.

## Background

In 2001, the 77th Texas Legislature passed HB 1200 enacting the Texas Economic Development Act with the intent to attract qualified economic development to Texas by limiting the M&O taxes paid by the company. Established under Ch. 313 of the Texas Tax Code, the program has become more commonly referred to as Ch. 313.

The Ch. 313 program enables school districts to limit the M&O taxable value of qualified economic development projects for a ten-year period. The State of Texas Comptroller sets the value limitation amount for each school district. At the time the application was deemed complete by the Texas Comptroller, WISD is permitted to grant a value limitation of \$30 million.

Several types of projects are eligible to receive value limitations under Chapter 313 of the Tax Code. Behind Tab 4 of the Application, the Applicant provides a detailed description of, "a proposed solar powered electric generating storage facility in Wharton County." Furthermore, "The proposed Project is anticipated to have a total generating capacity of 600 MC ac." This type of renewable energy electric generation project qualifies under Texas Tax Code 313.024(b)(5).

## Gulfstar Power LLC Application

The application from Gulfstar Power LLC was presented to and accepted by the WISD School Board on April 15, 2021. In their application, the Applicant requested a \$30 million value limitation be applied to their renewable energy electric generation project beginning in the 2024 tax year. Within the Application, Schedule B behind Tab 14 outlines the estimated taxable value schedule of the project for a 25-year period.

Texas Tax Code 313.027(f)(3) requires an agreement holder to maintain a viable presence within the school district for five years after the value limitation expires; therefore, this analysis concludes after the last year of this viable presence period, the 2038-2039 school year. Below is a modified version of Schedule B displaying the estimated taxable values of the project beginning with each year prior to limitation period and concluding five years after the value limitation expires.

### Gulfstar Power LLC Taxable Values, Schedule B of Application

	Year	School Year (YYYY-YYYY)	Tax Year YYYY	Final taxable value for I&S after all reductions	Final taxable value for M&O after all reductions
Qualifying Time Period	0	20221-2022	2021	\$0	\$0
	1	2022-2023	2022	\$71,250,000	\$71,250,000
	2	2023-2024	2023	\$334,291,430	\$30,000,000
Value Limitation Period	1	2024-2025	2024	\$307,532,592	\$30,000,000
	2	2025-2026	2025	\$278,658,727	\$30,000,000
	3	2026-2027	2026	\$247,454,717	\$30,000,000
	4	2027-2028	2027	\$213,777,150	\$30,000,000
	5	2028-2029	2028	\$177,410,908	\$30,000,000
	6	2029-2030	2029	\$138,140,873	\$30,000,000
	7	2030-2031	2030	\$95,716,074	\$30,000,000
	8	2031-2032	2031	\$72,114,300	\$30,000,000
	9	2032-2033	2032	\$72,104,100	\$30,000,000
	10	2033-2034	2033	\$72,094,100	\$72,094,100
Continue to maintain viable presence	11	2034-2035	2034	\$72,084,400	\$72,084,400
	12	2035-2036	2035	\$72,074,900	\$72,074,900
	13	2036-2037	2036	\$72,065,700	\$72,065,700
	14	2037-2038	2037	\$72,056,700	\$72,056,700
	15	2038-2039	2038	\$71,250,000	\$71,250,000

As a result of such limitation being granted, the project will receive two taxable values beginning in the 2024 tax year: one, a valuation of \$30 million for M&O tax purposes, and the second, a full taxable valuation assessed the local appraisal district for WISD's I&S tax purposes. This duality will continue for the ten-year limitation period after which, starting with the 2034-2035 school year, the project will receive a single taxable value for M&O and I&S tax purposes. Any taxable value

of the project outside the ten-year limitation period is fully taxable for M&O tax purposes.

## Calculation of Revenue Loss

The Ch. 313 Agreement (Agreement) prepared by the Rogers, Morris & Grover, L.L.P. ensures that WISD is protected against any loss in revenue incurred by the district's M&O general fund. During each year of the limitation period, the Agreement calls for the annual calculation of loss in M&O revenue. If and when a revenue loss occurs, the Agreement requires the Applicant to hold the school district harmless and pay the school district this calculated amount.

To identify a loss in revenue, two school finance models are established and the outputs compared. One model serves as the control utilizing the full M&O taxable value of the project; the second model substitutes the limited value of \$30 million for the full taxable value. Any revenue loss is accounted for by deducting the resulting M&O revenue of the control model from that of the limited value model.

## Note on School Finance

To fund the maintenance and operation of Texas public schools, the state's school finance system relies on local tax collections and state aid. The method of determining state aid is a complex system that further breaks funding into two major components referred to as Tier I and Tier II. Tier I funding is based on the M&O taxes at the compressed rate, program allotments, and ADA and special student populations. Tier II is the enrichment tier based on the tax effort above the school district's compressed rate. State aid works to fill the gap between local revenue and the total funding the school district is entitled to through the state finance system.

In the Spring of 2019, the 86<sup>th</sup> Texas Legislature passed House Bill 3 which made significant changes to the school finance system in Texas. In passing HB 3, the Legislature sought to equalize funding across school districts, increase teacher compensation, improve learning outcomes, and reduce property taxes.

Of particular note to this analysis, HB 3 now requires the use of current-year local taxable values as opposed to prior-year taxable values when determining state aid. The 2019-20 school year, the first in which this method of calculating state aid was used, differs from the prior school finance system under which state aid was based on the prior year's Comptroller certified property values. However, in specifically addressing the Ch. 313 program, HB 3 states that calculations determining the school districts' revenue loss must continue to use the prior year local taxable values when determining the state aid allotted to the school district.

Due in part to this reliance on prior year values when determining state aid, the first year of the limitation period often results in a loss in revenue for the school district. Under the terms of the agreement, the Applicant is required to hold the district harmless from any such losses. Estimates of revenue losses are based on the current school finance system and the taxable values provided by the Applicant. **Any future**

changes in the school finances system or in the project’s taxable value as compared to those put forth in the application, may result in different levels of revenue loss than described in this report.

## Data

The project’s taxable values are accessed from Schedule B, behind Tab 14 of the Application. School district level data was obtained from WISD in June of 2021 and includes the assumed 2021-2022 M&O tax rate of \$1.0028. In developing the comparison scenarios, all variables and funding factors were held constant as of the 2021-2022 school year with the exception of the project’s taxable value and the district’s resulting tax collections.

**Future calculations will utilize the concurrent statewide school funding system, school district data and tax rates, as well as the appraised value of the Applicant’s project as determined by the Wharton Appraisal District.**

## Results

Table 1 displays WISD total M&O revenue after including the full taxable value of the project. Table 2 shows the total M&O revenue after substituting the \$30 million limitation value. The highlighted rows outline the ten-year value limitation period.

**Table 1 – M&O Revenue at Full Project Taxable Value**

	School Year	M&O Revenue		Total Recapture	Total M&O General Fund
		from Local Taxes	M&O Revenue from State		
Qualifying Time Period	2021-2022	-	-	-	-
	2022-2023	\$13,104,654	\$5,780,412	\$0	\$18,885,066
	2023-2024	\$13,819,149	\$5,848,233	\$0	\$19,667,382
Value Limitation Period	2024-2025	\$16,456,929	\$5,272,731	-\$3,894	\$21,725,765
	2025-2026	\$16,188,591	\$2,443,744	-\$19,523	\$18,612,812
	2026-2027	\$15,899,044	\$2,708,984	-\$17,859	\$18,590,168
	2027-2028	\$15,586,130	\$2,994,146	-\$17,443	\$18,562,833
	2028-2029	\$15,248,411	\$3,303,466	-\$17,071	\$18,534,806
	2029-2030	\$14,883,731	\$3,636,194	-\$11,848	\$18,508,076
	2030-2031	\$14,489,931	\$3,995,521	-\$9,665	\$18,475,786
	2031-2032	\$14,064,495	\$4,383,569	-\$7,235	\$18,440,828
	2032-2033	\$13,827,816	\$4,817,808	-\$4,729	\$18,640,895
	2033-2034	\$13,827,714	\$5,069,218	-\$3,323	\$18,893,609
Maintain Viable Presence	2034-2035	\$13,827,614	\$5,069,320	-\$3,323	\$18,893,611
	2035-2036	\$13,827,516	\$5,069,419	-\$3,322	\$18,893,614
	2036-2037	\$13,827,421	\$5,069,419	-\$3,322	\$18,893,519
	2037-2038	\$13,827,329	\$5,069,610	-\$3,321	\$18,893,618
	2038-2039	\$13,827,239	\$5,069,703	-\$3,320	\$18,893,621

**Table 2 – M&O Revenue at Limited Project Taxable Value**

	School Year	M&O Revenue from Local Taxes	M&O Revenue from State	Total Recapture	Total M&O General Fund
Qualifying Time Period	2021-2022	-	-	-	-
	2022-2023	\$13,104,654	\$5,780,412	\$0	\$18,885,066
	2023-2024	\$13,819,149	\$5,848,233	\$0	\$19,667,382
Value Limitation Period	2024-2025	\$13,405,494	\$5,047,257	-\$3,165	\$18,449,586
	2025-2026	\$13,405,494	\$5,488,845	-\$680	\$18,893,659
	2026-2027	\$13,405,494	\$5,488,845	-\$680	\$18,893,659
	2027-2028	\$13,405,494	\$5,488,845	-\$680	\$18,893,659
	2028-2029	\$13,405,494	\$5,488,845	-\$680	\$18,893,659
	2029-2030	\$13,405,494	\$5,488,845	-\$680	\$18,893,659
	2030-2031	\$13,405,494	\$5,488,845	-\$680	\$18,893,659
	2031-2032	\$13,405,494	\$5,488,845	-\$680	\$18,893,659
	2032-2033	\$13,405,494	\$5,488,845	-\$680	\$18,893,659
	2033-2034	\$13,405,494	\$5,488,845	-\$680	\$18,893,659
	Maintain Viable Presence	2034-2035	\$13,827,614	\$5,521,723	-\$702
2035-2036		\$13,827,516	\$5,069,419	-\$3,322	\$18,893,614
2036-2037		\$13,827,421	\$5,069,419	-\$3,322	\$18,893,519
2037-2038		\$13,827,329	\$5,069,610	-\$3,321	\$18,893,618
2038-2039		\$13,827,239	\$5,069,703	-\$3,320	\$18,893,621

Table 3 displays the outcome of comparing the M&O general fund totals within these two models. The column entitled, “School District Revenue Loss,” displays instances in which the projected M&O revenue in Table 2 is less than in Table 1. In doing, Table 3 captures each instance in which WISD’s M&O general fund is negatively impacted by WISD having granted a value limitation agreement. As shown below, it is estimated that WISD will forego \$3,276,179 in M&O revenue during the 2024-2025 school year. At this time, no revenue loss is anticipated beyond the first year of the limitation period.

The project is estimated to reach a peak taxable value of \$334 million during the 2024-2025 school year, the year prior to the start of the limitation period, followed by steady depreciation in value. Any change in the project’s taxable value schedule, school district data or tax rates, or legislative changes to the school finance system may result in additional revenue losses. Of note, it is typically the case that any appreciation of taxable value within the limitation period will result in additional revenue losses for the school district.

The final column, “Company Tax Savings,” displays the tax savings in each year of the limitation with the Applicant’s total savings over the ten-year period totaling \$13,141,671.

**Table 3 - Projected School District Revenue Loss & Company Tax Savings**

School Year	Project Full Taxable Value (I&S Value)	Project Limited Tax Value (M&O Value)	M&O Tax Rate	M&O Taxes Paid Before Limitation	M&O Taxes Paid After Limitation	Tax Savings Before District Calculations	School District Revenue Loss	Company Tax Savings Before Supplemental Payment
2021-2022	\$0	\$0	\$1.0028	\$0	\$0	\$0	\$0	\$0
2022-2023	\$0	\$0	\$1.0028	\$0	\$0	\$0	\$0	\$0
2023-2024	\$71,250,000	\$71,250,000	\$1.0028	\$714,495	\$714,495	\$0	\$0	\$0
2024-2025	\$334,291,430	\$30,000,000	\$1.0028	\$3,352,274	\$300,840	\$3,051,434	-\$3,276,179	-\$224,745
2025-2026	\$307,532,592	\$30,000,000	\$1.0028	\$3,083,937	\$300,840	\$2,783,097	\$0	\$2,783,097
2026-2027	\$278,658,727	\$30,000,000	\$1.0028	\$2,794,390	\$300,840	\$2,493,550	\$0	\$2,493,550
2027-2028	\$247,454,717	\$30,000,000	\$1.0028	\$2,481,476	\$300,840	\$2,180,636	\$0	\$2,180,636
2028-2029	\$213,777,150	\$30,000,000	\$1.0028	\$2,143,757	\$300,840	\$1,842,917	\$0	\$1,842,917
2029-2030	\$177,410,908	\$30,000,000	\$1.0028	\$1,779,077	\$300,840	\$1,478,237	\$0	\$1,478,237
2030-2031	\$138,140,873	\$30,000,000	\$1.0028	\$1,385,277	\$300,840	\$1,084,437	\$0	\$1,084,437
2031-2032	\$95,716,074	\$30,000,000	\$1.0028	\$959,841	\$300,840	\$659,001	\$0	\$659,001
2032-2033	\$72,114,300	\$30,000,000	\$1.0028	\$723,162	\$300,840	\$422,322	\$0	\$422,322
2033-2034	\$72,104,100	\$30,000,000	\$1.0028	\$723,060	\$300,840	\$422,220	\$0	\$422,220
2034-2035	\$72,094,100	\$72,094,100	\$1.0028	\$722,960	\$722,960	\$0	\$0	\$0
2035-2036	\$72,084,400	\$72,084,400	\$1.0028	\$722,862	\$722,862	\$0	\$0	\$0
2036-2037	\$72,074,900	\$72,074,900	\$1.0028	\$722,767	\$722,767	\$0	\$0	\$0
2037-2038	\$72,065,700	\$72,065,700	\$1.0028	\$722,675	\$722,675	\$0	\$0	\$0
2038-2039	\$72,056,700	\$72,056,700	\$1.0028	\$722,585	\$722,585	\$0	\$0	\$0
<b>Totals</b>				<b>\$23,754,594</b>	<b>\$7,336,744</b>	<b>\$16,417,850</b>	<b>-\$3,276,179</b>	<b>\$13,141,671</b>

## Supplemental Payment

The two parties are able to negotiate a supplemental payment, which allows for a partial sharing of the Applicant’s tax savings with the school district. Under Texas Tax Code 313.027(i), these payments may not exceed \$100 per average daily attendance (ADA) and may only occur from the first year of the qualifying time period through the third year after the value limitation expires. In the case of school districts with an ADA below 500, the tax code allows for a maximum annual payment of \$50,000. The exact terms of the supplemental payment are set in the final Ch. 313 Agreement.

## Facilities Impact

The project remains fully taxable for I&S tax purposes over the course of the taxable life of the project and should have significant positive impact on WISD’s debt service. The Applicant intends to invest a total of \$541 million resulting in a peak taxable value of \$334 million in the 2024-2025 school year. If applied to WISD’s 2020 tax base, this taxable value would increase the district’s I&S tax base by roughly 24.4%.

The project's taxable value is assumed to depreciate quickly, with an average annual reduction in value of \$32.7 million until reaching a floor of \$72 million in the 2032-2033 school year. However, unlike most commercial property, the project is assumed to hold this roughly \$70 million valuation through at least the 2045-2046 school year. This addition of long-term value combined with the overall increase to the tax base should provide WISD the ability to service existing debt through a reduced I&S tax rate and offer a more diverse tax base for future debt issuances.

## **Conclusion**

The total estimated WISD revenue losses of \$3,276,179 and Applicant tax savings of \$13,141,671 are based on the assumptions used in this report. The terms of these calculations are set in the Ch. 313 Agreement and will require the use of the concurrent year's school finance system, assessed taxable value of the project, school district level taxable values and tax rates, and school district student population data. Changes to any of these factors may result in revenue losses and company tax savings in different amounts than estimated in this report.

The Ch. 313 Agreement prepared by the Rogers, Morris & Grover, L.L.P. ensures that WISD is protected against any loss in revenue and defines the supplemental payment allowing the district to share in the applicant's long-term tax savings. With the Ch. 313 Agreement in place, the proposed project is financially beneficial for both the Wharton Independent School District and the applicant Gulfstar Power LLC.