# Attachment G

# Participation Agreement

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

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by and between

**BRAZOSPORT INDEPENDENT SCHOOL DISTRICT**

and

**THE DOW CHEMICAL COMPANY**

(*Texas Taxpayer ID # 13812851288*)

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TEXAS COMPTROLLER APPLICATION NO. 214

Dated

May 1, 2012

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

*STATE OF TEXAS* §

*COUNTY OF BRAZORIA* §

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 **BRAZOSPORT INDEPENDENT SCHOOL DISTRICT**, hereinafter referred to as the "District," a lawfully created independent school district within the State of Texas operating under and subject to the Texas Education Code, and **THE DOW CHEMICAL COMPANY,** Texas Taxpayer Identification Number *13812851288,* 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." Certain capitalized and other terms used in this Agreement shall have the meanings ascribed to them in Section 1.3.

## RECITALS

***WHEREAS,*** on October 24, 2011, the Superintendent of Schools of the Brazosport Independent School District, acting as agent of the Board of Trustees of the District (the "Board of Trustees"), received from the Applicant an Application for Appraised Value Limitation on Qualified Property, pursuant to Chapter 313 of the Texas Tax Code; and,

***WHEREAS,*** on November 1, 2011 the Board of Trustees authorized the Superintendent to accept, on behalf of the District, the Application from The Dow Chemical Company, and on November 1, 2011 the Superintendent acknowledged receipt of the Application and the requisite application fee as established pursuant to Texas Tax Code § 313.025(a)(1) and Local District Policy CCG (Local); and,

***WHEREAS,*** on or about February 23, 2012, the Superintendent of Schools of the Brazosport Independent School District, acting as agent of the Board of Trustees, received supplemental Application materials from the Applicant concerning the previously submitted Application for Appraised Value Limitation on Qualified Property, pursuant to Chapter 313 of the Texas Tax Code; and,

***WHEREAS,*** the Application, together with the supplemental materials, were delivered to the Texas Comptroller's Office for review pursuant to Texas Tax Code § 313.025(d); and,

***WHEREAS,*** the Comptroller's Office, via letter, has established March 19, 2012 as the completed Application date; and,

***WHEREAS,*** pursuant to 34 Tex. Admin Code §9.1054, the Application was delivered for review to the Brazoria County Appraisal District established in Brazoria County, Texas (the "Brazoria County Appraisal District"), pursuant to Texas Tax Code § 6.01; and,

***WHEREAS,*** the Application was reviewed by the Texas Comptroller's Office pursuant to Texas Tax Code § 313.025(d), and on April 9, 2012, the Comptroller's Office, via letter, recommended that the Application be approved; and,

***WHEREAS,*** the Texas Comptroller of Public Accounts conducted an economic impact evaluation pursuant to Chapter 313 of the Texas Tax Code which was presented to the Board of Trustees at a public hearing held in connection with the Board's consideration of the Application; and,

***WHEREAS,*** the Board of Trustees has carefully reviewed the economic impact evaluation pursuant to Tex. Tax Code § 313.026 and has carefully considered such The Comptroller's positive recommendation for the project; and,

***WHEREAS***, the Applicant has requested that, pursuant to the authority created by Tex. Tax Code § 313.027(h), that the date upon which the Qualifying Time Period for the project begins, *i.e.* the "Commencement Date," be deferred until January 2, 2015.

***WHEREAS,*** on May 1, 2012, 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; and,

***WHEREAS,*** on May 1, 2012 the Board of Trustees made factual findings pursuant to Tex. Tax Code § 313.025(f), including, but not limited to findings that: (i) the information in the Application is true and correct; (ii) this Agreement is in the best interest of the District and the State of Texas; (iii) the Applicant is eligible for the Limitation on Appraised Value of the Applicant's Qualified Property; and, (iv) each criterion listed in Texas Tax Code § 313.025(e) has been met; and,

***WHEREAS,*** the Brazosport Independent School District was within an area that qualified as a strategic investment area under Texas Tax Code Chapter 171, Subchapter 0, immediately before that Subchapter expired; and because of that fact, the District qualifies as a rural school district under the provisions of Texas Tax Code § 313.051(a)(1); and,

***WHEREAS***, on May 1, 2012, the Board of Trustees determined that the Tax Limitation Amount requested by Applicant, and as defined in Sections 1.2 and 1.3, below, is consistent with the minimum values set out by Tax Code, §§ 313.022(b) and 313.052, as such Tax Limitation Amount was computed as of the date of this Agreement; and,

***WHEREAS,*** on April 25, 2012, the District received written notification, pursuant to 34 Tex. Admin Code § 9.1055(e)(2)(A), that the Texas Comptroller of Public

Accounts reviewed this Agreement, and reaffirming the recommendation previously made on April 9, 2012 that the Application be approved: and,

***WHEREAS***, on May 1, 2012, 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;

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

## ARTICLE I

## AUTHORITY, TERM, DEFINITIONS, AND GENERAL PROVISIONS

### Section 1.1. 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 Texas Tax Code § 313.027.

### Section 1.2. TERM OF THE AGREEMENT

This Agreement shall commence and first become effective on the Commencement Date, as defined in Section 1.3, below. In the event that Applicant makes a Qualified Investment in the amount defined in Section 2.6 below, between the Commencement Date and the end of the Qualifying Time Period, Applicant will be entitled to the Tax Limitation Amount defined in Section 1.3 below, for the following Tax Years: 2018, 2019, 2020, 2021, 2022, 2023, 2024, and 2025. The limitation on the local ad valorem property values for Maintenance and Operations purposes shall commence with the property valuations made as of January 1, 2018, the appraisal date for the third full Tax Year following the Commencement Date.

The period beginning with the Commencement Date of January 2, 2015 and ending on December 31, 2017 will be referred to herein as the "Qualifying Time Period," as that term is defined in Texas Tax Code § 313.021(4). Applicant shall not be entitled to a tax limitation during the Qualifying Time Period.

Unless sooner terminated as provided herein, the limitation on the local ad valorem property values shall terminate on December 31, 2025. Except as otherwise provided herein, this Agreement will terminate in full on the Final Termination Date. The termination of this Agreement shall not (i) release any obligations, liabilities, rights and remedies arising out of any breach of, or failure to comply with, this Agreement occurring prior to such termination, or (ii) affect the right of a Party to enforce the payment of any amount to which such Party was entitled before such termination or to which such Party became entitled as a result of an event that occurred before such termination, so long as the right to such payment survives said termination.

Except as otherwise provided herein, the Tax Years for which this Agreement is effective are as set forth below and set forth opposite each such Tax Year are the corresponding year in the term of this Agreement, the date of the Appraised Value determination for such Tax Year, and a summary description of certain provisions of this Agreement corresponding to such Tax Year (it being understood and agreed that such summary descriptions are for reference purposes only, and shall not affect in any way the meaning or interpretation of this Agreement):

| **Full Tax Year of Agreement** | **Date of Appraisal** | **School Year** | **Tax Year** | **Summary Description of Provisions** |
|---|---|---|---|---|
| Partial Year Commencing on date of Board approval (May 1, 2012) | January 1, 2012 | 2012-13 | 2012 | Deferral Period |
| Pre-Year | January 1, 2013 | 2013-14 | 2013 | Deferral Period |
| Pre-Year | January 1, 2014 | 2014-15 | 2014 | Deferral Period |
| Partial Year (January 1, 2015 to January 2, 2015) | January 1, 2015 | 2015-16 | 2015 | Deferral Period |
| Partial Year (Commencement Date January 3, 2015) | January 1, 2015 | 2015-16 | 2015 | Start of Qualifying Time Period beginning with Commencement Date. First year for computation of Annual Limit. |
| 1 | January 1, 2016 | 2016-17 | 2016 | Qualifying Time Period. No limitation on value. Possible Tax Credit in future years. |
| 2 | January 1, 2017 | 2017-18 | 2017 | Qualifying Time Period. No limitation on value. Possible Tax Credit in future years. |
| 3 | January 1, 2018 | 2018-19 | 2018 | $ 30 million property value limitation. |
| 4 | January 1, 2019 | 2019-20 | 2019 | $ 30 million property value limitation. Possible Tax Credit due to Applicant. |

| Full Tax Year of Agreement | Date of Appraisal | School Year | Tax Year | Summary Description of Provisions |
|---|---|---|---|---|
| 5 | January 1, 2020 | 2020-21 | 2020 | $ 30 million property value limitation. Possible Tax Credit due to Applicant. |
| 6 | January 1, 2021 | 2021-22 | 2021 | $ 30 million property value limitation. Possible Tax Credit due to Applicant. |
| 7 | January 1, 2022 | 2022-23 | 2022 | $ 30 million property value limitation. Possible Tax Credit due to Applicant. |
| 8 | January 1, 2023 | 2023-24 | 2023 | $ 30 million property value limitation. Possible Tax Credit due to Applicant. |
| 9 | January 1, 2024 | 2024-25 | 2024 | $ 30 million property value limitation. Possible Tax Credit due to Applicant. |
| 10 | January 1, 2025 | 2025-26 | 2025 | $ 30 million property value limitation. Possible Tax Credit due to Applicant. |
| 11 | January 1, 2026 | 2026-27 | 2026 | No tax limitation. Possible Tax Credit due to Applicant. Applicant obligated to Maintain Viable Presence if no early termination. |
| 12 | January 1, 2027 | 2027-28 | 2027 | No tax limitation. Possible Tax Credit due to Applicant. Applicant obligated to Maintain Viable Presence if no early termination. |
| 13 | January 1, 2028 | 2028-29 | 2028 | No tax limitation. Possible Tax Credit due to Applicant. Applicant obligated to Maintain Viable Presence if no early termination. |

**Section 1.3. DEFINITIONS**

Wherever used herein, the following terms shall have the following meanings, unless the context in which used clearly indicates another meaning, to-wit:

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

"*Affiliate*" means any entity that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Applicant. For purposes of this definition, control of an entity means (i) the ownership, directly or indirectly, of fifty (50) percent or more of the voting rights in a company or other legal entity or (ii) the right to direct the management or operation of such entity whether by ownership (directly or indirectly) of securities, by contract or otherwise.

"*Affiliated Group*" means a group of one or more entities in which a controlling interest is owned by a common owner or owners, either corporate or non-corporate, or by one or more of the member entities.

"*Aggregate Limit*" means, for any year of this Agreement, the cumulative total of the Annual Limit amount for the current year and all previous years of the Agreement, less all amounts paid by the Applicant to or on behalf of the District under Article IV, below.

"*Agreement*" means this Agreement, as the same may be modified, amended, restated, amended and restated, or supplemented from time to time in accordance with Section 6.3.

"*Annual Limit*" means the maximum annual benefit which can be paid directly to the District as a Supplemental Payment under the provisions of Tex. Tax Code §313.027(i). For purposes of this Agreement, the amount of the Annual Limit shall be One Million One Hundred Eighty Thousand Four Hundred Ninety-Four Dollars and Ninety Cents ($1,170,608) based upon the District's 2010-2011 Final Average Daily Attendance of 11,706.08. An annual limit shall first be computed for Tax Year 2015, which, by virtue of the Commencement Date, is the first year of the Qualifying Time Period under this Agreement.

"*Applicant*" means The Dow Chemical Company *(Texas Taxpayer ID # 13812851288),* the company listed in the Preamble of this Agreement who, on October 24, 2011, filed the Original Application; and on February 23, 2012, filed supplemental Application materials with the District for an Appraised Value Limitation on Qualified Property, pursuant to Chapter 313 of the Texas Tax Code. The term "Applicant" shall also include the Applicant's assigns and successors-in-interest.

"*Applicable School Finance Law*" means Chapters 41 and 42 of the Texas Education Code, the Texas Economic Development Act (Chapter 313 of the Texas Tax Code), Chapter 403, Subchapter M, of the Texas Government Code applicable to the District, and the Constitution and general laws of the State applicable to the independent school districts of the

State, including specifically, the applicable rules and regulations of the agencies of the State having jurisdiction over any matters relating to the public school systems and school districts of the State, and judicial decisions construing or interpreting any of the above. The term also includes any amendments or successor statutes that may be adopted in the future that could impact or alter the calculation of the Applicant's ad valorem tax obligation to the District, either with or without the limitation of property values made pursuant to 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 October 24, 2011, together with the supplemental Application materials filed on February 23, 2012, which have been certified by the Comptroller's office to constitute a complete final Application as of the date of March 19, 2012. The term includes all forms required by the Comptroller, the schedules attached thereto, and all other documentation submitted by Applicant for the purpose of obtaining an Agreement with the District.

"*Appraised Value*" shall have the meaning assigned to such term in Section 1.04(8) of the Texas Tax Code.

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

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

"*Commencement Date*" means January 2, 2015. By agreement of the parties pursuant to Tex. Tax Code § 313.027(h), the Commencement Date has been deferred, at the request of Applicant, from the date upon which this Agreement was approved by the District's Board of Trustees.

"*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 at Chapter 34 Texas Administrative Code, Chapter 9, Subchapter D, together with any court or administrative decisions interpreting same.

"*County*" means Brazoria County, Texas.

"*Determination of Breach*" shall have the meaning assigned to such term in Section 7.8 of the Agreement

"*District*" or "*School District*" means the Brazosport Independent School District, being a duly authorized and operating independent 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.

"*Enterprise Adjusted Percent of the Applicant's Net Tax Benefit*" means a number, calculated as a percentage, which when added to the payments made by Applicant under: i) this Agreement *(Comptroller Application No. 214*; ii) the two additional Agreements for Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes, between Applicant and the District which were approved by the Board of Trustees on May 1, 2012 *(Comptroller Application Nos. 213 and 216);* and, iii) that certain Agreement for Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes, between Applicant and the District which was approved by the Board of Trustees on April 3, 2012 *(Comptroller Application No. 215)*, is equal to Ten Percent (10%) of the total Net Tax Benefits received by Applicant for the combined and above –described four (4) Agreements.

"*Final Termination Date*" means December 31, 2028.

"*Force Majeure*" means a failure caused by (a) provisions of law, or the operation or effect of rules, regulations or orders promulgated by any governmental authority having jurisdiction over the Applicant, the Applicant's Qualified Property or the Applicant's Qualified Investment or any upstream, intermediate or downstream equipment or support facilities as are necessary to the operation of the Applicant's Qualified Property or the Applicant's Qualified Investment; (b) any demand or requisition, arrest, order, request, directive, restraint or requirement of any government or governmental agency whether federal, state, military, local or otherwise; (c) the action, judgment or decree of any court; (d) floods, storms, hurricanes, evacuation due to threats of hurricanes, lightning, earthquakes, washouts, high water, fires, acts of God or public enemies, wars (declared or undeclared), blockades, epidemics, riots or civil disturbances, insurrections, strikes, labor disputes (it being understood that nothing contained in this Agreement shall require the Applicant to settle any such strike or labor dispute), explosions, breakdown or failure of plant, machinery, equipment, lines of pipe or electric power lines (or unplanned or forced outages or shutdowns of the foregoing for inspections, repairs or maintenance), inability to obtain, renew or extend franchises, licenses or permits, loss, interruption, curtailment or failure to obtain electricity, gas, steam, water, wastewater disposal, waste disposal or other utilities or utility services, inability to obtain or failure of suppliers to deliver equipment, parts or material, or inability of the Applicant to ship or failure of carriers to transport electricity from the Applicant's facilities; or (e) any other cause (except financial), whether similar or dissimilar, over which the Applicant has no reasonable control and which forbids or prevents performance.

"*Land*" shall have the meaning assigned to such term in Section 2.2.

"*Maintain Viable Presence*" means after the development and construction of the project described in the Application and in the description of Qualified Investment/Qualified property as set forth in Section 2.3, below, (i) the operation over the term of this Agreement of the facility or facilities for which the tax limitation is granted, as the same may from time to time

be expanded, upgraded, improved, modified, changed, remodeled, repaired, restored, reconstructed, reconfigured, and/or reengineered: (ii) the retention over the term of this Agreement of the number of New Jobs and Qualifying Jobs set forth in its Application by the Applicant, and the retention of the highest number of New Jobs and Qualifying Jobs set forth in its Application through the Final Termination Date of this Agreement.

"*M&O Amount*" shall have the meaning assigned to such term in Section 3.2 of the Agreement.

"*Maintenance and Operations Revenue*" or "*M&O Revenue*" means (i) those revenues which the District receives from the levy of its annual ad valorem maintenance and operations tax pursuant to Texas Education Code § 45.002 and Article VII § 3 of the Texas Constitution, plus (ii) all State revenues to which the District is or may be entitled under Chapter 42 of the Texas Education Code or any other statutory provision as well as any amendment or successor statute to these provisions, plus (iii) any indemnity payments received by the District under other agreements similar to this Agreement to the extent that such payments are designed to replace District M&O Revenue lost as a result of such similar agreements, less (iv) any amounts necessary to reimburse the State of Texas or another school district for the education of additional students pursuant to Chapter 41 of the Texas Education Code.

"*Market Value*" shall have the meaning assigned to such term in Section 1.04(7) of the Texas Tax Code.

"*Net Tax Benefit*" means, (i) the amount of maintenance and operations ad valorem taxes which the Applicant would have paid to the District for all Tax Years if this Agreement had not been entered into by the Parties, (ii) adding to the amount determined under clause (i) all Tax Credits received by the Applicant under Chapter 313, Tax Code, and (iii) subtracting from the sum of the amounts determined under clauses (i) and (ii) 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 all Tax Years of this Agreement, plus (B) any payments due to the District under Article III under this Agreement.

"*New Jobs*" means the total number of jobs, defined by 34 Tex. Admin. Code § 9.1051, which Applicant will create in connection with the project which is the subject of its Application. In accordance with the requirements of Tex. Tax Code § 313.024(d), Eighty Percent (80%), of all New Jobs created by Applicant on the project shall also be Qualifying Jobs, as defined below.

"*Qualified Investment*" has the meaning set forth in Chapter 313 of the Texas Tax Code, as interpreted by the Comptroller's Rules, as these provisions existed on the date of this Agreement, applying any specific requirements for rural school districts imposed by Subchapter C of Chapter 313 of the Texas Tax Code and by the Comptroller's Rules.

"*Qualifying Jobs*" means the number of New Jobs Applicant will create in connection with the project which is the subject of its Application, which meet the requirements of Tex. Tax Code 313.021(3).

"*Qualified Property*" has the meaning set forth in Chapter 313 of the Texas Tax Code, as interpreted by the Comptroller's Rules and the Texas Attorney General, as these provisions existed on the date of this Agreement, applying any specific requirements for rural school districts imposed by Subchapter C of Chapter 313 of the Texas Tax Code and by the Comptroller's Rules.

*"Qualifying Time Period"* means, after a deferral period as permitted by Tex. Tax Code §313.027(h), the period that begins on the Commencement Date of January 2, 2015 and ends on December 31, 2017.

*"Revenue Protection Amount"* means the amount calculated pursuant to Section 3.2 of this Agreement.

*"State"* means the State of Texas.

*"Substantive Document"* means a document or other information or data in electronic media determined by the Comptroller to substantially involve or include information or data significant to an application, the evaluation or consideration of an application, or the agreement or implementation of an agreement for limitation of appraised value pursuant to Tax Code, Chapter 313. The term includes, but is not limited to, any application requesting a limitation on appraised value and any amendments or supplements, any economic impact evaluation made in connection with an application, any agreement between applicant and the school district and any subsequent amendments or assignments, any school district written finding or report filed with the comptroller as required under this subchapter, and any application requesting school Tax Credits under Tax Code, §313.103.

"*Tax Credit*" means the Tax Credit, either to be paid by the District to Applicant, or to be applied against any taxes that the school district imposes in Qualified Property, as computed under the provisions of Subchapter D of the Act, and rules adopted by the Comptroller and/or the Texas Education Agency, provided that Applicant complies with the requirements under such provisions, including the timely filing of a completed application under Texas Tax Code § 313.103 and the duly adopted administrative rules.

"*Tax Limitation Amount*" means the maximum amount which may be placed as the Appraised Value on Qualified Property/Qualified Investment for years three (3) through ten (10) of this Agreement pursuant to Texas Tax Code § 313.054. That is, for each of the eight (8) Tax Years 2018, 2019, 2020, 2021, 2022, 2023, 2024, and 2025, the Appraised Value of the Applicant's Qualified Investment for the District's maintenance and operations ad valorem tax purposes shall not exceed, and the Tax Limitation Amount shall be, the lesser of:

(a) the Market Value of the Applicant's Qualified Investment; or

(b) Thirty Million Dollars ($30,000,000.00).

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

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

"*Taxable Value*" shall have the meaning assigned to such term in Section 1.04(10) of the Texas Tax Code.

"*Texas Education Agency Rules*" means the applicable rules and regulations adopted by the Texas Commissioner of Education in relation to the administration of Chapter 313, Texas Tax Code, which are set forth at Title 19 – Part 2, Texas Administrative Code, together with any court or administrative decisions interpreting same.

## ARTICLE II

## PROPERTY DESCRIPTION

### Section 2.1. LOCATION WITHIN A QUALIFIED REINVESTMENT OR ENTERPRISE ZONE

The Applicant's Qualified Property upon which the Applicant's Qualified Investment will be located is within an area designated as a reinvestment zone under Chapter 311 or 312 of the Texas Tax Code. The legal description of the reinvestment zone in which the Applicant's Qualified Property is located is attached to this Agreement as **EXHIBIT 1** and is incorporated herein by reference for all purposes.

### Section 2.2. LOCATION OF QUALIFIED PROPERTY

The location of the Applicant's Qualified Property upon which the Applicant's Qualified Investment will be located is described in the legal description which is attached to this Agreement as **EXHIBIT 2** and is 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** without the express authorization of each of the Parties.

### Section 2.3. DESCRIPTION OF QUALIFIED INVESTMENT AND QUALIFIED PROPERTY

The Qualified Investment and/or Qualified Property that is subject to the Tax Limitation Amount is described in **EXHIBIT 3**, which is attached hereto and incorporated herein by reference for all purposes ("Applicant's Qualified Investment"). Qualified Investment shall be that property, described in **EXHIBIT 3** which is placed in service under the terms of the Application, during the Qualifying Time Period described in Section 1.2, above. Qualified Property shall be all property, described in **EXHIBIT 3**, including, but not limited to Applicant's Qualified Investment, together with the land described in **EXHIBIT 2** which: 1) is owned by Applicant; 2) was first placed in service after March 19, 2012, the final Application date established by the Comptroller; and 3) is used in connection with the activities described in the Application.

Property which is not specifically described in **EXHIBIT 3** shall not be considered by the District or the Appraisal District to be part of the Applicant's Qualified Investment or Qualified Property for purposes of this Agreement, unless pursuant to Texas Tax Code § 313.027(e) and Section 8.3 of this Agreement, the Board of Trustees, by official action, provides that such other property is a part of the Applicant's Qualified Investment for purposes of this Agreement.

Property owned by Applicant which is not described on **EXHIBIT 3** may not be considered to be Qualified Property unless the Applicant:

(a) submits to the school district and the Comptroller a written request to add property to the limitation agreement, which request shall include a specific description of the additional property to which the applicant requests that the limitation apply;

(b) notifies the District and the Comptroller of any other changes to the information that was provided in the Application approved by the District; and,

(c) provides any additional information reasonably requested by the District or the Comptroller necessary to re-evaluate the economic impact analysis for the new or changed conditions.

**Section 2.4. APPLICANT'S OBLIGATIONS TO PROVIDE CURRENT INVENTORY OF QUALIFIED PROPERTY**

At the end of the Qualifying Time Period, or at any other time when there is a material change in the Qualified Property located on the land described in **EXHIBIT 2**; upon a reasonable request of the District, the Comptroller, or the Appraisal District, Applicant shall provide to the District, the Comptroller, and the Appraisal District a specific and detailed description of the tangible personal property, buildings, or permanent, nonremovable building components (including any affixed to or incorporated into real property) on the Qualified Property to which the value limitation applies including maps or surveys of sufficient detail and description to locate all such described property within the boundaries of the real property which is subject to the agreement.

**Section 2.5. QUALIFYING USE**

The Applicant's Qualified Investment described above in Section 2.3 qualifies for a tax limitation agreement under Texas Tax Code § 313.024(b)(1) as a manufacturing facility.

**Section 2.6. LIMITATION ON APPRAISED VALUE**

So long as Applicant makes a Qualified Investment in the amount Thirty Million Dollars ($30,000,000.00), or greater, during the Qualifying Time Period; and unless this Agreement has been terminated as provided herein before such Tax Year, for each of the eight (8) Tax Years 2018, 2019, 2020, 2021, 2022, 2023, 2024, and 2025, the Appraised Value of the Applicant's Qualified Investment 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 Investment; or

(b) Thirty Million Dollars ($30,000,000.00).

This Tax Limitation Amount is based on the limitation amount for the category that applies to the District on the effective date of this Agreement, as set out by Tex. Tax Code § 313.052.

## ARTICLE III

## PROTECTION AGAINST LOSS OF FUTURE DISTRICT REVENUES

### Section 3.1. INTENT OF THE PARTIES

Subject to the limitations contained in this Agreement (including Section 5.1), it is the intent of the Parties that the District shall, in accordance with the provisions of Tex. Tax Code §313.027(f)(1), be compensated by the Applicant for any loss that the District incurs in its Maintenance and Operations Revenue as a result of, or on account of, entering into this Agreement, after taking into account any payments to be made under this Agreement. Such payments shall be independent of, and in addition to, such other payments as set forth in Article IV. Subject to the limitations contained in this Agreement (including Section 5.1), it is the intent of the Parties that the risk of any negative financial consequence to the District in making the decision to enter into this Agreement will be borne by the Applicant and not by the District.

### Section 3.2. CALCULATING THE AMOUNT OF LOSS OF REVENUES BY THE DISTRICT

Subject to the provisions of Sections 5.1 and 5.2, the amount to be paid by the Applicant to compensate the District for loss of Maintenance and Operations Revenue resulting from, or on account of, this Agreement for each year during the term of this Agreement (the "M&O Amount") shall be determined in compliance with the Applicable School Finance Law in effect for such year and according to the following formula:

The M&O Amount owed by the Applicant to District means the Original M&O Revenue *minus* the New M&O Revenue;

Where:

i. "Original M&O Revenue" means the total State and local Maintenance & Operations Revenue that the District would have

received for the school year under the Applicable School Finance Law had this Agreement not been entered into by the Parties and the Qualified Property and/or Qualified Investment been subject to the ad valorem maintenance & operations tax.

ii. "New M&O Revenue" means the total State and local Maintenance & Operations Revenue that the District actually received for such school year.

In making the calculations required by this Section 3.2:

i. The Taxable Value of property for each school year will be determined under the Applicable School Finance Law.

ii. For purposes of this calculation, the tax collection rate on the Applicant's Qualified Property and/or the Applicant's Qualified Investment will be presumed to be one hundred percent (100%)

iii. If, for any year of this Agreement, the difference between the Original M&O Revenue and the New M&O Revenue as calculated under this Section 3.2 results in a negative number, the negative number will be considered to be zero.

iv. All calculations made for years three (3) through ten (10) of this Agreement under Section 3.2, Subsection *ii* of this Agreement will reflect the Tax Limitation Amount for such year.

v. All calculations made under this Section 3.2 shall be made by a methodology which isolates only the revenue impact caused by this Agreement. Applicant shall not be responsible to reimburse the District for other revenue losses created by other agreements or any other factors.

**Section 3.3. COMPENSATION FOR LOSS OF OTHER REVENUES**

In addition to the amounts determined pursuant to Section 3.2 above, and to the extent provided in Section 6.3, the Applicant, on an annual basis, shall also indemnify and reimburse the District for the following:

(a) all non-reimbursed costs incurred by the District in paying or otherwise crediting to the account of Applicant, any applicable Tax Credit to which Applicant may be entitled pursuant to Chapter 313, Subchapter D of the Texas Tax Code, and for which the District does not receive reimbursement from the State pursuant to Texas Educ. Code § 42.2515, or other similar or successor statute.

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

(c) any other loss of District revenues which are, or may be attributable to the payment by Applicant to or on behalf of any other third party beneficiary.

**Section 3.4. CALCULATIONS TO BE MADE BY THIRD PARTY**

All calculations under this Agreement shall be made annually by an independent third party (the "Third Party") jointly approved each year by the District and the Applicant. If the Parties cannot agree on the Third Party, then the Third Party shall be selected by the mediator provided in Section 7.9 of this Agreement.

**Section 3.5. DATA USED FOR CALCULATIONS**

The calculations for payments under this Agreement shall be initially based upon the valuations placed upon the Applicant's Qualified Investment and/or the Applicant's Qualified Property by the Brazoria County Appraisal District in its annual certified tax roll submitted to the District pursuant to Texas Tax Code § 26.01 on or about July 25 of each year of this Agreement. Immediately upon receipt of the valuation information by the District, the District shall submit the valuation information to the Third Party selected under Section 3.4. The certified tax roll data shall form the basis of the calculation of any and all amounts due under this Agreement. All other data utilized by the Third Party to make the calculations contemplated by this Agreement shall be based upon the best available current estimates. The data utilized by the Third Party shall be adjusted from time to time by the Third Party to reflect actual amounts, subsequent adjustments by the Brazoria County Appraisal District to the District's certified tax roll or any other changes in student counts, tax collections, or other data.

**Section 3.6. DELIVERY OF CALCULATIONS**

On or before November 1 of each year for which this Agreement is effective, the Third Party appointed pursuant to Section 3.4 of this Agreement shall forward to the Parties a certification containing the calculations required under Sections 3.2 and/or 3.3 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. Upon reasonable prior notice, the employees and agents of the Applicant shall have access, at all reasonable times, to the Third Party's offices, personnel, books, 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 and fee for a period of three (3) years after payment. The Applicant shall not be liable for any of 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 or the fee paid by the Applicant to the Third Party pursuant to Section 3.7, if such fee is timely paid.

### Section 3.7. PAYMENT BY APPLICANT

The Applicant shall pay any amount determined to be due and owing to the District under this Agreement on or before the January 31 next following the tax levy for each year for which this Agreement is effective. By such date, the Applicant shall also pay any amount billed by the Third Party for all calculations under this Agreement, plus any reasonable and necessary legal expenses paid by the District to its attorneys, auditors, or financial consultants for the preparation and filing of any financial reports, disclosures, or Tax Credit or other reimbursement applications filed with or sent to the State of Texas which are, or may be required under the terms or because of the execution of this Agreement. In no year shall the Applicant be responsible for the payment of any total expenses under this Section in excess of Ten Thousand Dollars ($10,000.00).

### Section 3.8. RESOLUTION OF DISPUTES

Pursuant to Section 3.4 and Section 3.6, should the Applicant disagree with the certification containing the calculations, the Applicant may appeal the findings, in writing, to the Third Party within thirty (30) days of receipt of 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 certification containing the calculations. Thereafter, the Applicant may appeal the final determination of certification containing the calculations to the District. Any appeal by the Applicant of the final determination of the Third Party may be made, in writing, to the Brazosport Independent School District Board of Trustees within thirty (30) days of the final determination of certification containing the calculations.

### Section 3.9. EFFECT OF PROPERTY VALUE APPEAL OR OTHER ADJUSTMENT

In the event that, at the time the Third Party selected under Section 3.4 makes its calculations under this Agreement, Applicant has appealed the taxable values placed by the County Appraisal District on the Qualified Property, and the appeal of the appraised values are unresolved, the Third Party shall base its calculations upon the values placed upon the Qualified Property by the County Appraisal District.

In the event that the result of an appraisal appeal or for any other reason, the Taxable Value of the Applicant's Qualified Investment and/or the Applicant's Qualified Property is changed, once the determination of a new value becomes final, the Parties shall immediately notify the Third Party who shall immediately issue new calculations for the applicable year or years. In the event the new calculations result in the change of any amount payable by the Applicant under this Agreement, the party from whom the adjustment is payable shall remit such

amounts to the counter-party within thirty (30) days of the receipt of the new calculations from the Third Party.

### Section 3.10. EFFECT OF STATUTORY CHANGES

Notwithstanding any other provision in this Agreement, but subject to the limitations contained in Section 5.1, in the event that, by virtue of statutory changes to the Applicable School Finance Law, administrative interpretations by the Comptroller, Commissioner of Education, or the Texas Education Agency, 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, Applicant shall make payments to the District, up to the revenue protection amount limit set forth in Section 5.1, that are necessary to offset any negative impact on the District as a result of its participation in this Agreement. Such calculation shall take into account any adjustments to the amount calculated for the current fiscal year that should be made in order to reflect the actual impact on the District.

## ARTICLE IV

### Section 4.1. INTENT OF PARTIES WITH RESPECT TO SUPPLEMENTAL PAYMENTS

(a) Amounts Exclusive of Indemnity Amounts

In addition to undertaking the responsibility for the payment of all of the amounts set forth under Article III, 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 IV. 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, Tex. 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 IV are separate and independent of the obligation of the Applicant to pay the amounts described in Article III; provided, however, that all payments under Articles III and IV are subject to the limitations contained in Section 5.1, and that all payments under Article IV are subject to the separate limitations contained in Section 4.4.

(b) Adherence to Statutory Limits on Supplemental Payments

It is the express intent of the parties that any Supplemental Payments made to or on behalf of the District by Applicant, under this Article IV, shall not exceed the limit imposed by the provisions of Tex. Tax Code 313.027(i) unless that limit is increased by the Legislature at a future date.

**Section 4.2. STIPULATED SUPPLEMENTAL PAYMENT AMOUNT - SUBJECT TO AGGREGATE LIMIT**

During the term of this Agreement, the District shall not be entitled to receive Supplemental Payments that exceed the lesser of:

(a) Applicant's Stipulated Supplemental Payment Amount, defined as the lower of Nineteen and Seven Tenths Percent (19.7%) or the Enterprise Adjusted Percent of the Applicant's Net Tax Benefit, as those terms are defined in Section 1.3, above; or,

(b) the Aggregate Limit, as the term is defined in Section 1.3, above.

**Section 4.3. ANNUAL CALCULATION OF STIPULATED SUPPLEMENTAL PAYMENT AMOUNT**

The Parties agree that for each Tax Year of this Agreement, beginning with the third full year (Tax Year 2018) the Stipulated Supplemental Payment amount, described in Section 4.2 will annually be calculated based upon the then most current estimate of tax savings to the Applicant, which will be made, based upon assumptions of student counts, tax collections, and other applicable data, in accordance with the following formula:

Taxable Value of the Applicant's Qualified Property for such Tax Year had this Agreement not been entered into by the Parties (i.e., the Taxable Value of the Applicant's Qualified Property used for the District's interest and sinking fund tax purposes for such Tax Year, or school taxes due to any other governmental entity, including the State of Texas, for such Tax Year);

*Minus,*

The Taxable Value of the Applicant's Qualified Property for such Tax Year after giving effect to this Agreement (i.e., the Taxable Value of the Applicant's Qualified Property used for the District's maintenance and operations tax purposes for such Tax Year, or school taxes due to any other governmental entity, including the State of Texas, for such Tax Year);

*Multiplied by,*

The District's maintenance and operations tax rate for such Tax Year, or the school tax rate of any other governmental entity, including the State of Texas, for such Tax Year;

*Plus,*

Any Tax Credit received by the Applicant with respect to such Tax Year;

*Minus,*

Any amounts previously paid to the District under Article III;

*Multiplied by,*

The lower of the following numbers:

(a) the number 0.197, or
(b) the number determined to be Enterprise Adjusted Percent of the Applicant's Net Tax Benefit as defined in Section 1,3, above

*Minus,*

Any amounts previously paid to the District under Sections 4.2 and 4.3 with respect to such Tax Year.

In the event that there are changes in the data upon which the calculations set forth herein are made, the Third Party described in Section 3.4, above, shall adjust the Stipulated Supplemental Payment amount calculation to reflect any changes in the data.

**Section 4.4. CALCULATION OF ANNUAL SUPPLEMENTAL PAYMENTS TO THE DISTRICT AND APPLICATION OF AGGREGATE LIMIT**

For each year of, for each year of this Agreement, beginning with year three (Tax Year 2018) and continuing thereafter through year thirteen (Tax Year 2028), the District, or its Successor Beneficiary should one be designated under Section 4.6, below, shall not be entitled to receive Supplemental Payments, computed under Sections 4.2 and 4.3, above, that exceed the Aggregate Limit, defined in Section 1.3, above.

If, for any year of this Agreement the payment of Applicant's Stipulated Supplemental Payment amount, calculated under sections 4.2 and 4.3 above, exceeds the Aggregate Limit for that year, the difference between the Stipulated Supplemental Payment amount and the Aggregate Limit, shall be carried forward from year-to-year into subsequent years of this Agreement, and to the extent not limited by the Aggregate Limit in any subsequent year of this Agreement, shall be paid to the District.

Any Stipulated Supplemental Payment amount, which cannot be made to the District prior to the end of year thirteen (Tax Year 2028), because such payment would exceed the Aggregate Limit will be deemed to have been cancelled by operation of law.

**Section 4.5. PROCEDURES FOR SUPPLEMENTAL PAYMENT CALCULATIONS**

(a) All calculations required by this Article, including but not limited to: the calculation of the Stipulated Supplemental Payment amount; the determination of both the Annual Limit and the Aggregate Limit; the effect, if any, of the Aggregate Limit upon the actual amount of Supplemental Payments eligible to be paid to the District by the Applicant; and the carry forward and accumulation of any Stipulated Supplemental Payment amounts unpaid by Applicant due to the Aggregate Limit in previous years, shall be calculated by the Third Party selected pursuant to Section 3.4.

(b) 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 Section 3.6.

(c) The payment of all amounts due under this Article shall be made at the time set forth in Section 3.7.

### Section 4.6. DISTRICT'S OPTION TO DESIGNATE SUCCESSOR BENEFICIARY

At any time during this Agreement, the District's Board of Trustees may, in its sole discretion, so long as such decision does not result in additional costs to Applicant under this Agreement, direct that Applicant's payment obligations under this Article IV be made to its educational foundation, or to a similar entity. The alternative entity may only use such funds received under this Article to support the educational mission of the District and its students. Any designation of an alternative entity must be made by recorded vote of the District's Board of Trustees at a properly posted public Board meeting. Any such designation will become effective after public vote and the delivery of notice of said vote in conformance with the provisions of Section 6.1, below. Such designation may be rescinded by the District's Board of Trustees, by Board action, at any time.

Any designation of a successor beneficiary under this Section shall not alter the Aggregate Limitation on Supplemental payments described in Section 4.4, above.

## ARTICLE V

## ANNUAL LIMITATION OF PAYMENTS BY APPLICANT

### SECTION 5.1. ANNUAL LIMITATION AFTER FIRST THREE YEARS

Notwithstanding anything contained in this Agreement to the contrary, and with respect to each Tax Year during the term of this Agreement after the 2018 Tax Year, in no event shall (i) the sum of the maintenance and operations ad valorem taxes paid by the Applicant to the District for such Tax Year, plus the sum of all payments otherwise due from the Applicant to the District under Articles III and IV with respect to such Tax Year, exceed (ii) the amount of the maintenance and operations ad valorem taxes that the Applicant would have paid to the District for such Tax Year (determined by using the District's actual maintenance and operations tax rate

for such Tax Year) if the Parties had not entered into this Agreement. The calculation and comparison of the amounts described in clauses (i) and (ii) of the preceding sentence shall be included in all calculations made pursuant to Section 3.4, and in the event the sum of the amounts described in said clause (i) exceeds the amount described in said clause (ii), then the payments otherwise due from the Applicant to the District under Articles III and IV shall be reduced until such excess is eliminated.

### Section 5.2. OPTION TO CANCEL AGREEMENT

In the event that any payment otherwise due from the Applicant to the District under Article III and/or Section 4.2 with respect to a Tax Year is subject to reduction in accordance with the provisions of Section 5.1 above, then the Applicant shall have the option to terminate this Agreement. The Applicant may exercise such option to cancel this Agreement by notifying the District of its election in writing not later than the July 31 of the year next following the Tax Year with respect to which a reduction under Section 5.1 is applicable. Any cancellation of this Agreement under the foregoing provisions of this Section 5.2 shall be effective immediately prior to the second Tax Year next following the Tax Year in which the reduction giving rise to the option occurred. Upon such termination this Agreement shall terminate and be of no further force or effect; provided, however, that 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.

## ARTICLE VI

## TAX CREDITS

### Section 6.1. APPLICANT'S ENTITLEMENT TO TAX CREDITS

The Applicant shall be entitled to Tax Credits from the District under and in accordance with the provisions of Subchapter D of the Act and Comptroller Rules, provided that the Applicant complies with the requirements under such provisions, including the filing of a completed Application under Section 313.103 of the Texas Tax Code and Comptroller Rules.

### Section 6.2. DISTRICT'S OBLIGATIONS WITH RESPECT TO TAX CREDITS

The District shall timely comply and shall cause the District's collector of taxes to timely comply with their obligations under Subchapter D of the Act and Comptroller Rules, including, but not limited to, such obligations set forth in Section 313.104 of the Texas Tax Code and either Comptroller and/or Texas Education Agency Rules.

### Section 6.3. COMPENSATION FOR LOSS OF TAX CREDIT PROTECTION REVENUES

If after the Applicant has actually received the benefit of a Tax Credit under Section 6.1, the District does not receive aid from the State pursuant to Texas Education Code § 42.2515 or other similar or successor statute with respect to all or any portion of such Tax Credit for reasons other than the District's failure to comply with the requirements for obtaining such aid, then the District shall notify the Applicant in writing thereof and the circumstances surrounding the State's failure to provide such aid to the District. The Applicant shall pay to the District the amount of such Tax Credit for which the District did not receive such aid within thirty (30) calendar days after receipt of such notice, and such payment shall be subject to the same provisions for late payment as are set forth in Section 7.4 and 7.5. If the District receives aid from the State for all or any portion of a Tax Credit with respect to which the Applicant has made a payment to the District under this Section 6.3, then the District shall pay to the Applicant the amount of such aid within thirty (30) calendar days after the District's receipt thereof.

## ARTICLE VII

## ADDITIONAL OBLIGATIONS OF APPLICANT

### Section 7.1. DATA REQUESTS

During the term of this Agreement, and upon the written request of one Party or by the Comptroller (the "Requesting Party"), the other Party shall provide the Requesting Party with all information reasonably necessary for the Requesting Party to determine whether the other Party is in compliance with its obligations, including any employment obligations which may arise under this Agreement. The Applicant shall allow authorized employees of the District, the Comptroller, and/or the Brazoria County Appraisal District to have access to the Applicant's Qualified Property and/or business records, in accordance with Texas Tax Code Section 22.07, during the term of this Agreement, 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. All inspections will be made at a mutually agreeable time after the giving of not less that forty-eight (48) hours prior written notice, and will be conducted in such a manner so as not to unreasonably interfere with either the construction or operation of the Applicant's Qualified Property. 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 Brazoria County Appraisal District with any technical or business information that is private personnel data, proprietary, a trade secret or confidential in nature or is subject to a confidentiality agreement with any third party.

### Section 7.2. REPORTS TO OTHER GOVERNMENTAL AGENCIES

Applicant shall timely make any and all reports that are or may be required under the provisions of law or administrative regulation, including but not limited to the annual report or

certifications that may be required to be submitted by the Applicant to the Texas Comptroller of Public Accounts under the provisions of Texas Tax Code § 313.032. Applicant shall forward a copy of all such required reports or certifications to the District contemporaneously with the filing thereof. The obligation to make all such required filings shall be a material obligation under this Agreement.

**Section 7.3. APPLICANT'S OBLIGATION TO MAINTAIN VIABLE PRESENCE**

By entering into this Agreement, the Applicant warrants that:

(a) it will abide by all of the terms of the Agreement;

(b) it will Maintain Viable Presence in the District 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 (as hereinafter defined), provided the Applicant makes commercially reasonable efforts to remedy the cause of such Force Majeure; and,

(c) it will meet minimum eligibility requirements under Tax Code, Chapter 313 throughout the value limitation and tax-credit settle-up periods.

**Section 7.4. 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 5.2, or in the event that the Applicant or its successor-in-interest fails to comply in any material respect with the terms of this Agreement or to meet any material obligation under this Agreement, after the notice and cure period provided by Section 7.8, then the District shall be entitled to the recapture of all ad valorem tax revenue lost as a result of this Agreement together with the payment of penalty and interest, as calculated in accordance with Section 7.5, on that recaptured ad valorem tax revenue. For purposes of this recapture calculation, the Applicant shall be entitled to a credit for all payments made to the District pursuant to Article III. Applicant shall also be entitled to a credit for any amounts paid to the District pursuant to Article IV.

(b) Notwithstanding Section 7.4(a), in the event that the District determines that the Applicant has failed to Maintain Viable Presence and provides written notice of termination of the Agreement, then the Applicant shall pay to the District liquidated damages for such failure within thirty (30) days after receipt of such termination notice. The sum of liquidated damages due and payable shall be the sum total of 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 7.5. For purposes of this liquidated damages calculation, the Applicant shall be

entitled to a credit for all payments made to the District pursuant to Article III. The Applicant shall also be entitled to a credit for any amounts paid to the District pursuant to Article IV. Upon payment of such liquidated damages, Applicant's obligations under this Agreement shall be deemed fully satisfied, and such payment shall constitute the District's sole remedy.

### Section 7.5. CALCULATION OF PENALTY AND INTEREST

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 owed less all credits under Section 7.4 for each Tax Year during the term of this Agreement since the Commencement Date. The District shall calculate penalty or interest for each Tax Year during the term of this Agreement since the Commencement Date 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 7.4 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 Texas Tax Code § 33.01(a), or its successor statute. Interest on said amounts shall be calculated in accordance with the methodology set forth in Texas Tax Code § 33.01(c), or its successor statute.

### Section 7.6 MATERIAL BREACH OF AGREEMENT

Applicant shall be in Material Breach of this Agreement if it commits one or more of the following acts or omissions:

(a) Applicant is determined to have failed to meet its obligations to have made accurate representations of fact in submission of its Application as is required by Section 8.13, below.

(b) Applicant fails to Maintain Viable Presence in the District, as required by Section 7.3 of this Agreement, through the Final Termination Date of this Agreement.

(c) Applicant fails to make any payment required under Articles III or IV of this Agreement on or before its due date.

(d) Applicant fails to create and maintain at least the number of New Jobs set forth it committed to create and maintain on Schedule C, Column C of its Application.

(e) Applicant fails to create and maintain at least the number of New Jobs set forth it committed to create and maintain on Schedule C, Column E of its Application.

(f) Applicant fails to create and maintain at least Eighty Percent (80%) of all New Jobs created by Applicant on the project as Qualifying Jobs.

(g) Applicant makes 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, Tex. Tax Code, in excess of the amounts set forth in Articles III and IV, above. Voluntary donations made by Applicant to the District after the date of execution of this Agreement, and not mandated by this Agreement or made in recognition of consideration for this Agreement for limitation on appraised value made pursuant to Chapter 313 are not barred by this provision.

(h) Applicant fails to comply with any other term of this Agreement, or Applicant fails to meet its obligations under the applicable Comptroller's Rules, and under the Texas Economic Development Act.

**Section 7.7 LIMITED STATUTORY CURE OF MATERIAL BREACH**

In accordance with the provisions of Tex. Tax Code §313.0275, for any full Tax Year which commences after the project has become operational, Applicant shall may cure the Material Breaches of this Agreement, defined in Sections 7.6(d) and 7.6(e) or 7.6(f), above, without the termination of the remaining term of this Agreement. In order to cure its non-compliance with Sections 7.6(d) and 7.6(e) or 7.6(f) for the particular Tax Year of non-compliance only, Applicant may make the liquidated damages payment required by Tex. Tax Code §313.0275(b), in accordance with the provisions of Tex. Tax Code §313.0275(c).

**Section 7.8. DETERMINATION OF MATERIAL BREACH AND TERMINATION OF AGREEMENT**

Prior to making a determination that the Applicant has committed a material breach of this Agreement, such as making a misrepresentation in the Application, failing to Maintain Viable Presence in the District as required by Section 7.3 of this Agreement, failing to make any payment required under this Agreement when due, or has otherwise committed a material breach of this Agreement, the District shall provide the Applicant with a written notice of the facts which it believes have caused the material breach of this Agreement, and if cure is possible, the cure proposed by the District. After receipt of the notice, Applicant shall be given ninety (90) days to present any facts or arguments to the Board of Trustees showing that it is not in material breach of its obligations under the Agreement, or that it has cured or undertaken to cure any such material breach.

If the Board of Trustees is not satisfied with such response and/or that such breach has been cured, then the Board of Trustees shall, after reasonable notice to 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 whether or not a material breach of this Agreement has occurred, the date such breach occurred, if any, and whether or not any such

breach has been cured. In the event that the Board of Trustees determines that such a breach has occurred and has not been cured, it shall also terminate the Agreement and determine the amount of recaptured taxes under Section 7.4 (net of all credits under Section 7.4), and the amount of any penalty and/or interest under Section 7.5 that are owed to the District.

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").

### Section 7.9. DISPUTE RESOLUTION

After receipt of notice of the Board of Trustee's Determination of Breach and Notice of Contract Termination under Section 7.8, the Applicant shall have ninety (90) days in which either to tender payment or evidence of its efforts to cure, or to initiate mediation of the dispute by written notice to the District, in which case the District and the Applicant shall be required to make a good faith effort to resolve, without resort to litigation and within ninety (90) days after the Applicant's receipt of notice of the Board of Trustee's determination of breach under Section 7.8, 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 Brazoria 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.

In the event that any mediation is not successful in resolving the dispute or that payment is not received before the expiration of such ninety (90) days, the District shall have the remedies for the collection of the amounts determined under Section 7.8 as are set forth in Texas Tax Code Chapter 33, Subchapters B and C, 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 and a tax lien on the Applicant's Qualified Property and the Applicant's Qualified Investment pursuant to Texas Tax Code § 33.07 to the attorneys representing the District pursuant to Texas Tax Code § 6.30.

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

### Section 7.10. 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 greater of either any amounts calculated under Sections 7.4 and 7.5 above, or the monetary sum of the difference between the payments and credits due and owing to the Applicant at the time of such default and the District taxes that would have been lawfully payable to the District had this Agreement not been executed. 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 7.10 shall be the sole and exclusive remedies available to the District, whether at law or under principles of equity.

### Section 7.11. BINDING ON SUCCESSORS

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.

### Section 7.12. ADDITIONAL APPLICANT OBLIGATIONS PRIOR TO END OF DEFERRAL PERIOD

As set forth in section 1.2, above, the Parties have agreed to the deferral of the Commencement Date for this Agreement until January 2, 2015. Applicant must, therefore comply with the following additional requirements in conformance with the provisions of 34 Tex. Admin. Code § 9.1054(h)(13). Not earlier that July 6, 2014, nor later than October 3, 2014, Applicant shall provide the District with an update on the project status. If there have been no material changes in the project schedule, cost projections, taxable value projections, or employment projections made in the Application, Applicant shall notify the District and the Comptroller that no change in status has occurred. In the event that there has been any material change any data or projection submitted as a part of the Application, then Applicant shall within the time aforesaid time period deliver to the District and the Comptroller an Application amendment and/or supplement Application materials informing them of any material change in the Application materials. Additionally, prior to the Commencement Date, Applicant shall diligently comply with any written request from the District or the Comptroller to provide additional information necessary to evaluate the economic impact analysis for the conditions prior to the start of the Qualifying Time Period.

In the event that any information submitted pursuant to this Section results in the Comptroller's recommendation in favor of the project being changed to a negative recommendation by the Comptroller, then the District's Board of Trustees may, in its sole discretion immediately terminate this Agreement by giving Notice of said termination in

accordance with the provisions of Section 8.1, below. After receiving such Notice, Applicant shall be entitled to invoke the Dispute resolution provisions set forth at section 7.9, above.

## ARTICLE VIII

## MISCELLANEOUS PROVISIONS

### Section 8.1. INFORMATION AND NOTICES

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

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

Dr. Karin Holacka, Superintendent
**BRAZOSPORT INDEPENDENT SCHOOL DISTRICT**
P.O. Drawer Z.
Freeport, Texas 77542
Fax: (979) 266-2409

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

Notices to the Applicant shall be addressed to:

John Nichols
**THE DOW CHEMICAL COMPANY**
Tax Dept. APB Building
2301 N. Brazosport Blvd.
Freeport, Texas 77541
Fax: 979-238-0207

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

### Section 8.2. EFFECTIVE DATE, TERMINATION OF AGREEMENT

(a) This Agreement shall be and become effective on the date of final approval of this Agreement by the District's Board of Trustees,

(b) The obligation to Maintain Viable Presence under this Agreement shall remain in full force and effect through the termination in full date established in Section 1.2 of this Agreement.

(c) In the event that Applicant fails to make a Qualified Investment in the amount of Thirty Million Dollars ($30,000,000.00), or greater, during the Qualifying Time Period, this Agreement shall become null and void on December 31, 2017.

### Section 8.3. AMENDMENTS TO AGREEMENT; WAIVERS

This Agreement may not be modified or amended except by an instrument or instruments in writing signed by all of the Parties. 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. By official action of the Board of Trustees, this Agreement may be amended to include, in the Applicant's Qualified Investment, additional or replacement Qualified Property not specified in **EXHIBIT 3**, provided that the Applicant reports to the District, the Comptroller, and the Appraisal District, in the same format, style, and presentation as the Application, all relevant investment, value, and employment information that is related to the additional property. Any amendment of the Agreement adding additional or replacement Qualified Property pursuant to this Section 8.3 shall, (1) require that all property added by amendment be eligible property as defined by Tax Code, §313.024; (2) clearly identify the property, investment, and employment information added by amendment from the property, investment, and employment information in the original Agreement; and (3) define minimum eligibility requirements for the recipient of limited value. This Agreement may not be amended to extend the value limitation time period beyond its eight year statutory term.

### Section 8.4. ASSIGNMENT

The Applicant may assign this Agreement, or a portion of this Agreement, to an Affiliate or a new owner or lessee of all or a portion of the Applicant's Qualified Property and/or the Applicant's Qualified Investment, provided that the Applicant shall provide written notice of such assignment to the District. Upon such assignment, Applicant's assignee will be liable to the District for outstanding taxes or other obligations arising under this Agreement. A recipient of limited value under Tax Code, Chapter 313 shall notify immediately the District, the Comptroller, and the Appraisal District in writing of any change in address or other contact information for the owner of the property subject to the limitation agreement for the purposes of Tax Code §313.032. The assignee's or its reporting entity's Texas Taxpayer Identification Number shall be included in the notification.

### Section 8.5. 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 8.6. MAINTENANCE OF COUNTY APPRAISAL DISTRICT RECORDS

When appraising the Applicant's Qualified Property and the Applicant's Qualified Investment subject to a limitation on Appraised Value under this Agreement, the Chief Appraiser of the Brazoria County Appraisal District shall determine the Market Value thereof and include both such Market Value and the appropriate value thereof under this Agreement in its appraisal records.

### Section 8.7. 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 Brazoria County, Texas.

### Section 8.8. 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 8.9. SEVERABILITY

If any term, provision or condition of this Agreement, or any application thereof, is held invalid, illegal or unenforceable in any respect under any Law (as hereinafter defined), this Agreement shall be reformed to the extent necessary to conform, in each case consistent with the intention of the Parties, to such Law, and to the extent such term, provision or condition cannot be so reformed, then such term, provision or condition (or such invalid, illegal or unenforceable application thereof) shall be deemed deleted from (or prohibited under) this Agreement, as the case may be, and the validity, legality and enforceability of the remaining terms, provisions and conditions contained herein (and any other application such term, provision or condition) shall not in any way be affected or impaired thereby. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement in an acceptable manner so as to effect the original intent of the Parties as closely as possible to the end that the transactions contemplated hereby are fulfilled to the extent possible. As used in this Section 8.9, 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 8.10. 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 8.11. INTERPRETATION

When a reference is made in this Agreement to a Section, Article or Exhibit, such reference shall be to a Section or Article of, or Exhibit to, this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The words "include," "includes" and "including" when used in this Agreement shall be deemed in such case to be followed by the phrase "but not limited to" words used in this Agreement, regardless of the number or gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context shall require. This Agreement is the joint product of the Parties and each provision of this Agreement has been subject to the mutual consultation, negotiation and agreement of each Party and shall not be construed for or against any Party.

### Section 8.12. 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 8.13. ACCURACY OF REPRESENTATIONS CONTAINED IN APPLICATION

The Parties acknowledge that this Agreement has been negotiated, and is being executed, in reliance upon the information contained in the Application. Applicant warrants that all information, facts, and representations contained therein are true and correct. The parties further agree that the Application and all the attachments thereto are included by reference into this Agreement as if set forth herein in full.

In the event that the Board of Trustees, after completing the procedures required by Sections 7.8 and 7.9 of this Agreement, makes a written determination that the Application was either incomplete or inaccurate as to any material representation, information, or fact, the Agreement shall be invalid and void except for the enforcement of the provisions required by 34. Tex. Admin. Code § 9.1053(f)(2)(K).

### Section 8.14. 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; the approved and executed copy of this Agreement or any amendment thereto; and each application requesting Tax Credits under Tex. Tax Code § 313.103, as follows:

a. Within seven days of such document, the school district shall submit a copy to the Comptroller for Publication on the Comptroller's Internet website.

b. 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 Tex. Tax Code § 313.028.

*IN WITNESS WHEREOF*, this Agreement has been executed by the Parties in multiple originals on this 5th day of September 2012.

**THE DOW CHEMICAL COMPANY**

By: _____
Earl Ship, VP and Site Leader Texas Operations

Name: _____

Title: _____

**BRAZOSPORT INDEPENDENT SCHOOL DISTRICT**

By: _____
**RUTH ANN FEW**
President
Board of Trustees

**ATTEST:**

_____
**RON DAMIAN**
Secretary
Board of Trustees

## EXHIBIT 1

## DESCRIPTION OF QUALIFIED REINVESTMENT ZONE

*The Dow Chemical Company, LLC Reinvestment Zone* was originally created on April 3, 2012 by action of the Brazosport Independent School District Board of Trustees. A map of *The Dow Chemical Company, LLC Reinvestment Zone* is attached as the last page of this **EXHIBIT 1**.

As a result of the action of the Board of Trustees of the Brazosport Independent School District, *The Dow Chemical Company, LLC Reinvestment Zone* includes real property within Brazoria County, Texas, more specifically the following property and tracks.

EXHBIT 1

# PROPOSED REINVESTMENT ZONE

Approximately 1891 acres of land out of the Stephen F. Austin 5 League Grant, Abstract 19, A.B. Clark, Abstract 54, J.E.A. Phelps, Abstract 115, J.E.A. Phelps, Abstract 116, Peter Bertrand Labor 5, Abstract 42, J.F. Fields Labor 6, Abstract 62, Eli Mitchell Survey, Abstract 99, Maurice Henry ¼ League, Abstract 74 and the Alexander Calvit League, Abstract 49, all being located in Brazoria County, Texas, as follows;

Beginning at the intersection of Sim Hodge Road and Glycol Road, being more particular described as private roads located within the Dow Chemical Plant B Site, traversing in a southeasterly direction, a distance of 7,943' feet to the intersection of Glycol Road and Canal Road;

Thence in a northeasterly direction, a distance of 1,350' feet to a point at the south water's edge of the Dow Barge Canal;

Thence in southeasterly direction, along and coincident with the south water's edge of the above mentioned canal, continuing in all a distance of 8,537' feet to a point located at the intersection of the south water's edge of the Dow Barge Canal and the centerline of the Missouri-Pacific Oyster Creek Lead Railroad Spur Track;

Thence in a southeasterly direction, along and coincident with the centerline of the above mentioned railroad spur track, in all a distance of 9,654' feet to a point in the west right-of-way of F.M. Highway 523;

Thence in a southwesterly direction, along and coincident with the west right-of-way of F.M. Highway 523, in all distance of 2,778' feet to a point at the north water's edge of the Dow Barge Canal;

Thence in a northwesterly direction, along and coincident with the north water's edge of the Dow Barge Canal, continuing in all a distance of 6,076' feet to a point located at the intersection of the north water's edge of the Dow Barge Canal and the south water's edge of the Dow Waste Water Canal;

Thence in a southwesterly direction, along and coincident with the south water's edge of the Dow Waste Water Canal, continuing in all a distance of 7,549' feet to a point;

Thence in a northwesterly direction, along and coincident with the centerline of South Levee Road, said road being a private road located within the Dow Chemical Plant B Site, continuing in all a distance of 8,844' feet to the intersection of South Levee Road and Nickel Road;

Thence in a northeasterly direction, a distance of 317' feet to the intersection of Nickel Road and South Nitrogen Road;

Thence in a northwesterly direction, a distance of 803' feet to the intersection of South Nitrogen Road and Zinc Road;

Thence in a northeasterly direction, a distance of 920' feet to the intersection of Zinc Road and West Hydrogen Road;

Thence in a northwesterly direction, a distance of 1,045' feet to the intersection of West Hydrogen Road and East Plant Road;

Thence in a northeasterly direction, a distance of 1'755' feet to the intersection of East Plant Road and Chlorine Road;

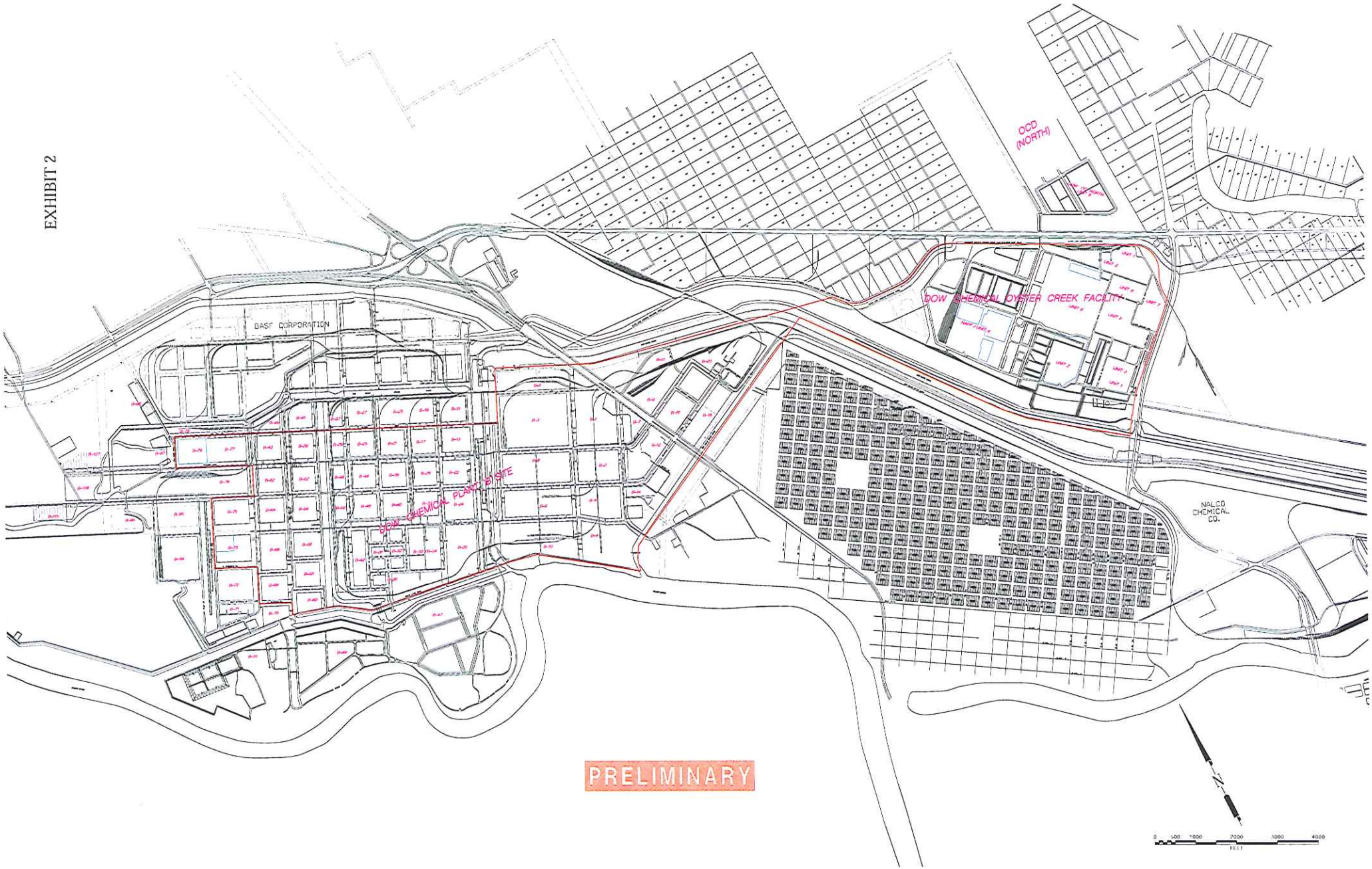
Thence in a southeasterly direction, a distance of 1,045' feet to the intersection of Chlorine Road and Zinc Road;

Thence in a northeasterly direction, a distance of 775' feet to the intersection of Zinc Road and Entrance Road;

Thence in a northwesterly direction, a distance of 1,877' feet to the intersection of Entrance Road and Sim Hodge Road;

Thence in a northeasterly direction, a distance of 775' feet to the place of beginning, containing 1,891 acres of land, more or less.

EXHIBIT 2


BASF CORPORATION
DOW CHEMICAL PLANT SITE
DOW CHEMICAL OYSTER CREEK FACILITY
OCD (NORTH)
NALCO CHEMICAL CO.
PRELIMINARY

## EXHIBIT 2

### LOCATION OF QUALIFIED INVESTMENT/QUALIFIED PROPERTY

All Qualified Property owned by Applicant and located within the boundaries of both the Brazosport Independent School District and *The Dow Chemical Company, LLC Reinvestment Zone* will be included in and subject to this Agreement. Specifically, all Qualified Property of Applicant located in the following sections of land is included, to wit:

EXHBIT 1

# PROPOSED REINVESTMENT ZONE

Approximately 1891 acres of land out of the Stephen F. Austin 5 League Grant, Abstract 19, A.B. Clark, Abstract 54, J.E.A. Phelps, Abstract 115, J.E.A. Phelps, Abstract 116, Peter Bertrand Labor 5, Abstract 42, J.F. Fields Labor 6, Abstract 62, Eli Mitchell Survey, Abstract 99, Maurice Henry ¼ League, Abstract 74 and the Alexander Calvit League, Abstract 49, all being located in Brazoria County, Texas, as follows;

Beginning at the intersection of Sim Hodge Road and Glycol Road, being more particular described as private roads located within the Dow Chemical Plant B Site, traversing in a southeasterly direction, a distance of 7,943' feet to the intersection of Glycol Road and Canal Road;

Thence in a northeasterly direction, a distance of 1,350' feet to a point at the south water's edge of the Dow Barge Canal;

Thence in southeasterly direction, along and coincident with the south water's edge of the above mentioned canal, continuing in all a distance of 8,537' feet to a point located at the intersection of the south water's edge of the Dow Barge Canal and the centerline of the Missouri-Pacific Oyster Creek Lead Railroad Spur Track;

Thence in a southeasterly direction, along and coincident with the centerline of the above mentioned railroad spur track, in all a distance of 9,654' feet to a point in the west right-of-way of F.M. Highway 523;

Thence in a southwesterly direction, along and coincident with the west right-of-way of F.M. Highway 523, in all distance of 2,778' feet to a point at the north water's edge of the Dow Barge Canal;

Thence in a northwesterly direction, along and coincident with the north water's edge of the Dow Barge Canal, continuing in all a distance of 6,076' feet to a point located at the intersection of the north water's edge of the Dow Barge Canal and the south water's edge of the Dow Waste Water Canal;

Thence in a southwesterly direction, along and coincident with the south water's edge of the Dow Waste Water Canal, continuing in all a distance of 7,549' feet to a point;

Thence in a northwesterly direction, along and coincident with the centerline of South Levee Road, said road being a private road located within the Dow Chemical Plant B Site, continuing in all a distance of 8,844' feet to the intersection of South Levee Road and Nickel Road;

Thence in a northeasterly direction, a distance of 317' feet to the intersection of Nickel Road and South Nitrogen Road;

Thence in a northwesterly direction, a distance of 803' feet to the intersection of South Nitrogen Road and Zinc Road;

Thence in a northeasterly direction, a distance of 920' feet to the intersection of Zinc Road and West Hydrogen Road;

Thence in a northwesterly direction, a distance of 1,045' feet to the intersection of West Hydrogen Road and East Plant Road;

Thence in a northeasterly direction, a distance of 1'755' feet to the intersection of East Plant Road and Chlorine Road;

Thence in a southeasterly direction, a distance of 1,045' feet to the intersection of Chlorine Road and Zinc Road;

Thence in a northeasterly direction, a distance of 775' feet to the intersection of Zinc Road and Entrance Road;

Thence in a northwesterly direction, a distance of 1,877' feet to the intersection of Entrance Road and Sim Hodge Road;

Thence in a northeasterly direction, a distance of 775' feet to the place of beginning, containing 1,891 acres of land, more or less.

## EXHIBIT 3

### DESCRIPTION OF THE APPLICANT'S QUALIFIED INVESTMENT/QUALIFIED PROPERTY

The proposed project will consist of an on-purpose propylene plant that will use propane as a feedstock to produce propylene. The process is known as propane dehydrogenation (PDH).

The proposed improvements for this project include:

- site improvements,
- installation of pipeways
- utility services
- foundations
- process equipment including vessels
- reactors, pumps, pipes, valves, filters
- electrical and instrument systems.

The project will also include any other necessary equipment to construct a fully functioning manufacturing plant.

All of the property for which the Applicant is seeking a limitation on appraised value will be owned by the Applicant or a valid assignee pursuant to this Agreement. The facility will also require some amount of personal property.