

PAYMENT AGREEMENT

This Payment Agreement (*the "Agreement"*) is entered into to be effective as of the Effective Date (as hereinafter defined) by and between **DALHART INDEPENDENT SCHOOL DISTRICT** (*the "District"*), a lawfully created independent school district of the State of Texas operating under and subject to the Texas Education Code, and **HILMAR CHEESE COMPANY** (*the "Applicant"*).

RECITALS:

WHEREAS, the District and the Applicant entered into a Texas Economic Development Act Participation Agreement, dated December 15, 2005 (*hereinafter the "Tax Limitation Agreement"*);

WHEREAS, on February 6, 2012 Moak, Casey & Associates, the Third Party appointed pursuant to Section 3.4 of the Tax Limitation Agreement, delivered to the Applicant, pursuant to Section 3.6 of the Tax Limitation Agreement, its revised determination of amounts due pursuant to the provisions of Articles III and IV of the Tax Limitation Agreement from the Applicant to the District on or about January 31, 2012; and,

WHEREAS, it was the determination of Moak, Casey & Associates that the Applicant owed the District the amount of EIGHT HUNDRED THREE THOUSAND TWO HUNDRED TEN DOLLARS (\$803,210.00) under Article III of the Tax Limitation Agreement and the amount of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) under Article IV of the Tax Limitation Agreement amounting to a combined calculated payment obligation under the Tax Limitation Agreement of NINE HUNDRED FIFTY-THREE THOUSAND TWO HUNDRED TEN DOLLARS (\$953,210.00) (*hereinafter the "2011 Original Calculated Contractual Payment Obligation"*); and,

WHEREAS, the Applicant does not question the accuracy of these calculations; and,

WHEREAS, Applicant had previously agreed, as a part of its plant expansion to pay the District an additional amount the Tax Limitation Agreement and the amount of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) per year on each remaining year of the Tax Limitation Agreement as additional Supplemental Payments in addition to the obligations set forth under Article IV of the Tax Limitation Agreement.

WHEREAS, the Parties to the Tax Limitation Agreement agree that the Applicant has recently completed a plant expansion requiring the expenditure of substantial sums which will enhance the value of the project to both the District and the community; and,

WHEREAS, changes in the school finance formulas which occurred after the execution of the Tax Limitation Agreement, reduced the Applicant's Net Tax Benefit under the Tax Limitation Agreement for Tax Year 2011 to the amount of ONE MILLION FOUR HUNDRED

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THIRTY-NINE THOUSAND FOUR HUNDRED SEVENTY-NINE (\$1,439,479.00) DOLLARS, an amount below the amount originally estimated by the Parties; and,

WHEREAS, the Applicant has requested additional time in which to make the aforementioned additional ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) payment for Tax Year 2011 (Payment due date January 31, 2011).

WHEREAS, in light of the substantial investment made in the community by the Applicant and the general economic benefit to both the District and the community made by the Applicant's project, the District's Board on February 9, 2012 determined it to be in the best interest of the District to honor the Applicant's request for additional time on the general terms and conditions set forth below.

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

AGREEMENT:

1. Receipt of 2011 Original Calculated Payment Obligation. The District Acknowledges that Applicant has paid to the District the Original Calculated Payment Obligation in the amount of NINE HUNDRED FIFTY-THREE THOUSAND TWO HUNDRED TEN DOLLARS (\$953,210.00):

The ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) balance for 2011, being the agreed additional payment associated with the plant expansion will be deferred for Tax Year 2011, and shall be due and payable in equal annual installments over the balance of the Tax Limitation Agreement.

As a result of the foregoing, and for the remaining term of the Tax Limitation Agreement, Applicant agrees to make payments to the District for each of the categories of payments set forth below: as follows:

- a. to increase its annual payments associated with the plant expansion to the District, beginning with the payment due payable on or before January 31, 2013, from the amount of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) per year, to the amount of ONE HUNDRED EIGHTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$187,500.00), per year. This obligation shall continue to be due and payable in four equal annual payments with the first such payment due on or before the 31st day of January 2013, and additional annual payments in the same amount of ONE HUNDRED EIGHTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$187,500.00), per year. on or before January 31 of each of the three (3) years next following January 31, 2013 (i.e. through January 31, 2016);
- b. to continue to make the payments to the District as set forth in Section 4.2 of the Tax Limitation Agreement under Article IV of the Tax Limitation Agreement.

- c. to continue to make the payments to the District as they are calculated, on an annual basis, under Article III of the Tax Limitation Agreement.

All payments made by the Applicant to the District under this each of the foregoing Subsections a through c shall be considered to be cumulative of each other.

2. Default. Any default by the Applicant in payment of the 2011 Combined Calculated Payment Obligation in accordance with the terms of this Agreement shall constitute a default under the Amended Tax Limitation Agreement, which is incorporated herein by reference for all purposes, and the District shall have all of the remedies contained therein to ensure compliance

3. Notices. All notices required to be sent under this Payment Agreement shall be given in writing via certified mail, return receipt requested to the Parties hereto in accordance with the notice provisions of the Tax Limitation Agreement.

4. Amendments. No amendments to this Payment Agreement shall be effective until the same are approved and accepted by the Parties. This Payment Agreement may be modified, amended, or terminated only by written mutual agreement of the District and the Applicant.

5. Assignment. This Payment Agreement may be assigned only in connection with an assignment of the Tax Limitation Agreement and only on the same terms for assignment set forth therein.

6. Governing Law. This Payment 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 rules that would direct the application of the laws of another jurisdiction.

7. Authority to Execute Payment Agreement. Each of the Parties listed below expressly warrants that it has been expressly authorized to execute this Payment Agreement for and on behalf of the respective Parties.

8. Severability. If any term or provision of this Payment Agreement, or the application thereof to any person or circumstance, shall to any extent be held to be invalid or unenforceable, then such invalidity or unenforceability shall not affect any other term or provision of this Payment Agreement or the application thereof which can be given effect without the invalid or unenforceable provision, and the Parties agree that the provisions of this Payment Agreement are and shall be severable.

9. Execution of Counterparts. This Payment Agreement may be executed in 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.

IN WITNESS WHEREOF, this Agreement has been executed by the District and the Applicant duplicate originals on this ____ day of _____ 2012.

HILMAR CHEESE COMPANY

DALHART INDEPENDENT SCHOOL DISTRICT

By: _____
Name _____
Title _____

By: _____
JEFF LLOYD
President
Board of Trustees

Attest:

By: _____
GARY SCHNIEDERJAN
Secretary
Board of Trustees