

**MATAGORDA BAY MITIGATION TRUST**

## MATAGORDA BAY MITIGATION TRUST AGREEMENT

This Matagorda Bay Mitigation Trust Agreement (the "Agreement" or "Trust Agreement") is made this 8<sup>th</sup> day of May, 2020, the "Effective Date," by and among San Antonio Bay Estuarine Waterkeeper, S. Diane Wilson, Formosa Plastics Corp., Texas, and Formosa Plastics Corp., U.S.A.

### RECITALS:

WHEREAS, a Final Consent Decree was entered in Cause No. 6:17-CV-00047 on December 9, 2019, In *San Antonio Bay Estuarine Waterkeeper and S. Diane Wilson, vs. Formosa Plastics Corp., Texas and Formosa Plastics Corp., U.S.A.*, in the United States District Court for the Southern District of Texas, Victoria Division ("Consent Decree");

WHEREAS, the Consent Decree disposed of the lawsuit by requiring changes at the Formosa facility, review and monitor of discharges, efforts to clean up the discharges, mitigation projects and mitigation payments until the discharges cease;

WHEREAS, the terms and conditions regarding the changes at the Formosa facility, the review and monitoring of discharges, mitigation payments for future discharges are governed by the Consent Decree and are not covered by this Trust Agreement;

WHEREAS, the Consent Decree requires the establishment of the Matagorda Bay Mitigation Trust with a Trustee to manage and distribute Funds paid by the Defendants for certain projects;

WHEREAS, the Consent Decree provides for certain mitigation projects with associated funding, funding schedule and objectives and scope of the mitigation projects to be implemented and administered under the Matagorda Bay Mitigation Trust;

WHEREAS, pursuant to the Consent Decree, this Matagorda Bay Mitigation Trust Agreement memorializes and provides for the terms and conditions of the Mitigation Projects;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein and the Consent Decree, the Parties hereby agree as follows:

### **ARTICLE I** **DEFINITIONS**

#### 1.1 Definitions.

The following terms as used in this Agreement shall have the definitions given below:

- 1.1.1 "Administrative Costs" means all reasonable fees, costs, and expenses incurred in connection with the operation and administration of this Matagorda Bay Mitigation Trust Agreement including, but not limited to,

compensation paid to: the Trustee, third-party professionals, employees of the Trust, certified public accountants, brokers, attorneys, consultants, and investment advisors; and expenses incurred in overseeing and managing the Matagorda Bay Mitigation Trust Agreement, including taxes, insurance, and maintenance costs.

- 1.1.2 “Agreement” means the Matagorda Bay Mitigation Trust Agreement.
- 1.1.3 “Award Committees” means the Award Committee for the Matagorda Bay Mitigation Trust, described in paragraph 2.3.7, and any Award Committee established for the Environmental Research Mitigation Project described in paragraph 2.3.6.
- 1.1.4 “Award Process” means the processes set forth in paragraphs 2.3.6 and 2.3.7 for the award of mitigation Funds pursuant to the Consent Decree.
- 1.1.5 “Bay Systems” means the Matagorda Bay and San Antonio Bay Systems.
- 1.1.6 “Beneficiary” means Recipient of Funds from the Trust but does not include recipients of Administrative Costs.
- 1.1.7 “Consent Decree” means the Final Consent Decree entered in Cause No. 6:17-CV-00047, In *San Antonio Bay Estuarine Waterkeeper and S. Diane Wilson, vs. Formosa Plastics Corp., Texas and Formosa Plastics Corp., U.S.A.*, in the United States District Court for the Southern District of Texas, Victoria Division, a copy of which is attached hereto as “Exhibit A” and is incorporated herein for all purposes.
- 1.1.8 “Court” means the United States District Court for the Southern District of Texas, Victoria Division.
- 1.1.9 “Defendants” means Formosa Plastics Corp., Texas and Formosa Plastics Corp., U.S.A., and the Transferor of the Funds to the Matagorda Bay Mitigation Trust under the Consent Decree. The terms Formosa, Defendants and Transferor may be used interchangeably.
- 1.1.10 “Effective Date” has the meaning set forth in the first paragraph of this Trust Agreement.
- 1.1.11 “Formosa” means Formosa Plastics Corp., Texas and Formosa Plastics Corp., U.S.A.
- 1.1.12 “Funding” or “Funds” means the monies to be paid by Formosa to the Matagorda Bay Mitigation Trust under the Consent Decree and specifically for the Mitigation Projects identified and described in this Trust Agreement

and any additional sums paid by Formosa or returned to the Trust for redistribution.

- 1.1.13 “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.
- 1.1.14 “Matagorda Bay Mitigation Trust Agreement” has the meaning as given in the preamble.
- 1.1.15 “Matagorda Bay Mitigation Trust” means the Trust created by the Consent Decree.
- 1.1.16 “Mitigation Projects” means those projects identified and described in 2.3 of this Trust Agreement.
- 1.1.17 “Parties” or “Party” means the San Antonio Bay Estuarine Waterkeeper, S. Diane Wilson, Formosa Plastics Corp., Texas and Formosa Plastics Corp., U.S.A.
- 1.1.18 “Person” or “Persons” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, charitable foundation, unincorporated organization, government or any agency or political subdivision thereof or any other entity.
- 1.1.19 “Plaintiffs” means San Antonio Bay Estuarine Waterkeeper, and S. Diane Wilson. Plaintiffs are also the Releasors under the Consent Decree.
- 1.1.20 “Qualified Settlement Fund” means the Qualified Settlement Fund defined in Article VIII.
- 1.1.21 “Recipient” or “Recipients” means the Beneficiaries of the Trust who receive distribution of Funds for the Mitigation Projects under the Trust established by the Consent Decree and who are responsible for use of the Funds for the specifically identified Mitigation Projects and other Beneficiaries identified by the Trustee and determined by the Trustee to receive Funds under the terms of the Trust Agreement, including, but not limited to the Beneficiaries named in the Consent Decree which consist of the Federation of Southern Cooperatives, Port Lavaca YMCA, Calhoun County, the University of Texas Marine Science Institute Nurdle Patrol, Environmental Research Mitigation Project, and Matagorda Bay Mitigation Trust. Recipient and Recipients may be used interchangeably.
- 1.1.22 “Transferor” means Formosa Plastics, Corp., Texas, and Formosa Plastics, Corp., U.S.A., the Defendants obligated to transfer Funds to the Matagorda Bay Mitigation Trust under the Consent Decree.

- 1.1.23 “Trust” means the entity to hold - (a) those assets, including the Funding transferred and to be transferred to the Trust pursuant to the Consent Decree and the Matagorda Bay Mitigation Trust Agreement, (b) such other assets, including Funds acquired, earned, or held by the Trust from time to time pursuant to the Consent Decree, the Matagorda Bay Mitigation Trust Agreement, including Trust Proceeds; and also means the Matagorda Bay Mitigation Trust created by the Consent Decree.
- 1.1.24 “Trust Account” has the meaning given in Section 2.2.2.
- 1.1.25 “Trust Agreement” means the Matagorda Bay Mitigation Trust Agreement.
- 1.1.26 “Trust Assets” or “Assets” means those assets, including Funding belonging to the Trust.
- 1.1.27 “Trust Parties” or “Trust Party” means, collectively, the Trust, the Trustee and affiliates, employees, managers, consultants, agents, accountants, attorneys or other professionals or representative engaged or employed by the Trust or Trustee.
- 1.1.28 “Trustee” means the Trustee of the Matagorda Bay Mitigation Trust established by the Consent Decree who will manage the distribution of Funds under the Consent Decree and this Trust Agreement. Trustee is also the Administrator of the Qualified Settlement Fund as described in ARTICLE VIII.

## **ARTICLE II**

### **THE MATAGORDA BAY MITIGATION TRUST**

#### **2.1 Creation of, Transfer of Assets and Administration of Trust Assets of the Matagorda Bay Mitigation Trust**

- 2.1.1 Pursuant to the Consent Decree, there is hereby established a Trust and the Defendants hereby transfer, assign, and deliver, by good title and other appropriate instruments, to the Matagorda Bay Mitigation Trust, or to the Trustee, not individually but solely in his representative capacity as Trustee, all Assets identified hereinafter.
- 2.1.2 The Trustee hereby accepts and agrees to hold the Assets in the Trust for the purposes described in the Consent Decree and subject to the terms of this Matagorda Bay Mitigation Trust Agreement, the Consent Decree, and any applicable orders of the Court.
- 2.1.3 The Trustee shall administer the Matagorda Bay Mitigation Trust in accordance with the terms of this Trust Agreement, the terms of the

Consent Decree and applicable trust law of the State of Texas. In the event of any dispute, issue of interpretation, conflict, or disagreement with the terms of the Trust Agreement or conflict or disagreement between the Parties and the Trustee, the Dispute Resolution Process in Section VI of the Consent Decree shall govern the manner of resolving any such disputes.

- 2.1.4 The Trustee shall have broad powers and the sole discretion and decision in the administration of this Trust Agreement and shall not be financially liable to any person, including, but not limited to any of the Parties, Recipients, Plaintiffs or Defendants, Trust Parties for any decision, action or inaction except in the case of willful fraud or gross negligence.
- 2.1.5 The Trust shall be the exclusive holder of the Trust Assets and Trust Accounts described herein.
- 2.1.6 The Trustee shall make reasonable efforts to ensure that information about the expenditures and accomplishments of the Trust are available to the public on a quarterly basis, unless there has been minimal change from the previous quarter.
- 2.1.7 The Trust shall be irrevocable. The Transferor shall not alter, amend, revoke, or terminate the Trust. The Transferor shall have no power or authority to direct the Trustee to return any of the Funds of the Trust to the Transferor.
- 2.1.8 As Trustee, the Trustee shall be independent of the Transferor, the Plaintiffs, and each Recipient.
- 2.1.9 The Trustee will act as Administrator of the Qualified Settlement Fund.

## 2.2 Transfer of Funding and Consideration to the Trustee

- 2.2.1 Creation of the Matagorda Bay Mitigation Trust, Funding and Trust Accounts. The sum of Fifty (50) million dollars will be paid into the Matagorda Bay Mitigation Trust over five (5) years and such Funds will be used to fund certain mitigation projects with such sums allocated, identified, and funded for each project as follows:
  - a. Federation of Southern Cooperatives - The sum of twenty (20) million dollars to be paid and transferred to the Matagorda Bay Mitigation Trust as follows:
    - i. \$3 million in 2020;
    - ii. \$4 million in 2021;
    - iii. \$4 million in 2022;

- iv. \$4 million in 2023; and
  - v. \$5 million in 2024.
  
- b. Green Lake Park – the sum of ten (10) million dollars to be paid and transferred to the Matagorda Bay Mitigation Trust:
  - i. \$2 million for breach repair in 2020;
  - ii. \$2 million for Green Lake Park in 2021;
  - iii. \$2 million for Green Lake Park in 2022;
  - iv. \$2 million for Green Lake Park in 2023; and
  - v. \$2 million for Green Lake Park in 2024.
  
- c. Port Lavaca YMCA – the sum of Seven Hundred Fifty (750) thousand dollars to be paid and transferred to the Matagorda Bay Mitigation Trust:
  - i. \$100,000 in 2020;
  - ii. \$125,000 in 2021;
  - iii. \$150,000 in 2022;
  - iv. \$150,000 in 2023; and
  - v. \$225,000 in 2024.
  
- d. Calhoun County – the sum of two (2) million dollars to be paid and transferred to the Matagorda Bay Mitigation Trust:
  - i. \$1,000,000 in 2021; and
  - ii. \$1,000,000 in 2022.
  
- e. University of Texas Marine Science Institute (UTMSI) – the sum of one (1) million dollars to be paid and transferred to the Matagorda Bay Mitigation Trust:
  - i. \$200,000 in 2020;
  - ii. \$200,000 in 2021;
  - iii. \$200,000 in 2022;
  - iv. \$200,000 in 2023; and
  - v. \$200,000 in 2024.
  
- f. Environmental Research Mitigation Project – the sum of five (5) million dollars to be paid and transferred to the Matagorda Bay Mitigation Trust:
  - i. \$1,000,000 in 2020;

- ii. \$1,000,000 in 2021;
  - iii. \$1,000,000 in 2022;
  - iv. \$1,000,000 in 2023; and
  - v. \$1,000,000 in 2024.
- g. Matagorda Bay Mitigation Trust – the sum of eleven (11) million two-hundred fifty (250) thousand dollars and any additional sums paid by Formosa or returned to the Trust for redistribution, to the Matagorda Bay Mitigation Trust in accordance with this Trust Agreement and Consent Decree:
- i. \$3,700,000 in 2020;
  - ii. \$1,675,000 in 2021;
  - iii. \$1,650,000 in 2022;
  - iv. \$2,650,000 in 2023; and
  - v. \$1,575,000 in 2024.

2.2.2 Trustee’s Management of Trust Accounts.

- a. Each Trust Account, if more than one at the discretion of the Trustee, shall be managed by the Trustee.
- b. The Trustee shall be responsible to distribute the Funds for the above identified projects, for the purposes identified hereinafter, in such amounts as Trustee determines appropriate, which shall be based on availability of Funds and in accordance with the terms of this Agreement and as determined by the Award Committees pursuant to 2.3.6 and 2.3.7.
- c. Separate Trust Accounts are referred to in this Agreement individually as “Trust Account” and collectively as the “Trust Accounts.”
- d. Upon transfer of the Funding, no person or entity, whether a Recipient under the Consent Decree or a Recipient of any such Funds transferred to the Matagorda Bay Mitigation Trust, shall have a personal interest in any Trust Assets.
- e. Each Recipient shall be obligated to expend the distribution of Funds made to it for the projects identified for such Recipient and shall limit any administrative expenses or overhead expenses to no more than 15% of salaries of such Recipient charged to the project. Recipient shall ensure salary amounts charged to the project are reasonable and for the projects identified.



- f. The Trustee shall enter into a contract with Recipients regarding their obligations for receipt of Funds as described in 2.4.4. The contract shall establish reporting guidelines and other terms as necessary.

## 2.3 Purposes, Objectives, and Scope of Environmental Mitigation Projects

### 2.3.1 The Federation of Southern Cooperatives (“Federation”):

- a. Twenty (20) million dollars will be paid from the Trust as described in 2.2.1.a to the Federation of Southern Cooperatives (“the Federation”), a non-profit organization with offices throughout the South, to form a Matagorda Bay Fishing Cooperative (“the Cooperative”), and netting or transportation cooperatives if necessary to support the Fishing Cooperative under a project called the Matagorda Bay Cooperative Development Project (“Project”).
- b. The Matagorda Bay and San Antonio Bay Systems (“the Bay Systems”) have historically had a thriving fishing, shrimping, and oystering industry that has declined due, in part, to pollution of the Bays. The purpose of this Mitigation Project is environmental restoration and protection, specifically to revitalize the marine ecosystems and promote long-term sustainable fisheries by supporting the fishing community to work together to sustain harvests from the Bay Systems in an environmentally responsible manner.
- c. The Federation will work with local fishermen, shrimpers and oystermen to organize a local Cooperative with the goal of improving the ecosystem and developing sustainable fishing, shrimping, and oystering of the Bay Systems. Funds may be expended for:
  - i. Organizing a local Cooperative;
  - ii. Implementing sustainable fishing practices;
  - iii. Promoting mechanisms to create sustainable harvest;
  - iv. Analyzing best markets for environmentally responsible seafood harvests; and
  - v. Determining and investing in necessary infrastructure as explained below.
- d. The Federation may make zero interest loans to the Cooperative(s) for:

- i. The purchase of infrastructure or other needs consistent with the goal of improving the ecosystem and developing sustainable fishing, shrimping, and oystering of the Bay Systems.
  - ii. Monies received from repayments of loans will go to Federation to be used exclusively on the Matagorda Bay Fishing Cooperative Project.
  - iii. All loans made by the Federation shall belong to the Federation.
  - iv. The Federation shall have the sole responsibility and obligation in managing the loans it makes and shall have all rights and remedies for the repayment of the loans and all enforcement and collection rights under applicable law. The Federation shall make reasonable efforts to enforce the repayment of loans.
  - v. While the Federation is responsible for managing the loans made, the Trustee shall have the right of oversight regarding loans made, status of repayments under such loans, efforts made by the Federation to seek repayment of the loans and other management decisions made by the Federation with regard to such loans. With regard to enforcing repayment of loans, the Trustee shall not have the obligation to enforce repayments of the loans.
- e. The Federation may determine that formation of other cooperatives, such as netting or transportation cooperatives, are necessary to support a sustainable fishing community and may expend Funds towards organizing those cooperatives.
- f. The Cooperative may recommend to the Federation that Funds earmarked for the Project be spent in coordination with Texas Parks and Wildlife Department on oyster reef restoration and aquaculture projects in the Bay Systems.
- g. If at any time, it is clear to the Federation or the Trustee that efforts to organize the Cooperative have failed, the Federation shall notify the Trustee and return any unexpended Funds to the Trust. If after five (5) years of efforts, the Federation determines that the Cooperative is not likely to succeed, any remaining Funds (excluding all loans and repayments made and collected under loans) will be returned to the Trustee for redistribution. All loan repayments made to the Federation after a determination that the

Co-operative is unlikely to succeed must be returned to the Trust upon repayment. Further, the Trustee may assign all loan repayments and any such loans to the Federation or to one or more political subdivisions and/or entities which qualify as a 501(c)(3) organization under the Internal Revenue Code with similar purpose(s) for which the Trust was established as provided in 3.4. For purposes of determination that efforts to organize the Cooperative have failed, or that the Cooperative is not likely to succeed, the Trustee shall be authorized to review the records and documentation of the Federation verifying such efforts and/or that the Cooperative is not likely to succeed. The Federation will act reasonably in determining that efforts to organize the Cooperative have failed and/or the Cooperative is not likely to succeed. Further, the Federation will cooperate reasonably in consultation with the Trustee in reaching the determination that efforts to organize the Cooperative have failed and/or the Cooperative is not likely to succeed. In the event the Federation and the Trustee are unable to resolve any such issue, the alternative dispute resolution procedures contained hereinafter will govern the manner of resolution.

- h. The Federation shall be responsible for the expenditures and utilization of Funds allocated to the Federation in accordance with this Trust Agreement and Consent Decree and for administering and implementing the purposes identified for use of Funds.
- i. The Federation shall provide such reports to the Trustee as Trustee requests or requires and shall be accountable for all expenditure of Funds to the Trustee.
- j. The Federation's accounting for the receipt and use of project Funds shall be subject to agreed upon procedures as shall be outlined in their contract and shall be subject to review by Trust representatives including independent third-party auditors if the Trustee determines an independent third-party audit is necessary.

#### 2.3.2 Green Lake Park.

- a. Ten (10) million dollars will be paid from the Trust as described in 2.2.1.b in total for the development, protection, operation and maintenance of Green Lake Park.

- b. Green Lake is the second largest natural lake in the State of Texas, but does not have public access, and has not been developed or protected in a way to ensure its natural environment is sustained. Green Lake was recently purchased by Calhoun County.
- c. The purpose of this Mitigation Project is environmental restoration and protection, specifically to restore the lake to its historic condition, including repairing a recent breach due to Hurricane Harvey and provide Funds for development of public access to the Park.
- d. Upon funding in 2020, Calhoun County will use two (2) million dollars to repair the current breach from Green Lake waters which is causing seepage from Green Lake into adjacent waters.
- e. Thereafter, Calhoun County will utilize eight (8) million dollar to develop, operate and maintain Green Lake Park as a publicly available park without recreational vehicle hook-ups, but otherwise consistent with the Green Lake Master Plan.
- f. Any funding left after construction of the Park will be spent on operation and maintenance of the park.
- g. Calhoun County shall be responsible for the expenditures and utilization of Funds allocated to Calhoun County in accordance with this Trust Agreement and Consent Decree and for administering and implementing the purposes identified for use of Funds.
- h. Calhoun County shall provide such reports to and shall be accountable for all expenditure of Funds to the Trustee.
- i. Calhoun County's accounting for the receipt and use of project Funds shall be subject to agreed upon procedures as shall be outlined in their contract and shall be subject to review by Trust representatives including independent third-party auditors, if the Trustee determines an independent third-party audit is necessary.

### 2.3.3 The Port Lavaca YMCA ("YMCA").

- a. The Port Lavaca YMCA is a branch of Young Men's Christian Association of the Golden Crescent, Inc. The Young Men's Christian Association of the Golden Crescent, Inc.'s headquarters are located in Victoria, Texas.

- b. Seven-hundred fifty (750) thousand dollars will be paid from the Trust as described in 2.2.1.c to the Port Lavaca YMCA to fund camps for children and teenagers in the area, which will be focused on education about how to be a good steward of the local ecosystems and will teach outdoor education and recreation activities.
- c. Beach erosion and pollution of the Bay Systems and their shores has limited recreational opportunity to children of Calhoun County. The purpose of this Mitigation Project is environmental education, specifically to give local children the opportunity to learn about and enjoy the local ecosystem.
- d. Free transportation will be offered to the camps and children who meet federal low-income standards will be given a scholarship to attend and will be provided free meals and snacks.
- e. Funding may also be spent for housing for summer staff to conduct the camps and to train staff on the ecology of the Bay Systems.
- f. Funding may also be used for the purchase of equipment for the camps.
- g. YMCA shall be responsible for the expenditures and utilization of Funds allocated to YMCA in accordance with this Trust Agreement and Consent Decree and for administering and implementing the purposes identified for use of Funds.
- h. YMCA shall provide such reports to the Trustee as the Trustee requests or requires and shall be accountable for all expenditure of Funds to the Trustee.
- i. YMCA's accounting for the receipt and use of project Funds shall be subject to agreed upon procedures as shall be outlined in their contract and shall be subject to review by Trust representatives including independent third-party auditors if the Trustee determines an independent third-party audit is necessary.

#### 2.3.4 Calhoun County.

- a. Two (2) million dollars to Calhoun County will be paid from the Trust as described in 2.2.1.d for erosion control and beach

restoration at Magnolia Beach. Funds may be used for the purchase and use of clean and uncontaminated fill material, planting of native plants, necessary construction to prevent future erosion and necessary maintenance to prevent beach erosion.

- b. Beach erosion and pollution of Lavaca Bay and its shores has limited recreational opportunities for the people of Calhoun County.
- c. Magnolia Beach has sustained harm from erosion and is also a location where plastics has been found.
- d. The purpose of this Mitigation Project is environmental restoration and protection specifically to restore Magnolia Beach and to allow use by the public.
- e. Calhoun County shall be responsible for the expenditures and utilization of Funds allocated to Calhoun County in accordance with this Trust Agreement and Consent Decree and for administering and implementing the purposes identified for use of Funds.
- f. Calhoun County shall provide such reports to the Trustee as the Trustee requests or requires and shall be accountable for all expenditure of Funds to the Trustee.
- g. Calhoun County's accounting for the receipt and use of project Funds shall be subject to agreed upon procedures as shall be outlined in their contract and shall be subject to review by Trust representatives including independent third-party auditors if the Trustee determines an independent third-party audit is necessary.

2.3.5 University of Texas Marine Science Institute ("UTMSI").

- a. One (1) million dollars will be paid from the Trust as described in 2.2.1.e to the University of Texas Marine Science Institute ("UTMSI") Nurdle Patrol ("the Nurdle Patrol"). The money will be used to support the Nurdle Patrol and for workshops and meetings, and to provide scholarships for attendance, food, transportation and expenses at conferences.

- b. UTMSI sponsors a “Nurdle Patrol” which documents the discharge of plastics on the Gulf Shore.
- c. The Nurdle Patrol also hosts conferences regarding plastics and environmental issues on the Gulf Coast.
- d. The purpose of this Mitigation Project is environmental quality assessment and environmental education, specifically to support the Nurdle Patrol and environmental conferences.
- e. The UTMSI shall be responsible for the expenditures and utilization of Funds allocated to UTMSI in accordance with this Trust Agreement and Consent Decree and for administering and implementing the purposes identified for use of Funds.
- f. The UTMSI shall provide such reports to the Trustee as the Trustee requests or requires and shall be accountable for all expenditure of Funds to the Trustee.
- g. The UTMSI’s accounting for the receipt and use of project Funds shall be subject to agreed upon procedures as shall be outlined in their contract and shall be subject to review by Trust representatives including independent third-party auditors if the Trustee determines an independent third-party audit is necessary.

2.3.6 Environmental Research Mitigation Project.

- a. Five (5) million dollars will be paid from the Trust as described in 2.2.1.f for an Environmental Research Mitigation Project providing for funding for environmental research regarding the Bay Systems, or the river deltas in Calhoun or Jackson Counties feeding into those systems.
- b. Funding may be distributed for environmental research topics, including, but not limited to, the ecology, pollution, fisheries, or habitat and wildlife restoration of the ecosystems.
- c. The Trustee shall set up a system to provide funding for research, including providing public notice of the funding opportunity and setting up a review process for applications with researchers in applicable fields.

- d. The Bay Systems have suffered environmental degradation, including the repeated discharges of pollutants. The purpose of this Mitigation Project is funding for specific environmental research projects to better understand the extent and impacts of environmental degradation in these ecosystems as well as possible solutions for restoration and mitigation.
- e. Each recipient of funding shall be responsible for the expenditures and utilization of Funds allocated to such recipient for the purposes granted therein.
- f. The Trustee shall require each recipient of funding to provide such reports to the Trustee as the Trustee requests or requires and shall be accountable for all expenditure of Funds to the Trustee.
- g. Each recipient's accounting for the receipt and use of project Funds shall be subject to agreed upon procedures as shall be outlined in their contract and shall be subject to review by Trust representatives including independent third-party auditors if the Trustee determines an independent third-party audit is necessary.

**2.3.7 Matagorda Bay Mitigation Trust.**

- a. Eleven (11) million two-hundred and fifty (250) thousand dollars will be paid from the Trust as described in 2.2.1.g to the Matagorda Bay Mitigation Trust, and any additional sums paid by Formosa or returned to the Trust for redistribution.
- b. The purpose of this Mitigation Project is to research, protect and restore the water bodies and surrounding ecosystems of the Bay Systems or the river deltas feeding into those systems.
- c. The Trust shall award Funds for the benefit of these waterbodies and the public, including for:
  - i. Providing public education about these waterbodies;
  - ii. Sponsoring youth camps such as described in 2.3.3, above;
  - iii. Purchasing land in the watershed of these waterbodies for conservation purposes, in order to reduce runoff and other



- pollution into those waterbodies, and/or to improve public access (physical or visual) to them;
- iv. Environmental research of those waterbodies as described in 2.3.6, above;
  - v. Environmental advocacy, except for litigation;
  - vi. Habitat restoration; and/or
  - vii. Additional funding for the dedicated Mitigation Projects described in 2.3.1 through 2.3.7.
- d. The Matagorda Bay Mitigation Trust shall have an Award Committee including the Trustee, one representative of Plaintiffs, one representative of Formosa, and two representatives from environmental groups or institutions. The initial Committee environmental representatives shall be selected from: Surfrider in Corpus Christi, the Mission-Aransas National Estuarine Research Reserve, or the Coastal Alliance to Protect our Environment. The Award Committee shall be established within thirty (30) Days of the establishment of the Trust. If Plaintiffs and Formosa cannot mutually agree on the representatives from the environmental groups, the Trustee will decide.
- e. The Award Committee of the Matagorda Bay Mitigation Trust shall establish a process for application and distribution of the available Funds in the Trust.
- f. The Trustee shall require each recipient of funding to provide such reports to the Trustee as the Trustee requests or requires and shall be accountable for all expenditure of Funds to the Trustee.
- g. The Trustee shall require that each recipient's accounting for the receipt and use of project Funds shall be subject to agreed upon procedures as shall be outlined in their contract and shall be subject to review by Trust representatives including independent third-party auditors.

#### 2.4 Trustee's Management of the Matagorda Bay Mitigation Trust and Projects.

The Trustee shall have the following authority and responsibilities with regard to the management of the Matagorda Bay Mitigation Trust and each project identified hereinabove, 2.2 through 2.3, inclusive.

- 2.4.1 The Trustee shall manage and distribute Funds paid into the Trust. The Trustee shall not be responsible for the actual construction or implementation of each of the Mitigation Projects; however, the Trustee has the authority to determine if each Recipient has properly used the Funds dedicated for the identified project.
- 2.4.2 The Trustee has the responsibility to distribute the Funds for the mitigation projects as provided herein and at such time or times as the Trustee in his sole discretion and determination deems appropriate.
- 2.4.3 The Trustee shall inform the Recipients if the Trustee determines that the Funds are not properly utilized in accordance with the terms of this Trust Agreement and the Consent Decree by the Recipient responsible for the Mitigation Projects as provided herein. Upon determination by the Trustee that the Recipient has not utilized Funds properly, the Trustee shall promptly notify the Recipient in writing that such Recipient has not properly utilized the Funds for the specified project.
- 2.4.4 The Trustee shall have the authority and responsibility to require each Recipient to execute such agreements obligating them to adhere to agreed upon procedures with respect to the utilization of Funds for the projects as identified hereinabove, including the maximum amount of Funds that may be used by Recipient for such Recipient's administrative or overhead expenses and shall comply timely with all requests made by the Trustee, including, but not limited to submission of budgets for the Mitigation Project, plans and/or specification for each Mitigation Project, estimated time for completion, estimated costs for each such Mitigation Project or phase of each such Mitigation Project, explanation for expenditures made by a Recipient, and shall submit to independent audits by Trustee or his designee regarding a Recipient's expenditures of Funds. All Recipient agreements shall include a schedule of interim project payments based on agreed upon performance measures with such interim payments predicated on such performance. Further, such agreement shall require each Recipient to respond timely to inquiries regarding status of projects, identify and notify Trustee of the principal contact person for each of the Recipients and allow Trustee full access to all records including, but not limited to, expense records, payment records, requisition records and records maintained by each Recipient regarding the Mitigation Project during the normal business hours. The agreements shall contain such other terms and conditions Trustee deems necessary to achieve the purposes and objectives of the Consent Decree, including, but not limited to, provisions for default, loss of funding, and repayment. Such agreement

shall contain provisions requiring disputes to be submitted to informal dispute resolution and binding alternative dispute resolution as provided hereinafter.

- 2.4.5 The Trustee shall be authorized to withhold distributions of Funds to any Recipient in the event Trustee determines that such Recipient has improperly used Funds distributed to it, only after the Trustee has given 30-days' notice to the Recipient regarding improper use of Funds and informed them of proposed withholding of Funds.
- 2.4.6 Trustee shall be authorized to terminate further distributions of Funds to a Recipient if the Trustee determines that such Recipient has improperly used Funds distributed to it, only after the Trustee has given 30-days' notice to the Recipient regarding improper use of Funds and informed them of proposed termination of Funds.
- 2.4.7 Trustee shall be authorized in its sole discretion to allow Recipient the opportunity to cure any deficiency or problem identified by Trustee upon such terms, conditions and time period as Trustee deems appropriate; however, Trustee is not obligated to provide such opportunity and this provision shall not grant any such Recipient any right to cure a deficiency or problem as such shall be the sole province of the Trustee.
- 2.4.8 The Trustee has the sole authority with respect to the management of the Trust, and Trust projects. Any such decision made by Trustee with regard to any Recipient shall be final with respect to Recipients. Disputes between the Trustee and Recipients shall be resolved as provided in 5.1.

## 2.5 Administrative Costs, Budgets, Projects

- 2.5.1 Consistent with this Trust Agreement and the Consent Decree, the Trustee shall use the Trust Accounts for the Mitigation Projects identified in 2.2 for the purposes outlined in 2.3.
- 2.5.2 The Trustee shall use the Matagorda Bay Mitigation Trust to fund the administrative costs of the Trust.
- 2.5.3 Annually, within 180 days after the Effective Date, and thereafter at least 60 days before January 1 of each year for the following years the Trustee shall prepare an annual budget for the administration of the Trust.

## 2.6 Investment and Safekeeping Trust Assets

- 2.6.1 The income and gains from any investment of the Matagorda Bay Mitigation Trust shall be allocated, paid and credited to the Trust Account and shall be utilized in accordance with 2.3.7 and 2.5.2.

- 2.6.2 The Trustee shall be under no liability for producing income on any Funds received by the Trust hereunder and held for distribution or payment as provided in this Trust Agreement, except as such interest shall actually be received by the Trust.
- 2.6.3 Investments of any Funds held by the Trust shall be administered in a manner consistent with the standards and requirements under the Texas Trust Code except as modified herein. Any income earned by the Trust, shall be limited to the right and power to invest such assets (pending periodic distributions of Funds in accordance with the terms of the Trust Agreement herein) in interest bearing demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured, or other liquid investments, such as Treasury bills and agency backed securities; brokerage firms with Securities Investor Protection Corporation insurance and provided further, that the scope of any such permissible investments shall be limited to include only the investments identified herein. Further, the generally applicable duty to diversify the investments of a trust is modified and the Trustee shall not be required to achieve any particular level of diversification.
- 2.6.4 The Trustee may hold any or all of the Trust Assets in a common, commingled or collective trust account using Generally Acceptable Account Procedures to properly account for each individual fund. The Trustee is expressly prohibited from holding any or all of the Trust Assets in a common, commingled or collective trust fund with the assets of any other entity. However, the Funds provided for administrative expenses can be held in one account.
- 2.6.5 Nothing in this Section shall be construed as authorizing the Trustee to cause the Trust to carry on any business not specifically provided for in the Consent Decree or to divide the gains therefrom, including without limitation, the business of an investment company, or a company "controlled" by an "investment company," required to register as such under the Investment Company Act of 1940, as amended. The sole purpose of this Section is to authorize the investment of the Funds in the Trust Accounts or any portions thereof as may be reasonably prudent pending use of the proceeds for the purposes of the Trust.

## 2.7 Insurance Policy

The Trustee may purchase one or more insurance policies in amounts of coverage and deductibles that the Trustee determines to be sufficient and prudent to cover actions of Trustee,

Trust Parties, employees and independent contractors engaged to support the administrative needs of the Trust; including, but not limited to general liability and errors and omissions.

#### 2.8 Accounting and Business Processes

The Trustee shall make all necessary provisions to maintain proper books, records, and accounts relating to all transactions pertaining to the Trust, and the assets and liabilities of the Trust, in such detail and for such period of time as may be necessary to enable the Trustee to make full and proper accounting in respect thereof in accordance with, and in compliance of, applicable provisions of law, good accounting and business practices and internal controls. The Trustee shall not be required to file any accounting or seek approval of the Court with respect to the administration of the Trust, or as a condition for making any payment or distribution out of the Trust Assets.

#### 2.9 Termination

Consistent with the terms of the Agreement, the Trustee shall not unduly prolong the duration of the Trust and shall at all times endeavor to complete the Trust's objectives and purposes, resolve, settle, or otherwise dispose of all claims against the Trust, to effect the distribution of any remaining Trust Assets and other receipts relating thereto, and to complete payments to Recipients who receive distributions of Funds hereunder in accordance with the terms hereof, and to terminate the Trust as soon as practicable consistent with this Trust Agreement.

2.9.1 To the extent that any rule against perpetuities or a rule governing or limiting vesting, accumulations, the suspension of alienation, or the like shall be deemed applicable, the Trust shall terminate upon completion of the winding up of the Trust affairs, which shall be completed no later than five (5) years after the first anniversary of the final distribution of the last of the available Funds to a Recipient unless there is good cause to continue the Trust which shall be presented to the Court for approval.

### **ARTICLE III** **DISTRIBUTIONS**

#### 3.1 Trust Accounts

The Trustee shall establish, maintain and hold Trust Accounts consistent with this Trust Agreement and Consent Decree to administer the Trust Assets and distributions of Funds therefrom.

#### 3.2 Payments by the Trust

The Trustee shall maintain books and records, including proposed project and administrative budgets. The Trustee shall not pay any expense that has not been provided for in

the applicable budget except for extenuating circumstances which only the Trustee may determine appropriate in his sole discretion.

3.2.1 Administrative Expenses of the Trust

Within 180 days following the Effective Date, and thereafter at least 60 days before January 1 of each year for the following years, the Trustee shall, prepare an annual budget for administration of the Trust provided, however, that the Trustee may incur or pay ongoing or recurring expenses from the prior year's budget. The Trustee shall include any anticipated retention of an employee in the annual budget. The Trust shall upon request by the Court, provide documentation to the Court to substantiate compliance with the applicable submitted budget and application of Trust Assets consistent with the terms of this Trust Agreement.

3.2.2 Remuneration for Start-Up Fees and Expenses

The Trustee, attorneys and other consultants shall be entitled to remuneration from the Trust Account for actual hours worked and expenses incurred in connection with the formation of the Trust and prior to start-up of the Trust.

3.3 Manner of Payment

Cash payments made by the Trust pursuant to the terms of this Trust Agreement shall be in United States dollars by check drawn on a domestic bank whose deposits are federally insured selected by the Trustee, by wire transfer from such a domestic bank, or electronically, at the option of the Trustee.

3.4 Unclaimed Distributions of Funds

In the event that Funds remain in the Trust at its termination, the amounts remaining shall be transferred, as approved by the Court to one or more political subdivisions and/or entities which qualify as a 501(c)(3) organization under the Internal Revenue Code with similar purpose(s) for which the Trust was established under the Consent Decree.

**ARTICLE IV**  
**THE TRUSTEE**

4.1 Appointment

4.1.1 Steven J. Raabe, not individually but solely in his representative capacity, is appointed to serve as the Trustee to administer the Trust and the Trust Accounts, in accordance with this Trust Agreement, and the Trustee hereby accepts such appointment and agrees to serve in such representative capacity, effective upon the Effective Date.

- 4.1.2 The Trust is authorized to obtain the services of professionals, consultants, or accountants (the "Consultant") to implement the purpose of this Agreement. The Trustee shall require any such Consultant to obtain general and professional liability insurance in the sum of \$ 1,000,000 or such lesser amount as determined by Trustee. The insured of the insurance policies shall be the Trust, and shall cover negligence committed by the Consultant in implementing the future actions or any other negligence committed by the Consultant. The legal relationship of the Consultant to the Trust and Trustee is that of an independent contractor professional not that of an entity employed by the Trust or the Trustee.
- 4.1.3 The Trustee is authorized to retain such person to sign checks, or make electronic payments drawn on the Trust accounts or bank accounts in such maximum amounts deemed appropriate by the Trustee and for purposes the Trustee deems appropriate to implement the purposes of this Agreement. The Trustee shall be authorized to secure such bond or insurance to ensure against theft or protection against loss.

#### 4.2 General Responsibilities of Trustee

In addition to the powers and duties identified hereinabove, the Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of the Trust and the terms of this Trust Agreement and not otherwise. The Trustee shall have the authority to bind the Trust, and any successor Trustee, or successor or assign of the Trust, but shall for all purposes hereunder be acting in its representative capacity as Trustee and not individually. Notwithstanding anything to the contrary contained herein, the Trustee shall not be required to take action or omit to take any action if, after the advice of counsel, the Trustee believes in good faith such action or omission is not consistent with the Trustee's fiduciary duties. The Trustee shall have no obligations to perform any activities for which the Trust lacks sufficient Funds or authority. The Trustee is empowered to comply with all requirements imposed by applicable law, rule or regulations.

#### 4.3 Powers

In connection with the administration of the Trust, except as otherwise set forth in this Trust Agreement and Consent Decree, the Trustee is authorized to perform any and all acts necessary to accomplish the purposes of the Trust. The powers of the Trustee shall, without any further Court approval or order, include, without limitations, each of the following: (i) to receive, manage, invest, supervise and protect the Trust Assets, withdraw, make distributions of Funds and pay taxes and other obligations owed by the Trust or the Trust Accounts from Funds held by the Trustee and/or the Trust (or the Trust Accounts) in accordance with this Trust Agreement, and withhold and pay to the appropriate taxing authority and withholding taxes on distributions of Funds from the Trust; (ii) to engage employees and professional Persons to assist the Trust

and/or Trustee with respect to the responsibilities described herein, including, but not limited to, authorizing such person to sign checks drawn on the Trust bank accounts in such maximum amounts deemed appropriate by the Trustee ; (iii) to make distributions of the Trust Assets from the Trust Accounts for the purposes contemplated in this Trust Agreement; and (iv) to effect all actions and execute all agreements, instruments and other documents necessary to implement this Trust Agreement, including to exercise such other powers as may be vested in or assumed by the Trust and/or the Trustee pursuant to this Trust Agreement and any order of the Court or as may be necessary and proper to carry out the provisions of this Trust Agreement. No Person dealing with the Trust shall be obligated to inquire into the authority of the Trustee in connection with the protection, conservation or disposition of Trust Assets. The Trustee is authorized to execute and deliver all documents on behalf of the Trust to accomplish the purposes of this Trust Agreement.

#### 4.4 Other Professionals

The Trustee is authorized to retain, on behalf of the Trust, and pay such third parties as the Trustee may deem necessary or appropriate to assist the Trustee in carrying out its powers and duties under this Trust Agreement, including, without limitation, (i) legal counsel to the Trust and/or Trustee, (ii) public accounting firms to perform bookkeeping and accounting services and such reviews and/or audits of the financial books and records of the Trust as may be appropriate in the Trustee's reasonable discretion and to prepare and file any tax returns or informational returns for the Trust or the Trust Accounts as may be required, (iii) investment or banking consultants, (iv) consultants, custodians, security personnel, brokers, contractors, administrative assistants and clerks, and (v) members of Award Committees, but not for Parties' representatives. The Trustee may pay all such person's reasonable compensation for services rendered and expenses incurred in accordance with a budget prepared by the Trustee as required herein. The Trustee may, consistent with its fiduciary duty, retain such persons the Trustee deems necessary to perform services for the Trust.

#### 4.5 Limitation of the Trustee's Authority

The Trust and the Trustee shall not and are not authorized to engage in any trade or business with respect to the Trust Assets or any proceeds therefrom except as and to the extent the same is deemed in good faith by the Trustee to be reasonably necessary or proper for the conservation or protection of the Trust Assets, or the fulfillment of the purposes of the Trust.

#### 4.6 Compensation of the Trustee

- 4.6.1 The Trust shall pay its own reasonable and necessary costs and expenses, and shall pay the Trustee reasonable compensation, and reimburse the Trustee for the actual reasonable out-of-pocket fees and expenses to the extent incurred by the Trustee in connection with the Trustee's duties hereunder, including, without limitation, necessary travel, lodging, office rent (to be paid directly by the Trust), mobile phone dedicated solely for



the business of the Trust, computer, electronic internet services, electronic storage and cloud services (to be paid directly by the Trust), postage, photocopying, telephone and facsimile charges upon receipt of periodic billings, all in accordance with an annual budget or fee schedule.

- 4.6.2 The Trustee, and employees of the Trust, who perform services for the Trust shall be entitled to receive reasonable compensation for services rendered on behalf of the Trust in accordance with an annual budget.
- 4.6.3 The Matagorda Bay Mitigation Trust shall be subject to the claims of the Trustee, and the Trustee shall be entitled to reimburse himself out of any available cash from the Matagorda Bay Mitigation Trust, and the Trust shall be obligated to pay, for actual out-of-pocket expenses and for actual hours worked.
- 4.6.4 All compensation and other amounts due and payable to the Trustee shall be paid from the Matagorda Bay Mitigation Trust.
- 4.6.5 The Trustee shall be an independent contractor and shall not be considered an employee. As a fiduciary, he shall exercise his independent judgment in implementing the purposes of the Trust and administering the Trust as contained in the Agreement in accordance with the standards required of a fiduciary under applicable law.

#### 4.7 Liability of Parties

- 4.7.1 In no event shall any of the Trust Parties, Parties and/or Trustee be held liable to any third parties for any liability, action, or inaction of any other party. The Trustee shall not be deemed in breach of his duties or responsibilities on account of the insufficiency of Funds. Funding from a Trust Account may not be used except as expressly provided by this Trust Agreement
- 4.7.2 No provision of this Trust Agreement shall require the Trust Parties and/or Trustee to expend or risk their own personal funds or otherwise incur any personal financial liability based on the ownership of the Trust Assets or the performance or non-performance of any of his duties or the exercise of any of his authorities as Trustee hereunder. Notwithstanding the foregoing, the Trustee shall satisfy from his own funds any liability imposed by a final order of the Court, not reversed on appeal, on account of the Trustee's fraud, willful misconduct, or criminal conduct with relation to the performance or non-performance of any of its duties or the exercise of any of its authorities as Trustee hereunder.

#### 4.8 Exculpation and Indemnification

- 4.8.1 **Exculpation.** None of the Trust Parties, including the Trustee, shall be financially liable unless the Court, by a final order that is not reversed on appeal, finds that they committed fraud or willful misconduct or gross negligence after the date of appointment of the Trustee in relation to the Trustee's duties. There shall be an irrebuttable presumption that any action taken or not taken with the approval of the Court does not constitute an act of fraud or willful misconduct, provided that there has been no willful misrepresentation to the Court. Any judgment against a Trust Party and/or Trustee and any costs of defense relating to any party shall be paid from the relevant Trust Account without the Trust Party or Trustee having to first pay from his or her own funds for any personal liability or costs of defense, unless a final order of the Court, that is not reversed on appeal, determines that it committed fraud or willful misconduct. However, any payment shall be limited to Funds in the relevant Trust Accounts or the Trust Account.
- 4.8.2 **Indemnification.** The Trust shall indemnify, defend and hold harmless the Trustee and Trust Parties from and against any and all claims, causes of action, liabilities, obligations, losses, costs, judgments, damages or expenses (including attorney's fees) and any other assertion of liability arising out of any action or inaction or in connection with the Trustee's duties, to the fullest extent permitted by law, including but not limited to, those caused or alleged to be caused by negligence or fault of any Trust party (except for fraud, willful misconduct, gross negligence, or criminal conduct), provided that such indemnification shall be limited to Funds in the relevant Trust Account if it relates to a specific Trust Account. Without limiting the foregoing, any such judgment against the Trustee or Trust Parties and any such costs of defense shall be paid by the Trust consistent with the terms and conditions of this Section. Notwithstanding the foregoing, to the extent fraud, willful misconduct, gross negligence, or criminal conduct of the Trustee is alleged and the Court finds, by a final order, not reversed on appeal, that such Trustee committed fraud, willful misconduct, gross negligence, or criminal conduct after the date of appointment of the Trustee in relation to the Trustee's or Trust Parties' duties, there shall be no indemnification of the Trustee or Trust Parties, for any judgments or costs of attorneys' fees arising from such allegations of fraud, willful misconduct, gross negligence, or criminal conduct. It shall be an irrebuttable presumption that any action or inaction taken pursuant to Court approval shall not constitute fraud, willful misconduct, gross negligence, or criminal

**conduct, provided that there has been no willful misrepresentation to the Court.**

**4.9 Termination, Resignation, Replacement, and Removal of the Trustee**

**4.9.1 Termination.** The duties, responsibilities and powers of the Trustee will terminate on the date the Trust is dissolved under applicable law in accordance with the Trust Agreement or by an order of the Court.

**4.9.2 Death or Other Cause.** In the event of death of the Trustee a successor Trustee shall be appointed.

**4.9.3 Resignation.** The Trustee shall have the right to resign and without cause upon ninety (90) day written notice to the Parties and shall be entitled to reasonable compensation and reimbursement of expenses through and including the ninety (90) days.

**4.9.4 Replacement.** The Trustee may be replaced by agreement of the Parties, through the process outlined in paragraph 52 of the Consent Decree, and if no agreement is reached by the Parties, then by the Court as provided in 4.11.

**4.9.5 Removal.** The Trustee may be removed by the Court for cause such as willful misconduct or fraud.

**4.10 Interim Trustee**

**4.10.1** In the event of resignation by the Trustee and pending the appointment of a successor Trustee (“Successor Trustee”), the Trustee shall designate an interim Trustee (“Interim Trustee”) for the limited purposes of distributing Funds the Trustee deems necessary to implement the purposes of the Trust, including the payment of expenses which would otherwise result in undue hardship for the Recipients or other professionals or persons due payments for services performed.

**4.10.2** In the event of death of the Trustee and pending the appointment of a Successor Trustee, the Parties may designate an interim Trustee (“Interim Trustee”) for the limited purposes of distributing Funds demonstrated to be necessary to implement the purposes of the Trust, including the payment of expenses which would otherwise result in undue hardship for the Recipients or other professionals or persons due payments for services performed.

**4.10.3** The Interim Trustee shall make the records of all actions taken and payments made during such appointment available on the Trust’s website no later than 45 days after the appointment of the Successor Trustee.

4.10.4 The Interim Trustee shall be paid reasonable compensation for actual hours worked and expenses incurred in connection with the services performed for the Trust.

4.10.5 The Interim Trustee shall be considered an independent contractor obligated to perform its services as a fiduciary in accordance with the standards required of a fiduciary under applicable law.

#### 4.11 Appointment of Successor Trustees

Any successor Trustee shall be appointed by the Court in the event the Parties are unable to agree upon the appointment of a successor Trustee. Any successor Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall file such acceptance with the Trust records. Thereupon, such successor Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trust and duties of its predecessor in the Trust with like effect as if originally named herein; provided, however, that a removed or resigning Trustee shall, nevertheless, when requested in writing by the successor Trustee, to execute and deliver an instrument or instruments conveying and transferring to such successor Trustee under the Trust all the estates, properties, rights, powers, and trusts of such predecessor Trustee.

#### 4.12 No Bond

Notwithstanding any state law to the contrary, Trustee, including any successor Trustee or Trust Party, shall be exempt from giving any bond or other security in any jurisdiction, including but not limited to Texas.

### **ARTICLE V** **RECIPIENTS**

#### 5.1 Recipients and Disputes.

Upon the Effective Date of this Agreement, the Recipients defined in 1.1.21 shall be the Beneficiaries of the Trust. The Consent Decree and this Trust Agreement do not provide or grant authority of any Recipient any standing to institute a lawsuit or cause of action against the Trustee or the Trust requiring the distribution of any Funds to it, the manner of distribution or any time period associated with distribution of any such Funds. The Consent Decree and this Trust Agreement do not grant any Recipient any rights or claims to such Funds. In the event a Recipient has a dispute with the Trustee or in the event any Recipient seeks to file a claim or lawsuit, the Recipient's sole recourse shall be by informal dispute resolution between the Recipient and the Trustee and if such informal dispute resolution is not resolved, then the Recipient may seek the alternative dispute resolution as provided herein. The alternative dispute resolution process shall consist of a Mediated Settlement Conference in Calhoun County, to be conducted with the Recipient and the Trustee and their legal counsel. The mediator shall be

selected by agreement of the Recipient and the Trustee. Should the parties fail to agree on a mediator, an attorney mediator shall be selected by the Director of Calhoun County Dispute Resolution Services. The decision made by a Mediator shall be binding on the Recipient and the Trustee, and there shall be no further appeal but the decision shall be enforced, if necessary, by the District Court of Calhoun County. The Recipient shall submit to such binding alternative dispute resolution as provided herein. Further, a Recipient's sole remedy under the informal dispute resolution and under the binding alternative dispute resolution shall be limited to all, none or part of the remaining balance, if any, of Funds allocated to it under the terms of its contract with the Trustee; however, the Trustee may recoup any Funds distributed to the Recipient through the same alternative dispute resolution procedure described herein. Any remedy under the mediation shall be the sole province of the Mediator unless the Recipient and Trustee agree to the terms of resolution. In no event shall a Recipient be entitled to any other remedy; including, but not limited to, actual damages, compensatory damages, punitive damages, exemplary damages, interest, costs of court, actual expenses and attorneys' fees. These procedures shall be binding on Recipients notwithstanding any conflict with any law or regulation. The binding alternative dispute resolution procedures contained herein shall be deemed to be included and incorporated within all contracts with Recipients.

**ARTICLE VI**  
**REPORTING AND TAXES**

6.1 **Reports**

As required by the Consent Decree, the Trustee shall send annual reports to the Parties and make the reports publicly available.

6.2 **Other**

The Trustee shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Trust that are required by any applicable governmental unit.

6.3 **Reports in Support of Insurance Claims**

The Trustee shall also file (or cause to be filed) reports and cost analysis in support of claims against insurance carriers at the request of the Court.

6.4 **Taxes**

Subject to definitive guidance from the Internal Revenue Service or a judicial decision to the contrary, the Trustee shall file tax returns and pay applicable taxes with respect to the Trust in a manner consistent with the provisions of applicable law. All such taxes shall be paid from the Matagorda Bay Mitigation Trust.

6.5 **Notices**

All notices shall be made in writing and addressed as follows, using electronic mail where such addresses are provided:

As to Plaintiffs:

1. Erin Gaines  
TEXAS RIOGRANDE LEGAL AID  
4920 N. I-35  
Austin, Texas 78751  
512-374-2739  
[egaines@trla.org](mailto:egaines@trla.org)
2. S. Diane Wilson  
[wilsonlamobay@aol.com](mailto:wilsonlamobay@aol.com)
3. San Antonio Bay Estuarine Waterkeeper  
600 Ramona Road  
Seadrift, Texas 77983
4. Amy R. Johnson  
5836 SE Madison St.  
Portland, OR 97215  
[amy@savagejohnson.com](mailto:amy@savagejohnson.com)

As to Formosa:

1. John Riley, Esq.  
Holland & Knight LLP  
111 Congress Ave., Suite 540  
Austin, Texas 78701  
[John.riley@hklaw.com](mailto:John.riley@hklaw.com)
2. Vice President/General Manager  
Formosa Plastics Corporation, Texas  
201 Formosa Drive  
Point Comfort, Texas 77978
3. Assistant Vice President, Environmental Division  
Formosa Plastics Corporation, U.S.A.  
9 Peach Tree Hill Rd.  
Livingston, NJ 07039

As to Trustee:

Steven J. Raabe, Trustee  
Matagorda Bay Mitigation Trust  
PO Box 1269  
Poth, Texas 78147-1269

**ARTICLE VII**  
**MISCELLANEOUS PROVISIONS**

7.1 Amendments and Waivers

Technical amendments to this Agreement may be made as necessary by the Trustee, to clarify this Agreement or enable the Trustee to effectuate the terms of this Trust Agreement, to conform to legal, tax, or administrative requirements, or to resolve unanticipated liabilities, all in a manner consistent with the Consent Decree. The Trustee shall file a notice of such amendments with the Court.

The Trustee shall additionally be empowered to petition the Court for modification of the Trust Agreement if the Trustee determines that such modifications are necessary to conform to legal, tax, or administrative requirements.

7.2 Cooperation

The Trustee shall take such actions and execute such documents as are reasonably necessary with respect to effectuating this Trust Agreement and the transactions contemplated thereby, provided that such actions are not inconsistent with this Trust Agreement or the Consent Decree.

7.3 Disputes between Parties

Nothing in this Trust Agreement shall limit the rights of the Parties under the Consent Decree. The Consent Decree, Section VI, shall govern the manner and treatment of disputes between the Trustee and Parties arising under the Consent Decree.

7.4 Situs of the Trust

The situs of the Trust herein established is Texas. To the extent the Bankruptcy Code or other federal law is applicable, the rights, duties, and obligations arising under this Trust Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Texas. Where federal law is not applicable, the rights, duties, and obligations arising under this Trust Agreement shall be governed by, and construed and enforced in accordance with this Trust Agreement and the laws of the State of Texas, without giving effect to the principles of conflict of law thereof.

#### 7.5 Severability

If any provision of this Agreement or application thereof to any Person or circumstance shall be finally determined by the Court to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

#### 7.6 Sufficient Notice

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the Person for whom such notice is intended, or via email or facsimile, or such other address provided in writing to the Trust by an authorized representative of the respective Party.

#### 7.7 Headings

The section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or any term or provision hereof.

#### 7.8 Actions Taken on Other Than Business Day

If any payment or act under this Trust Agreement is required to be made or performed on a date that is not a business day, then the making of such payment or the performance of such act may be completed on the next succeeding business day, but shall be deemed to have been completed as of the required date. For the purpose of this agreement, a business day shall be any of the days Monday through Friday excluding national holidays.

#### 7.9 Consistency of Agreements and Construction

To the extent reasonably possible, the provisions of this Trust Agreement shall be interpreted in a manner consistent with the Consent Decree. To the extent reasonably possible, the provisions of the Consent Decree shall prevail where the provisions of this Trust Agreement are silent. Where the provisions of the Trust Agreement are irreconcilable with the provisions of the Consent Decree, the provisions of the Trust Agreement shall prevail.

#### 7.10 Compliance with Laws

Any and all distributions of Trust Assets shall be in compliance with applicable laws of the State of Texas, including, but not limited to, applicable federal and state securities laws.

#### 7.11 Preservation of Privilege.



In connection with the rights, claims, and causes of action that constitute the Trust Assets, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Trust shall vest in the Trust and its representatives, and the Parties are authorized to take all necessary actions to effectuate the transfer of such privileges.

7.12 No Recourse to Third Parties

In no event shall third parties have any responsibility for paying any expenses, fees, and other obligations of the Trust, and in no event shall the Trust or the Trustee, or any of their agents, representatives, or professionals, have recourse to the third parties.

7.13 Status of Recipients and The Parties

No Recipient, Parties, or member of the Parties shall be deemed to be an owner, operator, Trustee (other than the Trustee specifically appointed herein) partner, agent, shareholder, officer, or director of the Trust or the Trust Parties solely on account of this Trust Agreement or the Consent Decree, or actions contemplated thereby, or their status as a Recipient or Parties to this Agreement or the Consent Decree.

7.14 Prohibition

Neither Defendants nor any affiliate, subsidiary or parent, nor any employees, agents, families, successors or assigns of any of them shall or may be a Recipient of the Trust for any purpose.

7.15 Litigation or Other Proceedings

The Trustee is empowered to institute, conduct, defend, settle, or compromise any litigation or other proceedings in any court (of law or equity) or any administrative or regulatory forum in the name of the Trust if, in his sole discretion he deems it so advisable to do so.

**ARTICLE VIII**

**SECTION 468B QUALIFIED SETTLEMENT FUND**

8.1 Generally, it is the intent of the Trustee, the Court, the Releasor, the Beneficiaries, and this Trust Agreement that all steps shall be taken by the Trustee, and the Releasor to ensure that the Trust established by the Court will qualify as, and remain, a "Qualified Settlement Fund" within the meaning of § 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and the Regulations promulgated pursuant thereto and codified at 26 C.F.R. §§ 1.468B-1 through 1.468B-5. Transferor shall be classified as a "transferor" within the meaning of Regulation § 1.468B-1(d)(1), 26 C.F.R. § 1.468B-1(d)(1). The Trustee shall be classified as the "administrator" within the meaning of Regulation § 1.468B-2(k)(3), 26 C.F.R. § 1.468B-2(k)(3). Accordingly, if appropriate, the Trustee shall elect to apply settlement fund rules by filing a "§ 1.468B-5(b)(2) Election."

It is further intended that all transfers to the Trust will satisfy the “all events test” and the “economic performance” requirements of § 461(h)(1) of the Internal Revenue Code, 26 U.S.C. § 461(h)(1), and Regulation § 1.461-1(a)(2). 26 C.F.R. § 1.461-1(a)(2). As such, the Transferor shall not be taxed on the income of the Trust. The Trust shall be taxed on its modified gross income, excluding the sums, or cash equivalents of things, transferred to it. In computing the Trust’s modified gross income, deductions shall be allowed or, inter alia, administrative costs and other incidental deductible expenses incurred in connection with the operation of Trust, including, without limitation, state and local taxes, and legal, accounting, and actuarial fees relating to the operation of the Trust. All such computations of the Trust’s modified gross income, as well as any exclusions or deductions thereto, shall be compliant and consistent with Treasury Regulation § 1.468B-2(b)(1)-(4), 26 C.F.R. § 1.468B-2(b)(1)-(4).

**8.2 Employer Identification Number.** Upon establishment of the Trust, the Trustee shall apply for an employer identification number for the Trust pursuant to Internal Revenue Service Form SS-4, and in accordance with Treasury Regulation § 1.468B-2(k)(4), 26 C.F.R. § 1.468B-2(k)(4).

**8.3 Relations-Back Election.** If applicable, the Trustee, the Administrator, and the Transferor shall fully cooperate in filing a relation-back election under Treasury Regulation § 1.468B-1(j)(2), 26 C.F.R. § 1.468B-1(j)(2), to treat the Trust as coming into existence as a settlement fund as of the earliest possible date.

**8.4 Tax Preparation, Reporting, and Withholding Requirements.** The Trustee shall cause to be filed, on behalf of the Trust, all required federal, state, and local tax returns in accordance with the provisions of Treasury Regulation § 1.468B-2(k), 26 C.F.R. § 1.468B-2(k). Furthermore, in accordance with the provisions of Treasury Regulation § 1.468B-2(l), 26 C.F.R. § 1.468B-2(l), the Trustee shall cause to be filed all required federal, state, and local information returns and ensure compliance with withholding and reporting requirements. The Trustee may retain an independent, certified public accountant and tax attorney to consult with and advise the Trustee with respect to the preparation of any and all appropriate income tax returns, information returns, or compliance with withholding requirements. The Transferor (or some other person on behalf of the Transferor) shall supply to the Trustee and to the Internal Revenue Service the statement described in Treasury Regulation § 1.468B-3(e)(2), 26 C.F.R. § 1.468B-3(e)(2), no later than February 15<sup>th</sup> of the year following each calendar year in which the Transferor (or some other person on behalf of the Transferor) makes a transfer to the Trust.

**8.5 Powers of the Trustee.** The Trustee shall be empowered to take all such actions, including such actions as may be inconsistent with those expressly set forth above, as he deems necessary to ensure that the Trust is treated as a “Qualified Settlement Fund” under § 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and the Regulations promulgated pursuant thereto and codified at 26 C.F.R. §§ 1.468B-1 through 1.468B-5. Further, the Trustee may petition the Court to amend, either in whole or in part, any administrative Article of this Trust Agreement, which causes unanticipated tax consequences or liabilities inconsistent with the foregoing.

8.6 Savings Provision. Notwithstanding anything herein to the contrary, in the event that any portion of this Trust shall at any time be considered not to be in compliance with Internal Revenue Code § 468B, as amended, together with any and all Treasury Regulations and Internal Revenue Service's Notices, Announcements and directives thereunder, such offending Article of this Trust Agreement shall be considered null, void, and of no effect, without any action by any court or by the Trustee, or the Administrator. The overarching purpose of this Trust is to at all times be in compliance with Internal Revenue Code § 468B and all administrative authority and announcements thereunder. In the event that this Section 8.6 applies to render an offending Article null, void, or of no effect, Section 7.5 of this Trust Agreement shall still apply with respect to the remaining non-offending provisions of this Trust Agreement.

**ARTICLE IX**  
**INDEPENDENT LEGAL AND TAX COUNSEL**

The persons executing this Trust Agreement have been, or have had the opportunity to be, represented by counsel and advisors of his, her, or its own selection in this matter. Further, such persons represent that they have not relied upon any individual, nor have they relied upon the draftsmanship reflected in this Trust agreement. Such persons represent that they have not acted under duress or compulsion, whether legal, economic, or otherwise. Consequently, they agree that the language in all parts of this Trust Agreement shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against anyone. IT IS SPECIFICALLY ACKNOWLEDGED AND UNDERSTOOD THAT THIS TRUST AGREEMENT HAS NOT BEEN SUBMITTED TO, NOR REVIEWED OR APPROVED BY, THE INTERNAL REVENUE SERVICE OR THE TAXING AUTHORITIES OF ANY STATE OR TERRITORY OF THE UNITED STATES OF AMERICA.

**ARTICLE X**  
**CONTINUING JURISDICTION**

As specified in the Consent Decree, the Court shall retain full jurisdiction over the Trust for purposes of ensuring its compliance with the Consent Decree, this Trust Agreement, and any future order of the Court. The Trustee shall be a registered agent for the Trust for the purposes of personal service of process upon the Trust.

This document may be executed in counterparts, each of which shall be deemed an original for all purposes and all of which when taken together shall constitute one and the same document. Executed counterparts may be disassembled and signatory pages from the multiple counterparts may be attached to one original counterpart.

THE UNDERSIGNED PARTIES ENTER INTO THIS AGREEMENT:

ATTEST:

By:  \_\_\_\_\_

Erin Gaines

Texas State Bar No. 24093462

Jennifer Richards

Texas State Bar No. 24107975

TEXAS RIOGRANDE LEGAL AID

4920 N-I35

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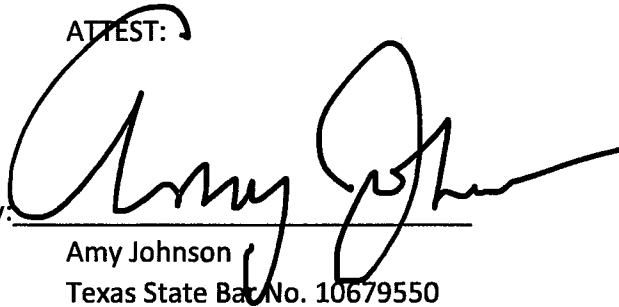
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ATTORNEYS FOR PLAINTIFF S. DIANE  
WILSON

ATTEST: ↻

By: \_\_\_\_\_

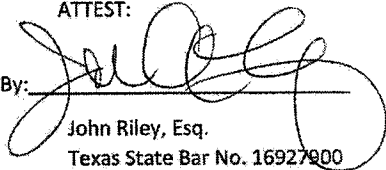


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AND SAN ANTONIO BAY ESTUARINE WATERKEEPER

ATTEST:

By:



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ATTORNEY FOR DEFENDANTS,  
FORMOSA PLASTICS CORP., TEXAS and  
FORMOSA PLASTICS CORP., U.S.A.

AGREED:

Trustee

A handwritten signature in black ink, appearing to read "S. Raabe", written over a horizontal line.

Name: Steven J. Raabe  
Matagorda Bay Mitigation Trust  
PO Box 1269  
Poth, Texas 78147-1269

United States District Court  
Southern District of Texas

**ENTERED**

December 09, 2019

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

**SAN ANTONIO BAY ESTUARINE )  
WATERKEEPER and )  
S. DIANE WILSON, )  
Plaintiffs )  
VS. )**

**CIVIL ACTION NO. 6:17-CV-47**

**FORMOSA PLASTICS CORP., )  
TEXAS, and FORMOSA PLASTICS )  
CORP., U.S.A., )  
Defendants )**

**FINAL CONSENT DECREE**





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1. Plaintiffs San Antonio Bay Estuarine Waterkeeper and S. Diane Wilson (hereinafter “Waterkeeper” or “Plaintiffs”), brought this federal Clean Water Act lawsuit pursuant to 33 U.S.C. §1365(a)(1) against Formosa Plastics Corp., Texas, and Formosa Plastics, Corp., U.S.A., (hereinafter “Formosa”) alleging the illegal discharge of Plastics from Formosa’s Point Comfort, Texas, plastics facility. The lawsuit was filed July 31, 2017.

2. The case was tried to the Court on issues of liability from March 25-28, 2019. The Court heard testimony from numerous experts and witnesses regarding the discharged plastics. Hundreds of documents were admitted in evidence.

3. On June 27, 2019, the Court issued a Memorandum and Order, ruling on liability and determining that a declaratory judgment should issue pursuant to Waterkeeper’s claims for relief in the form of monetary and injunctive relief; attorneys’ fee should be awarded; and appropriate sanctions for past violations and to enforce future compliance were appropriate.

4. The Plaintiffs sought in their injunctive relief that the Court order a monitor to review changes at the facility that would stop the discharges, order that efforts to clean up the discharges continue and be protective of the environment, and that penalties continue to be paid until the discharges ceased.

5. The Plaintiffs sought the maximum penalties available pursuant to 40 C.F.R. § 19.4.

6. The remedy phase of this trial was scheduled for October 28, 2019.

**NOW THEREFORE**, in the interest of settling and resolving all civil claims and controversies regarding the violations described above, the Parties hereby consenting to the entry of this Consent Decree; and the Court hereby finding that settlement of the claims alleged without further litigation or trial of any additional issues is fair, reasonable and in the public interest and

the entry of this Consent Decree is the most appropriate way of resolving the claims alleged, IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

**I. JURISDICTION AND VENUE**

7. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). An actual, justiciable controversy exists between Waterkeeper and Formosa Plastics. The requested relief is proper under 28 U.S.C. §§ 2201, 2202, and 33 U.S.C. §§ 1319(d), 1365(a), (d).

8. Venue lies in the Southern District of Texas, pursuant to 33 U.S.C. § 1365(c)(1), because the events giving rise to this claim occurred at the Formosa facility, located in Point Comfort, Texas, in Calhoun County, within the Southern District of Texas.

**II. APPLICATION AND SCOPE**

9. The provisions of this Consent Decree shall apply to and be binding upon the Parties to this action, and their agents, employees, successors, and assigns, as well as to all persons acting under the direction and/or control of Formosa, including firms, corporations, and third parties such as contractors engaged in implementation of this Consent Decree.

10. Formosa shall provide a copy of this Consent Decree to any consultant or contractor selected or retained to perform any activity required by this Consent Decree.

**III. DEFINITIONS**

11. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. **“Best Available Technology”** means the best available technology economically achievable as provided in 33 U.S.C. § 1311(b)(2)(A).
- b. **“Boom”** means a boom, boom with a net, or boom with another device designed to capture Plastics in the environment.
- c. **“Bypass Pipe”** means a pipe four (4) to eight (8) inches in diameter designed to allow collection of samples of the wastewater.

- d. **“Dispute Resolution Process”** means the process described in Section VI. of this Consent Decree.
- e. **“Days”** means calendar days, including weekends and holidays. Computation of time begins the calendar day after receipt by one representative.
- f. **“Engineering Consultant”** means a qualified, external (non-Formosa) stormwater and wastewater engineer or engineering firm chosen through the process described in Section IV(A), paragraphs 12-15. of this Consent Decree, retained and paid for by Formosa.
- g. **“Force Majeure Event”** means any event that would otherwise be a violation of this agreement but was caused solely by an act of God, war, strike, riot, or other catastrophe. (30 TAC § 70.7) Formosa shall take all reasonable steps, consistent with industry standards, to prevent any discharges of Plastics resulting from a Force Majeure event.
- h. **“Formosa”** means Formosa Plastics Corp., Texas and Formosa Plastics Corp., U.S.A., unless expressly stated otherwise in this Consent Decree.
- i. **“Mitigation Projects”** means environmental remediation projects that provide benefits that would not otherwise be available but for this Consent Decree.
- j. **“Monitor”** means a qualified, external (non-Formosa) person or firm that is mutually agreed upon and chosen through the process set forth in Section IV(B), paragraphs 28 of this Consent Decree, paid for by Formosa.
- k. **“Plastics”** means visible plastic pellets, flakes or powder produced at the Formosa Point Comfort Plant.
- l. **“Remediation Consultant”** means a qualified, external (non-Formosa) environmental remediation firm mutually agreed upon and chosen through the process set forth in Section IV(C), paragraphs 39-40, paid for by Formosa.
- m. **“Matagorda Bay Mitigation Trust”** or **“the Trust”** means the trust established to accept, manage and distribute Mitigation Project payments and other mitigation monies paid pursuant to this Consent Decree.
- n. **“Trustee”** means the trustee of the Matagorda Bay Mitigation Trust established by this Consent Decree that will manage the distribution of funds due to the Trust.

#### IV. REMEDIAL MEASURES

##### A. Engineering Changes

12. Within twenty-one (21) Days of the effective date of this Consent Decree, Formosa will propose to Plaintiffs an Engineering Consultant to review the current design and operation of

the Formosa Point Comfort Plant with regard to the discharge of Plastics and, ultimately, to design and audit the effectiveness of measures to halt those discharges. The proposed Engineering Consultant shall not be Dr. Aiza Jose-Sanchez (Plaintiffs' Engineering Expert) or her firm.

13. Upon providing the proposal of an Engineering Consultant, Formosa will provide to Plaintiffs the proposed Engineering Consultant's resume and a list of past clients. Plaintiffs may ask questions of Formosa and the proposed Engineering Consultant and object to the selection of the proposed Engineering Consultant within fourteen (14) Days of the proposal by Formosa, if Plaintiffs believe the Engineering Consultant's qualifications are not adequate.

14. If the selection of an Engineering Consultant cannot be resolved between the parties within seven (7) Days of the Plaintiffs' objection to the proposal by Formosa, then the determination of the Engineering Consultant will be made by the Court through a joint motion to the Court wherein Formosa and Plaintiffs each present the Court with proposed recommendation(s) and reasons for recommending their proposed Engineering Consultant(s).

15. Formosa will retain the Engineering Consultant within ten (10) Days of the written consent by the Plaintiffs to Formosa's proposed Engineering Consultant or within ten (10) Days of the Court's determination.

16. The Engineering Consultant shall have an opportunity to review all information requested and necessary to make a thorough evaluation of Formosa's wastewater and stormwater systems, including but not limited to all documents reviewed by, and the expert reports of, Plaintiffs' engineering expert, as well as at least one site visit to the facility and off-site outfall locations on Cox Creek and Lavaca Bay, and any other information requested by the Engineering Consultant.

17. Plaintiffs' designated engineer or engineering firm ("Plaintiffs' Engineering Expert") will have the opportunity to go on the site visit with the Engineering Consultant.

18. Plaintiffs may accompany their Plaintiffs' Engineering Expert and the Engineering Consultant on a visit to Cox Creek and Lavaca Bay to describe what they have seen when collecting samples.

19. The Engineering Consultant shall, consistent with good engineering principles, produce plans to retrofit the facility with the Best Available Technology and design to prevent the discharge of Plastics, including the following plans to address deficiencies in Formosa's current system:

- a. capacity improvements to the stormwater drainage system such that flooding does not occur from rainfall that is, at least, a 5-year 24-hour rainfall event (6.8 inches in 24 hours);
  - i. In support of this effort, Formosa agrees, if requested by the Engineering Consultant, to update the 2013 Ganem & Kelly drainage study for existing and ultimate conditions, including all sources of water into the stormwater system and other factors affecting flow and capacity, including detained water, gate openings/closings, current stormwater controls, screens, gabions, and Aquaguards. Ultimate conditions include the same considerations for existing, plus any foreseeable future changes including facility expansions, and additional stormwater controls that may modify conditions. The model should include all sources of water transported by the conveyance system in addition to rainwater, such as washwaters utilized at the facility. It should also model any storage or temporary detention of waters within the system. This means to model the stormwater system, including the amount of water normally in the system and model any recommended changes to the system to determine how it would operate in different rain events.
- b. direction of all stormwater outside battery limits for Outfalls 002, 003, 004, 005, 006, 007, 008, 009, 012 and 014 to a holding pond system that is designed to have zero (0) discharge of stormwater into Cox Creek for at least a 5-year 24-hour rainfall event (6.8 inches in 24 hours). The ponds and stormwater ditches will include engineered controls to remove Plastics if stormwater will be discharged into Cox Creek in the event of a greater than 5-year 24-hour rainfall event (6.8 inches in 24 hours);

- c. improvements to the inside boundary limits stormwater and wastewater systems to remove Plastics prior to entry into the current combined wastewater treatment plant (“CWTP”) system; and
- d. improvements in source reduction at all manufacturing and loading units.

20. Formosa’s engagement of the Engineering Consultant shall require that the Engineering Consultant’s plans to retrofit the facility to prevent future discharge of Plastics will be provided to Formosa within four (4) months of the hiring of the Engineering Consultant.

21. All plans the Engineering Consultant provides to Formosa will be shared simultaneously with Plaintiffs, along with any underlying documents that explain or justify the plans. Within forty-five (45) Days of receiving the plans from the Engineering Consultant, Formosa will determine which recommendations for each category of improvements (paragraphs 19(a)-(d)), Formosa intends to implement and will share that information with the Engineering Consultant and Plaintiffs. Formosa’s plans must address all of the deficiencies and requirements in paragraph 19(a)-(d).

22. Plaintiffs will have thirty (30) Days to contest the adequacy of Formosa’s proposed implementation of the plans to comply with the requirements in paragraph 19(a)-(d), request additional information, and/or request a conference with Formosa and the Engineering Consultant to raise any concerns. Plaintiffs’ concerns will be specific and expressed in writing. If the concerns raised by the Plaintiffs cannot be resolved between the Parties in thirty (30) Days after they have been received, then the issues will be addressed through the Dispute Resolution Process.

23. Within thirty (30) Days after the parties agree on the Engineering Consultant’s plans (the “Final Plan”), the Engineering Consultant will establish reasonable deadlines not later than three (3) years from the effective date of this Consent Decree for each of the elements in the Final Plan, including interim deadlines for different phases of each project. The implementation

deadlines and interim deadlines proposed by the Engineering Consultant will be shared with Plaintiffs, and the Plaintiffs will have twenty-one (21) Days to review the proposed deadlines and raise any concerns prior to finalization.

24. The deadlines, including interim deadlines, established by the Engineering Consultant and agreed to in writing by the Plaintiffs or resulting from the Dispute Resolution Process will be binding on Formosa, but Formosa may request, and the Engineering Consultant shall grant, reasonable extensions of any deadline due to delays not caused by Formosa, including by its subcontractors. Formosa shall notify Plaintiffs of any such requests and, if the Plaintiffs object to any requested extension, the Plaintiffs' objection shall be subject to the Dispute Resolution Process.

25. Formosa will provide Plaintiffs with quarterly updates regarding Formosa's progress in implementing the Engineering Consultant's Final Plan and report any deviations from the implementation deadlines. Formosa will provide Plaintiffs with any additional supporting documentation and/or a site visit, if requested, to assess the progress in implementing the Final Plan.

26. When any category of improvement is fully implemented, the efficacy of the improvement, including the efficacy during rain events, will be reviewed or tested for six (6) months ("First Efficacy Period") by the Engineering Consultant. If the testing shows additional changes or other improvements are needed, the Engineering Consultant will revise the Engineering Consultant's Final Plan and implementation schedule ("Revised Plan"), and the testing will again be conducted after the revisions are made ("Second Efficacy Period"). The Revised Plan will be provided to the Plaintiffs and Formosa, and any objection to the revisions by Plaintiffs or Formosa shall be provided in writing to the Engineering Consultant within twenty-one (21) Days. If an



agreement cannot be reached on the Revised Plan, the adequacy of the Revised Plan and implementation schedule is subject to the Dispute Resolution Process.

- a. The Engineering Consultant will produce a set of operating procedures for the new controls or improvements, which procedures establish monitoring protocols during the First Efficacy Period and, if needed, Second Efficacy Period. Such monitoring protocols will have monitoring logs that will be shared with Plaintiffs quarterly, or upon request. Formosa and Plaintiffs will have fourteen (14) Days from receipt to comment on the proposed operating procedures, which will be subject to the Dispute Resolution process. After the testing or failure of equipment, any necessary changes will be made by the Engineering Consultant to the operating procedures. Formosa and Plaintiffs will have fourteen (14) Days from receipt to comment on Second Efficacy Period operating procedures proposed by the Engineering Consultant, which will be subject to the Dispute Resolution process.

27. Documentation and results of the review or testing of implemented improvements will be provided to Plaintiffs each month, and Plaintiffs will have the right to raise any concerns with the Engineering Consultant, including requesting additional testing or a site visit.

**B. Monitoring, Reporting, and Future Mitigation Payments**

28. Within thirty (30) Days of the effective date of this Consent Decree, the Plaintiffs and Formosa will each propose two (2) recommendations for a Monitor. Within seven (7) Days of exchanging recommendations, the Parties will agree upon the selection of the Monitor. If the selection of a Monitor cannot be resolved between the parties within seven (7) Days of the exchange of recommendations, then the determination of the Monitor will be made by the Court. Formosa will retain the Monitor pursuant to a contract agreed to by Plaintiffs in advance within ten (10) Days of the written consent by the Plaintiffs to Formosa's proposed Monitor and retainer agreement or the Court's decision.

29. Formosa will install an above-ground Bypass Pipe with a back flow prevention device and treated wastewater sampling mechanism ("WSM") on the Outfall 001 discharge line outside of Formosa's fence line for the Formosa Point Comfort facility with access available to the

Plaintiffs and Plaintiffs' experts. The WSM will allow continuous monitoring of Outfall 001 wastewater for Plastics in Formosa's Outfall 001 wastewater stream after the wastewater has been treated and all water quality controls have been used but prior to the wastewater being discharged into Lavaca Bay through Outfall 001. The WSM will be designed with a filter mesh size small enough to capture Plastics and will be equipped with automatic sensors for pressure, solids and flow.

- a. Dr. Aiza Jose-Sanchez, or her firm, will propose a design for the Bypass Pipe and WSM. Formosa will have fourteen (14) Days from receipt of Dr. Jose-Sanchez's proposed Bypass Pipe and WSM designs to provide comments on the proposed design. Dr. Jose-Sanchez will have fourteen (14) Days to make any necessary modifications to the Bypass Pipe and WSM designs after receiving Formosa's comments, or a longer amount of time, as reasonably needed by the equipment provider to manufacture the WSM.
- b. Any disputes about the final design of the WSM will be resolved through the Dispute Resolution Process.
- c. After the design is agreed to, Formosa will have ninety (90) Days to construct the Bypass Pipe. Dr. Jose-Sanchez, or her firm, will review the construction and have ninety (90) Days to conduct tests on the Bypass Pipe to determine whether modifications are needed.
- d. The Monitor will ensure that the WSM is maintained and cleaned appropriately.

30. The Monitor shall have access at any time to the data collected by the WSM designed by Dr. Jose-Sanchez and installed on the Bypass Pipe. The Monitor may also physically view and sample the discharge water and any solids collected by the WSM. The Monitor shall visit the WSM at least twice per week and within two (2) Days of any indication from the WSM there are solids on the filter. The Monitor will record whether any Plastics are present. Plaintiffs and Formosa will have electronic access to the data collected, but will not have access to the WSM, unless access is needed to address an emergency.

31. The Monitor shall record relevant information from the WSM, including photographs of any Plastics detected and pressure readings.

32. At least twice per week, the Monitor will examine (a) the outfalls, containment Booms, water and adjacent shores fifty (50) feet downstream and upstream of containment Booms for all Formosa outfalls discharging into Cox Creek and (b) the Bypass Pipe WSM.

- a. Subject to each individual seeking access executing a full release and indemnification of Formosa from any and all liability resulting from access, Plaintiffs will have unrestricted access to all discharge channels and the shore areas upstream of the Booms outside Formosa's fence line for outfalls that discharge into Cox Creek.
- b. If Formosa or its subcontractors detect Plastics upstream of a Boom or the shore areas upstream of the Booms, Formosa or its subcontractor will take photographs of the Plastics detected and will report that information to the Monitor and Remediation Consultant within twenty-four (24) hours.
- c. Booms shall not be modified or moved without prior notice to Plaintiffs and the Monitor. Plaintiffs and the Monitor will have ten (10) Days from receipt of notice to object to the modification of Booms and that objection may be appealed to the Court if the issue cannot be resolved between Plaintiffs and Formosa. For purposes of this subparagraph, the phrase "modified or moved" does not include routine maintenance and repair of the Booms.
- d. Within thirty (30) Days of the effective date of this Consent Decree, Formosa shall install and/or maintain Booms for all outfalls discharging to Cox Creek, including Outfalls 003, 007, 010, and 012.

33. The particular days of the visits will be determined exclusively by the Monitor and will not be known to Formosa or Plaintiffs in advance.

34. The Monitor shall report the location of any Plastics to the Remediation Consultant.

35. The Monitor will document the presence of any Plastics outside of Formosa's outfalls and at the locations in paragraph 32 through a log and photographs. Monitoring logs and any photographs or videos taken will be sent to Plaintiffs, Formosa and the Remediation Consultant weekly. These logs and photographs may be shared publicly.

36. If either Formosa or the Monitor documents any Plastics resulting from sampling at the WSM for Outfall 001 or upstream of containment Booms, including on the upstream shores or in the water, for outfalls discharging into Cox Creek, and including discharges of Plastics found by

the Monitor in accordance with paragraph 37, Formosa, subject to any claim by Formosa of a Force Majeure Event or Force Majeure Events, is in violation of its discharge permit and Formosa will, within thirty (30) Days of learning of the violation, pay into the Mitigation Trust the amount below:

- For discharges in calendar year 2019: \$10,000
- For discharges in calendar year 2020: \$15,000
- For discharges in calendar year 2021: \$20,000
- For discharges in calendar year 2022: \$25,000
- For discharges in calendar year 2023: \$30,000
- For discharges in calendar year 2024 and after: maximum amount provided by 40 C.F.R. § 19.4.

The stipulated mitigation payments shall be separate for Lavaca Bay and Cox Creek; so, for example, on a given day, a payment could be \$20,000 in 2019 if Plastics are identified by the Monitor in accordance with this paragraph in both Cox Creek and Lavaca Bay on the same day.

37. Plaintiffs or other concerned citizens may send documentation of Plastics outside of Formosa's outfalls in Cox Creek or on the shores of Cox Creek for outfalls discharging into Cox Creek to the Monitor for review. If the Monitor determines the submitted documentation demonstrates new discharges of Plastics not already identified, the Monitor will add the new discharges demonstrated by the citizen documentation to the discharges documented by the Monitor, as provided in paragraph 36.

38. When there has been a discharge of Plastics, as determined pursuant to paragraphs 36, within twenty-four (24) hours of Formosa learning of the discharge, Formosa will report each event as a permit violation to the Texas Commission on Environmental Quality ("TCEQ") identifying the water body (Cox Creek or Lavaca Bay) where Plastics were discharged.

- a. Formosa will propose a new reporting policy to replace Formosa's existing Standard Operating Procedure to Plaintiffs within thirty (30) Days of the effective date of this Consent Decree that complies with definition of permit violations as ordered by the Court and in this Consent Decree, including that "best management practices" do not constitute compliance with the permit. Plaintiffs will have thirty (30) Days to respond and propose

revisions in writing to the proposed new reporting policy. Within ten (10) Days of Plaintiffs' written approval of Formosa's new reporting policy or the Court's determination if the Parties cannot agree on revisions, Formosa will approve the new reporting policy internally to replace the previous Standard Operating Procedure, and provide this new reporting policy as a revised Standard Operating Procedure to TCEQ.

**C. Remediation of Past Discharges**

39. Within thirty (30) Days of the effective date of this Consent Decree, the Plaintiffs and Formosa will each propose two (2) recommendations for a Remediation Consultant. Within seven (7) Days of exchanging recommendations, the Parties will agree upon the selection of the Remediation Consultant. If the parties cannot agree, then the determination of the Remediation Consultant will be made by the Court.

40. Formosa will retain pursuant to a contract agreed to by Plaintiffs in advance the Remediation Consultant within ten (10) Days of the written consent by the Plaintiffs to Formosa's proposed Remediation Consultant and retainer agreement or the Court's determination.

41. The Remediation Consultant will review remediation methods for Plastics in Cox Creek and Lavaca Bay as follows:

- a. The Remediation Consultant will review ongoing remediation methods, make site visits, and will produce a Remediation Plan with the goal being a removal of most Plastics from the environment while protecting the Cox Creek and Lavaca Bay ecosystems.
- b. Formosa will direct Horizon Environmental Services, Inc. ("Horizon") to provide whatever information regarding previous cleanup efforts in Horizon's possession as is requested by the Remediation Consultant.
- c. The Remediation Consultant will determine whether Horizon's removal of shoreline and submerged vegetation should be remedied by planting of native vegetation to stabilize the banks and what mitigation should be undertaken, if any, in Cox Creek where submerged vegetation has been removed. Formosa will cease any efforts to authorize removal of submerged vegetation from Cox Creek or its shoreline at Texas Parks and Wildlife Department, and Formosa will withdraw its request within ten (10) Days of the effective date of this Consent Decree.

- d. If the Remediation Consultant determines specific removal methods will cause significant environmental damage that cannot be remediated, the removal methods should not be used.
- e. Plaintiffs may request the opportunity to take the Remediation Consultant up Cox Creek or to Lavaca Bay to show areas of concern. Dr. Jeremy Conkle may accompany Plaintiffs and the Remediation Consultant during this process, or Dr. Conkle may speak directly with the Remediation Consultant to discuss Dr. Conkle's concerns.

42. The Remediation Consultant shall develop and propose a plan to remove Plastics from the Cox Creek and Lavaca Bay ecosystems and, if warranted, for a Cox Creek bank stabilization and revegetation plan. Within sixty (60) Days of being retained, the Remediation Consultant's plan shall be provided to Formosa and the Plaintiffs for review.

43. Formosa and the Plaintiffs will have thirty (30) Days to provide comments on the Remediation Plan and, if requested, the Plaintiffs shall have an opportunity to consult with Formosa and the Remediation Consultant to resolve any concerns.

44. Formosa and/or the Remediation Consultant will continue to keep daily records of cleanup activities using a form approved by the Plaintiffs. The Remediation Consultant will propose a methodology for estimating the weight and/or volume of Plastics removed on a daily basis to Plaintiffs and Formosa, and Plaintiffs and Formosa shall have ten (10) Days from receipt of the Remediation Consultant's proposed methodology to provide written feedback to the Remediation Consultant. After considering any written feedback from Plaintiffs or Formosa, the Remediation Consultant will approve a final methodology to be used to estimate and record the daily weight and/or volume of Plastics removed on the daily form.

45. Plaintiffs may notify the Remediation Consultant of the presence of Plastics in the Cox Creek or Lavaca Bay ecosystems so those Plastics can be cleaned up. The Remediation Consultant will share any relevant information with Formosa.

46. On a monthly basis, Formosa will make the daily records required by paragraph 44 available on a public website created for that purpose until cleanup has ceased. Plaintiffs may also share this information publicly.

47. Within thirty (30) Days of the conclusion of cleanup efforts as determined by the Remediation Consultant, Formosa or the Remediation Consultant will create a final report that includes a summary of the cleanup, containing the amount of bags, and approximate weight and/or volume of Plastics and debris removed from locations along Cox Creek and Lavaca Bay.

48. Cleanup will continue until the Remediation Consultant determines that most Plastics have been removed from the environment and that further remediation efforts may harm the Cox Creek and Lavaca Bay ecosystems.

**D. Permit and Mitigation Terms**

49. Within ten (10) Days of the effective date of this Consent Decree, Formosa will request in writing to TCEQ as part of the current Texas Pollutant Discharge Elimination System ("TPDES") permit renewal process that Formosa's renewed TPDES permit contain the following new permit requirements:

- a. There will be zero (0) discharge of stormwater or other waters, including washwater, from Outfalls 002, 003, 004, 005, 006, 007, 008, 009, 012 and 014 for rainfall events of 5-year 24-hour rainfall event or less (6.8 inches in 24 hours) as measured by Formosa's onsite rain gauge. If Formosa discharges stormwater or other waters from these Outfalls, it will notify TCEQ within twenty-four (24) hours of the discharge and include the rainfall amount and outfall number. This requirement will be effective upon the earlier of actual construction of the infrastructure necessary to achieve this requirement or January 1, 2024.
- b. There will be zero (0) discharge of Plastics from Formosa's Point Comfort Plant. Formosa shall not propose that Plastics in its discharge in any way are part of permitted total suspended solids.
- c. Formosa will provide Plaintiffs a copy of the letter to TCEQ complying with this term immediately after sending it. Formosa will also provide Plaintiffs copies of any subsequent correspondence and notifications of in

person or oral communications to or from TCEQ regarding these proposed permit terms within five (5) Days.

- d. Regardless of whether TCEQ adopts these new permit terms proposed by Formosa, Formosa agrees to comply with the requirements in paragraphs 49 (b) and (c) above, on the effective date of this Consent Decree, and with 49(a) upon the earlier of actual construction of the infrastructure necessary to achieve this requirement or January 1, 2024.

50. Formosa will work with the Texas Department of Transportation ("TxDOT") to facilitate repairs to the SH35 boat ramp on Cox Creek so that the ramp can be used by boats, including motor boats. Formosa will request that TxDOT make the repairs or approve and release Formosa to make the repairs within thirty (30) Days of the effective date of this Consent Decree. Formosa will request that any efforts by TxDOT to repair the ramp include the removal of soil containing pellets and plastic pellets before pavement is laid.

#### **E. Environmental Mitigation Projects**

##### **Establishment of the Matagorda Bay Mitigation Trust**

51. Formosa will pay fifty (50) million dollars over five (5) years (ten (10) million dollars per year) for Mitigation Projects to the Matagorda Bay Mitigation Trust. The parties agree these Mitigation Projects provide environmental benefits to the affected areas. All mitigation funds paid by Formosa pursuant to this Consent Decree will be paid into the Mitigation Trust account, which will be an interest-bearing account.

52. Within twenty-one (21) days of the effective date of this Consent Decree, the Plaintiffs and Formosa will each propose up to two (2) recommendations for a Trustee. Within seven (7) Days of exchanging recommendations, the Parties will agree upon the selection of the Trustee. If the selection of a Trustee cannot be resolved between the parties within seven (7) Days of the exchange of recommendations, then the determination of the Trustee will be made by the Court.



53. The Trustee shall file all papers necessary to establish the Matagorda Bay Mitigation Trust. Formosa shall annually contribute to the Trust as required by this Consent Decree, with the first payment due fourteen (14) Days after the establishment of the Trust, and each subsequent annual payment due within one (1) week of the anniversary of the initial payment. The cost of administering the Trust, including costs of the Trustee, shall be paid by the funds in the Trust described in Paragraph 62.

54. The Trustee will send annual reports to the Parties and make the reports publicly available.

**Environmental Mitigation Projects**

55. The total amount for Mitigation Projects will be divided as follows:

56. Twenty (20) million dollars to the Federation of Southern Cooperatives (“the Federation”), a non-profit organization with offices throughout the South, to form a Matagorda Bay Fishing Cooperative (“the Cooperative”), and netting or transportation cooperatives if necessary to support the Fishing Cooperative, under a project called the Matagorda Bay Cooperative Development Project (“the Project”).

- a. The Matagorda Bay and San Antonio Bay Systems (“the Bay Systems”) have historically had a thriving fishing, shrimping, and oystering industry that has declined due, in part, to pollution of the Bays. The purpose of this Mitigation Project is environmental restoration and protection, specifically to revitalize the marine ecosystems and promote long-term sustainable fisheries by supporting the fishing community to work together to sustain harvests from the Bay Systems in an environmentally responsible manner.
- b. The Federation will work with local fishermen, shrimpers, and oystermen to organize a local Cooperative with the goal of improving the ecosystem and developing sustainable fishing, shrimping, and oystering of the Bay Systems. Funds may be expended for organizing a local cooperative, implementing sustainable fishing practices, promoting mechanisms to create sustainable harvests, analyzing best markets for environmentally responsible seafood harvests, and determining and investing in necessary infrastructure, as explained below.

- c. The Federation may make zero-interest loans to the Cooperative(s) for the purchase of infrastructure or other needs consistent with the goal of improving the ecosystem and developing sustainable fishing, shrimping, and oystering of the Bay Systems. Repayments of the loans will go to the Federation to be used on the Matagorda Bay Fishing Cooperative project.
- d. The Federation may determine that formation of other cooperatives, such as netting or transportation cooperatives, are necessary to support a sustainable fishing community and may expend funds towards organizing those cooperatives.
- e. The Cooperative may recommend to the Federation that funds earmarked for the Project be spent in coordination with Texas Parks and Wildlife Department on oyster reef restoration and aquaculture projects in the Bay Systems.
- f. If at any time, it is clear to the Federation that efforts to organize the Cooperative have failed, the Federation shall notify the Trustee and return any unexpended funds to the Trust. If after five (5) years of efforts, the Federation determines that the Cooperative is not likely to succeed, any remaining funds will be returned to the Trustee for redistribution.
- g. The twenty (20) million dollars to the Federation shall be paid as follows:
  - \$3 million in 2020;
  - \$4 million in 2021;
  - \$4 million in 2022;
  - \$4 million in 2023; and
  - \$5 million in 2024.

57. Ten (10) million dollars in total for the development, protection, operation and maintenance of Green Lake Park.

- a. Green Lake is the second largest natural lake in the state of Texas but does not have public access and has not been developed or protected in a way to ensure its natural environment is sustained. Green Lake was recently purchased by Calhoun County. The purpose of this mitigation project is environmental restoration and protection, specifically to restore the lake to its historic condition including repairing a recent breach due to Hurricane Harvey and provide funds for the development of public access to the park.
- b. Eight (8) million dollars to Calhoun County to develop, operate and maintain Green Lake Park as a publicly available park without RV hook-ups, but otherwise consistent with the Green Lake Master Plan. Two (2) million dollars will be used to repair the current breach from Green Lake waters, which is causing seepage

from Green Lake into adjacent waters. Any funding left after construction of the Park will be spent on operation and maintenance of the park.

- c. The ten (10) million dollars to Calhoun County shall be paid as follows:
  - \$2 million for breach repair in 2020;
  - \$2 million for Green Lake Park in 2021;
  - \$2 million for Green Lake Park in 2022;
  - \$2 million for Green Lake Park in 2023; and
  - \$2 million for Green Lake Park in 2024.

58. Seven-hundred fifty (750) thousand dollars to the Port Lavaca YMCA to fund camps for children and teenagers in the area, which will be focused on education about how to be a good steward of the local ecosystems and will teach outdoor education and recreation activities.

- a. Beach erosion and pollution of the Bay Systems and their shores has limited recreational opportunity to children of Calhoun County. The purpose of this mitigation project is environmental education, specifically to give local children the opportunity to learn about and enjoy the local ecosystem.
- b. Free transportation will be offered to the camps, and children who meet federal low-income standards will be given a scholarship to attend and will be provided free meals and snacks. Funding may also be spent for housing for summer staff to conduct camps and to train staff on the ecology of the Bay Systems. Funding may also be used for the purchase of equipment for the camps.
- c. The seven-hundred fifty (750) thousand dollars for environmental education and recreation summer camps will be paid as follows:
  - \$100,000 in 2020;
  - \$125,000 in 2021;
  - \$150,000 in 2022;
  - \$150,000 in 2023; and
  - \$225,000 in 2024

59. Two (2) million dollars to Calhoun County for erosion control and beach restoration at Magnolia Beach. Funds may be used for purchase and use of clean and uncontaminated fill material, planting of native plants, necessary construction to prevent future erosion, and necessary maintenance to prevent beach erosion.

- a. Beach erosion and pollution of Lavaca Bay and its shores has limited recreational opportunities for the people of Calhoun County. Magnolia Beach has sustained

harm from erosion and is also a location where Plastics have been found. The purpose of this mitigation project is environmental restoration and protection, specifically to restore Magnolia Beach and allow use by the public.

b. The two (2) million dollars to Calhoun County for erosion control and beach restoration shall be paid as follows:

- \$1,000,000 in 2021; and
- \$1,000,000 in 2022.

60. One (1) million dollars to the University of Texas Marine Science Institute (“UTMSI”) Nurdle Patrol (“the Nurdle Patrol”). The money will be used to support the Nurdle Patrol and for workshops and meetings, and to provide scholarships for attendance, food, transportation and expenses at conferences.

a. UTMSI sponsors a “Nurdle Patrol,” which documents the discharge of plastics on the Gulf Shore. The Nurdle Patrol also hosts conferences regarding plastics and environmental issues on the Gulf Coast. This purpose of this mitigation project is environmental quality assessment and environmental education, specifically to support the Nurdle Patrol and environmental conferences.

b. The one (1) million dollars for the Nurdle Patrol shall be paid as follows:

- \$200,000 in 2020;
- \$200,000 in 2021;
- \$200,000 in 2022;
- \$200,000 in 2023; and
- \$200,000 in 2024.

61. Five (5) million dollars for an Environmental Research Mitigation Project providing for funding for environmental research regarding the Bay Systems, or the river deltas in Calhoun or Jackson Counties feeding into those systems. Funding may be distributed for environmental research topics, including but not limited to, the ecology, pollution, fisheries, or habitat and wildlife restoration of the ecosystems. The Trustee shall set up a system to provide funding for research, including providing public notice of the funding opportunity and setting up a review process for applications with researchers in applicable fields.

- a. The Bay Systems have suffered environmental degradation, including the repeated discharges of pollutants. The purpose of this mitigation project is funding for specific environmental research projects to better understand the extent and impacts of environmental degradation in these ecosystems as well as possible solutions for restoration and mitigation.
- b. The five (5) million dollars for the Environmental Research Mitigation Project shall be paid as follows:
  - \$1,000,000 in 2020;
  - \$1,000,000 in 2021;
  - \$1,000,000 in 2022;
  - \$1,000,000 in 2023; and
  - \$1,000,000 in 2024.

62. Eleven (11) million two-hundred and fifty (250) thousand dollars to the Matagorda Bay Mitigation Trust, and any additional sums paid by Formosa or returned to the Trust for redistribution.

- a. The purpose of this mitigation project is to research, protect, and restore the water bodies and surrounding ecosystems of the Bay Systems or the river deltas feeding into those systems. The Trust shall award funds for the benefit of these waterbodies and the public, including for:
  - providing public education about those waterbodies,
  - sponsoring youth camps such as described in paragraph 57;
  - purchasing land in the watersheds of those waterbodies for conservation purposes, in order to reduce runoff and other pollution into those waterbodies, and/or to improve public access (physical or visual) to them;
  - environmental research of those waterbodies as in paragraph 59;
  - environmental advocacy, except for litigation;
  - habitat restoration; and/or
  - additional funding for the dedicated Mitigation Projects described in paragraphs 52-57.
- b. The Matagorda Bay Mitigation Trust shall have an Award Committee including the Trustee, one representative of Plaintiffs, one representative of Formosa, and two representatives from environmental groups or institutions. The initial Committee environmental representatives shall be selected from: Surfrider in Corpus Christi, the Mission-Aransas National Estuarine Research Reserve, or the Coastal Alliance to Protect our Environment. The Award Committee shall

be established within thirty (30) Days of the establishment of the Trust. If Plaintiffs and Formosa cannot mutually agree on the representatives from the environmental groups, the Trustee will decide.

- c. The Award Committee of the Matagorda Bay Mitigation Trust shall establish a process for application and distribution of the available funds in the Trust.
- d. The eleven (11) million two-hundred and fifty (250) dollars to the Matagorda Bay Mitigation Trust shall be paid as follows:
  - \$3,700,000 in 2020;
  - \$1,675,000 in 2021;
  - \$1,650,000 in 2022;
  - \$2,650,000 in 2023; and
  - \$1,575,000 in 2024.

#### **Public Statements**

63. Any public statement, oral or written, in print, film, or other media, made by Formosa making reference to the Mitigation Projects under this Consent Decree shall include the following language or words to the effect: This project was undertaken in connection with the settlement of a Clean Water Act suit, San Antonio Bay Estuarine Waterkeeper v. Formosa.

#### **V. COSTS OF SUIT**

64. Formosa will pay Plaintiffs' reasonable attorneys' fees and costs through the effective date of this Consent Decree of \$3,030,613.00 and, future reasonable attorneys' fees and costs, including costs for retained experts, for the duration of this Consent Decree for ensuring compliance with this Order. Plaintiffs will send invoices to Formosa every two (2) months for future fees and costs, and payment will be made within thirty (30) Days of receipt. Plaintiffs' reasonable attorneys' fees and costs, including costs for retained experts, through the effective date of this Consent Decree will be paid within thirty (30) Days of the effective date of this Consent Decree.

65. Payment of all sums due to Plaintiffs for attorneys' fees or costs shall be made by electronic funds transfer to Texas RioGrande Legal Aid, who will distribute the funds among Plaintiffs' co-counsel. This payment shall not be construed as a donation to Texas RioGrande Legal Aid.

**VI. DISPUTE RESOLUTION**

66. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

67. Informal Dispute Resolution. Any dispute under this Consent Decree shall first be the subject of good faith informal negotiations. The dispute shall be considered to have arisen when the Plaintiffs or Formosa sends the other party a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter(s) in dispute. The period of informal negotiations shall not exceed thirty (30) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then either party may ask the Court for final resolution of the issue.

68. Judicial Review. Either Formosa or Plaintiffs may seek judicial review of any dispute under this Consent Decree by filing with the Court and serving on the other party, a motion requesting judicial resolution of the dispute arising under this Consent Decree.

69. No Effect on Deadlines. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Formosa or the Plaintiffs under this Consent Decree, unless and until final resolution of the dispute so provides.

**VII. MISCELLANEOUS**

70. This Consent Decree is entered in full and final settlement of the civil claims for violations of the Clean Water Act, 33 U.S.C. 1365, et seq., as alleged in the complaint filed by Plaintiffs up through the date of entry of this Consent Decree, but shall not affect rights or obligations not specifically addressed herein, as to which the Parties specifically reserve their rights.

71. Formosa will review Plaintiffs' expert reports that have been produced or filed as confidential and Plaintiffs' Findings of Fact filed under seal in the lawsuit to determine which language needs to remain confidential within thirty (30) days of the effective date of this Consent Decree to remove any restriction on use of Plaintiffs' expert reports or Findings of Fact. If the Parties cannot agree, any dispute over confidentiality may be taken to the Court for resolution.

#### **VIII. CONTINUING JURISDICTION**

72. The Court shall retain jurisdiction to effectuate and enforce the terms and conditions and achieve the objectives of this Consent Decree, and to resolve disputes arising hereunder as may be necessary or appropriate for the construction, modification, implementation, or execution of this Consent Decree.

#### **IX. MODIFICATION**

73. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties and with approval by the Court.

#### **X. TERMINATION**

74. Request for Termination. Formosa may serve upon Plaintiffs a request for termination after implementation and testing of all the Engineering Consultant's improvements (in Section IV(A)), after completion of all requirements in Section IV(D), and after the Monitor, Plaintiffs, and cleanup records have all documented no discharges of Plastics as defined in paragraph 36 of this Consent Decree into either Cox Creek or Lavaca Bay for six (6) consecutive months.



75. Joint Motion for Termination. Following receipt of the request for termination, the Parties shall confer informally concerning the request and attempt in good faith to address any disagreement that the Parties may have as to whether Formosa has complied with the requirements for termination of this Consent Decree. If the Plaintiffs agree that this Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint motion to terminate this Consent Decree.

76. Formosa Motion for Termination. In the event that the Parties cannot agree as to whether Formosa has complied with the requirements for termination of this Consent Decree, Formosa may move to terminate this Consent Decree on its own motion to the Court.

77. Survival of Paragraph 49. In the event the Court grants termination of this Consent Decree and the TCEQ has not acted on the Formosa requests set forth in paragraph 49 or the TCEQ has acted on Formosa's renewal of Formosa's TPDES permit and not expressly incorporated the changes requested by Formosa pursuant to paragraph 49, Formosa and Plaintiffs agree that the requirements in paragraph 49, Subparagraphs a. and b. will survive this Consent Decree and remain enforceable. Discharges in violation of these subparagraphs will result in a payment by Formosa to the Mitigation Trust of \$10,000 for each discharge. In the event of the earlier dissolution of the Mitigation Trust, the payment will be to the recipient designated by the Trust's dissolution document.

#### **XI. NOTICES AND SERVICE OF PROCESS**

78. Unless otherwise specified in this Consent Decree or otherwise changed by notice to all Parties, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows, using electronic mail where such addresses are provided:

As to the Plaintiffs:

1) Erin Gaines  
TEXAS RIOGRANDE LEGAL AID  
4920 N. I-35  
Austin, TX 78751  
512-374-2739  
egaines@trla.org

2) Diane Wilson  
wilsonalamobay@aol.com

As to Formosa:

1) John Riley, Esq.  
Holland & Knight LLP  
111 Congress Ave., Suite 540  
Austin, TX 78701  
John.Riley@hkllaw.com

2) Vice President/General Manager  
Formosa Plastics Corporation, Texas  
201 Formosa Drive  
Point Comfort, TX 77978

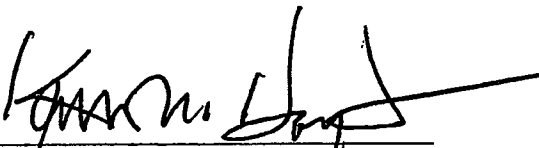
3) Assistant Vice President, Environmental Division  
Formosa Plastics Corporation, U.S.A.  
9 Peach Tree Hill Rd.  
Livingston, NJ 07039

**XII. SIGNATORIES**

79. Each of the undersigned representatives certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree, to execute this Consent Decree, and to legally bind to this Consent Decree the Party, affiliate or entity he or she represents.

IT IS SO ORDERED:

Dated and entered the 6th day of December, 2019 to be effective January 15, 2020  
("effective date").



HONORABLE KENNETH M. HOYT  
UNITED STATES DISTRICT JUDGE