

---

FINANCING AGREEMENT

between

TEXAS PUBLIC FINANCE AUTHORITY

and

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Pertaining to

Texas Public Finance Authority  
State of Texas  
General Obligation Commercial Paper Notes  
Series 2008

Dated as of January 2, 2013

---

TABLE OF CONTENTS

Page Number

**ARTICLE I**

**DEFINITIONS AND OTHER PRELIMINARY MATTERS**

SECTION 1.01	Definitions.....	1
SECTION 1.02	General Rules of Construction.....	5
SECTION 1.03	Preamble.....	5

**ARTICLE II**

**GENERAL REPRESENTATIONS AND WARRANTIES**

SECTION 2.01	General Representations and Warranties of Authority.....	5
SECTION 2.02	General Representations and Warranties of Qualified Agency.....	6

**ARTICLE III**

**THE PROJECT**

SECTION 3.01	Authorization for Project.....	7
SECTION 3.02	Plans and Specifications.....	7
SECTION 3.03	Project Completion Schedule.....	7
SECTION 3.04	Construction and Acquisition of Project.....	7
SECTION 3.05	Licenses and Permits.....	8
SECTION 3.06	Disbursements from Project Fund.....	8
SECTION 3.07	Status Reports.....	9
SECTION 3.08	Inspection of Project.....	9
SECTION 3.09	Completion of Project.....	9
SECTION 3.10	Use of Project.....	9
SECTION 3.11	Authority Not Responsible for Project.....	9
SECTION 3.12	Necessity for Project.....	10

**ARTICLE IV**

**THE NOTES**

SECTION 4.01	Issuance of the Notes.....	10
SECTION 4.02	Cooperation by Qualified Agency.....	10
SECTION 4.03	Maintaining Tax-Exempt Status of the Notes.....	10
SECTION 4.04	Arbitrage Rebate.....	12
SECTION 4.05	Disclosure Documents.....	12

**ARTICLE V**

**PARTICULAR AGREEMENTS**

SECTION 5.01	Recordkeeping.....	13
SECTION 5.02	Indemnification of Qualified Agency.....	13
SECTION 5.03	Availability of Other Funding.....	13
SECTION 5.04	Real Property.....	13

SECTION 5.05	Title Insurance.....	13
SECTION 5.06	Project Design.....	14

**ARTICLE VI**

**MISCELLANEOUS PROVISIONS**

SECTION 6.01	Term of Agreement.....	14
SECTION 6.02	Amendment.....	14
SECTION 6.03	Notices and Other Communications.....	14
SECTION 6.04	Exclusive Benefit.....	15
SECTION 6.05	Severability.....	15
SECTION 6.06	Conflict with Memorandum.....	15
SECTION 6.07	Counterparts.....	16
SECTION 6.08	Governing Law.....	16

EXHIBIT A	Description of the Project
EXHIBIT B	Project Completion Schedule
EXHIBIT C	Governmental Project Approvals
EXHIBIT D	Form of Disbursement Certificate
EXHIBIT E	Monthly Status Report Information
EXHIBIT F	Form of Project Completion Certificate
EXHIBIT G	Form of Project Substitution Certificate

## FINANCING AGREEMENT

FINANCING AGREEMENT, dated as of January 2, 2013, between the TEXAS PUBLIC FINANCE AUTHORITY (the “Authority”) and the TEXAS DEPARTMENT OF CRIMINAL JUSTICE (the “Qualified Agency”);

### WITNESSETH:

WHEREAS, the Authority is authorized to provide financing of certain projects (hereinafter defined) for certain agencies of the State of Texas through the issuance of commercial paper notes pursuant to certain provisions of the Texas Constitution and other statutory and regulatory authorities including, but not limited to, Article III, Section 50-g of the Texas Constitution, Chapters 1232, and 1371 Texas Government Code, as amended, and Part X, Title 34, Texas Administrative Code (collectively, the “Authorizing Law”);

WHEREAS, one or more projects of the Qualified Agency have been authorized in appropriations by the Legislature of the State; and

WHEREAS, the parties desire to provide for the financing by the Authority of certain projects for the Qualified Agency;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS AND OTHER PRELIMINARY MATTERS

##### SECTION 1.01 Definitions.

Except as otherwise provided in this Financing Agreement, the capitalized terms in this Financing Agreement shall have the meanings specified in this section unless the context requires otherwise.

*Agency Act* – Texas Government Code, Title 4, subtitle G, and any other Act pursuant to which the Qualified Agency operates.

*Appropriation Act* – HB1, Acts 82<sup>nd</sup> Legislature, R.S. (2011), and any other act of the Legislature appropriating funds for the Project to the Qualified Agency.

*Authority* – the Texas Public Finance Authority or any successor thereto.

*Authority Regulations* – the regulations of the Authority in Part X, Title 34, Texas Administrative Code, as amended.

*Authorized Agency Representative* – the chief administrative officer of the Qualified Agency or any member of the staff of the Qualified Agency designated by the chief administrative officer or by the governing body of the Qualified Agency as an authorized representative.

*Authorizing Law* – means the “Authorizing Law” as defined in the preamble of this Financing Agreement.

*Available Construction Proceeds* – means Proceeds other than Proceeds used to refund the obligations refunded by the Notes (if any) and to pay issuance costs. For purposes of determining compliance with the spending requirements as of the end of each of the first three spending periods, available construction proceeds include the amount of future earnings that the Qualified Agency reasonably expected as of the issue date.

*Board* – the Board of Directors of the Authority.

*Bond Counsel* – any law firm experienced in matters relating to the issuance of tax-exempt obligations and engaged by the Board to render such services.

*Business Day* – any day on which the Comptroller and the Authority are open for business and on which financial institutions in the city where the principal corporate trust office of the Issuing and Paying Agent is located are not authorized by law or executive order to close.

*Closing* – with respect to each sale of Notes, the concurrent delivery of such Notes to, or upon the order of, the initial purchaser(s) in exchange for payment therefor.

*Closing Date* – the date of a Closing.

*Code* – the Internal Revenue Code of 1986, as amended, together with all published regulations promulgated thereunder and rulings issued with respect thereto by the United States Department of the Treasury or the Internal Revenue Service.

*Comptroller* – the Comptroller of Public Accounts of the State or any successor thereto, including the individual elected to serve as Comptroller of the State, the Deputy Comptroller, or such other official designated by law to serve or act in the capacity of the Comptroller.

*Construction Expenditures* – means capital expenditures that are allocable to the cost of real property or constructed personal property. Except as provided below, construction expenditures do not include expenditures for acquisitions of interests in land or other existing real property. Expenditures are not for the acquisition of an interest in existing real property other than land if the contract between the seller and the Qualified Agency requires the seller to build or install the property (e.g., a turnkey contract), but only to the extent that the property has not been built or installed at the time the parties enter into the contract. Constructed personal property means tangible personal property (or, if acquired pursuant to a single acquisition contract, properties) or specially developed computer software if: (i) A substantial portion of the property or properties is completed more than 6 months after the earlier of the date construction or rehabilitation commenced and the date the Qualified Agency entered into an acquisition contract; (ii) based on the reasonable expectations of the Qualified Agency, if any, or representations of the person constructing the property, with the exercise of due diligence, completion of construction or rehabilitation (and delivery to the Qualified Agency) could not have occurred within that 6-month period; and (iii) if the Qualified Agency itself builds or rehabilitates the property, not more than 75 percent of the capitalizable cost is attributable to property acquired by the Qualified Agency (e.g., components, raw materials, and other supplies). Specially developed computer software means any programs or routines used to cause a computer to perform a desired task or set of tasks, and the documentation required to describe and maintain those programs, provided that the software is specially developed and is functionally related and subordinate to real property or other constructed personal property.

*Costs of Issuance* – the “costs of issuance,” as provided in the Authorizing Law and defined in the Resolution, incurred in connection with the issuance of the Notes.

*Disbursement Certificate* – a certificate of the Authorized Agency Representative for the disbursement of funds from the appropriate account of the Project Fund, in substantially the form of Exhibit D of this Financing Agreement.

*Disclosure Documents* – collectively, the Offering Memorandum and any amendments thereto.

*Event of Taxability* – any act or omission that could adversely affect the excludability of the interest on any Note from the gross income of the owner of the Note.

*Executive Director* – the Executive Director of the Authority, or any member of the staff of the Authority authorized by the Board to perform the duties of the Executive Director.

*Facility Contract* – any contract, entered into by the Qualified Agency after the effective date of this Financing Agreement, for the design, engineering, acquisition, construction, equipping, repair, or renovation of any facilities financed for the Qualified Agency in whole or part with proceeds of the Notes.

*Financing Agreement* – this Financing Agreement, and any amendments hereto.

*Gross Proceeds* – means any Proceeds and any Replacement Proceeds.

*Interest and Sinking Fund* – the fund by that name created pursuant to Section 4.01 of the Resolution for the purpose of paying Note Obligations.

*Investment Proceeds* – means any amounts actually or constructively received from investing Proceeds.

*Legislative Budget Board* – the joint committee of the Legislature that develops recommendations for legislative appropriations for the state agencies.

*Legislature* – the Legislature of the State.

*Memorandum* – the Memorandum of Understanding, dated as of December 3, 2009, between the Authority and the Qualified Agency, and any amendments thereto.

*Notes* – any obligations issued by the Authority from time to time to finance or refinance the Project.

*Offering Memorandum* – the final official disclosure document authorized by the Authority to be used in connection with the sale of the Notes.

*Plans and Specifications* – the plans and specifications for the Project Component(s), as amended or supplemented.

*Proceeds* – means any Sale Proceeds, Investment Proceeds, and Transferred Proceeds of the Notes which are attributable to financing the Project.

*Project* – collectively, the Project Components.

*Project Completion Amount* – the aggregate amount of the cost of all of the Project Components, as set forth in Exhibit A to this Financing Agreement.

*Project Completion Certificate* – a certificate of an Authorized Agency Representative delivered on behalf of the Qualified Agency, pursuant to this Financing Agreement, to the effect that the Project has been completed (or that no further proceeds of the Notes are required for the payment of Project Costs), in substantially the form set forth in Exhibit F to this Financing Agreement.

*Project Completion Date* – the date that the Project is completed, as certified in the Project Completion Certificate.

*Project Completion Schedule* – the schedule projecting the rate of expenditure of proceeds of the Notes for the payment of Project Costs which is set forth in Exhibit B to this Financing Agreement.

*Project Component* – each respective item (or part of an item) in the Appropriation Act that has been approved to be financed with proceeds of the Notes, as described in Exhibit A to this Financing Agreement.

*Project Costs* – any costs associated with the Project that are authorized under the Authorizing Law to be paid with proceeds of the Notes.

*Project Financing Documents* – collectively, all documents furnished by the Qualified Agency to the Authority in connection with the financing of the Project and issuance of the Notes, including (without limitation) the Memorandum, the Request for Financing, this Financing Agreement, each Disbursement Certificate, any Project Substitution Certificate, and the Project Completion Certificate.

*Project Fund* – the fund by that name and any other project fund created pursuant to Section 4.01 of the Resolution.

*Project Substitution Certificate* – a certificate of an Authorized Agency Representative to the effect that a Project Component is to be substituted for, in substantially the form set forth as an exhibit to this Financing Agreement.

*Qualified Agency* – the “Qualified Agency” as defined in the preamble of this Financing Agreement or any successor thereto.

*Regulations* – means the temporary or final Income Tax Regulations applicable to the Notes pursuant to sections 141 through 150 of the Code. Any reference to a section of the Regulations shall also refer to any successor provision to such section hereafter promulgated by the Internal Revenue Service pursuant to sections 141 through 150 of the Code and applicable to the Notes.

*Replacement Proceeds* – has the meaning set forth in Section 1.148-1(c) of the Regulations and generally includes amounts that have a sufficiently direct nexus to the Notes or to the governmental purpose of the Notes to conclude that the amounts would have been used for that governmental purpose if the proceeds of the Notes were not used or to be used for that governmental purpose. For this purpose, the mere availability or preliminary earmarking of amounts for a governmental purpose does not in itself establish a sufficient nexus to cause those amounts to be replacement proceeds. Replacement proceeds include, but are not limited to, sinking funds and pledged funds.

*Request for Financing* – the letter or other communication from the Qualified Agency to the Authority requesting financing for the Project, and any supplements thereto.

*Resolution* – the resolution of the Authority adopted on March 6, 2008, pursuant to which the Notes are authorized to be issued, and any amendments and supplements thereto.

*Sale Proceeds* – means any amounts actually or constructively received from the sale (or other disposition) of any Note, including amounts used to pay underwriters’ discount or compensation and accrued interest other than pre-issuance accrued interest.

*State* – the State of Texas.

*Transferred Proceeds* – means transferred proceeds as defined in Section 1.148-9 of the Regulations which includes Proceeds of any Notes used to refund Notes outstanding prior to the Closing Date.

**SECTION 1.02 General Rules of Construction.**

(a) A capitalized term used in this Financing Agreement that is not defined herein and that is defined in the Resolution shall have the meaning assigned to it in the Resolution.

(b) Whenever in this Financing Agreement the context requires:

- (1) a reference to the singular number includes the plural and vice versa; and
- (2) a word denoting gender includes the masculine, feminine, and neuter.

(c) The table of contents and the titles given to any article or section of this Financing Agreement are for convenience only and are not intended to modify the article or section.

**SECTION 1.03 Preamble.**

The statements and findings in the preamble of this Financing Agreement are hereby adopted and made a part of the Financing Agreement.

**ARTICLE II**

**GENERAL REPRESENTATIONS AND WARRANTIES**

**SECTION 2.01 General Representations and Warranties of Authority.**

The Authority represents and warrants as follows:

(1) the Authority is a validly existing agency of the State authorized to operate under the Texas Public Finance Authority Act, Chapter 1232, Texas Government Code, as amended;

(2) the Authority has full power and authority to execute and deliver this Financing Agreement, perform its obligations thereunder, and carry out the transactions contemplated hereby;

(3) the Authority has duly authorized the execution and delivery of this Financing Agreement and the performance of its obligations thereunder;

(4) the execution and delivery of this Financing Agreement, the consummation of the transactions contemplated hereby, the performance of its obligations hereunder, and the compliance with the terms hereof by the Authority will not conflict with, or constitute a default under, any law (including administrative rule), judgment, decree, order, permit, license,



agreement, mortgage, lease, or other instrument to which the Authority is subject or by which it is bound;

(5) the Authority has full power and authority to issue the Notes, to cause funds to be made available to finance the Project in accordance with the Resolution and this Financing Agreement and to perform its obligations under the Resolution;

(6) the Resolution has been duly adopted by the Authority, is in full force and effect, and constitutes the legal, valid, and binding act of the Authority;

(7) this Financing Agreement, when duly executed and delivered by the Authority, will constitute a legal, valid, and binding obligation of the Authority; and

(8) the Authority has not revoked its authorization of the Qualified Agency to declare official intent on behalf of the Authority for purposes of the Code.

SECTION 2.02 General Representations and Warranties of Qualified Agency.

The Qualified Agency represents and warrants, as follows:

(1) the Qualified Agency is a validly existing agency of the State authorized to operate under the Agency Act;

(2) the Qualified Agency has full power and authority to execute and deliver the Project Financing Documents, perform its obligations thereunder, and carry out the transactions contemplated thereby;

(3) the Qualified Agency has duly authorized the execution and delivery of the Project Financing Documents and the performance of its obligations thereunder;

(4) the execution and delivery of the Project Financing Documents, the consummation of the transactions contemplated thereby, the performance of its obligations thereunder, and the compliance with the terms thereof by the Qualified Agency will not conflict with, or constitute a default under, any law (including administrative rule), judgment, decree, order, permit, license, agreement, mortgage, lease, or other instrument to which the Qualified Agency is subject or by which the Qualified Agency or any of its property are bound;

(5) the Qualified Agency is not in violation of any law, which violation could adversely affect the consummation of the transactions contemplated by the Project Financing Documents; and

(6) the Project Financing Documents, when duly executed and delivered by the Qualified Agency, as appropriate, will constitute legal, valid, and binding obligations of the Qualified Agency.

## ARTICLE III

### THE PROJECT

#### SECTION 3.01 Authorization for Project.

(a) The Qualified Agency represents that the Project has been authorized by the Appropriation Act or other statute and that all of the Project Costs to be paid with proceeds of the Notes will be incurred for the acquisition, construction, equipping, major repair, or renovation of facilities and will otherwise be lawful expenditures of the Qualified Agency.

(b) The Qualified Agency represents that the description of each Project Component set forth in Exhibit A to this Financing Agreement is accurate.

(c) The Qualified Agency represents that it has submitted specific plans for the Project to the Legislative Budget Board and, if required by the Appropriation Act, such plans have been approved by the Legislative Budget Board.

#### SECTION 3.02 Plans and Specifications.

(a) The Qualified Agency shall cause the Plans and Specifications to be prepared and shall maintain the Plans and Specifications with its official records.

(b) The Authority and its authorized agents may inspect the Plans and Specifications at reasonable times.

#### SECTION 3.03 Project Completion Schedule.

(a) As of the Closing Date, the Qualified Agency reasonably expects that the Project Completion Amount will be expended within the time periods set forth in Exhibit B hereto. The Qualified Agency represents that it is not aware of any fact or circumstance that could cause the entire Project Completion Amount not to be expended as set forth in the Project Completion Schedule, as amended from time to time.

(b) Upon becoming aware of any circumstances that will result in a deviation from Exhibit B hereto of \$1,000,000 or more, the Qualified Agency shall notify the Executive Director of the amount and nature of such deviation.

(c) Upon becoming aware of any circumstances that will result in the expenditure for Project Costs in any "Expenditure Period" (as set forth in Exhibit B hereto) of an aggregate amount that is less than the amount set forth in Exhibit B hereto for such Expenditure Period, the Qualified Agency shall notify the Executive Director of (1) such aggregate expenditure amount, and (2) the reason(s) that such expenditure amount will be less than the amount set forth in Exhibit B hereto.

#### SECTION 3.04 Construction and Acquisition of Project.

(a) The Qualified Agency shall cause the acquisition, construction, equipping, repair, and/or renovation of the Project to be completed with due diligence substantially in accordance with the Plans and Specifications and in a good and workman-like manner.

(b) The Qualified Agency represents that at least 95 percent of the Project Completion Amount will be expended to pay Project Costs constituting expenditures for the acquisition, construction, reconstruction, or rehabilitation of the Project.

(c) The Qualified Agency may shift its use of proceeds among Project Components to the extent permitted by law so long as such shift of use does not constitute an Event of Taxability. The Authority may require the Qualified Agency to obtain an opinion of Bond Counsel regarding taxability.

#### SECTION 3.05 Licenses and Permits.

The Qualified Agency represents that it has obtained all necessary licenses, permits, and other governmental approvals necessary to complete the Project, except for those (if any) described in Exhibit C to this Financing Agreement.

#### SECTION 3.06 Disbursements from Project Fund.

(a) The Qualified Agency may cause disbursements to be made from the Project Fund in accordance with contracts for the Project and with this Financing Agreement and the Resolution.

(b) The Qualified Agency acknowledges that the Project Fund may be applied in accordance with the Resolution for purposes other than the payment of Project Costs.

(c) The Qualified Agency acknowledges and agrees that interest earned in funds contained in the Project Fund may be used to pay interest payments, if any, on the Notes.

(d) To obtain a disbursement of funds from the Project Fund for the payment of Project Costs, the Qualified Agency shall submit to the Authority, not later than the Business Day immediately preceding the disbursement date, a properly completed Disbursement Certificate. Subject to Subsection (e) of this Section 3.06, upon determining that the submitted Disbursement Certificate has been properly completed, the Executive Director shall cause the Comptroller to transfer funds in the Project Fund to the appropriate fund(s) of the Qualified Agency in the amount(s) set forth in the Disbursement Certificate. The Qualified Agency shall apply the funds so transferred to the payment of Project Costs.

(e) Disbursements from the Project Fund for the payment of Project Costs shall not exceed, in the aggregate, the Project Completion Amount without the prior approval of the Executive Director (which approval shall be based on availability of funds and legal authorization).

(f) Before a disbursement from the Project Fund may be made with respect to any Project Component in excess of the estimated cost of such component shown on Exhibit A of this Financing Agreement, the Qualified Agency shall give notice to the Executive Director identifying such Project Component and stating the amount of such excess.

(g) In the event that the Authority determines that the Qualified Agency has breached any material representation, warranty, or agreement in this Financing Agreement, the Authority, in its discretion, may suspend further disbursement of funds from the Project Fund if it is advised in writing by the Texas Attorney General that (1) such suspension is lawful, and (2) such breach constitutes a breach of this Financing Agreement and such suspension may commence not sooner than the 30th day after the date of delivery to an Authorized Agency Representative of notice of such suspension, and may continue until such breach is cured or is waived by the Executive Director. If such breach is not cured or waived within 90 days after the date such suspension commenced, the Authority may apply any remaining funds in the

Project Fund allocated to the payment of Project Costs in the manner permitted by the Resolution and law.

(h) To the extent required by law, the Qualified Agency has submitted a master plan for construction of its facilities and shall periodically revise the master plan in accordance with such law.

#### SECTION 3.07 Status Reports.

Not later than the 15th day of each month, through the month following the month in which the Project Completion Date occurs, the Qualified Agency shall prepare and deliver to the Executive Director a status report, containing the information set forth in Exhibit E to this Financing Agreement, covering the preceding calendar month. At other times (whether before or after the Project Completion Date), the Qualified Agency shall provide the Executive Director, upon request, with any information available to the Qualified Agency regarding the expenditure of funds disbursed to the Qualified Agency from the Project Fund or the condition or use of the Project.

#### SECTION 3.08 Inspection of Project.

The Authority and its authorized agents, at reasonable times before and after completion of the Project, may enter on and inspect the Project and examine any records of the Qualified Agency relating to the Project.

#### SECTION 3.09 Completion of Project.

Upon the completion of the Project (or when no further proceeds of the Notes are to be expended for Project Costs), the Qualified Agency shall deliver to the Executive Director a properly completed Project Completion Certificate.

#### SECTION 3.10 Use of Project.

(a) The Qualified Agency may use the Project for any lawful purpose so long as such use does not constitute an Event of Taxability.

(b) The Qualified Agency shall not lease any part of the Project to, or permit any part of the Project to be operated, managed, or otherwise used by, an entity other than an agency or political subdivision of the State without the prior approval of the Executive Director. The Authority shall direct the Executive Director to approve any proposed arrangement for use of the Project (or a part thereof) by a nongovernmental entity upon obtaining an opinion of Bond Counsel to the effect that such arrangement will not constitute an Event of Taxability. Any agreement or understanding that allows any other agency or political subdivision of the State to use all or any portion of the Project shall limit such use in a manner sufficient to prevent an Event of Taxability.

#### SECTION 3.11 Authority Not Responsible for Project.

(a) The Authority has no responsibility for the acquisition, construction, equipping, repair, or renovation of the Project or for the operation or maintenance of the Project.

(b) If the amounts in Project Fund are insufficient for the payment of all of the Project Costs, the Authority is not responsible for the payment of any Project Costs that cannot be paid from the Project Fund.

SECTION 3.12 Necessity for Project.

The Qualified Agency represents to the Authority that, as of the Closing Date:

(a) the provision of the Project in accordance with the Project Completion Schedule is necessary in order for the Qualified Agency to effectively carry out its lawful duties and functions; and

(b) the Qualified Agency expects that it will use the Project for the purposes for which it is designed for the entire useful economic life of the Project.

**ARTICLE IV**

**THE NOTES**

SECTION 4.01 Issuance of the Notes.

The Authority shall use its best efforts to issue and sell the Notes from time to time in an amount that is sufficient for the Project Completion Amount to be made available in the Project Fund for the payment of the Project Costs.

SECTION 4.02 Cooperation by Qualified Agency.

The Qualified Agency shall take the action(s), enter into the agreement(s), provide the certification(s) contemplated by this Financing Agreement, and otherwise cooperate with the Authority and its agents, to effect the lawful issuance and administration of the Notes under this Financing Agreement.

SECTION 4.03 Maintaining Tax-Exempt Status of the Notes.

The Qualified Agency will not take, or omit to take, any action that will adversely affect the exclusion from gross income for federal income tax purposes of interest paid on any Note, and, in the event of such action or omission, it will use all reasonable efforts to cure the effect of such action or omission. With the intent not to limit the generality of the foregoing, the Qualified Agency covenants and agrees that it will comply with the covenants set forth, unless it has received a written opinion of Bond Counsel to the effect that failure to comply with such covenant will not adversely affect the excludability of interest on any Note from the gross income for federal income tax purposes.

(a) No Private Payments. No portion of the payment of the debt service on the Notes will be directly or indirectly derived from payments (whether or not to the Qualified Agency or any related party) in respect of property, or borrowed money, used or to be used for a private business use. Furthermore, no portion of the payment of the debt service on the Notes will be directly or indirectly secured by any interest in property used or to be used for a private business use or payments in respect of property used or to be used for a private business use. The Qualified Agency will not impose or accept, directly or indirectly, any charge or other payment with respect to any Proceeds used in any trade or business of a nongovernmental person. For purposes of determining use of Proceeds, the Qualified Agency will apply the rules set forth in Section 4.03(b) below.

(b) No Private Use. The Qualified Agency will not use or permit any of the Proceeds of the Notes to be used, directly or indirectly, in any trade or business of a nongovernmental person.

(i) For purposes of determining use, the Qualified Agency will apply rules set forth in applicable Regulations and Revenue Procedures promulgated by the Internal Revenue Service, including, among others, the following rules: (A) Any activity carried on by a person other than a natural person or a state or local governmental unit will be treated as a trade or business of a nongovernmental person; (B) the use of all or any portion of the Project is treated as the direct use of proceeds; (C) a nongovernmental person will be treated as a private business user of Proceeds of the Notes as a result of ownership, actual or beneficial use of the proceeds pursuant to a lease, or a management or incentive payment contract, or certain other arrangements such as a take-or-pay or other output-type contract; and (D) use in a trade or business exists if a nongovernmental person has any special legal entitlement to use directly or indirectly all or any portion of the Project.

(ii) In the case of any portion of the Project that is not available for use by the general public, the Qualified Agency will not permit any special economic benefit to be provided to any nongovernmental person. In determining whether there is a special economic benefit the following factors will be taken into account: (A) whether the portion of the Project in question is functionally related or physically proximate to property used in the trade or business of a nongovernmental person; (B) whether only a small number of nongovernmental persons receive the special economic benefit; and (C) whether the cost of the portion of the Project in question is treated as depreciable for federal income tax purposes by any nongovernmental person.

(iii) For purposes of this section, a management contract is a management, service, or incentive payment contract between a governmental person and a service provider under which the service provider provides services involving all, a portion of, or any function of, the Project. The following arrangements generally are not treated as management contracts that give rise to private business use: (A) Contracts for services that are solely incidental to the primary governmental function or functions of a portion of the Project in question (for example, contracts for janitorial, office equipment repair, hospital billing, or similar services); (B) a contract to provide for the operation of a facility or system of facilities that consists predominantly of public utility property, if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider; (C) a contract to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

(iv) For purposes of this section, use by the federal government and its agencies and instrumentalities is considered use of a nongovernmental person.

(v) For purposes of determining use, research contracts with nongovernmental persons that do not comply with the requirements in applicable Revenue Procedures promulgated by the Internal Revenue Service constitute use in a trade or business of a nongovernmental person.

(c) Loans of Sale Proceeds. No portion of the Proceeds of the Notes will be directly or indirectly used to make or finance a loan to any person other than a state or local governmental unit. For purposes of the foregoing covenant, Proceeds are considered to be “loaned” to a person or entity if (1) all or any portion of the Project is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes, (2) capacity in or service from all or any portion of the Project is committed to such person or entity under a take-or-pay, output, or similar contract or arrangement, or (3)

indirect benefits, or burdens and benefits of ownership, of such Proceeds or all or any portion of the Project are otherwise transferred in a transaction which is the economic equivalent of a loan.

(d) No-Arbitrage Covenant. The Qualified Agency will not, at any time prior to the final maturity of any Note, direct or permit the investment (or the use of Gross Proceeds to replace money so invested), if as a result of such investment the yield of all investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the yield of the Notes to stated maturity, except as permitted by section 148 of the Code and Regulations thereunder.

#### SECTION 4.04 Arbitrage Rebate.

(a) The Qualified Agency shall timely take such lawful action as requested by the Executive Director to avoid or mitigate the obligation to make payments to the United States government under section 148(f) of the Code, unless an Authorized Agency Representative certifies to the Authority that the requested action is not practicable.

(b) If the Qualified Agency fails to cause Note proceeds to be expended within the time periods set forth in the Project Completion Schedule, the Executive Director may inquire as to the nature of such failure and the extent to which it is expected to continue.

(c) The Qualified Agency reasonably expects to use at least seventy-five percent (75%) of the "available construction proceeds" of any Note for "construction expenditures," as such terms are defined in Section 1.148-7(f) of the Regulations. The Qualified Agency shall use its best efforts to expend all funds necessary to complete its Project within the two-year expenditure period set forth in section 148(f)(4)(C) of the Code as follows: (i) 10 percent of the funds within the 6-month period beginning on the date the Notes are issued; (ii) 45 percent of the funds within the 1-year period beginning on such date; (iii) 75 percent of such funds within the 18-month period beginning of such date; and (iv) 100 percent of such funds within the 2-year period beginning on such date. If a portion of the Project Completion Amount will remain unexpended as of the close of the two-year period beginning with the Closing Date (or such other period as specified by the Executive Director), the Qualified Agency, not later than the close of such period, shall notify the Executive Director of the amount of such unexpended funds and the purpose(s) for which such funds are being retained in the Project Fund after such period.

#### SECTION 4.05 Disclosure Documents.

(a) The Qualified Agency shall provide the Authority, promptly upon request, with available information relating to the Qualified Agency or the Project that the Executive Director determines appropriate for inclusion in the Disclosure Documents. The Qualified Agency authorizes the Authority to include any such information in the Disclosure Documents.

(b) The Qualified Agency shall provide the Authority with certification of an Authorized Agency Representative to the effect that the information contained in the Disclosure Documents provided by the Qualified Agency is accurate and does not omit any information necessary to make the information provided not misleading.

(c) The Qualified Agency authorizes the Authority and any offeree or purchaser of the Notes to rely on the information and certifications provided by the Qualified Agency under this section. The Notes will not be issued unless the information and certifications requested under this section have been provided by the Qualified Agency.

## ARTICLE V

### PARTICULAR AGREEMENTS

#### SECTION 5.01 Recordkeeping.

(a) The Executive Director shall retain, as official records of the Authority, all Disbursement Certificates, the Project Completion Certificate, all Project Substitution Certificates, if any, and all Project status reports submitted by the Qualified Agency pursuant to this Financing Agreement.

(b) The Qualified Agency shall retain, as official records of the Qualified Agency, all materials, records, and information necessary to confirm the Qualified Agency's compliance with the provisions of Section 4.03 for a period beginning on the Closing Date and ending three years after the date the Notes are no longer outstanding.

#### SECTION 5.02 Indemnification of Qualified Agency.

The Qualified Agency represents that, subject to applicable law, it intends that each Facility Contract providing for payment of goods or services exceeding \$25,000 will require indemnification of the Qualified Agency. The Qualified Agency will be provided with insurance, a surety bond, or other form of financial assurance, from a financially sound provider that assures performance under such Facility Contract with respect to such indemnification, unless the Qualified Agency determines that such financial assurance is not necessary or is required in a reduced amount.

#### SECTION 5.03 Availability of Other Funding.

As of the Closing Date, the Qualified Agency represents that no funds (other than funds derived from Note proceeds) have been appropriated to the Qualified Agency for the biennium in which the Notes are issued for application to the payment of Project Costs that are to be paid with the proceeds of the Notes. It is understood and agreed, however, that the Qualified Agency may apply funds other than proceeds of the Notes for payment of Project Costs in compliance with applicable law.

#### SECTION 5.04 Real Property.

The Qualified Agency represents that, subject to applicable law, it does not intend to acquire real property at a purchase price in excess of \$25,000 unless:

(1) such property is suitable for the Qualified Agency's intended use and has no defect or condition (including, without limitation, pollution or hazardous waste defects) that would jeopardize such use; or

(2) the Qualified Agency determines that, notwithstanding such nonsuitability, defect, or condition (as applicable), such acquisition is appropriate.

#### SECTION 5.05 Title Insurance.

The Qualified Agency represents that, subject to applicable law, it does not intend to acquire any real property at a purchase price in excess of \$25,000 unless:



(1) the Qualified Agency' title to such property is insured by title insurance in an amount not less than the purchase price paid by the Qualified Agency, subject to standard printed exceptions, with only those changes thereto normally required by a prudent purchaser; or

(2) the Qualified Agency determines that the acquisition of such real property without such title insurance is appropriate.

SECTION 5.06 Project Design.

The Qualified Agency represents that the Project has been (or will be) designed to satisfy all of the purposes that the Qualified Agency intends the Project to serve, and that the Qualified Agency has used (or will use) all reasonable efforts to design the Project so that the Project will be provided, and can be operated, at such reasonable cost as is consistent with applicable legal requirements and the sound business judgment of the Qualified Agency.

**ARTICLE VI**

**MISCELLANEOUS PROVISIONS**

SECTION 6.01 Term of Agreement.

This Financing Agreement shall take effect upon its delivery by the parties hereto and shall remain in effect until the Notes have been fully paid or until no more periodic status reports are required from the Qualified Agency under this Financing Agreement, whichever is the later to occur.

SECTION 6.02 Amendment.

The Authority and the Qualified Agency, by mutual agreement, may amend this Financing Agreement if, before the amendment takes effect:

(1) the Qualified Agency obtains an opinion of its legal counsel to the effect that such amendment is permitted under the Agency Act and other law governing the Qualified Agency; and

(2) either of the following requirements is satisfied:

(A) the Authority obtains an opinion of Bond Counsel to the effect that such amendment will not constitute an Event of Taxability, violate the Authorizing Law or the Resolution, or adversely affect the rights of the owners of the Notes thereunder, or

(B) the owners of at least a majority in aggregate principal amount of the outstanding Notes affected by such amendment consent thereto.

SECTION 6.03 Notices and Other Communications.

(a) Notices, certificates, approvals, and other communications under this Financing Agreement shall be in writing and delivered by United States mail, postage paid, by telex, telegram, or other electronic transmission, or by express or personal delivery, addressed as follows:

(1) if to the Qualified Agency:

Texas Department of Criminal Justice  
P.O. Box 99  
Hunstville, TX 77342-0099  
Attention: Chief Financial Officer

(2) if to the Authority:

Texas Public Finance Authority  
300 West 15th Street, Suite 411  
Austin, Texas 78701  
Attention: Executive Director

(3) if to the Comptroller:

Comptroller of Public Accounts of the State of Texas  
208 East 10<sup>th</sup> Street  
Austin, Texas 78701  
Attention: Chief Investment Officer

(b) Any such party may designate any additional or different address to which communications under this Financing Agreement shall be delivered by giving at least five days advance notice thereof to the affected party.

(c) Any communication delivered by mail in compliance with this section is deemed to have been delivered as of the date of deposit in the mail.

(d) A provision of this Financing Agreement that provides for a different method of giving notice or otherwise conflicts with this section supersedes this section to the extent of the conflict.

SECTION 6.04 Exclusive Benefit.

This Financing Agreement shall inure to the exclusive benefit of and be binding on the Authority, the Qualified Agency, and their respective successors.

SECTION 6.05 Severability.

If any part of this Financing Agreement is ruled unenforceable by a court of competent jurisdiction, this Financing Agreement shall remain operable to the fullest extent possible under the application of such ruling.

SECTION 6.06 Conflict with Memorandum.

In the event of a conflict between this Financing Agreement and the Memorandum, this Financing Agreement shall supersede the Memorandum to the extent of the conflict.

SECTION 6.07 Counterparts.


This Financing Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same document.

SECTION 6.08 Governing Law.

This Financing Agreement shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the parties have caused this Financing Agreement to be executed by their respective duly authorized officers as of the date first above written.

TEXAS PUBLIC FINANCE AUTHORITY

By:   
Robert P. Coalter, Executive Director

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

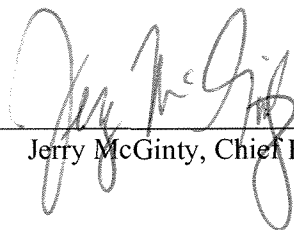
By:   
Jerry McGinty, Chief Financial Officer

EXHIBIT A  
TO THE  
FINANCING AGREEMENT

DESCRIPTION OF THE PROJECT

<u>PROJECT COMPONENTS</u>	<u>ESTIMATED COST</u>	<u>ESTIMATED USEFUL LIFE</u>
Safety	\$2,197,000	20 years
Roofing	\$9,430,000	20 years
Ventilation	\$128,000	15 years
Infrastructure	\$3,200,000	25 years
Security	\$11,792,000	25 years
Kitchen Renovation	\$100,000	25 years
Facility Repair	<u>\$13,153,000</u>	20 years
Total	\$40,000,000	

EXHIBIT B  
TO THE  
FINANCING AGREEMENT

PROJECT COMPLETION SCHEDULE

(PREPARED BY TDCJ; GENERALLY, THE EXPENDITURE PERIODS ARE CONSECUTIVE SIX-MONTH PERIODS TO A 24 MONTH TOTAL TO FOLLOW THE CONSTRUCTION PROJECT SPENDING REQUIREMENTS FOR EXEMPTION FROM ARBITRAGE REBATE)

<u>EXPENDITURE PERIOD</u>	<u>PROJECTED PROJECT EXPENDITURES EACH PERIOD</u>
<i>Month</i>	<i>Amount</i>
January 2013	\$4,000,000
February 2013	\$4,000,000
March 2013	\$4,000,000
April 2013	\$4,000,000
May 2013	\$4,000,000
June 2013	\$4,000,000
July 2013	\$4,000,000
August 2013	\$4,000,000

\*Does not include estimated Fringe Benefits which will be paid from proceed

EXHIBIT C  
TO THE  
FINANCING AGREEMENT

GOVERNMENTAL PROJECT APPROVALS

As of the Closing Date, the following licenses, permits, and other governmental approvals necessary to complete the Project have not been obtained (Describe each such approval (e.g., utility easement), stating for each (1) the identity of the Project facility (or facilities) for which such approval is required, (2) the primary requirements necessary to obtain such approval, and (3) the date that such approval is expected to be obtained):

**None**

EXHIBIT D  
TO THE  
FINANCING AGREEMENT

FORM OF DISBURSEMENT CERTIFICATE

DISBURSEMENT CERTIFICATE

The undersigned hereby certifies, on behalf of the TEXAS DEPARTMENT OF CRIMINAL JUSTICE (the "Qualified Agency"), as follows:

(a) The capitalized terms in this Certificate that are not herein defined shall have the meanings defined in the Financing Agreement, dated as of July 9, 2012, between the Qualified Agency and the Texas Public Finance Authority.

(b) The Qualified Agency (Agency No. [\_\_\_]) requests disbursement from the Project Fund to pay Project Costs in the aggregate amount of \$\_\_\_\_\_. The aggregate of all disbursements (including this disbursement) from the Project Fund requested by the Qualified Agency to date is \$\_\_\_\_\_.

(c) Except as previously disclosed in writing to the Executive Director, the Qualified Agency is not in breach of any representation, warranty, or agreement in the Financing Agreement.

(d) The Qualified Agency reasonably expects to submit payment vouchers, in the aggregate amount of the disbursements requested by this Certificate, for the payment of the Project Costs for which disbursement is requested.

(e) For each item of Project Costs for which a disbursement of funds is requested, state the following information [attach separate sheet if necessary]:

Program Cost Account	Appropriated Fund No. (D22 Profile)	Agency Fund No. (D23 Profile)	Agency General Ledger Account	Appropriation Year	Amount of Disbursement	Project Identification

IN WITNESS WHEREOF, the undersigned executes this Certificate on the date shown below.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

By: \_\_\_\_\_  
Authorized Representative

Date: \_\_\_\_\_



EXHIBIT E  
TO THE  
FINANCING AGREEMENT

MONTHLY STATUS REPORT INFORMATION

The monthly status report prepared by the Qualified Agency pursuant to this Financing Agreement shall contain the following information with respect to the Project:

- (1) identity of the Project Components (name, ID no., etc.) and the original date on which such Project Components were first financed hereunder;
- (2) fund number(s);
- (3) the budget amount for the Project Components (including adjustments, if any);
- (4) description of work category;
- (5) amount expended for reporting month;
- (6) total amount expended to date;
- (7) amount encumbered;
- (8) available balance;
- (9) percent work complete;
- (10) percent funds expended; and
- (11) narrative identifying any problems (including, without limitation, delays and cost overruns) and indicating whether such problems will substantially alter the work schedule or costs.
- (12) identify any use of the Project or facilities by any Person other than a state or local governmental unit.

EXHIBIT F  
TO THE  
FINANCING AGREEMENT

FORM OF PROJECT COMPLETION CERTIFICATE

PROJECT COMPLETION CERTIFICATE

FUND NO. 7653

The undersigned hereby certifies, on behalf of the TEXAS DEPARTMENT OF CRIMINAL JUSTICE (the "Qualified Agency"), as follows:

(a) The capitalized terms in this Certificate that are not herein defined shall have the meanings defined in the Financing Agreement, dated as of July 9, 2012, between the Qualified Agency and the Texas Public Finance Authority.

(b) The Project was completed on (or no further proceeds of the Notes are to be expended for Project Costs as of) \_\_\_\_\_ *[insert date]*.

(c) Except for \$ \_\_\_\_\_ (the "Retainage"), all Project Costs that have been incurred have been paid, and no further disbursements from the Project Fund for the payment of Project Costs will be necessary.

(d) The Retainage is sufficient to pay all claims (1) for the payment of any Project Costs that are not presently due, and (2) for the payment of any Project Costs the liability for which is being contested or disputed by the Qualified Agency.

IN WITNESS WHEREOF, the undersigned executes this Certificate on the date shown below.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

By: \_\_\_\_\_  
Authorized Agency Representative

Date: \_\_\_\_\_

EXHIBIT G  
TO THE  
FINANCING AGREEMENT

FORM OF PROJECT SUBSTITUTION CERTIFICATE

The undersigned hereby certifies, on behalf of the TEXAS DEPARTMENT OF CRIMINAL JUSTICE (the "Qualified Agency"), as follows:

(a) The capitalized terms in this Certificate that are not herein defined shall have the meanings defined in the Financing Agreement, dated as of July 9, 2012, between the Qualified Agency and the Texas Public Finance Authority.

(b) The Project identified in Appendix I hereto (the "Old Project") is to be substituted for on \_\_\_\_\_ *[insert date]*.

(c) The new project is described in Appendix II hereto (the "New Project") and the Project Costs for the New Project will not exceed \$\_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned executes this Certificate on the date shown below.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

By: \_\_\_\_\_  
Authorized Agency Representative

Date: \_\_\_\_\_