

**LEASE AGREEMENT**

**between**

**TEXAS PUBLIC FINANCE AUTHORITY**

**and**

**TEXAS FACILITIES COMMISSION**

**Pertaining to**

**State of Texas**

**Texas Public Finance Authority  
Revenue Commercial Paper Program  
(Texas Facilities Commission Projects), Series 2016A (Taxable)**

**and**

**State of Texas  
Texas Public Finance Authority  
Revenue Commercial Paper Program  
(Texas Facilities Commission Projects), Series 2016B (Tax-Exempt)**

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## LEASE AGREEMENT

THIS LEASE AGREEMENT ("*Lease*"), is between the TEXAS PUBLIC FINANCE AUTHORITY, an agency of the State of Texas (as further defined herein, the "*Authority*") and the TEXAS FACILITIES COMMISSION, an agency of the State of Texas, as lessee (together with any successor, the "*Lessee*");

### WITNESSETH:

WHEREAS, pursuant to Chapters 1207, 1232 and 1371, Texas Government Code, as amended (the "*Authorizing Law*"), the Authority was duly established with the power and authority (i) to purchase, lease, rent, or otherwise acquire, construct and equip buildings or parking garages in Travis County for agencies of the State of Texas, including the Lessee, (ii) to enter into this Lease (as defined herein) and other agreements to properly assure the recovery of the cost of providing the construction and equipment for such buildings, and (iii) to issue obligations to finance or refinance the construction and equipment of such buildings; and

WHEREAS, pursuant to a resolution duly adopted by the Authority on May 5, 2016, the Authority has determined that it is in the best interests of the State and the Authority for the Authority to enter into and execute this Lease and certain documents related hereto for the purpose of assuring the recovery of the cost of financing construction of the building projects described herein (such building projects to be leased to Lessee as further set forth on **Exhibit A** hereto, and herein collectively referred to as the "*Projects*" as further defined herein); and

WHEREAS, the Projects have been authorized pursuant to H.B. 1, 84<sup>th</sup> Legislature, Regular Session, Article I Section A, pg. I-47, Rider 19 (2015) (the "*Appropriation Act*"); and

WHEREAS, the Lessee and the Authority have entered into a Memorandum of Understanding (the "*Memorandum*") dated as of February 1, 1990, relating to financing various projects; and

WHEREAS, pursuant to a resolution duly adopted by the Lessee under the authority of Chapter 2166, Texas Government Code, as amended, the Lessee has determined that it is in the best interest of the State and the Lessee for the Lessee to enter into and execute this Lease for the purpose of financing and refinancing the Project (as defined herein); and

WHEREAS, pursuant to Section 771.008 of the Interagency Cooperation Act, Chapter 771, Texas Government Code, as amended (the "*Interagency Act*"), the Lessee is authorized to grant to the Authority the right to access the Lessee's appropriated funds for payment of Lease Payments coming due hereunder; and

WHEREAS, the Authority and the Lessee shall have the right to further define the Project from time to time in accordance with the terms of this Lease; and

WHEREAS, the parties hereto understand and agree that the Authority intends to assign the Authority's rights hereunder as security for indebtedness incurred to finance or refinance the Projects.

NOW, THEREFORE, in consideration of the premises and the mutual benefit to the parties hereto, the Authority and the Lessee agree as follows:

## ARTICLE I

### DEFINITIONS

#### SECTION 1.01 Definitions.

Except as otherwise provided in this Lease, the capitalized terms in this Lease shall have the meanings specified in this section unless the context requires otherwise. Any terms capitalized but not defined herein shall have the meanings specified in the Resolution.

*Acquisition Papers* - as to the Projects or any phase thereof, all required Texas Bond Review Board approvals, procurement documents, invoices, contracts of construction or purchase and sale, and all title documents or applications therefor (if applicable), leases or subleases of any part of the Project, together with a purchase voucher, properly completed pursuant to the terms of this Lease and applicable law.

*Administration Costs* - means any Administration Costs as defined in the Resolution.

*Agency Act* - Chapter 2166, Texas Government Code, as amended.

*Arbitrage Rebate Rules* - the provisions of Section 148(f) of the Code relating to the rebate of arbitrage on tax-exempt bond proceeds to the United States government, or payment of penalties in lieu thereof.

*Authority* - the Texas Public Finance Authority or any successor agency thereto.

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

*Authority Representative* - the Executive Director, Deputy Director or General Counsel, or any other member of the staff of the Authority designated by the Executive Director or the Board of the Authority as an Authority Representative.

*Authorized Lessee Representative* - the person designated in writing as the Lessee's Authorized Representative or any person designated in writing by such Authorized Lessee Representative.

*Authorizing Law* - has the meaning designated in the recitals of this Lease.

*Board* - the Board of Directors of the Authority.

*Bonds* - any Tax-Exempt Bonds or Taxable Bonds.

*Bond Counsel* - Bracewell LLP or any successor law firm engaged by the Authority to render services to the Authority as bond counsel for the Program.

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

*Code* - means the Internal Revenue Code of 1986, as amended and, with respect to a specific section thereof, such reference shall be deemed to include (a) the Regulations promulgated under such section, (b) any successor provision of similar import hereafter enacted, (c) any corresponding provision of any subsequent Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

*Costs of Issuance* – means any Costs of Issuance as defined in the Resolution.

*Disbursement Certificate* – a certificate of the Lessee for the disbursement of funds from the Project Fund created pursuant to the Resolution, in substantially the form of **Exhibit C** to this Lease.

*Disclosure Document* - the offering memorandum in connection with the offer and sale of any Notes.

*Effective Date* – the date of execution of this Lease.

*Event of Default* - the occurrence of any of the following:

(1) the failure to pay when due any Lease Payment for which the Legislature has appropriated funds that are legally available to make such Lease Payments;

(2) the failure of the Lessee to cure any breach by the Lessee of any representation, warranty, or agreement under this Lease within 45 days (or such longer period as the Authority, in its discretion, may specify) after the date of having been directed by the Authority to cure such breach unless the Authority has extended such period or unless the Authority has waived such breach; or

(3) the occurrence of any act of bankruptcy of the Lessee, the Authority, or the State.

*Event of Nonappropriation* - the failure of the Legislature to appropriate for any fiscal period of the State sufficient funds that are lawfully available to pay all Lease Payments hereunder in respect of the Program that are to come due (or estimated to come due) during such fiscal period, or the reduction of any appropriation to an amount insufficient to permit the Lessee to pay such Lease Payments.

*Event of Taxability* - means a change in law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the Lessee, or the failure to take any action by the Lessee, or the making by the Lessee of any misrepresentation herein or in any certificate required to be given in connection with the Project or the issuance, sale or delivery of the Tax-Exempt Obligations) that has the effect of causing interest paid or payable on the Tax-Exempt Obligations to be includable, in whole or in part, in gross income for federal income tax purposes.

*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.

*Favorable Opinion of Bond Counsel* - with respect to any action the taking of which requires such an opinion, an unqualified opinion of Bond Counsel, delivered to and in form and substance satisfactory to the Authority to the effect that such action will not adversely affect the exclusion interest on the Tax-Exempt Obligations from gross income for purposes of federal income taxation (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon original issuance of the Tax-Exempt Obligations or other customary exceptions acceptable to the recipient thereof).

*Interagency Act* - the Interagency Act as defined in the Preamble to this Lease.

*Issuing and Paying Agent* - the issuing and paying agent designated and appointed in the Resolution.

*Lease* - this Lease and any amendment hereto or supplements hereunder.

*Lease Payment(s)* - a Rent Payment and/or any other payment of amounts required to be paid or made available by the Lessee pursuant to this Lease, including (without limitation) costs of insurance, if any, required to be maintained pursuant to this Lease, Administration Costs, and payments indemnifying the Authority.

*Legislature* - the Legislature of the State.

*Lessee* - the "Lessee" as defined in the preamble of this Lease.

*Memorandum* - the Memorandum of Understanding, dated as of February 1, 1990, between the Authority and the Lessee, and any amendments thereto.

*Notes* - any Tax-Exempt Notes or any Taxable Notes that may be issued from time to time to finance or refinance Projects for the Lessee under the Program.

*Obligations* - any Notes or Bonds.

*Payment Obligations* - the principal and interest payment obligations of the Authority under any Bonds or Notes or in respect of any credit agreement (as defined in Chapter 1371, Texas Government Code, as amended) relating to any Notes and under any note or obligation delivered by the Authority under any such credit agreement.

*Person* - any individual, partnership, corporation, trust, or unincorporated organization, or governmental entity.

*Plans and Specifications* - the plans and specifications for each respective Project, as the same may be amended from time to time as provided in Section 3.02 hereof, on file at the office of the Lessee and available at all times for inspection by the Authority.



*Program* - the Authority's Revenue Commercial Paper Program (Texas Facilities Commission Projects), Series 2016A (Taxable) and Series 2016B (Tax-Exempt) for the acquisition, construction and equipping of buildings for the Lessee, or the refinancing thereof, as the same may be amended or supplemented from time to time, including, without limitation, the Transaction Documents.

*Project(s)* - Any building, parking garage or related edifice that has been specifically authorized by the Legislature for the Authority to finance, together with the land and equipment related to such building, parking garage or related edifice, or any other fixed asset used by a Lessee to conduct official State business, as further described in **Exhibit A** to this Lease or as altered or substituted pursuant to this Lease.

*Project Completion Amount* - the aggregate amount of the Project Costs, as set forth in the General Appropriations Act, as amended from time to time, that the Lessee expects to be necessary to complete the construction or acquisition of the Projects.

*Project Completion Certificate* - the certificate of the Lessee to the effect that the acquisition, construction or improvement of each Project has been completed or that no further proceeds, other than reasonably required retainage, are required for the payment of Project Costs with respect to such Project, in substantially the form of **Exhibit E** of this Lease.

*Project Completion Date* - the date on which each Project is completed, as certified in the Project Completion Certificate.

*Project Completion Schedule* - the schedule projecting the rate of expenditure of proceeds for the payment of Project Costs in connection with the Project set forth in **Exhibit B** of this Lease, or such other expenditure schedule as furnished by the Lessee and approved by the Executive Director.

*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 Lease.

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

*Project Descriptions* - the projects described on **Exhibit A** of this Lease.

*Project Financing Documents* - collectively, all documents furnished by the Lessee to the Authority in connection with the creation of the Program and issuance of Notes to finance the Project, including, without limitation, this Lease and any Acquisition Papers and Bonds issued to refinance the Notes.

*Project Fund* - the fund with such name created pursuant to the Resolution including certain separate accounts or sub-accounts established therein.

*Project Site* - as to each Project, the land on which the Project is situated, as described in **Exhibit A** of this Lease.

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

*Regular Rent Payment Date* - two Business Days preceding each February 1 and August 1 commencing on the date of the Lease, or such other date as directed by the Authorized Representative or to conform with Sections 6.02(f) and (g) hereof.

*Regulations* - the applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

*Rent Payment Reset* - the resetting of Rent Payments pursuant to Section 6.02(h) hereof.

*Rent Payments* - the rent payments required to be made by the Lessee pursuant to this Lease in consideration of its use of the Projects, such payments consisting of interest portions and principal portions of the Obligations in the amounts set forth herein, along with any applicable Administration Costs, as the same may be amended or supplemented from time to time, including any payments required with respect to any credit agreement and any payments required as a result of a Rent Payment Reset.

*Resolution* - the resolution adopted by the Authority on May 5, 2016 as the same may be amended from time to time to provide for the creation of the Program and the issuance of Notes, and governing the terms thereof.

*Special Rent Payment Date* - any date, other than a Regular Rent Payment Date, on which a payment is due hereunder.

*State* - the State of Texas.

*State Agency* - any board, commission, department, office, agency, institution of higher education, or other governmental entity in the executive, judicial, or legislative branch of the State government.

*State Lease Fund Account* - the account identified as such in the Authorizing Law or any successor account created for the same purpose pursuant to law.

*Tax-Exempt Bonds* – any long term tax-exempt bonds issued to refund and refinance Tax-Exempt Notes or Taxable Notes.

*Tax-Exempt Notes* - any Tax-Exempt Notes as defined in the Resolution.

*Tax-Exempt Obligations* –collectively, any Tax-Exempt Notes and Tax-Exempt Bonds.

*Taxable Bonds* – any long term taxable Bonds issued to refund and refinance Tax-Exempt Notes or Taxable Notes.

*Taxable Notes* - any Taxable Notes as defined in the Resolution.

*Transaction Documents* means collectively, the Resolution, the Notes, this Lease, the Liquidity Agreement (as defined in the Resolution), the DTC Letter of Representations (as defined in the Resolution), the Issuing and Paying Agency Agreement (as defined in the Resolution), and the Dealer Agreement (as defined in the Resolution).

*Useful Life* - as to any Project, the actual useful economic life of such Project.

SECTION 1.02 General Rules of Construction.

(a) Whenever in this Lease 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.

(b) The table of contents and the titles given to any article or section of this Lease 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 Lease are hereby adopted and made a part of this Lease.

## ARTICLE II

### GENERAL REPRESENTATIONS AND WARRANTIES

SECTION 2.01 General Representations and Warranties of Authority.

The Authority represents and warrants as follows:

(a) the Authority is a validly existing agency of the State authorized to operate under the Authorizing Law;

(b) the Authority has full power and authority to execute and deliver this Lease, perform its obligations hereunder, and carry out the transactions contemplated hereby;

(c) the Authority has duly authorized the execution and delivery of this Lease and the performance of its obligations hereunder;

(d) the execution and delivery of this Lease, 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.

(e) the Authority has full power and authority to issue Obligations, to cause funds to be made available to finance or refinance the Projects in accordance with this Lease, and to perform its obligations under the Transaction Documents; and

(f) the Authority is not in violation of any law, which violation could adversely affect the consummation of the transactions contemplated by the Project Financing Documents.

SECTION 2.02 General Representations and Warranties of Lessee.

The Lessee represents and warrants, as follows:

(a) the Lessee is a validly existing Lessee authorized to operate under the Agency Act;

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

(c) the Lessee has duly authorized the execution and delivery of the Project Financing Documents and the performance of its obligations thereunder;

(d) 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 Lessee 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 Lessee is subject or by which the Lessee or any of its property is bound;

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

(f) the Lease is the legal, valid, and binding obligation of the Lessee, in accordance with its terms.

### ARTICLE III

#### THE PROJECTS

SECTION 3.01 Authorization for Projects.

(a) The Lessee represents that all legislative approvals, appropriations, and authorizations required under the Agency Act and the Authorizing Law as a condition to the construction, acquisition and equipping of the Project and the financing or refinancing thereof by the Authority have been obtained with respect thereto shall constitute confirmation of such representation.

(b) The Lessee represents that, as of the Effective Date, the description of the Project as provided in **Exhibit A** hereto is accurate.

SECTION 3.02 Construction and Acquisition of Projects.

(a) The Lessee shall cause the Plans and Specifications to be prepared and shall maintain the Plans and Specifications with its official records. The Authority and its authorized agents may inspect the Plans and Specifications at reasonable times. The Lessee shall cause the construction and equipment of each of the Projects to be completed with diligence substantially in accordance with the Plans and Specifications and do all things which may be requisite or proper therefor. It is agreed and understood that the Lessee has entered into and executed, or will enter into and execute, all agreements and contracts necessary to assure and accomplish the acquisition or construction of the Projects and that the Authority shall not execute and is not a party to such agreements or contracts; the Lessee will carry out, pay, supervise, and enforce all such agreements and contracts. Notwithstanding, if for any reason such construction of the Project is delayed or not completed, there shall be no diminution in or postponement of Lease Payments.

The Lessee agrees to make timely payments of the Project Costs as they are incurred in accordance with the Authorizing Law, Agency Act and Appropriation Act. The Lessee shall require all contractors to provide performance and payment bond as required by State law in the full amounts of the construction contracts. The Lessee shall pursue collection of any amounts due under such bonds.

The Authority shall have no liability, obligation, or responsibility whatever with respect to the acquisition or construction of any of the Projects. The Authority shall not be obligated to inspect any of the Projects or the construction thereof, nor be liable for the performance or default of the Lessee, or any party, or for any failure to construct, complete, protect, or insure any of the Projects before the respective completion dates, or for the payment of costs of labor, materials, or services supplied for the construction of any of the Projects, or for the performance of any obligation of the Lessee whatsoever. The Lessee agrees that it will cause the contractor for each Project to maintain builder's risk insurance, naming the Lessee and the Authority as additional insureds, during construction in amounts deemed by the Lessee to be reasonable. The Lessee agrees that it will obtain or maintain any insurance on the Project in such amounts and in the manner as may be required under any applicable rules and regulations governing the Lessee and under Texas law, including but not limited to fire and extended coverage, for as long as any Notes are outstanding under the Resolution or any Obligations are outstanding under any resolution.

(b) In respect to the Project, the Lessee shall prepare and assemble, or cause to be prepared and assembled, the Acquisition Papers and submit them, or cause them to be submitted, to the Authority. The Authority and the Lessee hereby agree that the Lessee shall negotiate or call for bids and take all other action required by law for the acquisition and/or construction of such property and shall direct the purchase of each item of property by the Authority pursuant to the terms and conditions set forth in this Lease. Contracts in connection with the acquisition and/or construction and installation of the property shall be let in accordance with all laws applicable to Lessee acquisition and/or construction and installations.

(c) Title to the Projects shall be vested in the Authority, subject to such security interests, if any, that are permitted by applicable law and are granted by the Authority to secure

financing for such Projects, or any refinancing thereof, until the payment of all amounts due and owing with respect to such Projects, provided that in no event shall the Authority grant any mortgage or security interest in any building Project. The Lessee shall at all times keep the Projects free and clear of all other encumbrances.

SECTION 3.03 Project Completion Schedule.

(a) As of the Effective Date, the Lessee reasonably expects that the Project Completion Amount will be expended within the time periods set forth in the Project Completion Schedule and 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) Promptly upon becoming aware of any circumstances that would result in a deviation from the Project Completion Schedule that will result in a deviation of 10% or more, the Lessee shall notify the Executive Director of the amount and nature of such deviation.

(c) To the extent required by law or necessary to complete the Projects, promptly upon becoming aware of any circumstance that will result in the expenditure for Project Costs in any "Expenditure Period" (as set forth in the Project Completion Schedule) of an aggregate amount that is less than the "Estimated Minimum Required Cumulative Project Expenditures Each Period" (as set forth in the Project Completion Schedule) for such Expenditure Period, the Lessee 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 Estimated Minimum Required Cumulative Project Expenditures Each Period for such Expenditure Period.

(d) Upon the completion of the Project (or when no further proceeds of the Notes other than reasonably required retainage are to be expended for Project Costs with respect to such Project), the Lessee shall deliver to the Executive Director a properly completed Project Completion Certificate.

SECTION 3.04 Use of Projects.

(a) The Lessee may use each Project for any lawful purpose consistent with the normal intended use of such Project so long as such use does not constitute an Event of Taxability.

(b) Subject to Section 3.06 hereof, the Lessee shall not sublease any Project (or any portion thereof) to, or permit any Project (or any portion thereof) to be operated, managed, or otherwise used by, any entity other than the Lessee or a political subdivision of the State unless, before any such action is taken, the Executive Director determines that such action will not constitute an Event of Taxability, provided that no such sublease or other use arrangement for a Project shall release the Lessee from its liability hereunder.

(c) Any sublease or other use arrangement for a Project with the Lessee shall terminate upon the termination of this Lease except as otherwise authorized by the Authority.

(d) The Projects may be considered by the Lessee to be state-owned property for purposes of the application of the Agency Act.

SECTION 3.05 Alteration or Substitution of Projects.

The Lessee may alter any Project or substitute other projects for all or any part of a Project if, before such alteration or substitution is made:

(1) (A) in the case of an alteration or substitution that would cause the amount of funds necessary to complete the acquisition and/or construction of the Project (as altered or substituted) to exceed the Project Completion Amount, an Authorized Lessee Representative certifies to the Authority that the Lessee has sufficient legally available funds to complete the acquisition and/or construction and installation of the Project; (B) the Project so altered or substituted has the same or greater remaining Useful Life as the Project to be substituted; and (C) the Project so substituted is of equal or greater usefulness or value to the Lessee;

(2) the Authorized Lessee Representative obtains an opinion of Bond Counsel to the effect that such alteration or substitution is authorized by law and will not constitute an Event of Taxability; and

(3) an Authorized Lessee Representative notifies the Authority of such alteration or substitution and completes a Project Substitution Certificate, and the Lease is amended to reflect the Project as altered or substituted.

SECTION 3.06 Subleases by Lessee.

Subject to Section 6.02 hereof, the Lessee hereby retains the right to sublease, or otherwise permit use of, the Project to and by any other State Agency and hereby covenants that any such sublease shall contain and provide amounts of rents in amounts sufficient to provide the revenue required by the Authority for Rent Payments and other payments hereunder. The Authority shall be the third party beneficiary of any such sublease or other use arrangement for the Project, and any amounts actually received by the Authority as such beneficiary shall be credited against any Rent Payment. Any sublease or other use arrangement affecting the Project will expressly provide, however, that it will automatically terminate upon the termination of this Lease as provided for herein. Notwithstanding any other provision herein, any sublease by the Lessee pursuant to this Section shall not release the Lessee from or mitigate its obligations under this Lease and the Lessee shall continue to be obligated to make all payments required hereunder.

SECTION 3.07 Licenses and Permits.

The Lessee represents that it has obtained, or will obtain, all necessary licenses, permits, and other governmental approvals necessary for the acquisition and/or construction and installation and operation of the Projects.

SECTION 3.08 Inspection of Projects.

The Authority and its authorized agents, upon notice to the Authorized Lessee Representative and at reasonable times before, during and after completion of the construction or acquisition of Projects, may enter the Lessee's premises and inspect the Projects and examine any records of the Lessee relating to the Projects.

SECTION 3.09 Compliance with Laws; Repair and Maintenance; Limitation of Liability.

(a) The Lessee shall comply with all municipal, county, state, and federal laws, rules, regulations, and ordinances applicable to the Projects and the use or occupancy thereof. The Lessee shall provide for the service, repair, and maintenance of all Projects at its own expense so as to keep the Projects in as good condition, repair, appearance, and working order as when delivered to the Lessee hereunder, ordinary wear and tear excepted. The Lessee shall, at its own expense, replace any Project and all parts and devices which may become stolen, lost, damaged beyond repair, or rendered unfit for use for any reason whatsoever; provided that all such replacement parts, mechanisms, and devices shall be free and clear of liens, encumbrances, and rights of others so as not to impair the Authority's security interest in the Projects. The Authority, as a condition precedent to this Lease, shall transfer all manufacturers', contractors', vendors', and other representations and warranties relating to the Projects to the Lessee.

(b) LESSEE AGREES THAT THE AUTHORITY SHALL NOT BE RESPONSIBLE FOR LATENT DEFECTS, WEAR AND TEAR, OR GRADUAL DETERIORATION OR LOSS OF SERVICE OR USE OF ANY PROJECT OR ANY PART THEREOF. The Authority shall not be liable to Lessee, or anyone else, for any liability, injury, claim, loss, damage; or expense of any kind or nature caused directly or indirectly by the inadequacy of any Project or any item supplied by any contractor, vendor, or any other party, any interruption of use or loss of service or use or performance of any Project, any loss of business or other consequence or damage, whether or not resulting directly or indirectly from any of the foregoing.

SECTION 3.10 Taxes.

The Lessee shall pay any sales, property use, license, or other taxes from which the Lessee is not exempt, respecting the Projects, imposed, assessed, levied, or becoming due and payable on or after the effective date of this Lease, together with any penalties, fines, or interest thereon. Any tax statement received by the Authority for taxes payable by the Lessee shall be promptly forwarded by the Authority to the Lessee for payment.

SECTION 3.11 Necessity for Projects.

The Lessee represents to the Authority that:

(1) the provision of the Project is necessary in order for the Lessee to effectively carry out its lawful duties and functions; and



(2) the Lessee expects that it will use the Project for essential governmental purposes for the entire useful economic life of the Project.

SECTION 3.12 Insufficient Funds.

(a) If the funds requested are insufficient for the payment of all Project Costs of any Project, the Authority shall not be responsible for the payment of any Project Costs that cannot be paid from such funds.

(b) If the funds so requested are insufficient to pay all of the Project Costs of any Project or to restore the Project in the event the Project is destroyed, damaged, or deteriorates, and the Lessee does not have other lawfully available funds for such purposes, the Lessee shall notify the Legislature of such shortfall.

(c) The Lessee represents that, as of the Effective Date, it expects that an amount of funds equal to the Project Completion Amount will enable the Lessee to complete the acquisition, construction and improvement of the Project.

SECTION 3.13 Disposition of Project.

At the direction of the Legislature, the Authority may sell or otherwise dispose of all or any part of the Project, provided the Authority applies the proceeds of such sale or disposition in accordance with such directive and, if Tax-Exempt Obligations that financed or refinanced such Project remain outstanding, in accordance with Section 141 of the Code, if applicable. Any such legislative directive must appropriate the proceeds derived from such sale or other disposition for deposit into the Interest and Sinking Fund to be applied in accordance with the Resolution for the payment of Note Obligations, if any are then currently outstanding, and the remainder for deposit to the Project Fund to be used to pay Project Costs of any substitute Project.

SECTION 3.14 No Encumbrances.

Neither the Lessee nor the Authority shall create or suffer to exist any lien or other encumbrance against any Project except as provided by this Lease or the Resolution.

SECTION 3.15 Assumption of Risks.

(a) Except as set forth in Section 3.13, Lessee shall assume and bear the risks of loss, damage, destruction, or theft of any Project and all component parts thereof caused by force majeure or Lessee's employees and agents or by others. No such loss or damage shall impair or reduce the obligations of Lessee hereunder, which shall continue in full force and effect, except as expressly provided herein.

(b) Lessee assumes all risk and liabilities for injury to or death of any person or damage to any property, in any manner arising out of possession, use, operation, custody, control, condition, or storage of any Project whether such injury or death be with respect to agents or employees of Lessee or third parties, and whether such property damage be to Lessee's property or the property of others. This subsection shall not be construed to limit or waive in any way the sovereign immunity of the Lessee, the liability of which under this subsection is limited

to amounts in which the Lessee is otherwise permitted or required to respond in accordance with applicable law. This subsection is not intended to confer any rights on any third parties to this agreement.

SECTION 3.16 Title Insurance.

(a) With respect to each building or Project, Lessee shall cause a binder to its owner's policy of title insurance to be issued by a title insurance underwriter authorized to issue title insurance in the State, which policy insures the State's title to the Project in an amount (to the extent the Project is insurable on reasonable terms in the commercial market) equal to the value of the real estate associated with such building or Project or such other amount to be mutually determined by the Authority and the Lessee, subject to standard printed exceptions and such other exceptions as a prudent purchaser would agree to.

(b) Title insurance required by this section shall be in effect at the time that title to the Project (or any part thereof) is acquired by the Authority.

SECTION 3.17 Disbursements from Project Fund.

(a) Lessee may cause disbursements to be made from the applicable subaccount of the Project Fund in accordance with this Lease, the Authorizing Law and the Resolution and apply the amounts so transferred to the payment of Project Costs.

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

(c) The Lessee acknowledges and agrees that, in accordance with the Resolution interest earned on amounts held in the Project Fund may be transferred to the Interest and Sinking Fund to the extent a deficit exists therein or to such other Fund as directed by the Authorized Representative.

(d) In the event that the Authority determines that the Lessee has breached any material representation, warranty, or agreement in this Lease, the Authority, in its discretion, may suspend further disbursement of amounts from the Project Fund if it is advised in writing by its counsel that (1) such suspension is lawful, and (2) such breach constitutes a breach of this Lease. 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 amounts in the Project Fund allocated to the payment of Project Costs in the manner permitted by the Resolution and law.

SECTION 3.18 Status Reports.

Not later than the 15th day of each month, the Lessee shall prepare and deliver to the Executive Director a status report, containing the information set forth in Exhibit B to this Lease, covering the preceding calendar month. At other times the Lessee shall provide the Executive

Director, upon request, with any information available to the Lessee regarding the expenditure of amounts disbursed to the Lessee from the Project Fund or use of the Project.

## ARTICLE IV

### PARTICULAR AGREEMENTS

#### SECTION 4.01 Lessee's Obligation Unconditional Subject to Appropriation.

(a) Subject to Subsection (b) of this section, all obligations of the Lessee under this Lease are absolute and unconditional and are not subject to any diminution, abatement, setoff, or counterclaim, and the Lessee shall not suspend or discontinue any Lease Payment. The Lessee shall apply, or cause to be applied, any funds lawfully available to it (whether from the State Lease Fund Account or any other source) to the Lease Payments as they come due.

(b) The obligation of the Lessee to make Lease Payments is subject to enactment by the Legislature of appropriations that are lawfully available to be applied to the Lease Payments. THIS LEASE SHALL NOT CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE STATE OF TEXAS OR ANY OF ITS AGENCIES, OR A PLEDGE OF THE FAITH AND CREDIT OF THE STATE OF TEXAS OR OF ANY SUCH AGENCIES. THE SOURCES OF PAYMENT OF LESSEE'S OBLIGATIONS HEREUNDER SHALL BE LIMITED STRICTLY TO THE SOURCES IDENTIFIED HEREIN. THE OBLIGATION OF THE STATE OF TEXAS TO CONTINUE TO MAKE LEASE PAYMENTS IS SUBJECT TO APPROPRIATION OF FUNDING AS DESCRIBED IN THIS LEASE.

(c) Except as expressly provided by this Lease, the Lessee waives (to the extent permitted by law) any right that it may have to terminate or cancel this Lease.

(d) If any Event of Nonappropriation shall occur and be continuing, the Lessee agrees, upon request of the Executive Director, to deliver the Project to the Authority or the Authority's designee.

#### SECTION 4.02 Indemnification of Authority.

The Lessee (to the extent permitted by law) shall make, or cause to be made, available to the Authority lawfully available funds sufficient to indemnify the Authority for any losses or damages whatsoever (including, without limitation, attorney's fees) incurred by the Authority that arise out of the acquisition, ownership, design, construction, maintenance, or operation of the Projects. The Authority shall obtain such reimbursement pursuant to all applicable interagency fund transfer procedures in effect at the time of the transfer.

#### SECTION 4.03 Proceeds of Property Damage Insurance or Condemnation.

If any Project is destroyed or damaged by fire or other casualty, or title to such Project shall be taken by theft, loss, or the exercise of the power of eminent domain or otherwise while this Lease is in effect, the Lessee shall elect one of the following options.

(a) Option A – Repair, Restoration, or Replacement. Lessee shall use its own funds to promptly repair, restore, or replace (in which case such replacement of any Project shall become subject to the provisions of this Lease Agreement as fully as if it were the originally leased Project) such Project. Such funds of the Lessee, or net proceeds of a condemnation award or insurance policy, if any, shall be delivered to the Authority and be deposited in the Project Fund and applied by the Authority toward the payment of the cost of such repair, restoration, or replacement, in the same manner and upon the same conditions as set forth in the Resolution for the payment of Project Costs from the Project Fund. Any balance of the net proceeds remaining after the repair, restoration, or replacement, or in the event the Lessee elects not to repair, restore or replace the Project, such funds shall be deposited in the Interest and Sinking Fund for the payment of Note Obligations. Any amounts remaining after the satisfaction of all obligations under the Resolution and this Lease shall be paid to Lessee.

(b) Option B – Prepayment of Rent Payments. Lessee shall prepay all Rent Payments applicable to such Project. Such prepayment price shall be an amount equal to the then outstanding aggregate principal portion of all regular Rent Payments plus all of the accrued interest portion plus other amounts that may be required under Payment Obligations applicable to such Project.

The Lessee shall notify the Authority of its election in writing within 60 days after the taking, damage, loss, or destruction. Neither of the foregoing options shall be deemed to require payments by the Lessee other than from legally available funds.

SECTION 4.04 Notice to Lessee of Appropriation Necessary for Lease Payments.

Not later than the April preceding each regular session of the Legislature, the Executive Director shall provide the Authorized Lessee Representative with notice of the amount of the Rent Payments and the amount (or estimated amount, as applicable) of the other Lease Payments that are to come due (or estimated to come due) during the next fiscal period with respect to this Lease.

SECTION 4.05 Notice to Legislature of Appropriation Necessary for Lease Payments.

Before each regular session of the Legislature, the Lessee shall notify the Legislative Budget Board, and the Governor's Budget Office of the amount of the Rent Payments and the amount (or estimated amount, as applicable) of the rest of the Lease Payments that are to come due (or are estimated to come due) during the next fiscal period.

SECTION 4.06 Notice of Nonappropriation.

Not later than the third Business Day after the occurrence of an Event of Nonappropriation, the Lessee shall notify the Executive Director of such occurrence and of the amount of appropriated funds (if any) that will be available for application to Lease Payments during the succeeding fiscal biennium of the State.

## ARTICLE V

### THE OBLIGATIONS

#### SECTION 5.01 Issuance and Sale of Notes.

The Authority shall use its best efforts to issue and sell Notes or otherwise obtain financing in an amount sufficient for the Project Completion Amount for the payment of Project Costs, in accordance with the Resolution. It is acknowledged however, that the Authority cannot guarantee that adequate financing will always be available with respect to the Project, which shall be determined in the Authority's sole discretion.

#### SECTION 5.02 Refunding of Notes.

The Authority, in its sole discretion, may determine when and under what circumstances Bonds are to be issued to refund or refinance any outstanding Notes issued to finance the construction or acquisition of the Projects.

#### SECTION 5.03 Cooperation by Lessee.

The Lessee shall take the action(s), enter into the agreement(s), provide the certification(s) contemplated by this Lease, and otherwise cooperate with the Authority and its agents, to effect the lawful issuance and sale of Notes and enter into any amendments or supplements required to issue any Bonds.

#### SECTION 5.04 Covenants Relating to the Tax-Exempt Status of the Tax-Exempt Obligations.

The Lessee represents, warrants and covenants as follows:

(a) General. The Lessee covenants and agrees not to take any action, or omit to take any action within its control, that if taken or omitted, respectively, would (i) cause the interest on the Tax-Exempt Obligations to be includable in gross income, as defined in section 61 of the Code, for federal income tax purposes or (ii) result in the violation of or failure to satisfy any applicable provision of Section 103 and 141 through 150 of the Code. With the intent not to limit the generality of the foregoing, the Lessee covenants and agrees that, unless it has received and filed with the Authority a Favorable Opinion of Bond Counsel, the Lessee will comply with this Section 5.04.

(b) No Private Use or Payment and No Private Loan Financing. The Lessee covenants and agrees that it will make such use of the Proceeds of each issue of the Tax-Exempt Obligations, including interest or other investment income derived from such Proceeds, regulate the use of property financed, directly or indirectly, with such Proceeds, and take such other and further action as may be required so that no issue of the Tax-Exempt Obligations will be "private activity bonds" within the meaning of section 141 of the Code. Moreover, the Lessee will certify, through an authorized officer, employee or agent, based upon all facts and estimates known or reasonably expected to be in existence on the date that each issue of the Bonds is delivered, that the proceeds of such issue of Bonds will not be used in a manner that would cause

such issue of the Bonds to be “private activity bonds” within the meaning of section 141 of the Code and the Regulations promulgated thereunder.

(c) No Federal Guarantee. The Lessee covenants and agrees not to take any action, or knowingly omit to take any action within its control, that if taken or omitted, respectively, would cause any issue of the Tax-Exempt Obligations to be “federally guaranteed” within the meaning of section 149(b) of the Code, except as permitted by section 149(b)(3) of the Code.

(d) No Hedge Bonds. The Lessee covenants and agrees not to take any action, or knowingly omit to take any action within its control, that if taken or omitted, respectively, would cause any issue of the Tax-Exempt Obligations to be “hedge bonds” within the meaning of section 149(g) of the Code.

(e) No Arbitrage. The Lessee will not take any action or omit to take any action with respect to the gross proceeds or of any amounts expected to be used to pay the principal of or the interest on any issue of the Tax-Exempt Obligations which, if taken or omitted, respectively, would cause any Tax-Exempt Obligation to be classified as an “arbitrage bond” within the meaning of Section 148 of the Code. Moreover, the Lessee will certify, through an authorized officer, employee or agent, based upon all facts and estimates known or reasonably expected to be in existence on the date the Bonds are delivered, that the proceeds of the Bonds will not be used in a manner that would cause the Bonds to be “arbitrage bonds” within the meaning of section 148(a) of the Code. Except as provided in the this Lease, the Lessee will not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under this Lease or any Tax-Exempt Obligation and will not establish any segregated reserve or similar fund for such purpose, unless in each case there will have been delivered a Favorable Opinion of Bond Counsel.

(f) Yield on Investment of Gross Proceeds. The cumulative, blended yield on the investment of the gross proceeds will be restricted to the yield on the applicable issue of Tax-Exempt Obligations, other than amounts (i) not subject to yield restriction due to any applicable temporary period under Section 148(b) of the Code, (ii) deposited in a reasonably required reserve or replacement fund, a bona fide debt service fund, or as a minor portion, or (iii) invested at a restricted yield by virtue of being invested in obligations described in Section 103(a) of the Code that are not “specified private activity bonds” within the meaning of Section 57(a)(5) of the Code to the extent required by the Code.

(g) Record Retention. The Lessee will retain all pertinent and material records relating to the use and expenditure of the proceeds of each issue of the Tax-Exempt Obligations until three years after the last Tax-Exempt Obligation of such issue is redeemed, or such shorter period as authorized by subsequent guidance issued by the Department of Treasury, if applicable. All records will be kept in a manner that ensures their complete access throughout the retention period. For this purpose, it is acceptable that such records are kept either as hardcopy books and records or in an electronic storage and retrieval system, provided that such electronic system includes reasonable controls and quality assurance programs that assure the ability of the Lessee to retrieve and reproduce such books and records in the event of an examination of the Tax-Exempt Obligations by the Internal Revenue Service.

(h) Deliberate Actions. The Lessee will not take a deliberate action (as defined in section 1.141-2(d)(3) of the Regulations) that causes any issue of the Tax-Exempt Obligations to fail to meet any requirement of section 141 of the Code after the issue date of such issue of the Tax-Exempt Obligations unless an appropriate remedial action is permitted by section 1.141-12 of the Regulations, a Favorable Opinion of Bond Counsel has been received, and the Authority has approved the taking of the deliberate action and the remediation thereof.

(i) Tax Certificate. The undersigned has examined the Federal Tax Certificate executed by the Authority connection with the issuance of the Tax-Exempt Notes. The facts, estimates and expectations set forth in such Federal Tax Certificate are based on information provided by the Lessee, and all of such facts, estimates and expectations are true, reasonable, accurate, complete and not misleading..

(j) Examination by IRS. The Lessee acknowledges that, in the event of an examination by the Internal Revenue Service of the exclusion of interest on the Tax-Exempt Obligations from the gross income of the owners thereof for federal tax purposes, the Authority will likely be treated as the “taxpayer”, and the Lessee agrees to respond, at its own expense, to any requests from the Authority for information relating to any Tax-Exempt Obligations in a commercially reasonable manner.

(k) Continuing Obligation. Notwithstanding any other provision of this Lease, the Lessee’s obligations under the covenants and provisions of this Section 5.04 will survive the defeasance and discharge of the Tax-Exempt Obligations for as long as such matters are relevant to the exclusion from gross income of interest on the Tax-Exempt Obligations for federal income tax purposes.

#### SECTION 5.05 Arbitrage Rebate.

The Lessee will timely take such lawful action as requested by the Executive Director to avoid or mitigate the Authority’s obligation to make payments to the United States government under the Arbitrage Rebate Rules, unless an Authorized Lessee Representative certifies to the Authority that the requested action is not practicable. If a portion of the gross proceeds of the Bonds 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 Lessee, not later than the close of such period, will notify the Executive Director of the amount of such unexpended funds, the purpose(s) for which such funds are being retained in the Project Fund after such period and an expected timeline for expenditure of such amounts.

#### SECTION 5.06 Disclosure Documents.

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

(b) The Lessee shall provide the Authority with certification of an Authorized Lessee Representative to the effect that the information contained in the Disclosure Documents provided

by the Lessee is accurate and does not omit any information necessary to make the information provided not misleading.

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

#### SECTION 5.07 Recordkeeping.

(a) The Executive Director shall retain, as official records of the Authority, all Project status reports submitted by the Lessee pursuant to this Lease.

(b) The Lessee shall retain, as official records of the Lessee, all materials, records, and information necessary to confirm the Lessee's compliance with the provisions of Section 5.04 hereof for a period beginning on the Effective Date and ending three years after the date the Tax-Exempt Obligations are no longer outstanding.

### ARTICLE VI

#### DEMISE OF PROJECTS; RENT PAYMENT PROVISIONS

##### SECTION 6.01 Lease of Projects.

Upon the acquisition of title to each Project by the Authority, the Authority hereby leases such Project to the Lessee, and the Lessee hereby leases such Project from the Authority under the terms of this Lease.

##### SECTION 6.02 Rent Payments.

(a) As rent for its use of the Projects, the Lessee shall pay, or cause to be paid, Rent Payments in the amounts, at the times, and otherwise as set forth herein.

(b) The Lessee shall pay Rent Payments or cause the Rent Payments to be paid, from funds lawfully available for the payment of Rent Payments to the Comptroller for deposit into the State Lease Fund Account in accordance with the Resolution. Lessee agrees that notwithstanding anything to the contrary herein, Lessee will, to the extent permitted by law, apply all funds available to Lessee, regardless of their source or any other budget considerations of the Lessee, first to the payment of the Lease Payments hereunder, prior to all other potential uses of such funds. The Authority and the Lessee acknowledge that, under current law, the Lessee will not be able to apply funds to Lease Payments for building Projects other than funds that are specifically appropriated therefor by the Legislature.

(c) The Lessee agrees to pay Rent Payments in immediately available funds on or before the second Business Day preceding each Regular Rent Payment Date and to pay other obligations hereunder in the amounts and on the dates fixed by the Executive Director from time to time.



(d) If on the second Business Day immediately preceding any date on which Payment Obligations come due, the Authorized Lessee Representative receives notice from the Executive Director to the effect that sufficient funds for the payment of all Payment Obligations are not on deposit in the State Lease Fund Account, the Lessee shall immediately (before the close of business) cause to be deposited in immediately available funds (to the extent lawfully available) the amount directed by the Executive Director.

(e) The Lessee may prepay Rent Payments or cause Rent Payments to be prepaid at any time and in any amount by depositing such amount into the State Lease Fund Account, provided however, that no such prepayments shall in any way reduce the aggregate amount of the Rent Payments (including both the interest portion and the principal portion thereof) and such prepayment shall be deposited in accordance with the Resolution.

(f) In addition to the other items required herein, Lessee agrees to pay all costs, expenses, insurance premiums, if any, and other payments required under the terms of this Lease as directed by the Executive Director. The Lessee shall pay all such amounts, without notice and without set-off, deduction, or abatement. In the event of any non-payment of such amounts, the Authority shall have, in addition to all other rights and remedies, all rights and remedies provided for herein or by law for the non-payment of Rent Payments.

(g) Pursuant to the Authorizing Law, Lessee hereby irrevocably authorizes the Authority to access the Lessee's appropriated funds from time to time by issuing vouchers thereon to the Comptroller to transfer funds from the accounts identified herein to the State Lease Fund Account for the payment of Lease Payments.

(h) The Lessee acknowledges that the Authority may finance Projects initially through an interim financing arrangement, such as the Notes, at a rate of interest to be set at the time of issuance. The Lessee further acknowledges that the Authority may refinance any interim financing arrangement in a manner deemed by the Authority to be reasonable and financially prudent. The Lessee hereby agrees that the Authority may from time to time, and at any time, amend the schedule of Rent Payments herein with respect to any Project to reflect the terms of any refinancing of debt incurred by the Authority to finance or refinance the construction and equipping of the Project, including without limitation, to reflect any amounts drawn under a credit agreement with respect to any Notes or any prepayment under subsection (e) above (such change in the schedule of Rent Payments being referred to herein as the "*Rent Payment Reset*").

(i) The Lessee also acknowledges that this Lease pursuant to the Program will be pledged or assigned as security for Notes, Bonds and any credit agreement (as defined in Chapter 1371, Texas Government Code, as amended) relating to the Notes or Bonds and will serve as collateral therefor.

(j) From a portion of the Rent Payments the Authority shall pay to any paying agent, dealer, liquidity, rating agency or any Person performing similar duties, when due, reasonable compensation for all services in connection with acting as such under the Resolution; provided, however, that the Authority may, without creating a default hereunder or under the, contest in good faith the necessity for any such services and expenses and the reasonableness of any such fees, charges, or expenses.

(k) It is recognized that the Authority will incur certain overhead and operating expenses caused by the Program, the Obligations and the Projects; therefore, the Lessee agrees to transfer and pay to the Authority, if so requested by the Authority, as a portion of the Lease Payments the amount determined annually by the Authority and certified to the Lessee as the amount payable under this provision.

SECTION 6.03 Administration Costs.

The Authority intends to recover from the Lessee all Administration Costs by including approximate costs as an element of the Lease Payments herein or through such other method as may be consistent with the Act upon refinancing the Notes. However, Lessee agrees to indemnify the Authority, to the extent allowed by law, for any such costs to the extent they are not recovered through such mechanism. As soon as practicable after the date of receipt by an Authorized Lessee Representative of a statement from the Authority for Administration Costs, the Lessee shall pay, or cause to be paid; to the Authority, from lawfully available funds, all Administration Costs specified in such statement.

SECTION 6.04 Third Party Beneficiary.

The Authority shall be a third party beneficiary of all subleases of; and other use arrangements for, any Project.

**ARTICLE VII**

**REMEDIES**

SECTION 7.01 Remedies.

(a) Upon the occurrence of and during the continuation of any Event of Default arising from the failure to make a Lease Payment, upon the occurrence of and during the continuation of an Event of Nonappropriation, or upon 30 days prior to the expiration of the commitment of any provider of liquidity or credit enhancement for any Notes while such Notes are still outstanding, the Authority may take any one or more of the following remedial actions:

(1) declare all of the remaining unpaid principal portion of the Rent Payments under the Lease to be immediately due and payable solely to the extent the Legislature has appropriated funds for such payment; or

(2) enter and take possession of any or all Projects under the Lease without terminating this Lease, and sublease all or any part of such Projects for the account of the Lessee;

provided, that if the Authority shall lease or sublease any Project, it may lease or sublease such Project only to Persons and under such conditions, that will not constitute or create an Event of Taxability.

(b) Upon the occurrence of and during the continuation of any Event of Default or an Event of Nonappropriation, the Authority may take any action at law or in equity to collect any

amount due or that may become due under this Lease or to enforce performance of any obligation of the Lessee under this Lease by mandamus or otherwise.

(c) Upon the Authority taking possession of a Project, the Lessee shall immediately surrender the Project to the Authority.

(d) If the Authority leases or subleases a Project as a result of its exercise of remedies taken in the enforcement of this Lease, the Lessee and any sublessee of the Lessee shall remain liable (to the extent of lawfully available funds and otherwise as permitted by law) for all payments that are due or that become due under this Lease (except to the extent the Authority receives payments as a result of the subleasing or leasing of the Project).

(e) No remedy available to the Authority for the enforcement of this Lease is exclusive of any other remedy, and each remedy is cumulative of every other remedy.

(f) No delay or omission to exercise any remedy shall impair the right to exercise such remedy.

(g) The Authority is not required to provide notice in order to exercise any remedy in the enforcement of this lease.

#### SECTION 7.02 Waivers Restricted.

In the event any provision of this Lease is breached by either party and such breach is thereafter waived by the other party, such waiver shall be limited to the particular breach and shall not constitute any other breach.

#### SECTION 7.03 Assignment of Remedial Rights to Obligation Owners.

The Lessee acknowledges that certain rights and remedies that are available to the Authority under this Lease have been or will be assigned to the owners of the Notes pursuant to a Resolution and, if such Notes are supported by liquidity or credit enhancement arrangements, to the provider of such liquidity or credit arrangements, and such owners and credit providers shall have the right to exercise (to the extent permitted by law) such rights and remedies. The Lessee hereby authorizes the owners of the Notes and, if applicable, any credit provider, to rely on this Lease in regards to the assignment and exercise of such rights.

#### SECTION 7.04 Performance of Lessee's Obligations by Authority.

While the Lessee is in default of any provision of this Lease, the Lessee authorizes (to the extent permitted by law) the Authority to take any lawful action to cure such default and to act in the name and stead of the Lessee to the same extent as the Lessee is empowered to act.

#### SECTION 7.05 Notice of Default to Authority.

The Lessee shall notify the Authority of any breach by the Lessee of any of its representations, warranties, or agreements under this Lease as soon as possible after the occurrence of such breach.

## ARTICLE VIII

### TERM OF AGREEMENT

#### SECTION 8.01 Term of Agreement and Lease.

This Lease shall remain in full force and effect from the date hereof until the later of (i) December 1, 2041, or (ii) the date all Payment Obligations on all outstanding Notes have been paid (or provision has been made for such payment in accordance with the relevant Resolution) and all other obligations under this Lease have been satisfied, unless this Lease is terminated earlier pursuant to the terms hereof.

#### SECTION 8.02 Reinstatement.

If this Lease is terminated as a result of the occurrence of an Event of Default, the Authority agrees to reinstate this Lease when all defaults under this Lease have been cured or waived, and the Lessee shall be restored to the use, occupancy, and possession of the Projects, subject to the rights of any Person who has entered into a binding agreement providing for the leasing of all or any portion of the Projects.

#### SECTION 8.03 Conveyance of Projects upon Termination.

When this Lease is terminated as a result of all Lease Payments having been paid with respect to the Project identified thereon, the Executive Director shall notify the Lessee that Lease Payments are no longer required to be made, and the Authority, for the sum of \$1.00 paid to it, shall convey its right, title, and interest in such Project to the Lessee.

## ARTICLE IX

### MISCELLANEOUS PROVISIONS

#### SECTION 9.01 Amendment.

(a) The Authority and the Lessee, by mutual agreement, may amend this Lease if, before the amendment takes effect:

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

(2) the Authority obtains an opinion of Bond Counsel to the effect that such amendment will not violate the Authorizing Law or the applicable Resolution; and

(3) 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 and an opinion of Bond Counsel to the effect that such amendment will not adversely affect the rights of the owners of the Notes under the Resolution or any assignee of the rights under the Lease; or

(B) the owners of at least a majority in aggregate principal amount of the outstanding Notes affected by such amendment consent thereto, except that the consent of the owner of each outstanding Obligation affected by such amendment is required if such amendment would decrease the minimum percentage of owners of Notes required for effective consent to such amendment;

provided, that Rent Payment Reset shall not constitute an amendment hereunder.

(b) The Authority and the Lessee, by mutual agreement, may amend this Lease for the purpose of refinancing the Notes into long-term obligations.

SECTION 9.02 Notices and Other Communications.

(a) Notices, certificates, approvals, and other communications under this Lease shall be in writing and delivered by first class mail, return receipt requested, facsimile transmission or other electronic transmission, or by express or personal delivery, prepaid and addressed as follows:

(1) if to the Lessee:

Texas Facilities Commission  
Legal Services Division  
1711 San Jacinto  
Austin, Texas 78701  
Telephone: (512) 475-2400  
Facsimile: (512) 236-6171  
Attention: General Counsel

(2) if to the Authority:

Texas Public Finance Authority  
William P. Clements Building  
300 W. 15th Street, Suite 411  
Austin, Texas 78701  
Telephone: (512) 463-5544  
Facsimile: (512) 463-5501  
Attention: Executive Director  
Email: ExecutiveDirector@tpfa.texas.gov

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

(c) A provision of this Lease 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 9.03 Exclusive Benefit.

This Lease shall inure to the exclusive benefit of and be binding on the Authority, the Lessee, and their respective successors and assigns.

SECTION 9.04 Severability.

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

SECTION 9.05 Counterparts.

This Lease 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 9.06 Time of Essence.

Time is of the essence in this Lease.

SECTION 9.07 Governing Law.

This Lease shall be governed by and construed in accordance with the law of the State.

SECTION 9.08 Conflict with Memorandum or Resolution.

In the event of a conflict between this Lease and the Memorandum, this Lease shall supersede the Memorandum to the extent of the conflict. In the event of an irreconcilable conflict between the provisions of this Lease and the Resolution, the provisions of the Resolution shall control and be given effect.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their respective duly authorized officers, as of this 21<sup>st</sup> day of June, 2016.

TEXAS PUBLIC FINANCE AUTHORITY

By: Lee Deviney  
Authorized Representative  
Name: Lee Deviney  
Title: Executive Director

TEXAS FACILITIES COMMISSION

By: \_\_\_\_\_  
Authorized Representative  
Name: Harvey Hilderbran  
Title: Executive Director

Approved By: \_\_\_\_\_  
Name: Kay Molina  
Title: General Counsel

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their respective duly authorized officers, as of this 21<sup>st</sup> day of June, 2016.

TEXAS PUBLIC FINANCE AUTHORITY

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

Authorized Representative

Name: Lee Deviney

Title: Executive Director

TEXAS FACILITIES COMMISSION

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

Authorized Representative

Name: Harvey Hilderbran

Title: Executive Director

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

Name: Kay Molina

Title: General Counsel



EXHIBIT A  
PROJECT DESCRIPTION

<u>PROJECT COMPONENTS</u>	<u>ESTIMATED COST</u>	<u>ESTIMATED USEFUL LIFE (Years)</u>
Capitol Complex Utility Infrastructure, Phase One	\$ 71,335,306	100
Capitol Complex Office Building and Parking Garage, Phase One	174,446,464	100
Capitol Complex MLK Blvd	335,441,766	100
North Austin Campus New Building and Parking Garage, Phase One	<u>186,446,464</u>	100
Total:	\$767,670,000	

EXHIBIT B

PROJECT COMPLETION SCHEDULE

EXPENDITURE  
PERIOD

PROJECTED  
PROJECT  
EXPENDITURES  
EACH PERIOD

\_\_\_\_\_

\$(\_\_\_\_\_)

EXHIBIT C

FORM OF DISBURSEMENT CERTIFICATE

DISBURSEMENT CERTIFICATE

The undersigned hereby certifies, on behalf of the Texas Facilities Commission (Agency No. 303) (the "Commission"), as follows:

(a) The capitalized terms in this Certificate that are not herein defined shall have the meanings defined in the Lease Agreement, dated as of June 21, 2016, between the Commission and the Texas Public Finance Authority.

(b) Except as previously disclosed in writing to the Executive Director, the Commission is not in breach of any representation, warranty, or agreement in the Lease.

(c) The Commission reasonably expects to expend funds, in the aggregate amount of the disbursements requested by this Certificate, for the payment of the Project Costs for which disbursement is requested.

(d) 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 FACILITIES COMMISSION

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

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

## EXHIBIT D

### MONTHLY STATUS REPORT INFORMATION

The monthly status report prepared by the Lessee pursuant to this Lease shall contain the following information with respect to the Project:

- (1) identity of the Project (name, ID no., etc.) and the original date on which such Project was first financed hereunder;
- (2) fund number(s);
- (3) the budget amount for the Project (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, if applicable;
- (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 by any Person other than a state or local governmental unit.

EXHIBIT E

FORM OF PROJECT COMPLETION CERTIFICATE

PROJECT COMPLETION CERTIFICATE

FUND NO. \_\_\_\_\_

The undersigned hereby certifies, on behalf of the Texas Facilities Commission (the "Commission"), as follows:

(a) The capitalized terms in this Certificate that are not herein defined shall have the meanings defined in the Lease Agreement, dated as of June 21, 2016, between the Commission 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 Commission.

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

TEXAS FACILITIES COMMISSION

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

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

EXHIBIT F

FORM OF PROJECT SUBSTITUTION CERTIFICATE

The undersigned hereby certifies, on behalf of the Texas Facilities Commission (the "Commission"), as follows:

(a) The capitalized terms in this Certificate that are not herein defined shall have the meanings defined in the Lease Agreement, dated as of June 21, 2016, between the Commission 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 FACILITIES COMMISSION

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

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