

*[For Project Acquisition - with Lease Supplement(s)]*

**LEASE PURCHASE AGREEMENT**

**between**

**TEXAS PUBLIC FINANCE AUTHORITY**

**And**

**[\_\_\_\_\_]**

**Pertaining to**

**State of Texas  
Texas Public Finance Authority  
Master Lease Purchase Program**

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EXHIBIT A - Cumulative Lease Supplements

EXHIBIT A – 1 - Form of Lease Supplement

## **TEXAS PUBLIC FINANCE AUTHORITY**

### **LEASE PURCHASE AGREEMENT**

LEASE PURCHASE AGREEMENT ("Lease"), between the TEXAS PUBLIC FINANCE AUTHORITY, an agency of the State of Texas (as further defined herein, the "Authority") and the agency of the State of Texas indicated on the signature page hereof, as lessee (together with any successor, the "Lessee");

#### **WITNESSETH:**

WHEREAS, pursuant to Chapter 1232, Texas Government Code, as amended (the "Authority Act"), the Authority was duly established with the power and authority to establish the Master Lease Purchase Program (i) to purchase, lease, rent, or otherwise acquire or construct buildings and equipment for agencies of the State of Texas, (ii) to institute and maintain a system for purchasing such buildings and equipment, (iii) to enter into agreements with such state agencies to properly assure the recovery of the cost of providing such buildings and equipment to such state agencies, and (iv) to issue obligations to finance or refinance the purchase of such buildings and equipment; and

WHEREAS, pursuant to a resolution duly adopted by the Authority on November 8, 2019, 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 or refinancing equipment and building projects described or to be described on Exhibit A to this Lease, which equipment and building projects have been or prior to their listing on Exhibit A will have been accepted by the Lessee (such equipment and building projects leased and to be leased to Lessee hereunder as identified on Exhibit A hereto, together with all replacement parts, repairs, additions, attachments, accessories, restorations, replacements, and substitutions therefor, are herein collectively referred to as the "Projects"); and

WHEREAS, pursuant to a resolution duly adopted by the Lessee, 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 and certain related documents for the purpose of financing or refinancing Projects; 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 relationship between the Authority and the Lessee shall be a continuing one and Projects may be added to or deleted from this Lease 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 AND OTHER PRELIMINARY MATTERS

#### 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 each Project, 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 Projects, together with a purchase voucher properly completed pursuant to the terms of the Lease Supplement relating to the Project and applicable law.

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

*Agency Act* - the statute governing the Lessee as indicated on the signature page hereof.

*Arbitrage Rebate Rules* - the provisions of the Code governing 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 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 of the Authority, 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.

*Authority Act* - Authority Act as defined in the recitals of this Lease.

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

*Bond Counsel* - any law firm that is engaged by the Authority to render services to the Authority as bond counsel.

*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* - 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.

*Costs of Issuance* - any Costs of Issuance as defined in the Resolution.

*Disclosure Documents* - collectively, the offering memorandum, the preliminary official statement, and the official statement and any other disclosure documents authorized by the Authority in connection with the offer and sale of any Obligations.

*Eligible Project* - any physical structure that has been specifically authorized by the Legislature for the Authority to finance, together with the land and major equipment or personal property that is functionally related to the physical structure or any other fixed asset used by a State Agency to conduct official State business, including, without limitation, telecommunications devices or systems, automated information systems, computers and computer software, provided, that such property has a Useful Life of at least three years and an aggregate value of at least \$10,000.

*Estoppel Letter* - a letter to the effect required under Section 3.02 from any prior lender for any Project to be refinanced by the Authority pursuant to the Program.

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

(1) the failure to pay when due any Lease Payment for which the Legislature (or, in the event that the Lessee is an institution of higher education, the board of regents thereof) 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;

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

(4) the occurrence of an Event of Default as defined in any other lease between the Authority and the Lessee entered into in connection with the Program.

*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 tax-exempt Obligations) that has the effect of causing

interest paid or payable on 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.

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

*Lease* - this Lease, all Lease Supplements hereunder, and any amendments hereto or thereto.

*Lease Payment* - 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 to the extent permitted by law.

*Lease Supplement* - a Lease Supplement in the form of Exhibit A-1 hereto, properly completed by the Lessee and executed by an Authorized Lessee Representative and an Authority Representative, as the same may be amended or supplemented from time to time under the terms of this Lease.

*Legislature* - the Legislature of the State.

*Lessee* - the Lessee as defined in the recitals of this Lease.

*Obligations* - any obligations that may be issued or incurred from time to time to finance or refinance Projects for State Agencies pursuant to the Program, including without limitation, any short term or long term notes, bonds, revolving credit obligations, and other obligations issued to refinance such obligations.

*Payment Obligations* - the principal, premium (if any), and interest payment obligations of the Authority under any Obligations or in respect of any credit agreement (as defined in Chapter 1371, Texas Government Code, as amended) relating to any Obligations 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.

*Project* - each Project as described or to be described on Exhibit A to this Lease, which Project, prior to its listing on Exhibit A, will have been accepted by the Lessee together with all repairs; additions, attachments, replacements, and substitutions therefor.

*Project Completion Amount* - as to each Project, the aggregate amount of the Project Costs that the Lessee expects, as of the date of any Lease Supplement, to be necessary to complete the construction or acquisition and installation of such Project.

*Project Costs* - any costs associated with a Project that are authorized under the Authorizing Law, Chapter 1201, Texas Government Code, as amended, and the Authority Regulations, to be financed with the proceeds of the Obligations.

*Project Descriptions* - as to each Project, collectively, the information set forth on Exhibit A of this Lease as the same may be amended or supplemented from time to time.

*Project Financing Documents* - as to each Project, collectively, all documents furnished by the Lessee to the Authority in connection with the financing of the Project and, issuance of Obligations to fund such Project, including, without limitation, this Lease, each Lease Supplement, and any Acquisition Papers.

*Project Sites* - as to each Project, the land on which the Project is situated, as described in Exhibit A-1 of this Lease.

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

*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 Projects, such payments consisting of interest portions and principal portions of the Obligations in the amounts set forth on Exhibit A hereto, 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* - any resolution, credit agreement, or similar instrument adopted by the Authority from time to time to provide for the issuance of Obligations 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 Authority Act or any successor account created for the same purpose pursuant to law.

*Transaction Documents* - collectively, any Resolution, any Obligations, this Lease, and any other documents delivered in connection with any Obligations.

*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 recitals 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 Authority Act;

(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.**

The Lessee represents that on or before delivery of any Lease Supplement hereunder, all legislative approvals, appropriations, and authorizations required under the Agency Act and the Authority Act as a condition to the acquisition, construction, renovation, repair or equipping of the Project identified in such Lease Supplement and the financing or refinancing thereof by the Authority have been or will have been obtained and the delivery a Lease Supplement with respect thereto shall constitute confirmation of such representation.

**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 due diligence substantially in accordance with the Plans and Specifications, in the name of the Authority, free of any liens, and in accordance with law, and shall 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. If for any reason such construction of the Projects is delayed or not completed, there shall be no diminution in or postponement of Lease Payments.

(b) The Lessee will obtain or cause to be obtained, an Estoppel Letter from any prior lender for any Project that is subject to a prior lien before being refinanced under the Program, which Estoppel Letter will (i) confirm the amount of all outstanding payments due to such prior lender with respect to the Project to be financed pursuant to the Program, (ii) direct the Authority where to deliver funds in payment of such amounts, and (iii) agree to release all claims and liens on such Project upon receipt of such funds.

(c) The Lessee agrees to make timely payments of the Project Costs as they are incurred in accordance with the Authority Act and the Agency 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.

(d) 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.

(e) As Projects are identified for financing or refinancing hereunder, 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.

An Authorized Lessee Representative shall deliver a Lease Supplement and the Acquisition Papers to the Authority, and advise the Authority of the aggregate amount of funds needed for disbursement to pay the cost of the Project.

(f) The Authority shall cause the vendor or prior lender to be paid in accordance with the Lease Supplements. In accordance with Section 6.01 of this Lease, a real property interest 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. If deemed necessary by an Authority Representative, the Lessee shall cooperate with the Authority and do all things necessary to grant a security interest in the Lessee's leasehold estate for the benefit of the Note Owners. Any Project constituting vehicles subject to registration with the State Department of Motor Vehicles shall be registered with the Authority as the registered owner.

SECTION 3.03      Reserved.

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. The Lessee shall obtain and provide all permits and licenses, if any, necessary for the construction and/or installation and operation of each Project.

(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, another State Agency, 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 the 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 provides the Authority with a revised Lease Supplement describing the Project as altered or substituted.

#### SECTION 3.06      Sublease by Lessee.

Subject to Section 6.02 hereof, the Lessee retains the right to sublease, or otherwise permit use of, the Project to and by any other State Agency so long as the use of the Project by such sublessee complies and is consistent with the representations, warranties and restrictions that govern the use of the Project by Lessee; provided, that (a) Lessee hereby covenants that any such sublease shall contain and provide for the payment of rent in amounts that are not less (when combined with amounts paid by Lessee) than Lessee's Rent Payments and other payments hereunder, and (b) Lessee shall continue to be obligated to make all payments required 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 Lessee's Rent Payments. 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 (a) incorporate the representations, warranties, covenants and agreements of Lessee contained in this Lease and (b) not release the Lessee from or mitigate its obligations under this Lease. Not less than thirty (30) days prior to Lessee's execution of a sublease or agreement with any other State Agency conferring the right to use the Project, Lessee shall provide written notice to the Authority.

#### 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. The Lessee agrees to cooperate with the Authority in preparing an annual inventory of all Projects financed under the Program and to execute a certificate with respect thereto.

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, any State Agency, 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, as of the date any Lease Supplement is delivered to the Authority by the Lessee:

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

(2) except as otherwise expressly provided by this Lease, 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 pursuant to any Lease Supplement 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.

SECTION 3.13      Disposition of Project.

At the direction of the Legislature and to the extent allowed by law, the Authority may sell, lease or otherwise dispose of all or any part of the Project, provided the Authority applies the proceeds of such sale, lease 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, lease 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) not less than the amount of the Project Costs incurred to acquire and construct the Project, 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 a real property interest in the Project (or any part thereof) is acquired by the Authority pursuant to Section 6.01 of this Lease.

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 and any Lease Supplement, 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 Authority 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.

**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 (or, in the event that the Lessee is an institution of higher education, appropriation by the board of regents of funds 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 Non-appropriation 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, if the Project is moveable, at such location within the United States of America as the Authority may designate, freight prepaid.

#### 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 Restoration 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, subject to enactment by the Legislature (or, in the case of an institution of higher education, the board of regents thereof) of appropriations that are lawfully available to be applied to such Rent Payments. 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.

Before 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 Authority, 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 Non-appropriation.

Not later than the third Business Day after the occurrence of an Event of Non-appropriation, the Lessee shall notify the Authority 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 (or, in the case of an institution of higher education, during the succeeding fiscal year of the institution of higher education).

## ARTICLE V

### THE OBLIGATIONS

SECTION 5.01      Issuance and Sale of Obligations.

The Authority shall use its best efforts to issue and sell Obligations or otherwise obtain financing in an amount sufficient for the payment of Project Costs for Projects from time to time, in accordance with the Resolution. It is acknowledged however, that the Authority cannot

guarantee that adequate financing will always be available with respect to any Project, which shall be determined in the Authority's sole discretion.

SECTION 5.02      Refunding of Obligations.

The Authority, in its sole discretion, may determine when and under what circumstances obligations are to be issued to refund or refinance any outstanding Obligations issued to finance the construction or acquisition of 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 Obligations and enter into any amendments or supplements required to issue any Obligations.

SECTION 5.04      Maintain Tax-Exempt Status of the Obligations.

(a) The Lessee covenants that (i) it will take, or require to be taken; all actions required by the Authority to insure that interest on Obligations issued on a tax-exempt basis to finance the Projects is and remains excludable from gross income for federal income tax purposes; (ii) it will not take or authorize to be taken any actions that would adversely affect such exclusion under the Code; and (iii) it will refrain from certain uses of the Projects to the extent necessary to assure such exclusion of interest under the Code.

(b) Each Project is not, and is not expected to be, used in a manner that would cause Obligations issued on a tax-exempt basis to constitute "private activity bonds" (within the meaning of Code Section 141(a)). In this regard, not more than 5% of the proceeds of any funds advanced with respect to a Lease Supplement will be used, directly or indirectly, to finance a Project, or a portion of a Project, to be used in any trade or business carried on by any person other than the Lessee or a state or local governmental unit.

(c) The Lessee will not sell, lease, or otherwise change the use of any Project financed with the Proceeds of Obligations issued on a tax-exempt basis, or otherwise change the intended use of the proceeds of Obligations issued on a tax-exempt basis for any Project, in any manner that would impair the exclusion from gross income for federal income tax purposes of interest on Obligations issued on a tax-exempt basis to finance any Project.

(d) All covenants and representations of the Lessee contained herein or in any tax compliance certificate or other instrument delivered by the Lessee in connection with the execution and delivery of any Obligations issued on a tax-exempt basis to finance the Projects shall survive the execution, sale, and delivery of such Obligations and the date of execution and delivery of the instruments containing such representations and covenants.

(e) Promptly upon request, the Lessee shall provide the Authority with any information available to the Lessee relating to (i) the expenditure of funds by or on behalf of the Lessee, or (ii) the use of any Project.



(f) The Lessee shall timely take such lawful action as requested by the Executive Director to avoid, remedy, or mitigate the effect of an Event of Taxability.

**SECTION 5.05      Arbitrage Rebate.**

The Lessee shall 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.

**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 Obligations to rely on the information and certifications provided by the Lessee under this section. Obligations will not be issued unless the information and certifications requested under this section have been provided by the Lessee.

**ARTICLE VI**

**DEMISE OF PROJECTS; RENT PAYMENT PROVISIONS**

**SECTION 6.01      Lease of Projects.**

Upon the acquisition of a possessory real property interest in each Project by the Authority (whether by fee simple title, leasehold estate, or otherwise) sufficient to support the Authority's payment of Note Obligations, the Authority hereby leases such real property interest in such Project to the Lessee, and the Lessee hereby leases such real property interest in such Project from the Authority under the terms of this Lease and as set forth in the Lease Supplement with respect to such Project.

**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 in each Lease Supplement, as the same may be amended from time to time, and all other amounts with respect to the Projects and in accordance with this section.



(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 and under the Lease Supplements, prior to all other potential uses of such funds. The Authority and the Lessee acknowledge that, under current law, the Lessee may not be able to apply funds to Lease Payments for building Projects other than funds that are specifically appropriated therefor by the Legislature, or, in the event that the Lessee is an institution of higher education, by the board of regents thereof.

(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. The Lessee and the Authority acknowledge that this Lease is one of several similar leases made by the Authority with various State Agencies in connection with the Program and that the Projects hereunder and under the other leases may be pool-funded and/or, to the extent permitted by law, cross-collateralized. Thus, this Lease and Lease Supplements may also secure obligations of other State Agencies. When necessary, the Authority will allocate costs of issuance of any Obligations among the various State Agencies pro rata in accordance with their respective participation in the Program by adding the same to the principal portion of Rent Payments due under each Lease. The Authority will calculate from time to time the correct amount of the Rent Payments due from the Lessee on each Regular Rent Payment Date and notify the Lessee of the same.

(d) If on the second Business Day immediately preceding any date on which Payment Obligations come due, the Authorized Lessee Representative receives written 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)

(1) With the prior written consent of the Authority, Lessee may prepay Rent Payments or cause Rent Payments to be prepaid for the purpose of effecting a defeasance of Lessee's obligation to make Rent Payments hereunder or any portion thereof.

(2) In the absence of written consent of the Authority, 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 defease or reduce the aggregate amount of the Rent Payments (including both the interest portion and the principal portion thereof). Lessee shall notify the Authority not less than seven (7) days in advance of any such prepayment, which shall be deposited with the Comptroller in accordance with the Resolution.

(3) The Lessee shall pay and indemnify the Authority to the extent permitted by law for any costs associated with such prepayment, including but not limited to any costs associated with the defeasance of outstanding Obligations.

(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 Authority Act and the Interagency Act, 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 in the Lease Supplements to the State Lease Fund Account for the payment of Lease Payments, and Lessee further authorizes the Authority to complete on the Lessee's behalf all purchase voucher documentation necessary to cause purchase vouchers to be issued for the Projects.

(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 in the Lease Supplement with respect to any Project to reflect the terms of any refinancing of debt incurred by the Authority to finance or refinance the acquisition, construction, renovation or repair of such Project, including without limitation, to reflect any amounts drawn under a credit agreement with respect to any Obligations (such change in the schedule of Rent Payments being referred to herein as the "Rent Payment Reset").

(i) The Lessee also acknowledges that, in addition to this Lease, other leases between the Authority and other State Agencies pursuant to the Program may be pledged or assigned as security for Obligations and any credit agreement (as defined in Chapter 1371, Texas Government Code, as amended) relating to the Obligations and may serve as collateral therefor, and that any Event of Default or Event of Non-appropriation under such other leases may also constitute an Event of Default or Event of Non-appropriation, as the case may be, under this Lease.

(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) The Lessee acknowledges and understands that, by delivery of a Lease Supplement, the Lessee represents that the Legislature (or, in the case of an institution of higher education, the board of regents thereof) has appropriated funds sufficient to make all Rent Payments with respect to such Lease Supplement anticipated to come due in the fiscal biennium

of the State of Texas (or, in the case of an institution of higher education, in the fiscal year of the institution) in which such Lease Supplement is delivered, assuming an interest rate for the interest portion of Rent Payments equal to the rate established for the Lessee by the Authority from time to time for budgeting purposes.

**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 Rent Payments in each Lease Supplement 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 permitted 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 Non-appropriation, or upon 30 days prior to the expiration of the commitment of any provider of liquidity or credit enhancement for any Obligations while such Obligations 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 any or all Lease Supplements to be immediately due and payable solely to the extent the Legislature (or, in the case of an institution of higher education, the board of regents thereof) has appropriated funds for such payment; or

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

(3) terminate this Lease or any or all Lease Supplements, enter and take possession of the Projects under this Lease or such Lease Supplements, and, at the Authority's discretion (to the extent permitted by law) sell equipment acquired as part of the Projects, or lease all or any part of such Projects;

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 Non-appropriation, 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 a waiver of 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 Obligations pursuant to a Resolution and, if such Obligations are supported by liquidity or credit enhancement arrangements, also assigned 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 Obligations and, if applicable, any provider of credit or liquidity for any Obligations, to rely on this Lease in regard 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 Supplements.

This Lease shall remain in full force and effect from the date hereof until the later of (i) December 31, 2040, or (ii) the date all Payment Obligations on all outstanding Obligations 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. Each Lease Supplement hereunder will terminate as to the Project identified thereon when all Rent Payments have been paid with respect to such Project.

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 any Lease Supplement is terminated as a result of all Lease Payments having been paid with respect to the Project identified therein, 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 Obligations under the applicable Resolution or any assignee of the rights under this Lease or a Lease Supplement; or

(B) the owners of at least a majority in aggregate principal amount of the outstanding Obligations 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 Obligations required for effective consent to such amendment;

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

#### 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, to the address, telephone, and facsimile set forth on the signature page hereof; and

(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: BondTeam@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 Resolution.

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

SECTION 9.09      Memorandum of Understanding

This Lease shall constitute the memorandum of understanding that defines the division of authority between the Authority and the Lessee, as required to be adopted by the Authority and the Lessee pursuant to Section 1232.102(c), Texas Government Code, as amended (with respect to buildings), or Section 1232.103(c), Texas Government Code, as amended (with respect to equipment).

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their respective duly authorized officers, as of this \_\_\_\_\_.

TEXAS PUBLIC FINANCE AUTHORITY

By: \_\_\_\_\_  
Authority Representative  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
NAME OF AGENCY

By: \_\_\_\_\_  
Authorized Lessee Representative  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Agency Resolution Approving this Lease:

\_\_\_\_\_  
Agency Address for Notices:

\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_



## EXHIBIT A

to the

### Lease Purchase Agreement

*This Exhibit A will be deemed to be amended by adding all information from all Lease Supplements delivered under the Lease Purchase Agreement in the form of Exhibit A-1 hereto, as such Lease Supplements may be amended or modified from time to time pursuant to the terms of the Lease Purchase Agreement.*

## EXHIBIT A -1

to the

### Lease Purchase Agreement

#### (Lease Supplement)

*This is a Lease Supplement, as defined in the Lease Purchase Agreement (the "Lease" between the Lessee (as defined below) and the Authority (as defined below). Under the terms of the Lease, this Lease Supplement is required to be completed in two original counterparts, which are promptly to be delivered to the Authority.*

NAME OF AGENCY: \_\_\_\_\_ Agency #: \_\_\_\_\_ Appropriation Yr.: \_\_\_\_\_

The undersigned does hereby certify, that he/she is an Authorized Lessee Representative of the agency of the State of Texas set forth above (the "Lessee") pursuant to the terms of the Lease between the Lessee and the Texas Public Finance Authority (the "Authority"). The terms of the Lease are hereby incorporated herein by reference. This is a Lease Supplement as defined in the Lease. Capitalized terms not otherwise defined herein are used as defined in the Lease.

#### Authorization, Acceptance, Request for Acquisition

The undersigned, confirms that the Project described below is an "Eligible Project" as defined in the Lease and either (i) has been delivered to and received by the Lessee or (ii) is an interim portion of a larger Project and such interim portion has been approved for interim partial payment. All installation or other work necessary prior to the use thereof has been completed. The Project has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the Lessee and complies with all terms of the Lease. The Lessee hereby requests the Authority to acquire the Project for lease to the Lessee pursuant to the Lease and to cause the purchase price to be paid to the vendor as provided herein. The undersigned hereby represents that the execution, delivery, and performance of this Lease Supplement has been duly authorized by the Lessee. The delivery by the Lessee of this Lease Supplement constitutes a confirmation that the representations and warranties of the Lessee contained in the Lease are true and correct on the date hereof as though made on the date hereof. Notwithstanding the foregoing, neither the Authority nor the Lessee waives or limits, by execution of this Lease Supplement, any claim against the vendor or any other seller, installer, contractor, or other provider of property or services

related to the purchase, construction, shipment, delivery, installation, or maintenance of the Project.

All required approvals for acquisition and/or construction and financing of the Project, if any, including approval of the Texas Bond Review Board, if required, have been obtained on or before the date hereof.

Necessity for Project

The Lessee further confirms that the Project is necessary for the Lessee to effectively carry out its lawful duties and functions and that the Project will be used for governmental purposes for the entire useful economic life of the Project.

Source of Funds

The Lessee further confirms both that the Legislature (or, in the case an of institution of higher education, the board of regents of such institution of higher education) has appropriated funds sufficient and properly available to make all Rent Payments anticipated to come due in the current fiscal biennium of the State of Texas (or, in the case an of institution of higher education, all Rent Payments anticipated to come due in the current fiscal year of the institution of higher education), and that the Lessee will request appropriations for Rent Payments that will be due in future biennia (or, in the case an of institution of higher education, Lessee will make the board of regents aware of the Rent Payments that will be due in future fiscal years).

Instructions to Comptroller

Pursuant to Section 771.008 of the Interagency Cooperation Act, Chapter 771, Texas Government Code, as amended, and Chapter 1232, Texas Government Code, as amended, Lessee authorizes the Authority to access Lessee's appropriated funds in the accounts identified below from time to time by issuing vouchers thereon to the Comptroller to transfer to the State Lease Fund Account (as defined in the Lease) amounts required hereunder.

**Project Information for Equipment:**

Description:	_____
Serial No.:	_____
State Tag No:	_____
Useful Life of Project/ Desired Financing Term:	_____
Location of Equipment:	_____

**Project Information for Building Acquisition/Construction/Renovation/Repair:**

Description:	_____
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Project Site: \_\_\_\_\_

Useful Life of Project: \_\_\_\_\_

**Payments:**

Payee Name or Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Payee ID #: \_\_\_\_\_

Purchase or Contract Price: \_\_\_\_\_

Disburse to: \_\_\_\_\_

Payment Due Date: \_\_\_\_\_

Method of Payment: \_\_\_\_\_

Requisition No.: \_\_\_\_\_

Invoice Date / Invoice Number(s): \_\_\_\_\_

Invoice Received Date: \_\_\_\_\_

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

Service/Delivery Date: \_\_\_\_\_

TBPC Order No., if any: \_\_\_\_\_

(OPTIONAL)  
Legal Description: \_\_\_\_\_

PCC: \_\_\_\_\_

COBJ Code: \_\_\_\_\_

Appropriation Source (check one): \_\_\_\_\_

Capital Budget Rider \_\_\_\_\_

Operating Budget \_\_\_\_\_

**Budget Information:**

Appropriated Fund No: \_\_\_\_\_ Index: \_\_\_\_\_

Agency Fund No.: \_\_\_\_\_ AOBJ: \_\_\_\_\_

Appropriation No: \_\_\_\_\_ Subfund: \_\_\_\_\_

Program Cost Account (PCA) No: \_\_\_\_\_

Appropriation Year (AY): \_\_\_\_\_

Lessee hereby confirms that it has verified in accordance with all applicable statutes, that the Vendor listed above, if any, does not owe any outstanding and unpaid obligations to the State of Texas.

**Attached hereto are:**

1. A vendor's or contractor's invoice for the Project approved by the Lessee.
2. Schedule 1, showing the approximate semiannual payments to be made by the lessee for the Project.
3. All other Acquisition Papers (as defined in the Lease): Specify:

You are hereby requested to make a disbursement as indicated above.

Authorized Lessee Representative

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

Title: \_\_\_\_\_

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

Countersigned and  
Approved for payment:\*

Authority Representative of the Texas Public  
Finance Authority

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

Title: \_\_\_\_\_

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

\*By execution of this Lease Supplement, the Authority does not incur any obligation with Respect to Rent Payments other than as provided in the Lease.

## SCHEDULE 1

TO

### LEASE SUPPLEMENT

#### SCHEDULE OF RENT PAYMENTS

Date <sup>(1)</sup>	Principal Portion <sup>(2)(3)</sup>	Interest Portion <sup>(2)(3)(4)</sup>

<sup>1</sup> Payment period may not exceed the shorter of the Useful Life of the Project or 20 years from the date of delivery of the Lease Supplement. All payments will be due on such dates as shall be specified by the Authority. By delivery of this Lease Supplement, the Lessee represents that the term of the payments does not exceed the Useful Life of the Project. For construction projects, the Lessee may request to pay interest only throughout the anticipated completion date of the construction period and begin principal payments only thereafter.

<sup>2</sup> Principal and interest will be completed by the Authority prior to execution by the parties hereto and will be subject to Rent Payment Reset (as defined in the Lease) from time to time upon notice from the Authority that the indebtedness incurred to finance the Project has been refinanced and setting forth the revised principal and interest schedules.

<sup>3</sup> The initial principal portions will be increased upon Rent Payment Reset to include an amount to pay the anticipated issuance costs of the Authority to be incurred in connection with the financing and/or refinancing of the Project. The interest amounts will be revised upon Rent Payment Reset to reflect the interest cost, fees, expenses, and other such costs of any refinancing, including any advances under a credit agreement (as defined in Chapter 1371, Texas Government Code, as amended). Furthermore, interest portions will be subject to increase upon the occurrence of an Event of Default under the Lease or any financing documents entered into by the Authority to finance or refinance the purchase of the Project.

<sup>4</sup> The "net effective interest rate" calculated in accordance with Chapter 1204, Texas Government Code may not exceed the rate allowable under said Chapter.

[FORM OF ASSIGNMENT]

No. \_\_\_\_\_

TEXAS PUBLIC FINANCE AUTHORITY

The undersigned does hereby certify, that he/she is an authorized representative of the Texas Public Finance Authority (the "Authority") and as such is authorized to execute and deliver this Assignment.

The Authority does hereby assign, grant, transfer, and convey to \_\_\_\_\_ (the "Assignee") all of the Authority's right, title, and interest in, to and under the Lease Supplement annexed hereto by and between the Authority and \_\_\_\_\_, an agency of the State of Texas.

The undersigned hereby confirms that the execution, delivery, and performance of this Assignment has been duly authorized by the Authority. The delivery by the Authority of this Assignment constitutes a confirmation that the representations and warranties of the Authority contained in the Lease referred to in the Lease Supplement annexed hereto are true and correct on the date hereof as though made on the date hereof.

The undersigned does hereby instruct the Comptroller of the State of Texas to issue warrants for payments of Rent Payments in the amounts set forth in the attached payment schedule for deposit in the Texas State Lease Fund Account for application to amounts coming due under the Lease.

This Assignment shall be governed by and construed in accordance with the laws of the State of Texas and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Texas Public Finance Authority

By: \_\_\_\_\_  
Authority Representative

\_\_\_\_\_  
Assignee (Signature)

\_\_\_\_\_  
Assignee (Print)