

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding, dated as of \_\_\_\_\_ between the TEXAS PUBLIC FINANCE AUTHORITY (the "Authority") and \_\_\_\_\_ (the "Agency"), is entered into in accordance with the requirements of Texas Government Code, §1232.102.

### WITNESSETH:

**WHEREAS**, the Authority is authorized by law to finance projects for various state agencies through the issuance of bonds:

**WHEREAS**, the Agency is authorized by law (among other things) to construct, repair, renovate, equip and maintain facilities for \_\_\_\_\_ (the "Project" or "Projects") ;

**WHEREAS**, the Authority is empowered to issue \_\_\_\_\_ ("Bonds") to finance the costs of authorized projects for the use and benefit of the Agency pursuant to the Texas Public Finance Authority Act (Texas Government Code, chapter 1232) and \_\_\_\_\_, (collectively, the "Authorizing Law");

**WHEREAS**, the Authorizing Law provides that proceeds of bonds in the amount of \$ \_\_\_\_\_ may be used to finance the Agency's Project(s).

**WHEREAS**, the financing of the authorized projects requires cooperation between the Authority and the Agency;

**NOW, THEREFORE**, THE PARTIES HERETO EXECUTE THIS MEMORANDUM OF UNDERSTANDING:

#### **SECTION 1.           Planning of Projects.**

The Agency is responsible for the planning the Projects. The Authority will cooperate with and assist the Agency in such planning, if requested to do so by the Agency, but only with respect to the timing of the issuance, and the sizing of the amount, of the Bonds.

#### **SECTION 2.           Request for Bond Issuance.**

(a) As a condition to the issuance of bonds to finance the Project(s), the Agency will submit to the Authority a request to issue Bonds to finance such Project(s), signed by the executive director of the Agency (or his/her duly authorized deputy or delegate), at least 12 weeks (or such

shorter period as acceptable to the Authority) prior to the projected date of issuance of the Bonds. The request must state essentially the following: (1) a description of such Project(s), (2) the estimated costs of each of such Project(s), (3) the date(s) when funding is requested to be provided, (4) the estimated completion date of each of the Project(s), (5) a reference to the statutory authority

under which the Agency operates, (6) a schedule of actions required to be accomplished by the Agency prior to the first disbursement of proceeds of the Bonds for payment of costs of the Projects, and (7) a copy of the information required by the Authority for application to the Bond Review Board or otherwise required under the Authority's rules.

(b) Any request to issue Bonds submitted by the Agency to the Authority prior to the date hereof is deemed to comply with Subsection (a) of this section.

(c) A request to issue bonds shall include a copy of an executed resolution of the Agency's governing body authorizing the submission of the request to the Authority.

(d) It is contemplated that the Authority and the Agency will enter into a financing agreement that provides the terms and conditions under which the Authority will issue Bonds to provide financing for the Projects.

### **SECTION 3. Issuance of Bonds.**

(a) If the Authority determines that the financing of the Project will comply with law and the rules and policies of the Authority, the Authority will use its best efforts to issue and sell Bonds in such amounts and at such times as necessary to provide funds to pay for the costs of the Projects. The form, timing of issuance, principal amount, and other terms of the Bonds will be as determined by the Authority in its sole discretion, provided that the exercise of such discretion shall not negate the duty of the Authority to use its best efforts to issue and sell the Bonds.

(b) The parties recognize that the Authority may not issue general obligation bonds in an amount that exceeds the amount prescribed by the Authorizing Law.

(c) As a condition to issuing Bonds, the Authority may require the Agency to furnish opinions of counsel regarding such legal matters within the purview of the Agency's counsel as are necessary to effect the lawful issuance of the Bonds.

### **SECTION 4. Completion of Projects.**

As between the Authority and the Agency, the Agency will have sole responsibility to undertake and prosecute to completion any Projects financed with Bonds. The Agency will use all reasonable efforts to complete the Project in a timely manner and in conformity with applicable law (if any) and its covenants set forth in a Financing Agreement..

### **SECTION 5. Disposition of Excess Funds.**

Any proceeds of Bonds not required to pay the costs of the Project shall be disposed of as determined by the Authority in accordance with law.

### **SECTION 6. Management of Projects.**

As between the Authority and the Agency, the responsibility for operating, managing, and maintaining the Project will be the sole responsibility of the Agency; provided that the use or management of the Project may need to be approved by the Authority in order to ensure compliance with requirements to maintain the tax-exempt status of bonds as set out in the Financing Agreement.

**SECTION 7. Further Understandings.**

(a) This Memorandum of Understanding shall supersede any earlier memorandum of understanding between the parties.

(b) The parties recognize that it may become necessary from time to time to elaborate or otherwise revise the understandings herein stated and, accordingly, agree that the terms of this Memorandum of Understanding may be modified by written instrument executed by both parties.

**APPROVED**, as of the date first above written, by duly authorized representatives of the respective parties.

TEXAS PUBLIC FINANCE AUTHORITY

BY: \_\_\_\_\_  
Kimberly K. Edwards  
Executive Director

(NAME OF AGENCY)

BY: \_\_\_\_\_  
\_\_\_\_\_  
Executive Director