

**SECOND AMENDMENT TO THE LEASE AGREEMENT BETWEEN
TEXAS PUBLIC FINANCE AUTHORITY AND TEXAS FACILITIES COMMISSION**

WHEREAS, the Texas Public Finance Authority (the "Authority") and the Texas Facilities Commission (the "Commission") (the Authority together with the Commission, the "Parties") have entered into that certain lease agreement executed by the Parties on June 21, 2016 (the "Lease"); and

WHEREAS, the Lease was entered into to support the debt service on certain commercial paper notes (as defined in the Lease, the "Notes"), and bonds issued to refund and refinance such Notes, issued by the Authority to finance or refinance the Projects (as defined in the Lease); and

WHEREAS, the Parties entered into the First Amendment to the Lease Agreement (the "First Amendment," and with the Lease, the "Current Lease") to cause and implement certain technical amendments pertaining to the Project; and

WHEREAS, on August 28, 2019, the Commission submitted a request for financing (the "Request") to the Authority to increase the aggregate principal amount of the Program and to expand the Project; and

WHEREAS, the Parties have determined it is in the best interest of the Parties to amend the Current Lease to make certain technical, conforming changes and increase the aggregate principal amount of the Program consistent with the Request and the amendments to the Program to be caused by the amended and restated resolution adopted by the Authority on January 9, 2020; and

WHEREAS, pursuant to Section 9.01 of the Lease, the Parties seek to make certain technical amendments to the Lease in the form of this Second Amendment to the Lease Agreement (the "Second Amendment");

NOW, THEREFORE, the Parties hereby agree as follows:

1. The foregoing Recitals are true and correct in all material respects and are incorporated by reference herein and made a part of this Second Amendment for all purposes. Unless otherwise defined in this Second Amendment, any capitalized terms used in this Second Amendment shall have the meanings given to them in the Lease.

2. The third recital of the Lease shall be amended and replaced in its entirety by the following:

"WHEREAS, the Projects have been authorized pursuant to H.B. 1, 84th Legislature, Regular Session, Article I, Sec. 1, pg I-47, Rider 19 (2015) and H.B. 1, 86th Legislature, Regular Session, Article I, Sec. 1 pg I-43, Rider 3 (items a(1) and a(2)), (2019) and Article I, Sec. 1 pg. I-47, Rider 16 (2019) (hereinafter "Specific Legislative Authorization").

3. Section 1.01 of the Lease is hereby amended by deleting the definition of "Project" in its entirety and inserting the following:

Project(s) - Any building, parking garage or related edifice that has been specifically authorized by the Specific Legislative Authorization 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, substituted or amended pursuant to this Second Amendment.

4. Section 5.04 of the Lease is hereby amended by replacing it its entirety with:

SECTION 5.04 Federal Tax Covenants Relating to the Tax-Exempt Obligations.

(a) General. The Lessee covenants not to take any action or omit to take any action that, if taken or omitted would cause the interest on any issue of Tax-Exempt Obligations to be includable in gross income, for federal income tax purposes. In furtherance thereof, the Lessee covenants to comply with sections 103 and 141 through 150 of the Code. The Lessee has examined the Federal Tax Certificate executed by the Authority in 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 and complete and not misleading.

(b) No Private Activity Bonds. The Lessee covenants that it will use the proceeds of an issue of Tax-Exempt Obligations (including investment income) and the property financed, directly or indirectly, with such proceeds so that such issue of Tax-Exempt Obligations will not be "private activity bonds" within the meaning of section 141 of the Code. Furthermore, 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 Tax-Exempt Obligations to be a "private activity bond" unless it takes a remedial action permitted by section 1.141-12 of the Regulations.

(c) No Federal Guarantee. The Lessee covenants not to take any action or omit to take any action that, if taken or omitted, would cause any issue of 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 not to take any action or omit to take action that, if taken or omitted, would cause any issue of Tax-Exempt Obligations to be "hedge bonds" within the meaning of section 149(g) of the Code.

(e) No Arbitrage Bonds. The Lessee covenants that it will make such use of the proceeds of each issue of Tax-Exempt Obligations (including investment income) and regulate the investment of such proceeds of such issue so that such issue will not be "arbitrage bonds" within the meaning of section 148(a) of the Code.

(f) Required Rebate. The Lessee covenants that, if the Lessee does not qualify for an exception to the requirements of section 148(f) of the Code, the Lessee will comply with the requirement that certain amounts earned by the Lessee on the investment of the gross proceeds of an issue of Tax-Exempt Obligations be rebated to the United States.

(g) Record Retention. The Lessee covenants to retain all material records relating to the expenditure of the proceeds (including investment income) of each issue of Tax-Exempt Obligations and the use of the property financed, directly or indirectly, thereby until three years after the last Tax-Exempt Obligation of such issue is redeemed or paid at maturity (or such other period as provided by subsequent guidance issued by the Department of the Treasury) in a manner that ensures their complete access throughout such retention period.

(h) Registration. If an issue of Tax-Exempt Obligations is comprised of "registration-required bonds" under section 149(a)(2) of the Code, the Tax-Exempt Obligations of such issue will be issued in registered form.

(i) Favorable Opinion of Bond Counsel. Notwithstanding the foregoing, the Lessee will not be required to comply with any of the federal tax covenants set forth above if the Lessee has received an opinion of nationally recognized bond counsel that such noncompliance will not adversely affect the excludability of interest on the applicable issue of Tax-Exempt Obligations from gross income for federal income tax purposes.

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

(l) Continuing Compliance. Notwithstanding any other provision of this Resolution, the Lessee's obligations under the federal tax covenants set forth above will survive the defeasance and discharge of an issue Tax-Exempt Obligations for as long as such matters are relevant to the excludability of interest on such issue of Tax-Exempt Obligations from gross income for federal income tax purposes.

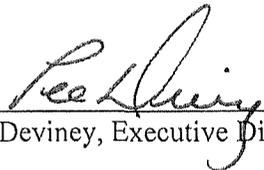
5. **Exhibit A** to the Lease is hereby amended by substituting the document designated as **Exhibit A** attached hereto to this Second Amendment.

6. The Lease, as amended, shall be construed and interpreted as one Agreement and conflicts and inconsistencies shall be resolved in favor of any amendment (i.e. First Amendment to the Lease and Second Amendment to the Lease).

7. The Authority and the Commission are bound by the terms of the Lease, as amended by this Amendment and their respective obligations thereunder are still in effect.

EXECUTED as of the June 1, 2020.

TEXAS PUBLIC FINANCE AUTHORITY

By: 
Lee Deviney, Executive Director

TEXAS FACILITIES COMMISSION

By: _____
Name: _____
Title: Executive Director

EXECUTED as of the June 1, 2020.

TEXAS PUBLIC FINANCE AUTHORITY

By: _____
Lee Deviney, Executive Director

TEXAS FACILITIES COMMISSION

By:  _____
Mike Novak, Executive Director

[Signature Page to the
Second Amendment to Lease Agreement]

Exhibit A
to
Second Amendment to Lease Agreement between
Texas Public Finance Authority and Texas Facilities Commission

PROJECT DESCRIPTION

<u>PHASE ONE PROJECT COMPONENTS</u>	ESTIMATED COST	ESTIMATED USEFUL LIFE (Years)
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
Sub Total:	\$767,670,000	
<u>PHASE TWO PROJECT COMPONENTS</u>	ESTIMATED COST	ESTIMATED USEFUL LIFE (Years)
Capitol Complex Office Buildings and Parking Garages	\$313,892,127	100
North Austin Campus New Building and Parking Garages	<u>161,293,454</u>	100
Sub Total:	\$475,185,581	
Total for Phase One and Phase Two	<u>\$1,242,855,581</u>	