

LEASE AGREEMENT

between

TEXAS PUBLIC FINANCE AUTHORITY

and

TEXAS DEPARTMENT OF TRANSPORTATION

**Pertaining to the Legislatively Authorized Financing of the
Austin Campus Consolidation Project
of the
Texas Department of Transportation**

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LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”), is between the TEXAS PUBLIC FINANCE AUTHORITY, an agency of the State of Texas (as further defined herein, the “Authority”) and the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas, as lessee (together with any successor, the “Lessee”);

W I T N E S S E T H:

WHEREAS, pursuant to Chapters 1232 and 1371, Texas Government Code, as amended (the “*Authorizing Law*”), including in particular Section 1232.111, Texas Government Code, the Authority was duly established with the power and authority (i) to purchase, lease, rent, or otherwise acquire, construct and equip buildings or other facilities for agencies of the State of Texas, including the Lessee, (ii) to enter into this Lease (as defined herein) and other agreements to properly assure the recovery of the cost of financing the acquisition, construction and equipment of such buildings, and (iii) to issue and sell obligations to finance or refinance the acquisition, construction and equipment of such buildings or other facilities, including specifically one or more projects described by Section 201.1055(a), Texas Transportation Code, as amended; and

WHEREAS, pursuant to a resolution duly adopted by the Authority on January 26, 2021, 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 the acquisition, design, construction, or renovation, including site development, of the project described herein (such project to be leased to Lessee as further described in **Exhibit A** hereto, and herein collectively referred to as the “*Project*” as further defined herein); and

WHEREAS, the Project has been authorized pursuant to H.B. 1, 86th Legislature, Regular Session, Article VII, Rider 42, p. VII-29 (2019) (the “*Appropriation Act*”); and

WHEREAS, pursuant to Minute Order No. 115515, duly adopted on June 27, 2019 by the Texas Transportation Commission, the governing body of the Lessee, under the authority of Chapter 201, Texas Transportation Code, as amended, the Lessee has determined that it is in the best interest of the State and the Lessee for the Lessee to enter into and execute this Lease and certain related documents for the purpose of financing or refinancing the Project (as defined herein); and

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

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

WHEREAS, the parties hereto understand and agree that the Authority intends to pledge and assign certain of the Authority’s rights under this Lease as security for Parity Debt incurred by the Authority to finance or refinance the Project.

NOW, THEREFORE, in consideration of the premises and the mutual benefit to the parties hereto, which include (i) the Authority's agreement to issue bonds to provide financing for Project Costs and lease the Project to the Lessee and (ii) the Lessee's agreement to grant the Authority rights of use of and access to the Project Site (as provided herein) and pay Lease Payments and discharge its other obligations and comply with the covenants contained herein, 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.

Administration Costs - means all costs, expenses, insurance premiums, if any, and other payments incurred by the Authority in connection with this Lease, including but not limited to Bond Administration Costs (as such term is defined in the Resolution) as determined by the Executive Director.

Agency Act - Chapter 201, Texas Transportation Code, as amended.

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.

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

Board - the Board of Directors of the Authority.

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

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

Disclosure Document - the Preliminary Official Statement or the Official Statement, each as defined in the Resolution, and any other disclosure documents authorized by the Authority in connection with the offer and sale of any Parity Debt.

Easement Agreement - the Easement Agreement attached hereto as **Exhibit H** to be entered into between the Authority and the Lessee in accordance with this Lease.

Effective Date - the date of execution of this Lease.

Encumbrance - any claim, defect, easement, restriction, lien, covenant, condition, reservation, right, option or other encumbrance.

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

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

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

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

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

Event of Taxability - 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 Bonds, if any) that has the effect of causing interest paid or payable on Tax-Exempt Bonds, if any, to be includable, in whole or in part, in gross income for federal income tax purposes.

Executive Director - the executive director of the Authority, or any member of the staff of the Authority authorized by the Board to perform the duties of the executive director.

Favorable Opinion of Bond Counsel - with respect to any action the taking of which requires such an opinion, an unqualified opinion of Bond Counsel, delivered to and in form and substance satisfactory to the Authority to the effect that such action will not adversely affect the exclusion of interest on the Tax-Exempt Bonds from gross income for purposes of federal income taxation (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel

delivered upon original issuance of the Tax-Exempt Bonds or other customary exceptions acceptable to the recipient thereof).

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

Lease - this Lease and any amendment hereto.

Lease Obligations - all obligations of Lessee under this Lease as provided in Section 8.01 hereof.

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.

Legislature - the Legislature of the State.

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

Permitted Encumbrances - (i) liens for ad valorem taxes, special assessments, and other charges not then delinquent or for taxes, assessments, and other charges being contested in accordance with this Lease, (ii) (A) utility, access, and other easements, license and rights of way, restrictions and other exceptions to title now existing as set forth in Schedule B of the Title Policy, (B) that certain electric utility license granted by the State to the City of Austin and recorded in the official public records of Travis County, Texas as document number 2020118128, and, (C) to the extent required in connection with the development and construction of the Project, easements and licenses hereafter granted by the Lessee to the extent such easements and licenses are permitted under the terms of this Lease and consistent with the intended use of the Project Site for the Project, (iii) inchoate mechanics' and materialmen's liens that arise by operation of law, but that have not been perfected by the required filing of record, for work done or materials delivered after the date of recording of the memorandum of this Lease in connection with additions to or alterations of the Project, and (iv) any additional exceptions or Encumbrances created or consented to in writing by the Authority, such consent not to be unreasonably withheld, delayed or conditioned.

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 - An office building, a parking garage, a laboratory, a warehouse or other facility that has been specifically authorized through the Appropriation Act for the Authority to finance or refinance, together with the equipment related to such office building, parking garage, laboratory, warehouse or other facility, or any other fixed asset used by the Lessee to conduct official State business, as further described in **Exhibit A** to this Lease and as may be altered, substituted, or expanded pursuant to the terms of this Lease, but specifically excluding the Project Site.

Project Completion Amount - the aggregate amount of the Project Costs that the Lessee expects to be necessary to complete the design, construction or acquisition of the Project.

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

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

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

Project Component - each respective item (or part of an item) that has been approved to be financed or refinanced with proceeds of the Parity Debt, as described in **Exhibit A** to this Lease as a component of the Project.

Project Costs - any costs associated with a Project that are authorized under the Authorizing Law, to be financed or refinanced with the proceeds of Parity Debt.

Project Financing Documents - collectively, all documents furnished by the Lessee to the Authority in connection with the financing of the Project and issuance of Parity Debt to finance or refinance the Project, including, without limitation, this Lease and any Project Papers.

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

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

Project Site - the land on which the Project is situated, as described in **Exhibit A** to the Easement Agreement.

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

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

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

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

Rent Payments - the rent payments required to be made by the Lessee pursuant to this Lease in consideration of its use, occupation and enjoyment of the Project, such payments consisting of interest portions and principal portions of Parity Debt (as defined in the Resolution) in the amounts set forth herein, 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 or similar instrument adopted by the Authority from time to time to provide for the issuance of Bonds or the incurrence of any other Parity Debt, including the resolution adopted by the Authority on January 26, 2021, as the same may be amended from time to time.

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.

Title Defect - an Encumbrance asserted or discovered to exist against title to the Project Site or any part thereof that is not a Permitted Encumbrance and that, in the sole judgement of the Authority, may reasonably be expected to cause or result in a material adverse effect on the operation, maintenance, value or use of the Project Site for the Project.

Title Policy - that certain Owner's Policy of Title Insurance No. CTA17001403-O1 issued to Lessee covering the Project Site by Chicago Title Insurance Company dated August 21, 2017.

Transaction Documents - collectively, any Resolution, the Bonds or any other Parity Debt, this Lease and any other documents delivered in connection the incurrence of Parity Debt.

Useful Life - the actual useful economic life of the 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 Authorizing Law;
- (b) the Authority has full power and authority to execute and deliver this Lease, perform its obligations hereunder, and carry out the transactions contemplated hereby;
- (c) the Authority has duly authorized the execution and delivery of this Lease and the performance of its obligations hereunder;
- (d) the execution and delivery of this Lease, the consummation of the transactions contemplated hereby, the performance of its obligations hereunder, and the compliance with the terms hereof by the Authority will not conflict with, or constitute a default under, any law (including administrative rule), judgment, decree, order, permit, license, agreement, mortgage, lease, or other instrument to which the Authority is subject or by which it is bound;
- (e) the Authority has full power and authority to issue Bonds or incur other Parity Debt, to cause funds to be made available to finance or refinance the Project 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, Warranties and Covenants 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;

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

(g) the Title Policy insures that the State of Texas owns fee simple title to the Project Site subject only to the matters set forth in Schedule B therein. If any Title Defect is discovered, the Lessee shall, upon written demand from the Authority, cure or remove any such Title Defect, including by making a claim under the Title Policy with respect to any Title Defect, to the extent it is insured against thereunder, or if necessary through the exercise of eminent domain or any other rights of the Lessee provided by law, all at the cost and expense of the Lessee. If the Lessee is unable to effect the cure or removal of any Title Defect within sixty (60) days after its receipt of written demand from the Authority, then the Authority shall have the right, unless the Lessee has initiated and thereafter continues diligently prosecuting to completion the cure or removal of such Title Defect, to cure or remove such Title Defect, including if necessary through the exercise of eminent domain or any other rights of the Authority provided by law. The Lessee shall pay to the Authority, in advance within thirty (30) days after receipt of written demand from the Authority, the amount the Authority is required to pay to any third party claiming or holding any right or interest creating or evidencing any Title Defect to effect the cure or removal of such Title Defect through the exercise of eminent domain or any other rights of the Authority provided by law. All other costs and expenses related to the Authority's cure or removal of a Title Defect as provided herein shall be reimbursed to the Authority by the Lessee within thirty (30) days after Lessee's receipt of an invoice and supporting documentation from the Authority.

ARTICLE III

THE PROJECT

SECTION 3.01 Authorization for Project.

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

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

SECTION 3.02 Design, Construction and Acquisition of Project.

(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 design, construction, acquisition and equipment of the Project to be completed with due diligence substantially in accordance with the Plans and Specifications 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 completion of the Project 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 the Project is delayed or the Project is not completed, there shall be no diminution in or postponement of Lease Payments.

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

The Authority shall have no liability, obligation, or responsibility whatever with respect to the design, acquisition or construction of the Project. The Authority shall not be obligated to inspect the Project 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 the Project before the respective completion dates, or for the payment of costs of labor, materials, or services supplied for the construction of the Project, or for the performance of any obligation of the Lessee whatsoever. The Lessee agrees that it will cause the contractor for the Project to maintain builder's risk insurance until substantial completion on a Completed Value Form, or a Special Form installation floater for instances in which the project involves solely the installation of material and/or equipment, naming the Lessee and the Authority as additional insureds, during construction in amounts equal to 100 percent of the contract sum in the applicable contract for construction. Upon achieving substantial completion of the Project, Lessee shall provide written notice to the Authority at the address set forth in Section 9.02 hereof.

(b) In respect to the Project, the Lessee shall prepare and assemble, or cause to be prepared and assembled, the Project 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 design, acquisition and/or construction of the Project. Contracts in connection with the design, acquisition and/or construction and installation of the Project shall be let in accordance with all laws applicable to Lessee.

(c) Title to the Project 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 Project, or any refinancing thereof, until the payment of all amounts due and owing with respect to such Project, provided that in no event shall the Authority grant any mortgage or security interest in the Project. The Lessee shall at all times keep the Project free and clear of all other Encumbrances other than Permitted Encumbrances. The Lessee hereby grants to the Authority the right to locate and maintain the Project on the Project Site in accordance with the terms of this Lease. Upon the satisfaction of all Lease Obligations in accordance with Section 8.01 hereof, the Authority agrees to execute and deliver to the Lessee, at Lessee's expense, a release and termination of the Easement Agreement and the memorandum of this Lease recorded pursuant to Section 9.10 hereof, and an improvements deed in recordable form conveying all right, title and interest to the Project to the Lessee in accordance with Section 8.03 hereof.

(d) Title to the Project Site is and shall remain vested in the Lessee except with the Authority's prior written consent as provided in Section 3.14 of this Lease. The Project Site does not constitute a portion of the Project. Pursuant to Section 1232.066(c), Texas Government Code, as amended, the Project shall not become part of the Project Site or other property of the Lessee to which the Project may be attached or into which the Project may be incorporated, without regard to whether the other property of the Lessee is real or personal.

(e) Prior to the execution of the Pricing Certificate, and as a condition to the Authority's execution of this Lease, the Lessee shall grant to the Authority easements over the Project Site pursuant to the Easement Agreement attached hereto as **Exhibit H**.

SECTION 3.03 Project Completion Schedule.

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

(b) Promptly upon becoming aware of any circumstances that would result in a deviation from the Project Completion Schedule that will result in a delay in the Project Completion Date of more than three (3) months, the Lessee shall notify the Authority of such delay, together with the revised Project Completion Date and the cause(s) and anticipated impact on the cost of the delay.

(c) To the extent required by law or necessary to complete the Project, promptly upon becoming aware of any circumstance that will result in the expenditure for Project Costs in any "Expenditure Month" (as set forth in the Project Completion Schedule) of an aggregate amount that is less than the "Estimated Project Expenditures Per Month" (as set forth in the Project Completion Schedule) for such Expenditure Month, the Lessee shall notify the Authority of (1) such aggregate expenditure amount, and (2) the reason(s) that such expenditure amount will be less than the Estimated Project Expenditures Per Month for such Expenditure Month.

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

SECTION 3.04 Use of Project.

(a) The Lessee may use the Project for any lawful purpose consistent with the normal intended use of such Project, and for any portion of the Project financed or refinanced with the proceeds of outstanding Tax-Exempt Bonds, 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 completion of the Project.

(b) Subject to Section 3.06 hereof, the Lessee shall not sublease any portion of the Project financed or refinanced with the proceeds of outstanding Tax-Exempt Bonds to, or permit any portion of the Project financed or refinanced with the proceeds of outstanding Tax-Exempt Bonds to be operated, managed, or otherwise used by, any entity other than the Lessee, another State Agency, or a unit of local government of the State unless, before any such action is taken, the Executive Director determines that such action will not constitute an Event of Taxability, provided that no such sublease or other use arrangement for a Project shall release the Lessee from its liability hereunder.

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

(d) The Project 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 Project.

The Lessee may alter the Project or substitute elements of all or any part of the 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 design, 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 design, 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) if any Tax-Exempt Bonds are then outstanding, 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) (A) an Authorized Lessee Representative notifies the Authority of such alteration or substitution pursuant to a Project Substitution Certificate submitted to the Authority, (B) evidence of any approvals required by the Appropriation Act and any other applicable law is provided by Lessee to the Authority, and (C) this Lease is amended to reflect the Project as altered or substituted.

SECTION 3.06 Subleases by Lessee.

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

SECTION 3.07 Licenses and Permits.

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

SECTION 3.08 Inspection of Project.

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

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 Project and the use or occupancy thereof. The Lessee shall provide for the service, repair, and maintenance of the Project at its own expense so as to keep the Project 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 portion of a 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 interest in the Project. The Authority, as a condition precedent to this Lease, shall transfer all manufacturers', contractors', vendors', and other representations and warranties relating to the Project 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 THE PROJECT OR ANY PART THEREOF. The Authority shall not be liable to Lessee, or anyone else, for any liability, injury, claim, loss, damage; or expense of any kind or nature caused directly or indirectly by the inadequacy of the 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 the 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 all or any portion of the Project, 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 Project.

The Lessee represents to the Authority that:

- (1) the provision of the Project is necessary in order for the Lessee to effectively carry out its lawful duties and functions; and
- (2) the Lessee expects that it will use the Project for essential governmental purposes for the entire useful economic life of the Project.

SECTION 3.12 Insufficient Funds.

(a) If amounts in the Project Fund are insufficient for the payment of all Project Costs of the Project, the Authority shall not be responsible for the payment of any Project Costs that cannot be paid from such funds. The Authority makes no representation that the amounts in the Project Fund will be sufficient to pay all Project Costs.

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

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

SECTION 3.13 Disposition of Project.

If the Authority is required by the Legislature to sell or otherwise dispose of all or any portion of the Project, the Authority shall apply the proceeds of such sale or other disposition in accordance with such directive and, if Tax-Exempt Bonds that financed or refinanced the Project remain outstanding, in accordance with Section 141 of the Code, if applicable. Any such legislative directive must appropriate the proceeds derived from such sale or other disposition for deposit into the Interest and Sinking Fund to be applied in accordance with the Resolution for the payment of Parity Debt, 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 and No Conveyances.

Neither the Lessee nor the Authority shall create or suffer to exist any lien or other Encumbrance against all or any portion of the Project except as provided by this Lease or the Resolution. Except as otherwise permitted hereunder, the Lessee shall not sell, convey or otherwise transfer any interest in the Project Site (whether voluntarily or by operation of law), or agree to do so, without the Authority's prior written consent, including (a) any sale, conveyance, Encumbrance, assignment, or other transfer of (including installment land sale contracts), or the grant of a security interest in, all or any part of the legal or equitable title to the Project Site; or (b) any lease of all or any portion of the Project Site. Any sale, conveyance, Encumbrance, assignment or other transfer in violation of this Section shall be void and of no force or effect to the extent it would adversely affect the interest of the Authority in the Project or its rights with respect to the Project Site under this Lease or the easements granted to the Authority pursuant to the Easement Agreement.

SECTION 3.15 Assumption of Risks.

(a) Lessee shall assume and bear the risks of loss, damage, destruction, or theft of the 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 the 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.

(c) Upon receiving notice from the Lessee that the project has reached substantial completion in accordance with Section 3.02(a) hereof, the Authority shall obtain and maintain insurance with respect to the Project for fire and extended coverage, without a coinsurance penalty, in an amount (to the extent of insurability) not less than an amount equal to 100% of the replacement value of the Project. Such insurance coverage shall be obtained and maintained to the extent that Lease Payments and/or other funds are lawfully available for such purpose and to the extent such insurance is available on commercially reasonable terms.

(d) Compliance with subsection (c) of this Section is not required to the extent that:

(1) the Authority determines that the prescribed insurance coverage is unavailable or is available only at unreasonable rates; or

(2) the Authority establishes, or causes to be established, a self-insurance program.

(e) The Authority shall furnish the Lessee with a copy of each policy of insurance maintained pursuant to subsection (c) of this Section. The Lessee, to the extent permitted by law, shall cooperate with the Authority in obtaining and maintaining the insurance required by this Section.

(f) If a claim arises under any insurance maintained pursuant to subsection (c) of this Section, the Authority shall diligently pursue collection under the insurance policy.

(g) The Lessee shall make, or cause to be made, available to the Authority lawfully available funds sufficient for the timely payment of premiums on insurance maintained pursuant to, and all other costs incident to the administration of, subsection (c) of this Section. The Authority shall obtain such funds in accordance with standard accounting procedures for interagency fund transfers.

SECTION 3.16 Disbursements from Project Fund.

(a) Lessee may cause disbursements to be made from the applicable subaccount of the Project Fund in accordance with this Lease, the Authorizing Law and the Resolution by submitting a Disbursement Certificate in the form attached hereto as **Exhibit C** 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 Lessee Representative of notice of such suspension, and may continue until such breach is cured or is waived by the Executive Director. If such breach is not cured or waived within 90 days after the date such suspension commenced, the Authority may apply any remaining amounts in the Project Fund allocated to the payment of Project Costs in the manner permitted by the Resolution and law.

SECTION 3.17 Status Reports.

Not later than the 15th day of each month, the Lessee shall prepare and deliver to the Executive Director a status report, containing the information set forth in **Exhibit D** to this Lease, covering the preceding calendar month. At other times the Lessee shall provide the Executive Director, upon request, with any information available to the Lessee regarding the expenditure of amounts disbursed to the Lessee from the Project Fund or use of the Project.

ARTICLE IV

PARTICULAR AGREEMENTS

SECTION 4.01 Lessee's Obligation Unconditional Subject to Appropriation.

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

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

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

(d) If any Event of 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.

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 Project. 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 the 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 the Project shall become subject to the provisions of this Lease 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 Parity Debt. 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 out of any legally available funds. 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 Parity Debt Obligations applicable to such Project. Upon such prepayment, the Authority shall deposit such Rent Payments in the Interest and Sinking Fund pursuant to the Resolution.

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

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

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

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

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

SECTION 4.06 Notice of 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

SECTION 4.07 Notice of Breach to Authority.

Not later than the third Business Day after the occurrence of any breach by the Lessee of any of its representations, warranties, or agreements under this Lease, the Lessee shall provide written notice to the Authority in accordance with Section 9.02 hereof.

ARTICLE V

THE PARITY DEBT

SECTION 5.01 Incurrence of Parity Debt.

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

SECTION 5.02 Refunding of Parity Debt.

The Authority, in its sole discretion, may determine when and under what circumstances Parity Debt is to be incurred to refund or refinance any outstanding Parity Debt incurred to finance the design, construction or acquisition of the Project.

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 Bonds or incurrence of other Parity Debt, and enter into any amendments or supplements required to issue any Bonds or incur other Parity Debt.

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

The Lessee represents, warrants and covenants as follows:

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

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

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

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

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

(f) Yield on Investment of Gross Proceeds. The cumulative, blended yield on the investment of the gross proceeds will be restricted to the yield on the applicable issue of Tax-Exempt Bonds, other than amounts (i) not subject to yield restriction due to any applicable temporary period under Section 148(b) of the Code, (ii) deposited in a reasonably required reserve or replacement fund, a bona fide debt service fund, or as a minor portion, or (iii) invested

at a restricted yield by virtue of being invested in obligations described in Section 103(a) of the Code that are not “specified private activity bonds” within the meaning of Section 57(a)(5) of the Code to the extent required by the Code.

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

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

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

(j) Examination by IRS. The Lessee acknowledges that, in the event of an examination by the Internal Revenue Service of the exclusion of interest on the Tax-Exempt Bonds from the gross income of the owners thereof for federal tax purposes, the Authority will likely be treated as the “taxpayer”, and the Lessee agrees to respond, at its own expense, to any requests from the Authority for information relating to any Tax-Exempt Bonds in a commercially reasonable manner. For the avoidance of doubt, any costs incurred by the Authority in connection with such examination, including the cost of counsel and any other consultants to the Authority which are deemed necessary or appropriate by the Authority, constitute Administration Costs.

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

SECTION 5.05 Arbitrage Rebate.

The Lessee will timely take such lawful action as requested by the Executive Director to avoid or mitigate the Authority’s obligation to make payments to the United States government under the Arbitrage Rebate Rules, unless an Authorized Lessee Representative certifies to the Authority that the requested action is not practicable. If a portion of the gross proceeds of the Bonds will remain unexpended as of the close of the two-year period beginning with the Closing Date (or such other period as specified by the Executive Director), the Lessee, not later than the

close of such period, will notify the Executive Director of the amount of such unexpended funds, the purpose(s) for which such funds are being retained in the Project Fund after such period and an expected timeline for expenditure of such amounts.

SECTION 5.06 Disclosure Documents.

(a) The Lessee shall provide the Authority, promptly upon request, with available information relating to the Lessee or the Project 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, purchaser of, or counterparty to any Parity Debt to rely on the information and certifications provided by the Lessee under this Section. No Bonds will be issued or other Parity Debt will be incurred unless the information and certifications requested under this Section have been provided by the Lessee.

SECTION 5.07 Recordkeeping.

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

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

ARTICLE VI

RENT PAYMENT PROVISIONS

SECTION 6.01 Lease of Project.

The Authority hereby leases such Project to the Lessee, and the Lessee hereby leases such Project from the Authority under the terms of this Lease. Pursuant to Section 3.02(d) of this Lease, title to the Project Site is and remains vested in the Lessee, and the Project Site does not constitute a portion of the Project.

SECTION 6.02 Rent Payments.

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

(b) The Lessee shall pay Rent Payments or cause the Rent Payments to be paid, from funds lawfully available for the payment of Rent Payments to the Comptroller for deposit into the State Lease Fund Account. Lessee agrees that notwithstanding anything to the contrary herein, Lessee will, to the extent permitted by law, apply all funds available to Lessee, regardless of their

source or any other budget considerations of the Lessee, first to the payment of the Lease Payments hereunder, prior to all other potential uses of such funds. The Authority and the Lessee acknowledge that, under current law, the Lessee will not be able to apply funds to the payment of Lease Payments other than funds that are specifically appropriated therefor by the Legislature.

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

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

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

(f) In addition to the other items required herein, Lessee agrees to pay all Administration Costs to the Authority in accordance with Section 6.03 hereof. 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) If requested by the Authority in writing, any Lease Payments for which an appropriation has been made that are not paid to the Authority within ten (10) days after the due date thereof shall bear interest at a rate equal to Authority's cost of funds, from the due date thereof through the date payment of the same shall be made. If it shall become necessary for the Authority to bring suit for collection of any sum(s) herein stipulated to be paid by the Lessee, and the Authority shall prevail, the Lessee agrees to pay any and all such reasonable expenses and costs as the Authority may incur, including, but not limited to, reasonable attorneys' fees actually incurred or reasonably determined to be the cost of legal services supplied by salaried employees of the Authority. For the avoidance of doubt, any such expenses and costs constitute Administration Costs under this Lease.

(h) Pursuant to the Authorizing Law, Lessee hereby irrevocably authorizes the Authority to access the Lessee's appropriated funds from time to time by issuing vouchers thereon to the Comptroller to transfer funds from the accounts identified in **Exhibit G** of this Lease 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 Project.

(i) The Lessee acknowledges that the Authority may refinance any Parity Debt in a manner deemed by the Authority to be reasonable and financially prudent. The Lessee hereby agrees that the Authority may from time to time, and at any time, amend the schedule of Rent

Payments herein with respect to the Project to reflect the terms of any refinancing of Parity Debt incurred by the Authority to finance or refinance the construction and equipping of the Project, including without limitation, to reflect any amounts drawn under a credit agreement with respect to any Parity Debt or any prepayment under subsection (e) above (such change in the schedule of Rent Payments being referred to herein as the “*Rent Payment Reset*”).

(j) The Lessee also acknowledges that certain of the Authority’s rights under this Lease will be pledged or assigned as security for Parity Debt and will serve as collateral therefor.

(k) It is recognized that the Authority will incur certain overhead and operating expenses caused by the Parity Debt and the Project which shall constitute a portion of the Administration Costs. Therefore, the Lessee agrees to pay or reimburse the Authority for such overhead and operating expenses in accordance with Section 6.03 hereof.

SECTION 6.03 Administration Costs.

The Authority intends to recover from the Lessee all Administration Costs by including approximate costs as an element of the Lease Payments herein or through such other method as may be consistent with the Act upon issuance of the Bonds or incurrence of other Parity Debt. Lessee agrees to indemnify the Authority, to the extent permitted by law, and to pay or reimburse the Authority, 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 portion of a 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 Parity Debt while such Parity Debt is 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 this Lease to be immediately due and payable solely to the extent the Legislature has appropriated funds for such payment; or

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

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

provided, that if the Authority shall lease or sublease all or any portion of a Project, it may lease or sublease such Project or portion thereof only to Persons and under such conditions, that will not constitute or create an Event of Taxability. The Lessee hereby further grants to the Authority and any Person authorized by the Authority to use the Project under a lease or other agreement made pursuant to this Section 7.01 (i) the right to use the Project Site for the Project and any other lawful purpose ancillary to the Project, and (ii) the right to access for pedestrian and vehicular ingress and egress to and from the Project over, and parking on, the Project Site and land owned or leased by the Lessee located adjacent to the Project Site, including use of existing driveways, sidewalks and other improvements, as may be reasonably required for use of the Project, that will not constitute or create an Event of Taxability; provided that, notwithstanding the fact that the grant of such rights of use herein are currently granted to and vested in the Authority, the right of the Authority to exercise its rights to utilize such use rights shall only become effective upon the exercise of the Authority's rights under clauses (2) or (3) of this Section 7.01(a). For avoidance of doubt, the Authority and Persons with which it enters into a lease or other agreement for use of all or any portion of the Project shall not be limited to uses made by Lessee of the Project provided that such use 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 the Project, the Lessee shall immediately vacate and surrender the Project to the Authority.

(d) If the Authority leases or subleases the 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 Parity Debt pursuant to a Resolution and, if such Parity Debt is supported by liquidity or credit enhancement arrangements, to the provider of such liquidity or credit arrangements, and such owners and credit providers shall have the right to exercise (to the extent permitted by law) such rights and remedies. The Lessee hereby authorizes the owners of Parity Debt and, if applicable, any credit provider, 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.

ARTICLE VIII

TERM OF AGREEMENT

SECTION 8.01 Term of Agreement and Lease.

This Lease shall remain in full force and effect from the date hereof until the date all Parity Debt Obligations relating to all outstanding Parity Debt has been paid (or provision has been made for such payment in accordance with the relevant Resolution), all pecuniary obligations of the Authority in connection with such Parity Debt have been satisfied, and all other obligations under this Lease have been satisfied (collectively, the "*Lease Obligations*"), unless this Lease is terminated earlier pursuant to the terms hereof. The Authority, at its sole option, may provide the Lessee with written notice, delivered by the Executive Director to the Authorized Lessee Representative, that all such obligations have been satisfied and the term of this Lease has ended in accordance with this Section.

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 Project, 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 Project.

SECTION 8.03 Conveyance of Project upon Termination.

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

ARTICLE IX

MISCELLANEOUS PROVISIONS

SECTION 9.01 Amendment. The Authority and the Lessee, by mutual written agreement, may amend this Lease for any lawful purpose, including the addition of Project Components, if before the amendment takes effect:

(a) 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;

(b) 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

(c) either of the following requirements is satisfied:

(1) the Authority obtains an opinion of Bond Counsel to the effect that such amendment will not constitute an Event of Taxability (to the extent that any Tax-Exempt Bonds are then outstanding) and an opinion of Bond Counsel to the effect that such amendment will not adversely affect the rights of the owners of outstanding Bonds or Additional Bonds under the applicable Resolution or any assignee of the rights under this Lease; or

(2) the owners of at least a majority in aggregate principal amount of the outstanding Bonds and Additional Bonds 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 Bonds and Additional Bonds 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 (specifically including each notice required under Article IV hereof), certificates, approvals, and other communications under this Lease shall be in writing and delivered by first class mail, return receipt requested, facsimile transmission or other electronic transmission, or by express or personal delivery, prepaid and addressed as follows:

(1) if to the Lessee:

Texas Transportation Commission
c/o Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Telephone: (512) 305-9507
Attention: Executive Director
Email: James.Bass@txdot.gov

(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).

SECTION 9.10 Memorandum of Lease.

The Authority and the Lessee agree that the parties to this Lease shall execute, acknowledge and deliver simultaneously with the execution of this Lease, in recordable form, a memorandum of lease setting forth the basic terms hereof, including, without limitation, the Authority's ownership of the Project and the rights granted to the Authority with respect to the Project Site pursuant to Section 3.02(c) and Section 7.01(a) hereof. The Authority and the Lessee also agree that the Easement Agreement will be filed with, and recorded, in the official public records of Travis County, Texas, in connection with the recording of the memorandum of lease.

SECTION 9.11 Covenants Running with the Land; Survival.

The Authority and the Lessee acknowledge and agree that the ownership of the improvements by the Authority and the rights granted by the Lessee to the Authority for use of the Project Site as set forth in Sections 3.02(c) and 7.01(a) are intended to be, and shall be, covenants running with the estates, interests and rights of the Lessee and the Authority in the Project Site and shall inure to the benefit of, be binding upon and be enforceable by the Authority and the Lessee and their respective transferees, successors and assigns, and all Persons claiming under them. The rights granted herein by the Lessee to the Authority for use of the Project Site as set forth in Section 7.01(a) shall survive the termination of the Lessee's right of possession to all or any part of the Project or this Lease until the satisfaction of all Lease Obligations occurs in accordance with Section 8.01 hereof.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their respective duly authorized officers, as of this March 11, 2021.

TEXAS PUBLIC FINANCE AUTHORITY

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

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____
Authorized Representative
Name: _____
Title: _____

Approved By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their respective duly authorized officers, as of this March 11, 2021.

TEXAS PUBLIC FINANCE AUTHORITY

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

TEXAS DEPARTMENT OF TRANSPORTATION

By: James M Bass
Authorized Representative
Name: James M. Bass
Title: Executive Director

Approved By: Jeff Graham
Name: Jeff Graham
Title: General Counsel

EXHIBIT A
PROJECT DESCRIPTION

<u>PROJECT COMPONENTS</u>	<u>ESTIMATED COST</u>	<u>ESTIMATED USEFUL LIFE (Years)</u>
Site Utilities – Underground Electric, Communications / Network, Water, Wastewater, and Mechanical Piping	\$15,000,000	50 Years
Site Improvements – Site grading, Detention ponds, Drainage improvements, retaining walls, Fencing, Landscaping / Irrigation – Off site work	\$23,000,000	50 Years
Office Building	\$136,000,000	50 Years
Central Utility Plant	\$18,000,000	50 Years
Above Ground Parking Structure	\$37,000,000	50 Years
Materials Testing Laboratory	\$39,000,000	50 Years
Warehouse /Signal Testing Laboratory / Print Shop	\$35,000,000	50 Years
Furniture, Fixtures, and Equipment	\$21,000,000	20 Years
Relocation / Move cost	\$2,000,000	NA
TOTAL	\$326,000,000	

EXHIBIT B

PROJECT COMPLETION SCHEDULE

Year	Expenditure Month	Estimated Monthly Expenditures
2019	SEP	\$ -
	OCT	\$ 8,066,130
	NOV	\$ 262,792
	DEC	\$ 894,322
2020	JAN	\$ 1,807,343
	FEB	\$ 2,903,238
	MAR	\$ 4,924,741
	APR	\$ 4,745,247
	MAY	\$ 4,651,762
	JUN	\$ 7,474,007
	JUL	\$ 6,376,025
	AUG	\$ 7,850,965
	SEP	\$ 11,337,157
	OCT	\$ 10,521,732
	NOV	\$ 13,072,051
	DEC	\$ 13,126,287
2021	JAN	\$ 15,057,103
	FEB	\$ 15,057,103
	MAR	\$ 15,958,056
	APR	\$ 15,958,056
	MAY	\$ 18,737,506
	JUN	\$ 18,495,124
	JUL	\$ 23,971,586
	AUG	\$ 19,270,057
	SEP	\$ 17,567,966
	OCT	\$ 14,512,570
	NOV	\$ 14,457,806
	DEC	\$ 16,040,132
2022	JAN	\$ 12,669,947
	FEB	\$ 10,110,475
	MAR	\$ 76,679
	APR	\$ 46,034
		\$ 326,000,000

Note – Monthly Expenditures in red are actual project expenditures to date

EXHIBIT C

FORM OF DISBURSEMENT CERTIFICATE

DISBURSEMENT CERTIFICATE

The undersigned hereby certifies, on behalf of the Texas Department of Transportation (Agency No. 601) (the "Agency"), as follows:

(a) The capitalized terms in this Certificate that are not herein defined shall have the meanings defined in the Lease Agreement, dated as of March 11, 2021, between the Agency and the Texas Public Finance Authority.

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

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

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

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

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

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____
Authorized Representative

Date: _____

EXHIBIT D

MONTHLY STATUS REPORT INFORMATION

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

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

EXHIBIT E

FORM OF PROJECT COMPLETION CERTIFICATE

PROJECT COMPLETION CERTIFICATE

FUND NO. _____

The undersigned hereby certifies, on behalf of the Texas Department of Transportation (the "Agency"), as follows:

(a) The capitalized terms in this Certificate that are not herein defined shall have the meanings defined in the Lease Agreement, dated as of March 11, 2021, between the Agency and the Texas Public Finance Authority.

(b) The Project was completed on (or no further proceeds of Parity Debt is to be expended for Project Costs as of) _____ *[insert date]*.

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

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

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

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____
Authorized Representative

Date: _____

EXHIBIT F

FORM OF PROJECT SUBSTITUTION CERTIFICATE

The undersigned hereby certifies, on behalf of the Texas Department of Transportation (the "Agency"), as follows:

(a) The capitalized terms in this Certificate that are not herein defined shall have the meanings defined in the Lease Agreement, dated as of March 11, 2021, between the Agency and the Texas Public Finance Authority.

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

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

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

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____
Authorized Representative

Date: _____

EXHIBIT G

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 hereby 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.

Budget Information:

Appropriated Fund No:	_____	Index: _____
Agency Fund No.:	_____	AOBJ: _____
Appropriation No:	_____	Subfund: _____
Program Cost Account (PCA) No:	_____	
Appropriation Year (AY):	_____	

EXHIBIT H
EASEMENT AGREEMENT
(ATTACHED)

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (**Agreement**) is made by **The State of Texas**, acting by and through the Texas Transportation Commission (**Grantor**).

RECITALS

- A. Grantor is the owner of fee simple title to certain real property (**Project Site**) located in Travis County, Texas, as described in **Exhibit A** attached hereto and made a part hereof, upon which an office building, driveways, parking garage, laboratory, warehouse and related facilities (collectively, the **Project**) are now located or may hereafter be constructed.
- B. The Texas Public Finance Authority, an agency of the State of Texas (**TPFA**) has agreed to issue and sell obligations to finance the acquisition, design, construction and equipping of the Project and enter into a Lease Agreement (**Lease**) with Grantor, as lessee, of the Project to assure the recovery of the costs of such financing through lease payments to be made by Grantor to TPFA.
- C. The TPFA owns or will own the Project, subject to such security interests, if any, that are permitted by applicable law and are granted by TPFA to secure financing for such Project, or any refinancing thereof, until the satisfaction of all obligations due and owing by the Grantor pursuant to the Lease. The Project is not part of, and will not become part of, the Project Site pursuant to Texas Government Code Section 1232.066(c).
- D. Fee simple title to the Project Site is and will remain vested in the Grantor, except as may be provided in the Lease. The Project Site is committed for the purposes of the Project.
- E. Grantor has, pursuant to the terms of the Lease, granted to (i) TPFA, the non-exclusive right to have and maintain the existence of the Project over, under and across the Project Site at the location or locations on which any portion of the Project is now or hereafter constructed, installed or otherwise situated on the Project Site, and (ii) TPFA and any person authorized by the TPFA to use the Project under a lease or other agreement pursuant to the terms of the Lease, the non-exclusive right to access for pedestrian and vehicular access for pedestrian and vehicular ingress and egress to and from the Project over, and parking on, the Project Site, including use of existing or to be constructed driveways, sidewalks and other improvements (collectively, the **Access Facilities**) as may be reasonably required for use of the Project.
- F. Notwithstanding the fact that the grant of the rights referenced in Recital E above are currently granted to and vested in TPFA under the Lease, the right of TPFA to exercise its rights to utilize such use rights will only become effective upon TPFA's exercise of its remedial rights (**Remedial Rights**) specifically enumerated in Sections 7.01(a)(2) and (3) of the Lease to (i) enter and take possession of all or any portion of the Project without terminating the Lease and sublease all or any part of the Project for the account of the Grantor, or (ii) terminate the Lease and enter and take possession of all or any portion of the Project.

- G. As a condition to entering into the Lease, TPFA has required the Grantor to grant to it (i) a non-exclusive easement for maintaining the existence of the Project on the Project Site at the locations upon which the Project is located, and (ii) a non-exclusive easement on the Project Site for the other purposes described in Recital E above.
- H. By Minute Order 115939 dated January 28, 2021, the Texas Transportation Commission recommended that the Grantor convey the easements described in this Agreement to TPFA under the terms herein.

AGREEMENT

1. **Easements.** For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor has this day GRANTED, SOLD and CONVEYED unto TPFA and by these presents does hereby GRANT, SELL AND CONVEY unto TPFA (A) a non-exclusive easement (**Project Easement**) for maintaining the existence of the Project over, under and across the Project Site at the location or locations on which any portion of the Project is now or hereafter constructed, installed or otherwise situated on the Project Site, and (B) a non-exclusive easement (**Access Easement**) for pedestrian and vehicular ingress and egress to and from the Project over and across, and parking on, the Project Site, including the use of the Access Facilities; provided, however, the Project Easement and the Access Easement (together, the **Easements**) will only become effective upon the exercise by TPFA of any of the Remedial Rights and, unless and until such occurrence, TPFA will have no rights to use the Easements under this Agreement. TO HAVE AND TO HOLD the Easements, together with all and singular rights and appurtenances thereto in anywise belonging, unto TPFA and its successors and assigns during the term of this Agreement; subject only to: (a) all of the conditions, restrictions and limitations set forth in this Agreement; and (b) "**Permitted Encumbrances**", as such term is defined in the Lease. Grantor hereby binds itself, its successors and assigns unto TPFA, and TPFA's successors and assigns, to forever defend title to the Project Site and the Easements, subject only to Permitted Encumbrances, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.
2. **Reservation of Rights.** Grantor reserves the right to use and improve the Project Site for any and all purposes not inconsistent with the rights granted to TPFA herein including, without limitation, for vehicular and pedestrian access purposes, roadway purposes, and utility and drainage purposes.
3. **Covenants Running With The Land.** The rights and easements granted in Section 1 hereof and the terms, conditions and agreements set forth herein are (a) easements and agreements running with the land (but only for the term of this Agreement) and (b) binding upon Grantor and TPFA and inuring to the benefit of TPFA and its successors and assigns and any person authorized by TPFA to use the Project under a lease or other agreement entered into pursuant to the terms of the Lease.

4. Common Use of Easements. The Easements granted in this Agreement to TPFA are non-exclusive and the Grantor retains the ownership of and joint right to use the Project Site and Access Facilities during the term of this Agreement, subject to exercise of the Remedial Rights by TPFA in accordance with the terms of the Lease. Grantor retains the right to grant further non-exclusive rights of ingress and egress over and across the Access Facilities to other persons or entities (**Other Easement Users**) which are not inconsistent with and will not interfere with the rights granted to TPFA herein. Any other non-exclusive rights of access to the Project Site may only be granted by Grantor if they are not inconsistent with, and will not interfere with, the rights granted to TPFA herein or established by the Lease. Such Other Easement Users will be entitled to use the Project Site and Access Facilities subject to the terms of this Section 4, which terms Grantor shall include in the grant of rights to any Other Easement Users.
5. No Dedication. Nothing contained herein will be construed or deemed to constitute a dedication, express or implied, of any real property or rights to or for any public use or purpose whatsoever.
6. Term. This Agreement and Easements will be in effect until and will automatically terminate on the date which Grantor has satisfied all "**Lease Obligations**" under the Lease, as such term is defined in the Lease. Upon satisfaction of the Lease Obligations in accordance with the terms of Section 8.01 of the Lease, this Agreement and Easements will automatically expire and terminate without the necessity of either party executing any termination or other agreement, and thereafter no party or person will have any continuing rights under this Agreement or the Easements. Notwithstanding the foregoing sentence, upon written request of Grantor, at Grantor's expense, TPFA will execute and record a termination of its rights under this Agreement and the Easements in the Official Public Records of Travis County, Texas upon the expiration and termination of this Agreement and Easements.
7. Notices. Notices and other communications under this Agreement must 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:
if to Grantor:

Texas Transportation Commission
c/o Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Telephone: (512) 305-9507
Attention: Executive Director
Email: James.Bass@txdot.gov

if to TPFA:

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

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

8. Effective Date. The effective date of this Agreement is the date on which it is signed by the Grantor.

[EXECUTION PAGES FOLLOW]

Executed this the 3rd day of March, 2021.

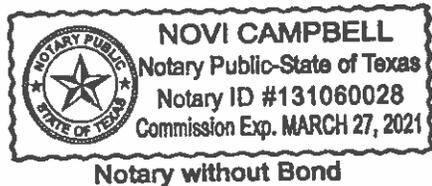
Texas Department of Transportation

By: *James M Bass*
James M. Bass
Executive Director

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on February 25, 2021 by James M. Bass, Executive Director, Texas Department of Transportation, on behalf of the State of Texas.



Noi Campbell
Notary Public, State of Texas

My commission expires: March 27, 2021

Acknowledged, Agreed, and Accepted on this 3rd day of March, 2021.

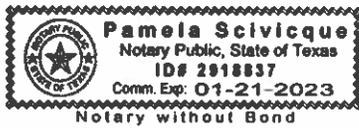
Texas Public Finance Authority

By: *Lee Deviney*
Lee Deviney
Executive Director

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on March 1, 2021 by Lee Deviney, Executive Director, Texas Public Finance Authority, on behalf of the State of Texas.



Pamela Scivicque
Notary Public, State of Texas

My commission expires: 1/21/2023

EXHIBIT A

PROPERTY DESCRIPTION

FIELD NOTE DESCRIPTION FOR TRACT 1. A 48.972 ACRE TRACT OF LAND:

BEING A TRACT OR PARCEL OF LAND SITUATED IN TRAVIS COUNTY, TEXAS, AND BEING OUT OF AND A PART OF THE SANTIAGO DEL VALLE SURVEY, ABSTRACT NO. 24, AND BEING A PART OF THAT CERTAIN TRACT OF LAND CONVEYED TO PARCUM DEVELOPMENT, LLC FROM TCEP, LLC, RECORDED IN DOCUMENT NO. 2015129800, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at an iron rod found in the west right of way line of East Stassney Lane, for the Southeast corner of Lot 1, Block A, Expo Center, Section II, a subdivision recorded in Document No. 200200045, Official Public Records of Travis County, Texas, for the Northeast corner of the said Parcum tract, and for the Northeast corner and POINT OF BEGINNING of the herein described tract:

THENCE with the west right of way line of said East Stassney Lane and the east line of the said Parcum tract, the following two (2) courses:

1. South $53^{\circ}40'21''$ West, a distance of 380.85 feet to an iron rod found at the beginning of a curve to the left:
2. Along said curve to the left, an arc length of 293.92 feet, (said curve having a radius of 1,800.00 feet, a delta angle of $09^{\circ}21'21''$), a chord bearing of South $49^{\circ}00'37''$ West, and a chord distance of 293.59 feet to an iron rod set, for the easterly most Northeast corner of Tract 3, a 21.042 acre tract of land surveyed this day by the undersigned, for the Southeast corner of this tract:

THENCE through the said Parcum tract, and with the north line of said Tract 2, North $44^{\circ}42'40''$ West, a distance of 2,061.83 feet to an iron rod set in the east line of Lot 1, Block D, Missouri-Pacific Industrial Park, a subdivision recorded in Volume 79, Page 268, Plat Records of Travis County, Texas and the west line of the said Parcum tract, for the Northwest corner of said Tract 2, and for the Southwest corner of this tract:

THENCE with the east line of the said Missouri-Pacific Industrial Park subdivision and the west line of the said Parcum tract, North $27^{\circ}12'15''$ East, a distance of 1,362.89 feet to an iron rod found in the south right of way line of Burleson Road, for the Northwest corner of the said Parcum tract, and for the Northwest corner of this tract:

THENCE with the south right of way line of said Burleson Road and the north line of the said Parcum tract, South $62^{\circ}30'45''$ East, a distance of 233.64 feet to an iron rod found, for Northwest corner of Lot 1, Block A, of Jaylee Subdivision, recorded in Document No. 201300107, Official Public Records of Travis County, Texas, for an angle corner of the said Parcum tract, and for an angle corner of this tract:

THENCE with the east line of the said Parcum tract, the following three (3) courses:

1. South $03^{\circ}14'34''$ East, a distance of 121.20 feet to an iron rod found, for an angle corner of this tract:
2. South $24^{\circ}42'34''$ East, at a distance of 1.382.03 feet pass an iron rod found, for the Southwest corner of said Lot 1, Jayee Subdivision and the Northwest west corner of the said Expro Center, in all a total distance of 1.866.94 feet to an iron rod found, for an angle corner of this tract:
3. South $47^{\circ}13'32''$ East, a distance of 492.35 feet to the POINT OF BEGINNING, containing 48.972 acres of land, more or less.